



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2016

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
20	Friday, March 11, 2016	March 30, 2016
21	Friday, March 25, 2016	April 13, 2016
22	Friday, April 8, 2016	April 27, 2016

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, March 4, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the February 17, 2016, Iowa Administrative Bulletin.

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Office organization; public records; petitions and procedures for rule making; declaratory

orders; contested cases, chs 1 to 6 Notice **ARC 2421C** 3/2/16

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Students enrolled in dental hygiene programs, 10.4(4) Notice **ARC 2432C** 3/2/16

Retired volunteer license, 13.4 Filed **ARC 2423C** 3/2/16

Students enrolled in dental assisting programs, 20.17 Notice **ARC 2431C** 3/2/16

ECONOMIC DEVELOPMENT AUTHORITY[261]

Nuisance property and abandoned building remediation assistance, ch 22 Filed **ARC 2420C** 3/2/16

HUMAN SERVICES DEPARTMENT[441]

State supplementary assistance—increase in personal needs allowance, 52.1(1),

52.1(3)"a"(2) Filed **ARC 2426C** 3/2/16

Dependent adult abuse—requests for information, 176.10 Filed **ARC 2427C** 3/2/16

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Unfair trade practices—update of hotline contact information, amendment to ch 15 Notice **ARC 2429C** 3/2/16

Pharmacy benefits managers, amendments to ch 59 Notice **ARC 2433C** 3/2/16

External review—update of division address and Iowa Code references, amendments to ch 76
Notice **ARC 2430C** 3/2/16

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Standards for amusement rides and devices, concession booths, and bungee jump operations,
rescind chs 61, 62; adopt chs 61 to 63 Filed **ARC 2428C** 3/2/16

Conveyances—elevators in broadcast towers, 71.11(2)"a," 72.28, 73.28 Notice **ARC 2422C** 3/2/16

REVENUE DEPARTMENT[701]

Withholding of or exemption from taxation—bingo prizes, raffle tickets, 46.1(1)"e," 231.9

Notice **ARC 2434C** 3/2/16

TRANSPORTATION DEPARTMENT[761]

Counties and cities—programs and funds for bridge and road construction and repair;

instructional memorandums; budgets, reports, highway-related services and supplies,
amendments to chs 160, 161, 170, 172 to 174, 178 Filed **ARC 2425C** 3/2/16

Investigation of convictions based on fraud, 615.41 Filed **ARC 2424C** 3/2/16

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

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Representative Lisa Heddens
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Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

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

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

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

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

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Office organization; public records; petitions and procedures for rule making; declaratory orders; contested cases, chs 1 to 6 IAB 3/2/16 ARC 2421C	Conference Room 2, B Level Hoover State Office Bldg. Des Moines, Iowa	March 22, 2016 1 to 2 p.m.
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DENTAL BOARD[650]

Students enrolled in dental hygiene programs, 10.4(4) IAB 3/2/16 ARC 2432C	Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa	March 30, 2016 2 p.m.
Students enrolled in dental assisting programs, 20.17 IAB 3/2/16 ARC 2431C	Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa	March 30, 2016 2 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Early childhood education—elementary endorsements, 13.26 IAB 2/17/16 ARC 2412C	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	March 9, 2016 1 p.m.
Substitute authorization, 22.2 IAB 2/17/16 ARC 2411C	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	March 9, 2016 1 p.m.
Early childhood paraeducator area of concentration, 24.4(1) IAB 2/17/16 ARC 2410C	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	March 9, 2016 1 p.m.

INSURANCE DIVISION[191]

Pharmacy benefits managers, amendments to ch 59 IAB 3/2/16 ARC 2433C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	March 22, 2016 10 a.m.
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LABOR SERVICES DIVISION [875]

Conveyances—elevators in broadcast towers, 71.11(2), 72.28, 73.28 IAB 3/2/16 ARC 2422C	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	March 23, 2016 10 a.m. (If requested)
Boilers and pressure vessels—incident reporting requirements, 90.11, 91.1(6), 91.20 IAB 2/17/16 ARC 2419C	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	March 9, 2016 1 p.m. (If requested)

NATURAL RESOURCE COMMISSION[571]

Waterfowl and coot hunting seasons, 91.1, 91.3, 91.6 IAB 2/17/16 ARC 2409C	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 8, 2016 2 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Minimum standards for
appropriate supervision of
a physician assistant by a
physician, 327.8
IAB 2/17/16 **ARC 2417C**

Fifth Floor Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

March 9, 2016
9 to 11 a.m.

TRANSPORTATION DEPARTMENT[761]

Federal motor carrier safety and
hazardous materials regulations,
520.1(1)
IAB 2/17/16 **ARC 2401C**

Motor Vehicle Division Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

March 10, 2016
10 a.m.
(If requested)

The following list will be updated as changes occur.

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

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

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

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Flood Mitigation Assistance (FMA) 2016

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
Iowa Homeland Security and Emergency Management Department (HSEMD)	<p>Flood Mitigation Assistance Competitive (FMA) Grant for Fiscal Year (FY) 2016 Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA).</p> <p>The FMA program seeks to reduce damages and the loss of life and property from natural hazards through the development and implementation of mitigation actions.</p>	<ul style="list-style-type: none"> State Agencies and Local Governments. Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations. Private non-profit organizations are not eligible to apply as sub-applicants; however, they may request a local government to submit an application for their proposed activity on their behalf. All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP. All applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan. <p>To learn more about the FMA program, use the following link on HSEMD's website: http://www.fema.gov/hazard-mitigation-assistance</p> <p>Applicants must complete an application through the Electronic Grant (e-Grants) System. Applications must be submitted for State review via e-grants by May 13, 2016. To learn more about the e-grant system use the following link on HSEMD's website: https://portal.fema.gov/famsVuWeb/home</p> <p>For additional information please contact:</p> <p>Dennis Harper 515-725-9348 Dan Schmitz 515-725-9369</p> <p>Iowa Homeland Security and Emergency Management Department 7900 Hickman Road; Suite 500 Windsor Heights, IA 50324</p> <p>TECHNICAL ASSISTANCE HELP DESK: Phone: (866) 222-3580 (toll free) E-mail: enghelpline@dhs.gov bchelpline@dhs.gov ehhelpline@dhs.gov</p>	<p>Eligible Project Activities</p> <p>Mitigation projects must focus on natural hazards. Examples include (but not limited to):</p> <ul style="list-style-type: none"> Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity; Structural and non-structural retrofitting (e.g., storm shutters, hurricane clips, bracing systems) of existing structures to meet or exceed applicable building codes relative to hazard mitigation; Hydrologic and hydraulic studies/analyses, engineering studies, and drainage studies for the purpose of project design and feasibility in conjunction with a project; Protective measures for utilities; water and sanitary sewer systems and/or infrastructure; Storm water management projects (e.g., culverts, floodgates, retention basins) to reduce or eliminate long-term risk from flood hazards; and Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system. <p>Planning Application</p> <p>The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.</p> <p>PROJECT TECHNICAL ASSISTANCE:</p> <p>Technical assistance for Engineering Feasibility, Benefit-Cost Analysis and Environmental/Historic Preservation compliance is available through FEMA.</p>

Pre-Disaster Mitigation (PDM) 2016

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
<p>Iowa Homeland Security and Emergency Management Department (HSEMD)</p>	<p>Pre-Disaster Mitigation Competitive (PDM) Grant for Fiscal Year (FY) 2016 Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA).</p> <p>The PDM program seeks to reduce damages and the loss of life and property from natural hazards through the development and implementation of mitigation actions.</p>	<ul style="list-style-type: none"> • State Agencies and Local Governments. • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations. • Private non-profit organizations are not eligible to apply as sub-applicants; however, they may request a local government to submit an application for their proposed activity on their behalf. • All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP. • All applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan. <p>To learn more about the PDM program, use the following link on HSEMD's website: http://www.fema.gov/hazard-mitigation-assistance</p> <p>Applicants must complete an application through the Electronic Grant (e-Grants) System. Applications must be submitted for State review via e-grants by May 13, 2016. To learn more about the e-grant system use the following link on HSEMD's website: https://portal.fema.gov/famsVuWeb/home</p> <p>For additional information please contact:</p> <p>Dennis Harper 515-725-9348 Dan Schmitz 515-725-9369</p> <p>Iowa Homeland Security and Emergency Management Department 7900 Hickman Road; Suite 500 Windsor Heights, IA 50324</p> <p>TECHNICAL ASSISTANCE HELP DESK: Phone: (866) 222-3580 (toll free) E-mail: enghelpline@dhs.gov bchelpline@dhs.gov ehhelpline@dhs.gov</p>	<p>Eligible Project Activities</p> <p>Mitigation projects must focus on natural hazards. Examples include (but not limited to):</p> <ul style="list-style-type: none"> • Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity; • Construction of safe rooms (tornado and severe wind shelters); • Structural and non-structural retrofitting (e.g., storm shutters, hurricane clips, bracing systems) of existing structures to meet or exceed applicable building codes relative to hazard mitigation; • Hydrologic and hydraulic studies/ analyses, engineering studies, and drainage studies for the purpose of project design and feasibility in conjunction with a project; • Protective measures for utilities; water and sanitary sewer systems and/or infrastructure; • Storm water management projects (e.g., culverts, floodgates, retention basins) to reduce or eliminate long-term risk from flood hazards; and • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system. <p>Planning Application</p> <p>The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.</p> <p>PROJECT TECHNICAL ASSISTANCE:</p> <p>Technical assistance for Engineering Feasibility, Benefit-Cost Analysis and Environmental/Historic Preservation compliance is available through FEMA.</p>

ARC 2421C

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 8B.4, 17A.3, and 22.11, the Office of the Chief Information Officer (the Office) proposes to adopt new Chapter 1, “Office Organization,” Chapter 2, “Public Records and Fair Information Practices,” Chapter 3, “Petitions for Rule Making,” Chapter 4, “Declaratory Orders,” Chapter 5, “Office Procedures for Rule Making,” and Chapter 6, “Contested Cases,” Iowa Administrative Code.

The Office, in accordance with Iowa Code chapters 8B, 17A, and 22, proposes to adopt new Chapters 1 through 6 to describe the Office’s internal organizational structure and establish how the Office will interact with the public in carrying out its duties and responsibilities. Chapter 1 is proposed to describe the Office’s mission and internal organizational structure. Chapter 2 is proposed to describe the information and records collected by the Office and the procedures by which individuals may interact with the Office in order to access and alter such records. Chapter 3 is proposed to set forth the nature and requirements related to petitioning the office to adopt new rules. Chapter 4 is proposed to set forth the nature and requirements related to declaratory orders. Chapter 5 is proposed to describe the procedures related to the Office’s adoption of rules and regulations. Chapter 6 is proposed to set forth the rules and procedures that shall govern contested case proceedings conducted by the Office.

Interested persons may make written comments on the proposed rules until 4:30 p.m. on March 22, 2016. Comments should be directed to the Chief Technology Officer, Office of the Chief Information Officer, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-6137 or by e-mail to ociorules@iowa.gov or may be submitted at <https://rules.iowa.gov>.

A public hearing will be held on March 22, 2016, from 1 to 2 p.m. in Conference Room 2, Level B, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Office and advise of specific needs by calling (515)281-5503.

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

These rules are intended to implement Iowa Code chapters 8B, 17A, and 22.

The following amendments are proposed.

ITEM 1. Adopt the following **new** 129—Chapter 1:

TITLE I
GENERAL OFFICE PROCEDURES
CHAPTER 1
OFFICE ORGANIZATION

129—1.1(8B,17A) Creation and mission. The office of the chief information officer is established in Iowa Code chapter 8B. The office leads, directs, manages, coordinates, and provides accountability for the information technology resources of state government and coordinates statewide broadband availability and access.

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The mission of the office is to provide high-quality, customer-focused information technology services and business solutions to government and to the citizens of the state of Iowa.

129—1.2(8B,17A) Location. The office's primary headquarters is located in the Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The office's Web site, available at www.ocio.iowa.gov, provides information about the office's organization and services.

1.2(1) The information security office is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(2) The infrastructure services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(3) The business services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(4) The enterprise applications division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(5) The application development division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(6) The project management office is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(7) The agency services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

129—1.3(8B,17A) Office head. The head of the office is the state chief information officer, who is appointed by the governor with the approval of two-thirds of the members of the senate. The CIO serves at the pleasure of the governor.

The CIO has the statutory authority to designate an employee of the office to carry out the powers and duties of the CIO in the absence of the CIO or due to the inability of the CIO to do so.

Specific powers and duties of the office, the CIO, and the office's employees and agents are set forth in Iowa Code chapters 8B and 17A and these administrative rules.

129—1.4(8B,17A) Administration of office. In order to carry out the functions of the office, the following enterprises and divisions have been established:

1.4(1) CIO's office. The CIO is the head of the office. The CIO's central administration area provides support to the CIO and to the governmental and business operations of the office and its enterprises. The following functions are included in this area: general counsel; strategic, performance and business continuity planning; program oversight and accountability; and departmental and enterprise policy and standards development.

1.4(2) Information security office. The information security office is responsible for developing, implementing and maintaining information security policies, standards, and practices for state government that enhance the confidentiality, integrity and availability of computer systems and electronic data resources and for ensuring enterprisewide compliance with security requirements. This office includes the state chief information security officer.

1.4(3) Infrastructure services. The infrastructure services division is responsible for infrastructure technology management and operations support throughout state government, including the management

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and administration of information technology (IT) assets such as data centers, servers, mainframes, networks, storage, desktops, mobile devices, and related infrastructure components.

1.4(4) *Business services.* The business services division is responsible for procurement, contracting, vendor management, financial management, brokerage services, and related business support activities of the office.

1.4(5) *Enterprise applications.* The enterprise applications division is responsible for support, configuration, and customization of commercial off-the-shelf applications, software-as-a-service applications, geospatial services, enterprise content management services, and related vendor business applications used throughout state government.

1.4(6) *Application development.* The application development division is responsible for software application, development, maintenance, and training and for providing advice and assistance in developing and supporting business applications throughout state government.

1.4(7) *Project management.* The project management office is responsible for the oversight, coordination, and tracking of IT projects throughout state government.

1.4(8) *Agency services.* The agency services division is responsible for customer IT service management throughout state government, including IT financial planning and budget support, customer liaison services, agency IT strategic planning, advisory services related to IT expenditures, and related services.

129—1.5(8B,17A) Definitions. As used in these rules, unless specified elsewhere:

“*Chief information officer*” or “*CIO*” means the state chief information officer.

“*Office*” or “*OCIO*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

These rules are intended to implement Iowa Code chapter 8B and section 17A.3.

ITEM 2. Adopt the following **new** 129—Chapter 2:

CHAPTER 2 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

129—2.1(8B,17A,22) Definitions. As used in this chapter:

“*Chief information officer*” or “*CIO*” means the state chief information officer.

“*Confidential record*” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the office is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Custodian*” means the office, the CIO, or another person lawfully delegated authority by the office to act for the office in implementing Iowa Code chapter 22.

“*Office*” or “*OCIO*,” unless the context otherwise requires, means the office of the chief information officer authorized by Iowa Code chapter 8B.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the office.

“*Record system*” means any group of records under the control of the office from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

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129—2.2(8B,17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound determinations by the office with respect to the handling of confidential records and the implementation of the Iowa fair information practices Act. This office is committed to the policies set forth in Iowa Code chapter 22; office staff shall cooperate with members of the public in implementing the provisions of that chapter.

129—2.3(8B,17A,22) Requests for access to records.

2.3(1) Location of record. A request for access to a record under the jurisdiction of the OCIO shall be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The OCIO shall forward the request appropriately. If a request for access to a record is misdirected, office personnel will forward the request to the appropriate person within the office.

2.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

2.3(3) Request for access. Requests for access to open records may be made in writing, in person, by e-mail or other electronic means, or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the office's response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

2.3(4) Response to requests. The custodian of records under the jurisdiction of the office is authorized to grant or deny access to a record according to the provisions of this chapter and directions from the office. The decision to grant or deny access may be delegated to one or more designated employees.

a. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

b. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 129—2.4(8B,17A,22) in this chapter and other applicable provisions of law.

2.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from office files. Examination and copying of office records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

2.3(6) Copying. A reasonable number of copies of an open record may be made in the office of the OCIO. If photocopy equipment is not available in the offices of the OCIO where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

2.3(7) Fees.

a. When charged. The office may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the OCIO shall be prominently posted in the offices of the OCIO. Copies of records

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may be made by or for members of the public on office photocopy machines or from electronic storage systems at cost as determined and posted in the offices of the OCIO by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual office expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in the offices of the OCIO the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an office clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee. Upon completion, the actual fee will be calculated and the difference refunded or collected.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

2.3(8) Records held for others. Requests for records the office holds solely in storage for or as the agent of another public body are not within the jurisdiction of the office and shall be directed to the owner of the records.

129—2.4(8B,17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 129—2.3(8B,17A,22).

2.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

2.4(2) Requests. The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

2.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

2.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

2.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

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129—2.5(8B,17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

2.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

2.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the office by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

2.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the office does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

2.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

2.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

2.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs

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the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

129—2.6(8B,17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester and shall include the current address and telephone number of the requester or the requester's representative.

129—2.7(8B,17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the office on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the office to disclose records about that person to the person's attorney.

129—2.8(8B,17A,22) Disclosures without the consent of the subject.

2.8(1) Open records are routinely disclosed without the consent of the subject.

2.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 129—2.9(8B,17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the office with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the office specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

129—2.9(8B,17A,22) Routine use.

2.9(1) "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.9(2) To the extent allowed by law, the following uses are considered routine uses of all office records:

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- a.* Disclosure to those officers, employees, and agents of the office who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes a legitimate need to use confidential records.
- b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the office.
- d.* Transfers of information within the office, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the office is operating a program lawfully.
- f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.
- g.* Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlements filed in contested case proceedings before the office.
- h.* Transmittal to the district court of the record in a contested case before the office, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

129—2.10(8B,17A,22) Consensual disclosure of confidential records.

2.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to the office's disclosure of confidential records as provided in rule 129—2.7(8B,17A,22).

2.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the office may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

129—2.11(8B,17A,22) Release to subject.

2.11(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 129—2.6(8B,17A,22). However, the office need not release the following records to the subject:

- a.* The identity of a person providing information to the office need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.
- b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
- c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.
- d.* As otherwise authorized by law.

2.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the office may take reasonable steps to protect confidential information relating to another subject.

129—2.12(8B,17A,22) Availability of records.

2.12(1) *General.* Office records are open for public inspection and copying unless otherwise provided by rule or law.

2.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a.* Records which are exempt from disclosure under Iowa Code section 22.7.
- b.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

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- c.* Procurement proposals prior to completion of the evaluation process and the issuance of a notice of intent to award a contract by the appropriate procurement authority. (11—subrule 117.19(3), Iowa Administrative Code)
- d.* Tax records made available to the office. (Iowa Code sections 422.20 and 422.72)
- e.* Minutes or audio recordings of closed meetings of a government body. (Iowa Code section 21.5(4))
- f.* Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“*e.*”
- g.* Those portions of office staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by office staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances of criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the office. (Iowa Code sections 17A.2(11)“*f*” and 17A.3(1)“*d*”)
- h.* Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.
- i.* Computer resource security files containing names, identifiers, and passwords of users of computer resources. Such files must be kept confidential to maintain security for access to confidential records pursuant to Iowa Code section 22.7. (Iowa Code section 22.7(50))
- j.* Data or information collected for the purpose of assessing, analyzing, measuring, preparing for, or responding to suspected, potential, or actual information security threats. (Iowa Code section 22.7(50))
- k.* Data or information collected for the purpose of assessing, analyzing, or classifying the severity of, nature of, ability to remediate, or ability to migrate data. (Iowa Code section 22.7(50))
- l.* Detailed security audit information. Such information includes but is not limited to security assessment reports; information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of the office. (Iowa Code section 22.7(50))
- m.* Information security data, information security proposals, or information security assessments compiled, prepared, or developed by a governmental body, or compiled, prepared, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.7(50))
- n.* Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.3A(2)“*a*”)
- o.* Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to the disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.
- p.* Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.
- q.* Any other records made confidential by law.

2.12(3) Authority to release confidential records. The office may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 129—2.4(8B,17A,22). If the office

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initially determines that it will release such records, the office may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

129—2.13(8B,17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the office by personal identifier in record systems as defined in rule 129—2.1(8B,17A,22). Unless otherwise stated, the authority to maintain the record is provided by Iowa Code chapter 8B.

2.13(1) Retrieval. Personal identifiers may be used to retrieve information from any of the systems of records that the office maintains that contain personally identifiable information.

2.13(2) Means of storage. Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

2.13(3) Comparison. Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

2.13(4) Comparison with data from outside the office. Personally identifiable information in systems of records maintained by the office is retrievable through the use of personal identifiers and may be compared with information from outside the office when specified by law.

2.13(5) Nature and extent. All of the record systems listed in subrule 2.13(6) contain personally identifiable information concerning matters such as income and social security numbers.

2.13(6) Record systems with personally identifiable retrieval. The office maintains other public bodies' systems or records that contain personally identifiable and confidential information. The legal authority for the collection of the information is with the public body of record for that system. The following record systems contain personally identifiable information:

a. Personnel files. The office maintains files containing information about employees and applicants for positions with the office. The files include payroll records, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

b. Telephone directory of state employees. The office maintains a telephone directory of state employees. The directory contains names, department names, business addresses and telephone numbers. The publication also includes private industry information and advertising containing business names, addresses and telephone numbers. This record is stored on both paper and electronically.

c. Contracts. These are records pertaining to training, consultants, and other services. These records are collected in accordance with Iowa Code chapter 8B, and portions are confidential records under Iowa Code section 22.7.

These records contain names, social security numbers, and other identifying numbers and are collected in the form of paper, microfilm, tape, and electronic records. Electronic records permit the comparison of personally identifiable information in one record system with that in another system.

d. Vendor files. The office maintains files of vendors eligible to do business with the state of Iowa. Files may contain applications, vendor information booklets, vendor codes, commodity codes, minority-owned vendor identification information, and mailing lists. Records are stored on paper and electronically.

e. Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing to obtain copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

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129—2.14(8B,17A,22) Other groups of records. This rule describes groups of records maintained by the office other than record systems as defined in rule 129—2.1(8B,17A,22). These records are routinely available to the public. However, the office's files of these records may contain confidential information. In addition, the records listed in rule 129—2.13(8B,17A,22) may contain information about individuals. All records are stored on paper and in automated data processing systems unless otherwise noted.

2.14(1) Rule-making records. Rule-making records are official documents executed during the promulgation of office rules and public comments. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may be found on the office's Web site.

2.14(2) Rule-making initiatives. The office maintains both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9 signed September 14, 1999.

2.14(3) Board and commission records. Agendas, minutes, and materials presented to boards and commissions within the office are available from the office except those records which concern closed sessions and are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records may contain information about individuals who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records may also be stored on audiotapes. This information is not stored in an automated data processing system, although minutes and other information may be found on the office's Web site.

2.14(4) Publications. News releases, annual reports, project reports, office newsletters, and other publications are available from the office. Office news releases, project reports, and newsletters may contain information about individuals, including office staff or members of office councils or committees. This information is not stored in an automated data processing system, although some office publications may be found on the office's Web site.

2.14(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 129—2.5(8B,17A,22) or subrule 2.12(2). These records, collected under the authority of Iowa Code chapter 8B, may contain confidential information about individuals.

2.14(6) Published materials or manuals. The office uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright laws.

2.14(7) Mailing lists and contact lists. The office maintains lists including names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public. These lists may be used for distribution of informational material, such as newsletters, policy directives, or educational bulletins. These lists are also used to provide contacts for coordination of services or as reference information sources.

2.14(8) Authorized user lists. The office maintains a list of persons authorized to use the office's on-line services.

2.14(9) Bid/purchasing process. The office maintains records of specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, printing orders, supply orders, and correspondence.

2.14(10) Project files. The office maintains plans, specifications, contracts, studies, drawings, photos, requests for services, lease/rental files, 28E agreements, and facilities records.

2.14(11) Property/equipment files. The office maintains records of inventory, assignments, distribution, maintenance, requests, operations, shipping/receiving reports, and adjustments.

2.14(12) Data processing files. Data processing files include operations logs, database user requests, job number maintenance/updates, data entry format books, integrated data dictionaries, computer output form designations, system software, hardware/software configurations, problem determination/resolution records, and incident reports.

2.14(13) Administrative records. Administrative records include, but are not limited to, the following:

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- a. Reports: weekly, monthly, annual, biennial, statistical, analysis, activity.
- b. Correspondence: public, interagency, internal.
- c. Policies and procedures.
- d. Organizational charts or tables of authorized positions.
- e. Memberships: professional/technical organizations.
- f. Budget and financial records.
- g. Accounting records: accounts receivable, accounts payable, receipts, invoices, claims, vouchers, office billings.
- h. Requisitions of equipment and supplies.
- i. Time sheets.
- j. Purchasing documents and records.

2.14(14) Legislative files. Legislative files include pending bills, enrolled bills, legislative proposals, and copies of amendments.

2.14(15) Printing files. Printing files include print requisitions, plates, negatives, samples, typesetting, artwork, and production logs.

2.14(16) Waivers and variances. Requests for waivers and variances, office proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others.

2.14(17) General correspondence, reciprocity agreements with other states, and cooperative agreements and memorandums of understanding with other agencies.

2.14(18) All other records. Records are open if not exempted from disclosure by law.

129—2.15(8B,17A,22) Data processing systems comparison. Some of the data processing systems used by the office permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

129—2.16(8B,17A,22) Applicability. This chapter does not:

1. Require the office to index or retrieve records which contain information about individuals by a person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the office which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the office in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the office.

129—2.17(8B,17A,22) Notice to suppliers of information. When the office requests a person to supply information about that person, the office shall notify the person of the use that will be made of the information, which persons outside the office might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

These rules are intended to implement Iowa Code chapters 8B, 17A, and 22.

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ITEM 3. Adopt the following new 129—Chapter 3:

CHAPTER 3
PETITIONS FOR RULE MAKING

129—3.1(17A) Petition for rule making.

3.1(1) Filing. Any person, other state agency, or board may file a petition for rule making with the office of the chief information officer at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the office. The office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the office an extra copy for this purpose.

3.1(2) Form. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER	
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state the subject matter).	<div style="font-size: 3em; line-height: 1;">}</div> <div style="text-align: left; padding-top: 10px;"> PETITION FOR RULE MAKING </div>

3.1(3) Content. The petition must provide the following information:

- a. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
- b. A citation to any law deemed relevant to the office's authority to take the action urged or to the desirability of that action.
- c. A brief summary of petitioner's arguments in support of the action urged in the petition.
- d. A brief summary of any data supporting the action urged in the petition.
- e. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.
- f. Any request by the petitioner for a meeting provided for by rule 129—3.4(17A).

3.1(4) Additional requirements. The petition must:

- a. Be dated and signed by the petitioner or the petitioner's representative;
- b. Include the name, mailing address, and telephone number of the petitioner and petitioner's representative; and
- c. Include a statement indicating the person to whom communications concerning the petition should be directed.

3.1(5) Denial. The chief information officer (CIO) may deny a petition if it does not substantially conform to or comply with the above requirements relating to filing, form, content, or additional requirements.

129—3.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The CIO, or the CIO's designee, may request a brief from the petitioner or from any other person concerning the substance of the petition.

129—3.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

129—3.4(17A) Office consideration.

3.4(1) Within 14 days after the filing of a petition, the office must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules

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review committee. Upon request by petitioner in the petition, the office must schedule a brief and informal meeting between the petitioner and the office to discuss the petition. The office may request the petitioner to submit additional information or argument concerning the petition. The office may also solicit comments from any person on the substance of the petition. Comments on the substance of the petition may also be submitted to the office by any person.

3.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the office must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or granting of the petition on the date when the office mails or delivers the required notification to the petitioner.

3.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the office's rejection of the petition.

These rules are intended to implement Iowa Code chapters 8B and 17A.

ITEM 4. Adopt the following new 129—Chapter 4:

CHAPTER 4 DECLARATORY ORDERS

129—4.1(8B,17A) Petition for declaratory order.

4.1(1) Filing. Any person may file a petition with the office for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the office of the chief information officer at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the office. The office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the office with an extra copy for this purpose.

4.1(2) Form. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER

Petition by (Name of Petitioner)
for a Declaratory Order on
(cite the provisions of law involved).



PETITION FOR
DECLARATORY ORDER

4.1(3) Content. The petition must provide the following information:

- a. A clear and concise statement of all relevant facts on which the order is requested.
- b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
- c. The questions the petitioner wants answered, stated clearly and concisely.
- d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
- e. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
- f. 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 directed by, are pending determination by, or are under investigation by any governmental entity.
- g. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.
- h. Any request by petitioner for a meeting provided for by rule 129—4.7(8B,17A).

4.1(4) Additional requirements. The petition must:

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- a. Be dated and signed by the petitioner or the petitioner's representative;
- b. Include the name, mailing address, and telephone number of the petitioner and petitioner's representative; and
- c. Include a statement indicating the person to whom communications concerning the petition should be directed.

129—4.2(8B,17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the office shall give notice of the petition to all persons not served by the petitioner pursuant to rule 129—4.6(8B,17A) to whom notice is required by any provision of law. The office may also give notice to any other persons.

129—4.3(8B,17A) Intervention.

4.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 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 files 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 office.

4.3(3) Filing. A petition for intervention shall be filed at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by the office. The office will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

4.3(4) Form. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER	
Petition by (Name of Original Petitioner) for a Declaratory Order on (cite the provisions of law cited in the original petition).	<div style="font-size: 3em; line-height: 1;">}</div> <div style="text-align: left; padding-top: 10px;"> PETITION FOR INTERVENTION </div>

4.3(5) Content. The petition for intervention must provide the following information:

- a. Facts supporting the intervenor's standing and qualifications for intervention.
- b. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
- c. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
- d. A statement indicating whether the intervenor is currently a party to any 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.
- e. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
- f. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

4.3(6) Additional requirements. The petition must:

- a. Be dated and signed by the intervenor or the intervenor's representative;
- b. Include the name, mailing address, and telephone number of the intervenor and intervenor's representative; and
- c. Include a statement indicating the person to whom communications should be directed.

129—4.4(8B,17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The office may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

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129—4.5(8B,17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the Office of the Chief Information Officer, c/o Business Services Division, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

129—4.6(8B,17A) Service and filing of petitions and other papers.

4.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the office.

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 rule 129—6.14(8B,17A).

129—4.7(8B,17A) Consideration. Upon request by petitioner, the office shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the office to discuss the questions raised. The office may solicit comments from any person on the questions raised. Additionally, any person may submit comments on the questions raised to the office.

129—4.8(8B,17A) Action on petition.

4.8(1) The office shall take action on a petition for a declaratory order within 30 days after its receipt as required by Iowa Code section 17A.9.

4.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 129—6.2(8B,17A).

129—4.9(8B,17A) Refusal to issue order.

4.9(1) The office shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially conform to or comply with the requirements set forth in rule 129—4.1(8B,17A) relating to filing, form, content, or additional requirements.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the office to issue an order.

c. The office does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other office or judicial proceeding that may definitively resolve them.

e. 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.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. 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 office decision already made.

i. 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 or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

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j. The petitioner requests that the office determine whether a statute is unconstitutional on its face.

4.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final office action on the petition.

4.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

129—4.10(8B,17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of the petitioner, the name of any intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

129—4.11(8B,17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

129—4.12(8B,17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the office, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are 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 office. The issuance of a declaratory order constitutes final office action on the petition.

These rules are intended to implement Iowa Code chapters 8B and 17A.

ITEM 5. Adopt the following new 129—Chapter 5:

CHAPTER 5 OFFICE PROCEDURE FOR RULE MAKING

129—5.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the office are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

129—5.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the office may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the office by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

129—5.3(17A) Public rule-making docket.

5.3(1) *Docket maintained.* The office shall maintain a current public rule-making docket.

5.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of a proposed rule is distributed for internal discussion within the office. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the office for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of office personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the office of that possible rule. The office may also include in the docket other subjects upon which public comment is desired.

5.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa

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Administrative Bulletin or the rule's becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any office determination with respect thereto;
- h. Any known timetable for office decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

129—5.4(17A) Notice of proposed rule making.

5.4(1) Contents. At least 35 days before the adoption of a rule, the office shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the office shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the office for the resolution of each of those issues.

5.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 5.12(2) of this chapter.

5.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the office a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the office shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the office for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. Inquiries regarding the subscription price should be directed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

129—5.5(17A) Public participation.

5.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written

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submissions should identify the proposed rule to which they relate and should be submitted to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action.

5.5(2) *Oral proceedings.* The office may, at any time, schedule an oral proceeding on a proposed rule. The office shall schedule an oral proceeding 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 office by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

5.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” or this chapter.

b. Scheduling and notice. An oral proceeding 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 Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The CIO, a member of the office, or another person designated by the CIO who will be familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule. If the CIO does not preside, the presiding officer shall prepare a memorandum for consideration by the CIO summarizing the contents of the presentations made at the oral proceeding unless the CIO determines that such a memorandum is unnecessary because the CIO will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding 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 CIO at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, 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. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, 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 office’s 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 oral proceeding. 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.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the office.

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(6) The presiding officer may continue the oral proceeding at a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or submit to cross-examination. However, the presiding officer in an oral proceeding 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.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

5.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the office may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

5.5(5) *Accessibility.* The office shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance to arrange access or other needed services.

129—5.6(17A) Regulatory analysis.

5.6(1) *Definition of small business.* A “small business” is defined in Iowa Code section 17A.4A(8).

5.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the office’s small business impact list by making a written application addressed to Small Business Registry, c/o Business Services Division, Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. The address of the small business or organization of small businesses;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant’s business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The office may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The office may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

5.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the office shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business and that was adopted in reliance upon Iowa Code section 17A.4(3), the office shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

5.6(4) *Qualified requesters for regulatory analysis—economic impact.* The office shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“a” after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

5.6(5) *Qualified requesters for regulatory analysis—business impact.* The office shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“b” after a proper request from:

- a. The administrative rules coordinator;

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- b. The administrative rules review committee;
- 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.

5.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the office shall adhere to the time lines described in Iowa Code section 17A.4A(4).

5.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the office. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

5.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) through 17A.4A(6).

5.6(9) *Publication of a concise summary.* The office shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(6).

5.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “a,” unless a written request expressly waives one or more of the items listed in the section.

5.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

129—5.7(17A,25B) Fiscal impact statement.

5.7(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.5.

5.7(2) If the office determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the office shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

129—5.8(17A) Time and manner of rule adoption.

5.8(1) *Time of adoption.* The office shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the office shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

5.8(2) *Consideration of public comment.* Before the adoption of a rule, the office 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 or fiscal impact statement issued in that rule-making proceeding.

5.8(3) *Reliance on office expertise.* Except as otherwise provided by law, the office may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

129—5.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

5.9(1) The office 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

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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.

5.9(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 office 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;

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.

5.9(3) The office shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the office finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

5.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the office to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

129—5.10(17A) Exemptions from public rule-making procedures.

5.10(1) *Omission of notice and comment.* When the statute so provides, or with the approval of the administrative rules review committee, if the committee finds good cause that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the office 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 office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

5.10(3) *Public proceedings on rules adopted without them.* The office may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 5.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the office shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 5.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the office may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 5.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

129—5.11(17A) Concise statement of reasons.

5.11(1) *General.* 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 office shall issue a concise

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statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Office of the Chief Information Officer, c/o Business Services Division, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The request should 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.

5.11(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the office's reasons for overruling the arguments made against the rule.

5.11(3) Time of issuance. After a proper request, the office shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

129—5.12(17A) Contents, style, and form of rule.

5.12(1) Contents. Each rule adopted by the office shall contain the text of the rule and, in addition:

- a. The date the office adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(2) or the office in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(2) or the office in its discretion decides to include such reasons; and
- g. The effective date of the rule.

5.12(2) Incorporation by reference. The office may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the office finds that the incorporation of such matter in the office's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the office's proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The office may incorporate such matter by reference in a proposed or adopted rule only if the office makes copies of such matter readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the office, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The office shall retain permanently a copy of any materials incorporated by reference in a rule of the office.

If the office adopts standards by reference to another publication, it shall deliver an electronic copy of the publication, or the relevant part of the publication, containing the standards to the administrative code editor who shall publish it on the general assembly's internet site. If an electronic copy of the publication is not available, the office shall deliver a printed copy of the publication to the administrative code editor who shall deposit the copy in the state law library where it shall be made available for inspection and reference.

5.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the office shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative

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Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the office. The office will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the office shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

5.12(4) *Style and form.* In preparing its rules, the office shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

129—5.13(17A) Office rule-making record.

5.13(1) *Requirement.* The office shall maintain an official rule-making record for each rule it proposes or adopts by publication in the Iowa Administrative Bulletin of a Notice of Intended Action. The rule-making record and materials incorporated by reference must be available for public inspection.

5.13(2) *Contents.* The office 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 and any file-stamped copies of submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the office's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the office, and all other written materials of a factual nature and distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the office and considered by the CIO, 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 office 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 office shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. 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;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(3) by the administrative rules review committee, the governor, or the attorney general;

i. 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 office response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

5.13(3) *Effect of record.* Except as otherwise required by a provision of law, the office rule-making record required by this rule need not constitute the exclusive basis for office action on that rule.

5.13(4) *Maintenance of record.* The office 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, the date of

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the Notice of Intended Action, or the date of any written criticism as described in paragraph 5.13(2) “g,” “h,” “i,” or “j.”

129—5.14(17A) Filing of rules. The office shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that were issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the office shall use the standard form prescribed by the administrative rules coordinator.

129—5.15(17A) Effectiveness of rules prior to publication.

5.15(1) *Grounds.* The office 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 office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.15(2) *Special notice.* When the office makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b,” the office shall employ all reasonable efforts to make the rule’s 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 office 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 office 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. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notices or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b” shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 5.15(2).

129—5.16(17A) General statements of policy.

5.16(1) *Compilation, indexing, public inspection.* The office shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated and indexed and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

5.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this rule shall not be relied on by the office to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 5.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

129—5.17(17A) Review by office of rules.

5.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the office to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the office shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead

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or whether the rule should be amended or repealed. The office may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

5.17(2) In conducting the formal review, the office shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the office's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the office or granted by the office. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the office's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapters 8B and 17A.

ITEM 6. Adopt the following new 129—Chapter 6:

CHAPTER 6
CONTESTED CASES

129—6.1(8B,17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the office or by the division of administrative hearings in the department of inspections and appeals on behalf of the office.

129—6.2(8B,17A) Definitions. Except where otherwise specifically defined by law, for purposes of this chapter:

“Administrative law judge” or *“ALJ”* means an employee of the administrative hearings division of the department of inspections and appeals who presides over contested cases and other proceedings.

“Chief information officer” or *“CIO”* means the state chief information officer or the state chief information officer's designee.

“Contested case” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“Division” means the division of administrative hearings of the department of inspections and appeals.

“Issuance” means, unless another date is specified in the order, the date of mailing of a decision or order or date of delivery if service is by other means.

“Office” means the office of the chief information officer authorized by Iowa Code chapter 8B.

“Party” means a party as defined in Iowa Code section 17A.2(8).

“Presiding officer” means the administrative law judge assigned to the contested case, or the chief information officer, whichever is appropriate.

“Proposed decision” means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the CIO did not preside.

129—6.3(8B,17A) Time requirements.

6.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

6.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as otherwise precluded by rule or law. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

129—6.4(8B,17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified

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by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the office action in question.

The request for a contested case proceeding should state the name and address of the requester; identify the specific office action which is disputed; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute. If the office denies the request, the office shall issue a written order specifying the basis for the denial.

129—6.5(8B,17A) Informal settlement. A party to a controversy that may culminate in contested case proceedings or a party to a contested case proceeding may attempt informal settlement of the controversy or contested case by complying with the procedures set forth in this rule. No party to such a controversy or contested case shall be required to settle the controversy or contested case by submitting to informal settlement procedures.

6.5(1) Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

6.5(2) When signed by the parties to a controversy or contested case and by the CIO, a proposed settlement shall represent final disposition of the matter in place of any prospective or current contested case proceedings.

6.5(3) Where there are more than two parties to a controversy or contested case involving the office, a separate settlement between one party and the office is permissible.

6.5(4) A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations are likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

129—6.6(8B,17A) Notice of hearing and transmission of contested cases.

6.6(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery of the notice of hearing may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure;
- b. Certified mail, return receipt requested;
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

6.6(2) Contents. Notices of hearing shall contain the information required by Iowa Code section 17A.12(2), any additional information required by statute or rule, and the following information:

- a. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the office or the state and of parties' counsel where known;
- b. Reference to the procedural rules governing conduct of the contested case proceeding;
- c. Reference to the procedural rules governing informal settlement;
- d. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., an administrative law judge from the department of inspections and appeals or the CIO);
- e. Information on who to contact if auxiliary aids or services are needed to participate in the matter because of a disability; and
- f. The mailing address and e-mail address for filing with the division or office, whichever is applicable, and notice of the option of e-mail service as provided in paragraph 6.14(2) "b."

6.6(3) Transmission of contested cases. In every proceeding filed by the office with the division, the office shall complete a transmittal form. The transmittal form shall contain the information required by 481—subrule 10.4(1).

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6.6(4) Issuance of the hearing notice. When a case is transmitted by the office to the division for hearing, the division shall issue the notice of hearing. The office shall provide the division with the information required by 481—subrule 10.4(2).

6.6(5) Attachments. The office shall attach the documents required by 481—subrule 10.4(3) to the completed transmittal form when it is sent to the division.

6.6(6) Receipt. When a properly transmitted case is received, it is marked with the date of receipt by the division. The division assigns an identifying number to each contested case upon receipt.

6.6(7) Scheduling. The division shall promptly schedule hearings for the office. The availability of an administrative law judge and any special circumstances shall be considered.

129—6.7(8B,17A) Legal representation. Parties in a contested case have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Business entities, such as partnerships, corporations, or associations may be represented by a nonlawyer partner, member, officer, director, shareholder, other owner or manager, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law. The attorney shall file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14. The cost of any such representation shall be borne by the represented party.

129—6.8(8B,17A) Presiding officer.

6.8(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the CIO.

6.8(2) The CIO may deny the request only upon a finding that one or more of the following apply:

- a. Neither the office nor any officer of the office under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. An administrative law judge with the qualifications identified in subrule 6.8(3) is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g. The request was not timely filed.
- h. The request is not consistent with a specified statute.

6.8(3) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the office:

- a. A license to practice law in the state of Iowa;
- b. Three years' experience as an administrative law judge;
- c. For a hearing related to procurement, knowledge of contract law;
- d. For a hearing in which the underlying dispute or subject matter is related to information technology, and to the extent an administrative law judge with a background in information technology is available, a background in information technology.

6.8(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the office. A party must seek any available intra-agency appeal in order to exhaust administrative remedies.

6.8(5) Unless otherwise provided by law, the CIO, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

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129—6.9(8B,17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the office in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

129—6.10(8B,17A) Telephone and electronic proceedings. The presiding officer may, on the presiding officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the parties or witnesses, as well as the nature of the case, shall be considered when the location is chosen. The presiding officer may permit any witness to testify by telephone or other electronic means. If there is a prehearing conference, the parties shall disclose at or before the prehearing conference whether any witness will be testifying by telephone or other electronic means. If there is not a prehearing conference, the parties shall disclose not less than three business days prior to the hearing date whether any witness will be testifying by telephone or other electronic means unless any law, rule, or order of the presiding officer requires disclosure sooner. Objections, if any, shall be filed and served on all parties at least three business days in advance of hearing.

129—6.11(8B,17A) Disqualification.

6.11(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.11(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other office functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.11(3) and 6.25(9).

6.11(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

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6.11(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.11(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code sections 17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

6.11(5) If, during the course of the hearing, a party becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

6.11(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 129—6.27(8B,17A) and seek a stay under rule 129—6.31(8B,17A).

129—6.12(8B,17A) Consolidation—severance.

6.12(1) Consolidation. The presiding officer may, upon motion by any party or the presiding officer's own motion, consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.12(2) Severance. The presiding officer may, upon motion by any party or the presiding officer's own motion, for good cause shown, order any contested case proceedings or portions thereof severed.

129—6.13(8B,17A) Pleadings.

6.13(1) When required. Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.13(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

6.13(3) Answer.

a. An answer shall be filed within 20 days of service of the petition unless otherwise ordered.

b. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

c. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds.

d. An answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

e. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

f. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

6.13(4) Amendment. Any notice of hearing or petition may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer. The presiding officer may impose terms as a condition of allowing such amendments or grant a continuance.

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129—6.14(8B,17A) Service and filing of pleadings and other papers.

6.14(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the office, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.14(2) *Service—to whom and how made.* Service upon a party represented in the contested case proceeding by an attorney shall be made upon the attorney unless otherwise ordered. Service may be made in the following ways:

a. Service may be made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

b. The presiding officer may by order or a party or a party's attorney may by consent permit service of particular documents by e-mail or similar electronic means unless precluded by a provision of law. In the absence of such an order or consent, electronic transmission shall not satisfy service requirements, but may be used to supplement service when rapid notice is desirable. Consent to electronic service by a party or a party's attorney shall be in writing, may be accomplished through electronic transmission to the office and other parties, and shall specify the e-mail address for such service. Service by electronic transmission is complete upon transmission unless the office or party making service learns the attempted service did not reach the party to be served.

6.14(3) *Filing—when required.*

a. After a matter has been assigned to the division, and until a proposed decision is issued, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the division, rather than the office. All pleadings, motions, documents or other papers filed after the notice is issued that are required to be served upon a party shall be filed simultaneously with the division.

b. After the notice of hearing, when a matter has not been assigned to the division for hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the office.

6.14(4) *Filing—how and when made.*

a. Except where otherwise provided by law, a document is deemed filed at the time it is:

(1) Delivered to the division pursuant to paragraph 6.14(3) "a" or to the office pursuant to paragraph 6.14(3), "b" and date-stamped received;

(2) Delivered to an established courier service for immediate delivery to the proper entity;

(3) Mailed by first-class mail or by state interoffice mail to the proper entity, so long as there is adequate proof of mailing; or

(4) Transmitted by electronic mail (e-mail) or by other electronic means to the proper entity as provided in paragraph 6.14(4) "b."

b. All documents filed with the division or the office pursuant to these rules, except a person's request or demand for a contested case proceeding (see Iowa Code section 17A.12(9)), may be filed by e-mail or other electronic means as approved by the division or the office, whichever is appropriate. A document filed by e-mail or other approved electronic means is presumed to be an accurate reproduction of the original. If a document filed by e-mail or other approved electronic means is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by e-mail or other approved electronic means shall be the date the document is received by the division or the office. Neither the division nor the office will provide a mailed file-stamped copy of documents filed by e-mail or other approved electronic means.

6.14(5) *Proof of mailing.* Proof of mailing includes:

a. A legible United States Postal Service postmark on the envelope;

b. A certificate of service;

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- c.* A notarized affidavit; or
 - d.* A certification in substantially the following form(s):
- (1) After a matter has been assigned to the division for hearing, the certification shall take the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Administrative Hearings Division, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(SIGNATURE)

(DATE)

- (2) When a matter has not been assigned to the division for hearing, the certification shall take the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(SIGNATURE)

(DATE)

129—6.15(8B,17A) Discovery.

6.15(1) Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases.

6.15(2) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

6.15(3) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. The time frames for discovery in the corresponding Iowa Rule of Civil Procedure govern those specific procedures, unless lengthened or shortened by the presiding officer.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

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6.15(4) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the presiding officer may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceedings or impose an undue hardship. As a practical matter the purpose of the disclosure requirements and discovery conference is served by the office's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 129—6.16(8B,17A).

6.15(5) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

6.15(6) Discovery shall be served on all parties to the contested case proceeding, but shall not be filed with the division or office.

6.15(7) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the division or office, whichever is applicable, relating to discovery shall allege that the moving party previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

6.15(8) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

129—6.16(8B,17A) Subpoenas.

6.16(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Upon written request that complies with this rule, subpoenas shall be issued either by the division when a matter has been assigned to the division for hearing or by the office when a matter has not been assigned to the division for hearing. The request may be made in person or by mail or electronic mail. A request for a subpoena must be received by the division or the office, whichever is applicable, at least seven calendar days before the scheduled hearing, or the subpoena will not be issued.

6.16(2) A request for a subpoena shall include the following information, as applicable:

- a.* The name, address, e-mail address, and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date and time and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested; and
- f.* The date, time and location for production, or inspection and copying.

6.16(3) Each subpoena shall contain, as applicable:

- a.* The caption of the case;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date and time and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address and telephone number of the presiding officer or designee;

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- j. The date of issuance;
- k. A return of service.

6.16(4) The presiding officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena. The person who requested the subpoena is responsible for the costs associated with such service, and for the payment of any witness fees and mileage expenses in connection with execution of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

6.16(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the division or office, whichever is applicable, a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then move the presiding officer to issue an order compelling production.

6.16(6) Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the presiding officer may issue a decision. The presiding officer may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the presiding officer may schedule oral argument or hearing by telephone or in person.

6.16(7) A person who is aggrieved by a ruling of a presiding officer and desires to challenge the ruling must appeal the ruling to the office in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 129—6.27(8B,17A) and 129—6.29(8B,17A), provided that all of the time frames are reduced by one-half.

6.16(8) If the person contesting the subpoena is not a party to the contested case proceeding, the presiding officer's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the presiding officer's decision is not final for purposes of judicial review until there is a final decision in the contested case.

129—6.17(8B,17A) Motions.

6.17(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.17(2) Any party may file a written response to a motion within 15 days after the motion is served, unless the time period is extended or shortened by rules of the office or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.17(3) The presiding officer may schedule oral argument on any motion upon request by any party or the presiding officer's own motion.

6.17(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the office or an order of the presiding officer.

6.17(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not

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less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 129—6.30(8B,17A) and appeal pursuant to rule 129—6.29(8B,17A).

129—6.18(8B,17A) Prehearing conference.

6.18(1) Any party may request a prehearing conference. Additionally, the presiding officer may order a prehearing conference on the presiding officer's own motion. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. The presiding officer shall give written notice of the prehearing conference to all parties. For good cause, the presiding officer may permit variances from this rule.

6.18(2) Each party shall disclose at or prior to the prehearing conference:

- a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and
- b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

6.18(3) In addition to the requirements of subrule 6.18(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations concerning the admissibility of exhibits;
- c.* Identify matters which the parties intend to request be officially noticed;
- d.* Unless precluded by statute, enter into stipulations for waiver of the provisions of Iowa Code chapter 17A, as permitted by Iowa Code section 17A.10(2), or waiver of office rules; and
- e.* Consider any additional matters which will expedite the hearing.

6.18(4) Prehearing conferences shall be conducted by telephone or other electronic means unless otherwise ordered.

6.18(5) The parties shall exchange and receive witness and exhibit lists in advance of a prehearing conference.

6.18(6) The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 6.23(4) no later than three business days in advance of hearing, unless otherwise ordered by the presiding officer at the prehearing conference.

129—6.19(8B,17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.19(1) A written application for a continuance shall:

- a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b.* State the specific reasons for the request; and
- c.* Be signed by the requesting party or the requesting party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The office may waive notice of such requests for a particular case or an entire class of cases.

6.19(2) In determining whether to grant a continuance, the presiding officer may consider:

- a.* Any prior continuances;

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- b.* The interests of all parties;
- c.* The likelihood of informal settlement;
- d.* The existence of an emergency;
- e.* Any objection to the continuance;
- f.* Any applicable time requirements;
- g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h.* The timeliness of the request;
- i.* Any applicable state or federal statutes or regulations; and
- j.* Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

6.19(2) The presiding officer may enter an order granting or denying an uncontested or contested application for a continuance.

129—6.20(8B,17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with office rules. Requests for withdrawal may be oral or written. If the request is oral, the presiding officer may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

129—6.21(8B,17A) Intervention.

6.21(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.21(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing, whichever is earlier. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will be denied.

6.21(3) Grounds for intervention. In order to be entitled to intervene, the movant must demonstrate that:

- a.* Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b.* The movant will be aggrieved or adversely affected by a final order in the proceeding; and
- c.* The interests of the movant are not adequately represented by existing parties.

6.21(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

129—6.22(8B,17A) Hearing procedures.

6.22(1) Role of presiding officer. The presiding officer shall preside at and be in control of the proceedings and shall have the authority to:

- a.* Issue such orders and rulings as will ensure the orderly conduct of the proceedings;
- b.* Rule on motions and objections;
- c.* Administer oaths to witnesses;
- d.* Admit or exclude testimony or other evidence;
- e.* Require that the parties submit briefs; and
- f.* Issue a proposed decision.

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6.22(2) *Public hearing.* The hearing shall be open to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

6.22(3) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disruptive or disorderly.

6.22(4) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the office for at least five years from the date of decision.

6.22(5) *Right to participation.* Subject to terms and conditions prescribed by the presiding officer, parties in a contested case proceeding have the right to introduce evidence on issues of material fact, cross-examine witnesses who testify at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.22(6) *Examination of witnesses.* All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning consistent with Iowa Code section 17A.14 and other applicable law.

6.22(7) *Sequestering witnesses.* The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses during the hearing.

6.22(8) *Witness fees.* The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

6.22(9) *Depositions.* Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

6.22(10) *Objections.* All objections to procedures, admissions of evidence, or any other matter shall be timely made and stated on the record.

6.22(11) *Witness right to legal representation.* Witnesses are entitled to be represented by an attorney at their own expense. An attorney to a witness may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

6.22(12) *Order of proceedings.* The presiding officer shall generally conduct hearings in the following order:

a. The presiding officer shall give an opening statement, which shall be on the record, in which the presiding officer briefly identifies himself or herself, identifies the primary parties and their representatives, notes the fact that all testimony is being recorded, and describes the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. The parties shall present their cases in the sequence determined by the presiding officer;

d. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

129—6.23(8B,17A) Evidence.

6.23(1) The presiding officer shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may, where appropriate, take official notice of facts in accordance with Iowa Code section 17A.14(4).

6.23(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.23(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer

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determines good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party that did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend its pleadings and to prepare on the additional issue.

6.23(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The way in which the parties shall mark exhibits shall be determined at the prehearing conference, if any. If there is no prehearing conference, the way in which the parties shall mark exhibits shall be determined by mutual agreement between the parties prior to hearing.

6.23(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such objection shall be timely, and the objecting party shall briefly state the grounds for the objection. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.23(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

6.23(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

129—6.24(8B,17A) Default.

6.24(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.24(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.24(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become the final action of the office unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 129—6.29(8B,17A). A motion to vacate must state all facts relied upon by the moving party that establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.24(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.24(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.24(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

6.24(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision

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granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 129—6.27(8B,17A).

6.24(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.24(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

6.24(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 129—6.31(8B,17A).

129—6.25(8B,17A) Ex parte communication.

6.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the office or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.25(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

6.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 129—6.14(8B,17A) and may be supplemented by telephone, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call, or other similar electronic means, that include all parties or their representatives.

6.25(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.25(6) Other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for the parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.25(1).

6.25(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 129—6.19(8B,17A).

6.25(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines

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that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.25(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.25(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the office. Violation of ex parte communication prohibitions by office personnel shall be reported to the CIO for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

129—6.26(8B,17A) Recording costs. Upon request, the office shall provide a copy of the tape-recorded hearing or a printed transcript of the whole or any portion of the hearing at cost. The cost of preparing the tape or transcript of the hearing shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

129—6.27(8B,17A) Interlocutory appeals. Upon written request of a party or on the CIO's own motion, the CIO may review an interlocutory order of the presiding officer. In determining whether to do so, the CIO shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which such review of that interlocutory order by the office at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is earlier.

129—6.28(8B,17A) Final decision.

6.28(1) Final decision of office. When the CIO presides over the reception of evidence at the hearing, the CIO's decision is a final decision.

6.28(2) Proposed decision. When the CIO does not preside at the reception of evidence, the presiding officer shall make a proposed decision.

6.28(3) Contents of decision. The proposed or final decision or order shall:

- a. Be in writing or stated on the record.
- b. Include findings of fact. Findings of fact, if set forth within statutory language, shall be accompanied by a concise, explicit statement of underlying facts supporting the findings.
- c. Include conclusions of law stated separately from the findings of fact and supported by cited authority or a reasoned opinion.
- d. Be based on the record of the contested case. The record of the contested case shall include all materials specified in Iowa Code section 17A.12(6). This record shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

6.28(4) Proposed decision becomes final. The proposed decision of the presiding officer becomes the final decision of the office without further proceedings unless there is an appeal to, or review on motion of, the office within the time provided in rule 129—6.31(8B,17A).

6.28(5) Reports. The office shall send the division a copy of any request for review of a proposed decision issued by a presiding officer from the division. The office shall notify the division of the results of the review, the office's final decision, and any judicial decision issued.

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129—6.29(8B,17A) Appeals and review.

6.29(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the CIO within 14 days after issuance of the proposed decision. Such an appeal is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

6.29(2) *Review.* The CIO may initiate review of a proposed decision on the CIO's own motion at any time within 21 days following the issuance of such a decision.

6.29(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought; and
- e. The grounds for relief.

6.29(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The CIO may remand a case to the presiding officer for further hearing or may preside at the taking of additional evidence.

6.29(5) *Scheduling.* The office shall issue a schedule for consideration of the appeal.

6.29(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 14 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The CIO may resolve the appeal on the briefs or provide an opportunity for oral argument. The CIO may shorten or extend the briefing period as appropriate.

129—6.30(8B,17A) Applications for rehearing.

6.30(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

6.30(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the office decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.29(4), the applicant requests an opportunity to submit additional evidence.

6.30(3) *Time of filing.* The application shall be filed with the office within 20 days after issuance of the final decision.

6.30(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the office shall serve copies on all parties.

6.30(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the CIO grants the application within 20 days after its filing.

6.30(6) *Proceedings.* If the CIO grants an application for rehearing, the CIO may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will be received, the CIO may remand the case to the presiding officer for further hearing or may preside at the taking of additional evidence. If additional evidence will not be received, the CIO may issue a ruling without oral argument or hearing. The CIO may, on the request of a party or on the CIO's own motion, order or permit the parties to provide written argument on one or more designated issues. The CIO may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

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129—6.31(8B,17A) Stays of office actions.

6.31(1) *When available.*

a. Any party to a contested case proceeding may petition the office for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the office. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The CIO may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the office for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. Seeking a stay from the office is required to exhaust administrative remedies prior to seeking a stay from the district court.

6.31(2) *When granted.* In determining whether to grant a stay, the CIO or the presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

6.31(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the office or any other party.

129—6.32(8B,17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

129—6.33(8B,17A) Emergency adjudicative proceedings.

6.33(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and consistent with the Constitution and other provisions of law, the office may issue a written order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the office by emergency adjudicative order. Before issuing an emergency adjudicative order, the office shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the office is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the office is necessary to avoid the immediate danger.

6.33(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the office’s decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the office;

(3) Certified mail to the last address on file with the office;

(4) First-class mail to the last address on file with the office; or

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(5) Electronic service. E-mail notification may be used as the sole method of delivery if the person required to comply with the order has filed a written request that office orders be sent by e-mail and has provided an e-mail address for that purpose.

c. To the extent practicable, the office shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.33(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the office shall make reasonable immediate efforts to contact by telephone, or other similar electronic means, the persons who are required to comply with the order.

6.33(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the office shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which office proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further office proceedings to a later date will be granted only in compelling circumstances upon application in writing.

129—6.34(8B,17A) Judicial review. Judicial review of the office's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

6.34(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the office's final decision. The office's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

6.34(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 6.30(5).

These rules are intended to implement Iowa Code chapters 8B and 17A.

ARC 2432C

DENTAL BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 153.33, the Dental Board hereby gives Notice of Intended Action to amend Chapter 10, "General Requirements," Iowa Administrative Code.

The purpose of the proposed amendment is to clarify supervision requirements in an accredited dental hygiene program. The proposed subrule establishes the supervision criteria that must be met when students practice clinical skills as part of their regular course of instruction.

Any interested person may make written comments on the proposed amendment on or before March 30, 2016. Such written materials should be directed to Phil McCollum, Associate Director, Iowa Dental Board, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa 50309; or sent by e-mail to phil.mccollum@iowa.gov.

There will be a public hearing on March 30, 2016, at 2 p.m. in the Board office, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa, at which time persons may present their views orally or in writing.

The Board does not intend to grant waivers under the provisions of these rules.

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

DENTAL BOARD[650](cont'd)

This amendment is intended to implement Iowa Code section 153.15.

The following amendment is proposed.

Adopt the following **new** subrule 10.4(4):

10.4(4) Students enrolled in dental hygiene programs. Students enrolled in an accredited dental hygiene program are not considered to be engaged in the unlawful practice of dental hygiene provided that such practice is in connection with their regular course of instruction and meets the following:

a. The practice of clinical skills on peers enrolled in the same program must be under the direct supervision of a program instructor with an active Iowa dental hygiene license, Iowa faculty permit, or Iowa dental license;

b. The practice of clinical skills on members of the public must be under the general supervision of a dentist with an active Iowa dental license;

c. The practice of clinical skills involving the administration or monitoring of nitrous oxide or the administration of local anesthesia must be under the direct supervision of a dentist with an active Iowa dental license.

ARC 2431C

DENTAL BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76, 153.33 and 153.38, the Dental Board hereby gives Notice of Intended Action to amend Chapter 20, “Dental Assistants,” Iowa Administrative Code.

The purpose of the proposed amendment is to clarify supervision requirements in an accredited dental assisting program. The proposed rule establishes the supervision criteria that must be met when students practice clinical skills as part of their regular course of instruction.

Any interested person may make written comments on the proposed amendment on or before March 30, 2016. Such written materials should be directed to Phil McCollum, Associate Director, Iowa Dental Board, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa 50309; or sent by e-mail to phil.mccollum@iowa.gov.

There will be a public hearing on March 30, 2016, at 2 p.m. in the Board office, 400 S.W. Eighth Street, Suite D, Des Moines, Iowa, at which time persons may present their views orally or in writing.

The Board does not intend to grant waivers under the provisions of these rules.

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

This amendment is intended to implement Iowa Code sections 153.38 and 153.39.

The following amendment is proposed.

Adopt the following **new** rule 650—20.17(153):

650—20.17(153) Students enrolled in dental assisting programs. Students enrolled in an accredited dental assisting program are not considered to be engaged in the unlawful practice of dental assisting provided that such practice is in connection with their regular course of instruction and meets the following:

1. The practice of clinical skills on peers enrolled in the same program must be under the direct supervision of a program instructor with an active Iowa dental assistant registration, Iowa dental hygiene license, Iowa faculty permit, or Iowa dental license;

2. The practice of clinical skills on members of the public must be under the direct supervision of a dentist with an active Iowa dental license;

DENTAL BOARD[650](cont'd)

3. The practice of clinical skills involving expanded function procedures must be under the direct supervision of a dentist with an active Iowa dental license.

ARC 2429C**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 505.16 and 507B.12, the Insurance Division (the Division) hereby gives Notice of Intended Action to amend Chapter 15, “Unfair Trade Practices,” Iowa Administrative Code.

This amendment is proposed to update the telephone number and add a Web site address for the Hotline referenced in Appendix II of Chapter 15.

The Division intends that this amendment shall go into effect June 1, 2016.

Any interested person may make written suggestions or comments on the proposed amendment on or before March 22, 2016. Such written materials should be directed to Ann Outka, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309; fax (515)281-8245; e-mail ann.outka@iid.iowa.gov. Any interested person may request an oral proceeding on the proposed amendment by contacting Ann Outka as directed above.

The Insurance Division’s general waiver provisions of 191—Chapter 4 apply to this rule.

This rule will impose no fiscal impact on the State.

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

This amendment is intended to implement Iowa Code chapter 507B.

The following amendment is proposed.

Amend **191—Chapter 15**, Appendix II, paragraph 8, as follows:

8. Information. Further information about HIV testing and AIDS can be obtained by ~~ealling~~ calling the national AIDS hotline at 1-800-342-2437 contacting the CDC national health information hotline, 1-800-CDC-INFO (1-800-232-4636); TTY 1-888-232-6348; www.cdc.gov/info.

ARC 2433C**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 510B.3, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 59, “Pharmacy Benefits Managers,” Iowa Administrative Code.

Iowa Code chapter 510B provides for the Iowa Insurance Commissioner’s administration of the provisions of Iowa Code chapter 510B relating to the regulation of pharmacy benefits managers. The proposed amendments to Chapter 59 are intended to do the following:

1. Implement 2015 Iowa Acts, House File 395.

INSURANCE DIVISION[191](cont'd)

2. Incorporate the findings in *Pharm. Care Mgmt Ass'n v. Gerhart*, No. 4:14-CV-00345 (S.D. Iowa Feb. 18 and Sep. 8, 2015, appealed to the U.S. Court of Appeals for the Eighth Circuit, *PCMA v. Gerhart and Miller*, No. 15-3292).

3. Clarify duties of pharmacy benefits managers that will allow the Commissioner to administer Iowa Code chapter 510B. Pharmacy benefits managers are engaged to stand in the stead of insurers and other entities to administer and manage prescription drug benefits provided under the health insurance plans issued by the insurers and other entities. The Insurance Division has the duties to regulate and supervise the conducting of the business of insurance in Iowa, pursuant to Iowa Code section 505.1. The Insurance Commissioner has general control, supervision, and direction over all insurance business transacted in the state, pursuant to Iowa Code section 505.8, and must provide assistance to the public and to consumers of insurance products in Iowa. The services provided by pharmacy benefits managers affect both the public (which includes pharmacies) and consumers of insurance products. Further, the services provided by pharmacy benefits managers not only contribute to the efficiency of how insurers administer the payment of benefits, but also contribute to insurance costs reflected in the rates charged by insurers to consumers of insurance. The Commissioner is required to review risks, costs and rates. (See, e.g., Iowa Code chapter 513C and sections 505.8(1), 505.8(19) and 514A.13.) The amendments provide means by which the Insurance Division and the Commissioner can obtain the information necessary to determine whether insurers, through their pharmacy benefits managers, are providing uniform, fair, administratively efficient and cost-efficient services to insurers, pharmacies and consumers.

The Division intends that this rule making will become effective June 1, 2016.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 22, 2016. Such written materials should be directed to Rosanne Mead, Iowa Securities and Regulated Industries Bureau, Iowa Insurance Division, Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa 50319; fax (515)281-3059; e-mail rosanne.mead@iid.iowa.gov.

Also, there will be a public hearing on March 22, 2016, at 10 a.m. at the offices of the Iowa Insurance Division, Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

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

These amendments will impose no fiscal impact to the State.

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

These amendments are intended to implement Iowa Code chapter 510B.

The following amendments are proposed.

ITEM 1. Rescind the definitions of “Clean claim,” “Corrective action plan” and “Pharmacist” in rule **191—59.2(510B)**.

ITEM 2. Amend rule **191—59.2(510B)**, definitions of “Complaint” and “Pharmacy,” as follows:

“*Complaint*” means a written communication ~~expressing a grievance or an inquiry concerning a transaction between a pharmacy benefits manager and~~ from a pharmacy- to a pharmacy benefits manager that makes an inquiry, requests information, or expresses a grievance and includes, but is not limited to, the following:

1. A comment on, contest or appeal by a pharmacy, as permitted by Iowa Code section 510B.8(3) and rule 191—59.5(510B), of a pharmacy benefits manager's maximum reimbursement amount rate or maximum reimbursement amount list.

2. Any pharmacy's appeal or request for an independent third-party review of an audit report pursuant to subrule 59.4(6).

3. Any request by a pharmacy for an independent third-party review of a termination or suspension decision pursuant to paragraph 59.6(3) “e.”

4. Any inquiries from the commissioner pursuant to subrule 59.8(3).

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“Pharmacy,” except as used in paragraph 59.4(1) “b,” means “pharmacy” as defined in Iowa Code section 155A.3 and includes “pharmacist,” as defined in Iowa Code section 155A.3, and a pharmacy services administrative organization while acting in its role as a representative of a pharmacist or pharmacy. For purposes of this definition, “pharmacy services administrative organization” means an entity that, while acting in its role as a representative of a pharmacy, provides contracting services on behalf of pharmacies with payers and with pharmacy benefits managers, consolidated reimbursement services for pharmacies, and other business support for pharmacies.

ITEM 3. Adopt the following new definition in rule **191—59.2(510B)**:

“Maximum reimbursement amount,” as defined in Iowa Code section 510B.1(6), includes but is not limited to a pricing rate for generic and therapeutically, pharmaceutically equivalent drugs such as maximum allowable cost, federal upper limit pricing, generic effective rate pricing, or other pharmacy benefits managers’ pricing strategies.

ITEM 4. Adopt the following new subrule 59.3(4):

59.3(4) For purposes of this rule, “clean claim” means a claim which is received by any pharmacy benefits manager for adjudication and which requires no further information, adjustment or alteration by the pharmacy or the covered individual in order to be processed and paid by the pharmacy benefits manager. A claim is a clean claim if it has no defect or impropriety, including any lack of substantiating documentation, or no particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this chapter. A clean claim includes a resubmitted claim with previously identified deficiencies corrected.

ITEM 5. Amend paragraph **59.4(1)“b”** as follows:

b. Any audit which involves clinical or professional judgment must be conducted by or in consultation with a pharmacist as defined in Iowa Code section 155A.3;

ITEM 6. Amend subparagraphs **59.4(1)“j”(4)** and **(6)** as follows:

(4) Any clerical or record-keeping error of the pharmacy, including but not limited to a typographical error, scrivener’s error, or computer error, regarding a required document or record shall not be considered fraud by the pharmacy under paragraph ~~59.5(3)~~ 59.6(3) “a” or under a pharmacy’s contract with the pharmacy benefits manager.

(6) ~~If a pharmacy has entered into a corrective action plan with a pharmacy benefits manager, errors that are a result of the pharmacy’s failure to comply with such plan may be subject to recovery. and if the pharmacy fails to comply with the corrective action plan in a manner that results in overpayments being made by the pharmacy benefits manager to the pharmacy, the pharmacy benefits manager may recover the overpaid amounts.~~ For purposes of this paragraph, “corrective action plan” means an agreement entered into by a pharmacy benefits manager and a pharmacy which is intended to promote accurate submission and payment of pharmacy claims.

ITEM 7. Amend subrule 59.4(6) as follows:

59.4(6) Any pharmacy’s appeal or request for an independent third-party review of an audit report shall be considered a complaint and shall be included in the report required by subrule ~~59.7(2)~~ 59.8(2).

ITEM 8. Renumber rules **191—59.5(510B)** to **191—59.10(505,507,507B,510,510B,514L)** as **191—59.6(510B)** to **191—59.11(505,507,507B,510,510B,514L)**.

ITEM 9. Adopt the following new rule 191—59.5(510B):

191—59.5(510B) Disclosure of national compendia used.

59.5(1) Pursuant to Iowa Code section 510B.8(3), in each contract between a pharmacy benefits manager and a pharmacy beginning or renewed on or after July 1, 2016, a pharmacy benefits manager shall identify how and where pharmacies may find the names of the national compendia or other services the pharmacy benefits manager has used to obtain the pricing data incorporated in the calculation of the maximum reimbursement amount for the formulary drugs included in the list made available to pharmacies pursuant to rule 191—59.7(510B).

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59.5(2) Pursuant to Iowa Code section 510B.8(3), a pharmacy benefits manager shall provide a process to allow a pharmacy to comment on, contest or appeal a maximum reimbursement amount rate or maximum reimbursement amount list.

59.5(3) Any pharmacy's comment on, contest or appeal of a maximum reimbursement amount rate or maximum reimbursement amount list shall be considered a complaint and shall be included in the report required by subrule 59.8(2).

ITEM 10. Amend renumbered paragraphs **59.6(3)“b”** and **“e”** as follows:

b. ~~A pharmacy shall not be terminated or suspended from the pharmacy benefits manager's provider network or otherwise penalized by a pharmacy benefits manager solely because the pharmacy files a complaint, grievance or appeal with any entity.~~ A pharmacy benefits manager shall not neither take action, nor imply or state that it may or will take action, to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefits manager's provider network solely or mainly because the pharmacy files a complaint, ~~grievance or appeal with any entity.~~

e. Any request by a pharmacy for an independent third-party review of a termination or suspension decision shall be considered a complaint and included in the report required by subrule ~~59.7(2)~~ 59.8(2).

ITEM 11. Amend renumbered rule 191—59.7(510B) as follows:

191—59.7(510B) Price change. For purposes of Iowa Code section 510B.7(3), a ~~pharmacy benefits manager may meet the requirements of having to adjust its payment to the pharmacy network provider consistent with a price increase within three business days of the price~~ “price increase notification by a manufacturer or supplier” includes price changes made by national compendia or other services used by a pharmacy benefits manager which take into account, in whole or in part, price changes made by manufacturers or suppliers to help facilitate the development of a drug's maximum reimbursement amount to a pharmacy. A pharmacy benefits manager ~~may comply with the requirements of Iowa Code section 510B.7(3) by keeping a list of current prescription formulary drugs and current maximum reimbursement amounts for those formulary drugs and by updating that list at least every three business days with any price increases maximum reimbursement amount changes.~~ This list shall be made available to pharmacies ~~and pharmacy network providers~~ through a readily accessible and easily usable online format, or in some other readily accessible and easily usable format.

ITEM 12. Amend renumbered subrules 59.8(1) and 59.8(2) as follows:

59.8(1) System to record complaints. Each pharmacy benefits manager shall develop an internal system to record and report complaints. This system shall include but not be limited to the following information regarding each complaint ~~from any pharmacy:~~

a. The reason for the complaint and any factual documentation submitted by the complainant to support the complaint;

b. to *f.* No change.

g. The final determination and outcome of the complaint; and

h. The name of any pharmacy services administrative organization with which the pharmacy has a contract or that is involved in the matter.

59.8(2) Quarterly complaint summary. A summary of all complaints received by the pharmacy benefits manager each calendar quarter shall be submitted to the commissioner within 30 days after the calendar quarter has ended. The summary shall include the following:

a. No change.

b. A summary of the information listed in paragraph ~~59.7(4)~~ 59.8(1)“a,” excluding documentation; and

c. The information listed in paragraphs ~~59.7(4)~~ 59.8(1)“b,” “d,” “e,” and “g.”

ITEM 13. Adopt the following **new** subrule 59.8(3):

59.8(3) Inquiries and complaints from the commissioner.

a. Pharmacy benefits managers shall comply with Iowa Code section 507B.4A(1) in responding promptly to inquiries from the commissioner, including complaints.

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b. When responding to inquiries and complaints from the commissioner, pharmacy benefits managers shall include the Food and Drug Administration National Drug Code number and the names of the manufacturers of the prescription drugs that are related to the inquiry.

ITEM 14. Amend renumbered rule 191—59.10(507,510,510B) as follows:

191—59.10(507,510,510B) Commissioner examinations of pharmacy benefits managers.

59.10(1) *Cooperation of pharmacy benefits managers with the commissioner.* Pharmacy benefits managers shall cooperate with the commissioner ~~for~~ and comply with the commissioner's requests to aid with the commissioner's administration of Iowa Code chapters 507, 507B, 510, and 510B and this chapter, including cooperation and compliance with the commissioner in conducting examinations of pharmacy benefits managers pursuant to Iowa Code chapter 507, and cooperation with the commissioner in conducting investigations pursuant to Iowa Code chapter 507B.

59.10(2) *Maintenance of records.* Pharmacy benefits managers shall maintain for five years the records necessary to demonstrate to the commissioner compliance with this chapter. Pharmacy benefits managers shall provide the commissioner easy accessibility to records for examination, audit and inspection to verify compliance with this chapter.

ITEM 15. Adopt the following **new** subrules 59.10(3), 59.10(4) and 59.10(5):

59.10(3) *Disclosure of payments received by the pharmacy benefits manager.*

a. The commissioner may request, and a pharmacy benefits manager shall disclose to the commissioner, the amount of all payments received by the pharmacy benefits manager, and the nature, type, and amounts of all other revenues that the pharmacy benefits manager receives.

b. For purposes of this subrule, "payments received by the pharmacy benefits manager" means the aggregate amount of the following types of payments:

(1) A remuneration collected by the pharmacy benefits manager which is allocated to a covered entity;

(2) An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer;

(3) A pharmacy network fee; and

(4) Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or labeler for a drug switch program, a formulary management program, a mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function.

59.10(4) *Disclosure of pricing methodology for maximum reimbursement amount.*

a. The commissioner may require, and a pharmacy benefits manager shall submit to the commissioner, pursuant to Iowa Code section 510B.8, information related to the pharmacy benefits manager's pricing methodology for maximum reimbursement amounts.

b. "Disclosure," as used in Iowa Code section 510B.8(2), means the disclosure to the commissioner of the information the commissioner requires the pharmacy benefits manager to submit pursuant to Iowa Code section 510B.8(1).

c. Iowa Code section 510B.8(2) "a" permits pharmacy benefits managers to establish maximum reimbursement amounts, as defined in Iowa Code section 510B.1(6), for all multiple-source prescription drugs prescribed after the expiration of any generic exclusivity period. The pricing methodology for determining the maximum reimbursement amounts for multiple-source prescription drugs including but not limited to those prescribed after the expiration of any generic exclusivity period shall be disclosed to the commissioner, if the commissioner requires pursuant to Iowa Code sections 510B.8(1) and 510B.8(2).

d. Iowa Code section 510B.8(2) "b" permits pharmacy benefits managers to establish maximum reimbursement amounts, as defined in Iowa Code section 510B.1(6), for prescription drugs including, but not limited to, those with at least two or more A-rated therapeutically equivalent, multiple-source prescription drugs with a significant cost difference. The pricing methodology for determining the maximum reimbursement amounts for prescription drugs, including but not limited to those with at least two or more A-rated therapeutically equivalent, multiple-source prescription drugs with a significant

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cost difference, shall be disclosed to the commissioner, if the commissioner requires pursuant to Iowa Code sections 510B.8(1) and 510B.8(2).

e. A pharmacy benefits manager using data sources for determining maximum reimbursement amounts must comply with this paragraph.

(1) The maximum reimbursement amounts that pharmacy benefits managers shall disclose to the commissioner, if the commissioner requires pursuant to Iowa Code sections 510B.8(1) and 510B.8(2), shall be determined, pursuant to Iowa Code section 510B.8(2)“a” and “b,” by using comparable prescription drug prices that are:

1. Obtained from multiple nationally recognized comprehensive data sources including, for example, wholesalers, prescription drug vendors, and pharmaceutical manufacturers for prescription drugs;

2. Nationally available prescription drug prices; and

3. Prescription drug prices that are available to multiple pharmacies in the state of Iowa for purchase locally.

(2) The sources listed in this paragraph and in Iowa Code section 510B.8(2)“c” as sources included among nationally recognized comprehensive data sources are examples of data sources that may be used by pharmacy benefits managers but are not the exclusive data sources that may be used and, if used, that must be disclosed when required by the commissioner.

(3) If a pharmacy benefits manager desires to use a data source not listed in this paragraph and in Iowa Code section 510B.8(2)“c,” the pharmacy benefits manager shall disclose the data source to the commissioner 90 days prior to using the data source.

59.10(5) Confidentiality. Information provided by a pharmacy benefits manager to the commissioner under this rule shall be deemed confidential under Iowa Code section 507.14.

ITEM 16. Amend **191—Chapter 59**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 505, 507, 507B, 510, 510B and 514L.

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Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 514J.117, the Insurance Division (the Division) hereby gives Notice of Intended Action to amend Chapter 76, “External Review,” Iowa Administrative Code.

These amendments are proposed to update the address of the Iowa Insurance Division and the Iowa Code citation referenced in the chapter.

The Division intends that these amendments shall go into effect June 1, 2016.

Any interested person may make written suggestions of comments on these proposed amendments on or before March 22, 2016. Such written materials should be directed to Doug Ommen, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309; fax (515)281-8245; e-mail doug.ommen@iid.iowa.gov. An interested person may request an oral proceeding on the proposed amendments by contacting Doug Ommen as directed above, or by telephone (515)725-1220, or at the Division offices, address above.

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

These rules will impose no fiscal impact on the State.

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

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These amendments are intended to implement Iowa Code chapter 514J.
The following amendments are proposed.

Amend **191—Chapter 76** as follows:

CHAPTER 76
EXTERNAL REVIEW

191—76.1(514J) Purpose. This chapter is intended to implement ~~2011~~ Iowa Code ~~Supplement~~ chapter 514J and the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148 as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, which amends the Public Health Service Act and adopts, in part, new 42 U.S.C. Section 300gg-19. These rules address issues which are unique to the external review process in this state and provide a uniform process for covered persons of health carriers providing health insurance coverage or the covered persons' authorized representatives to request and receive an external review of adverse determinations and final adverse determinations as defined in ~~2011~~ Iowa Code ~~Supplement~~ sections 514J.102(1) and 514J.102(18) and as referenced in ~~2011~~ Iowa Code ~~Supplement~~ section 514J.109(1). Health carriers defined in ~~2011~~ Iowa Code ~~Supplement~~ section 514J.102(23), and included in paragraph 76.2(2) "c" are subject to these rules.

191—76.2(514J) Applicable law and definitions.

76.2(1) The rules contained in this chapter shall apply to any health benefit plan as defined in ~~2011~~ Iowa Code ~~Supplement~~ section 514J.102(19) other than those excluded under ~~2011~~ Iowa Code ~~Supplement~~ section 514J.103(2), for any plan that is offered or issued by a health carrier as defined in ~~2011~~ Iowa Code ~~Supplement~~ section 514J.102(23), if the plan was issued in Iowa, and if the external review request is filed with the commissioner on or after July 1, 2011.

76.2(2) For purposes of this chapter, the definitions in ~~2011~~ Iowa Code ~~Supplement~~ chapter 514J shall apply. In addition:

a. For purposes of applying the exemption in ~~2011~~ Iowa Code ~~Supplement~~ section 514J.103(2) "b," "Medicare supplement policy of insurance" shall mean the same as "Medicare supplement policy" as defined in rule 191—37.3(514D).

b. For purposes of this chapter, the definition of "adverse determination" in ~~2011~~ Iowa Code ~~Supplement~~ section 514J.102 shall include experimental or investigational treatment adverse determinations, as set forth in ~~2011~~ Iowa Code ~~Supplement~~ section 514J.109.

c. No change.

191—76.3(514J) Disclosure requirements. The description of external review procedures required by ~~2011~~ Iowa Code ~~Supplement~~ section 514J.116 shall be in the form of Appendix A or substantially similar language approved by the commissioner.

191—76.4(514J) External review request.

76.4(1) Except for requests for expedited review, the covered person or the covered person's authorized representative shall submit a written request for external review (completed Appendix B) to the commissioner by personal delivery, by mail, by fax or by electronic transmission, including a copy of the health carrier's written notice containing the final adverse determination, within the time periods specified in ~~2011~~ Iowa Code ~~Supplement~~ section 514J.107(1) or 514J.109(1), as applicable. The request form and notice shall be submitted to the commissioner at Iowa Insurance Division, ~~330 Maple Street,~~ Two Ruan Center, 601 Locust, Fourth Floor, Des Moines, Iowa ~~50319~~ 50309; fax (515)281-3059; or e-mail iid.marketregulation@iid.iowa.gov.

76.4(2) and 76.4(3) No change.

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191—76.5(514J) Communication between covered person, health carrier, independent review organization and the commissioner.

76.5(1) Notices or other communications required by ~~2014~~ Iowa Code ~~Supplement~~ chapter 514J between the commissioner, the health carrier and the independent review organization shall be by e-mail or facsimile, unless otherwise specified, and shall be documented to prove transmission and receipt of the communication.

76.5(2) Notices or other communications required by ~~2014~~ Iowa Code ~~Supplement~~ chapter 514J from the commissioner, the health carrier or the independent review organization to the covered person shall be by e-mail, facsimile or overnight mail, and shall be documented to prove transmission and receipt of the communication.

76.5(3) The covered person or covered person's representative may provide notifications and communications to the health carrier, independent review organization and the commissioner as required by ~~2014~~ Iowa Code ~~Supplement~~ chapter 514J by e-mail, facsimile or overnight mail, but also may do so by first-class mail or personal delivery.

76.5(4) Any time periods or deadlines specified in ~~2014~~ Iowa Code ~~Supplement~~ chapter 514J shall commence upon receipt of the notice or communication and cease upon the transmission of the subsequent notice or communication.

191—76.6(514J) Assignment of independent review organization by the commissioner.

76.6(1) The assignment by the commissioner of an independent review organization pursuant to ~~2014~~ Iowa Code ~~Supplement~~ chapter 514J shall be by rotation among approved independent review organizations.

76.6(2) Upon assignment by the commissioner of an independent review organization, in addition to providing notice to the health carrier and the covered person or covered person's representative as required by ~~2014~~ Iowa Code ~~Supplement~~ chapter 514J, the commissioner shall provide notice of the assignment to the independent review organization.

76.6(3) No change.

191—76.7(514J) Decision notification. The independent review organization shall immediately provide a copy of a draft of the decision to the commissioner for review. The commissioner shall review the draft of the decision to verify that the independent review organization has included in its draft of the decision the requirements set forth in ~~2014~~ Iowa Code ~~Supplement~~ section 514J.107, 514J.108, or 514J.109. The commissioner shall make any suggestions for changes to make the draft of the decision comply with the requirements. The independent review organization shall make such required changes within two business days. Once the commissioner determines that the decision meets the requirements of ~~2014~~ Iowa Code ~~Supplement~~ section 514J.107, 514J.108, or 514J.109, as applicable, the independent review organization shall immediately send the decision to the commissioner, the health carrier, and the covered person or covered person's authorized representative. The decision approved by the commissioner shall be delivered by telephone, fax or electronic transmission to the health carrier, the commissioner and the covered person or covered person's authorized representative, and a hard copy of the decision also shall be delivered by mail to the covered person or covered person's authorized representative.

191—76.8(514J) Health carrier information.

76.8(1) No change.

76.8(2) Each health carrier shall make available to the commissioner upon request within five business days a detailed description of the process the health carrier has in place to ensure compliance with the requirements found in this chapter and in ~~2014~~ Iowa Code ~~Supplement~~ chapter 514J. The description shall include:

a. and *b.* No change.

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76.8(3) Each health carrier shall provide to the commissioner, upon request, information set forth in ~~2011 Iowa Code Supplement~~ section 514J.114(2) “b,” in a format substantially similar to Appendix D, or as approved by the commissioner.

191—76.9(514J) Certification of independent review organization.

76.9(1) In addition to the minimum qualifications set forth in ~~2011 Iowa Code Supplement~~ section 514J.112, the following minimum standards are required for certification as an independent review organization:

a. The applicant shall provide a description of the procedures employed to comply with ~~2011 Iowa Code Supplement~~ section 514J.112(1) “a.”

b. to e. No change.

76.9(2) The independent review organization shall develop written policies and procedures to ensure adherence to the requirements of this chapter and ~~2011 Iowa Code Supplement~~ chapter 514J by any contractor, subcontractor, subvendor, agent or employee affiliated with the certified independent review organization.

76.9(3) In addition to the toll-free telephone service required by ~~2011 Iowa Code Supplement~~ section 514J.112(1) “b,” the independent review organization shall establish a facsimile and electronic mail service to receive information relating to external reviews pursuant to this chapter and ~~2011 Iowa Code Supplement~~ chapter 514J.

76.9(4) The independent review organization shall provide the commissioner within ten business days of request such data, information, and reports as the commissioner determines necessary to evaluate the external review process established under ~~2011 Iowa Code Supplement~~ chapter 514J or a report in the format of Appendix C to comply with ~~2011 Iowa Code Supplement~~ section 514J.114(1).

76.9(5) Applications shall be submitted to the Commissioner of Insurance, ~~330 Maple Street, Two Ruan Center, 601 Locust, Fourth Floor, Des Moines, Iowa 50319~~ 50309; or as designated by the commissioner. Applications must be submitted in full to be considered. The form for initially approving and for reapproving independent review organizations required by ~~2011 Iowa Code Supplement~~ section 514J.111(4) shall be in the form of Appendix E. If the commissioner designates an entity to review applications, the designee may charge a fee, as permitted by ~~2011 Iowa Code Supplement~~ section 514J.111(5) and as approved by the commissioner. All applicants will be notified of the certification decision.

76.9(6) No change.

191—76.10(514J) No change.

191—76.11(514J) Penalties.

76.11(1) *Independent review organizations.* The commissioner may withdraw the approval of an independent review organization for any of the following reasons:

a. Failure to maintain the minimum standards set forth in ~~2011 Iowa Code Supplement~~ sections 514J.111 and 514J.112 or in subrule 76.9(1).

b. and c. No change.

d. Failure to comply with any other requirements set forth in this chapter or in ~~2011 Iowa Code Supplement~~ chapter 514J.

76.11(2) *Health carriers.*

a. No change.

b. The commissioner may require a health carrier to provide additional time for a covered person to request an external review or submit documentation if the health carrier failed to comply with any part of ~~2011 Iowa Code Supplement~~ chapter 514J or of this chapter.

c. No change.

These rules are intended to implement ~~2011 Iowa Code Supplement~~ chapter 514J.

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Appendix A

NOTICE OF APPEAL RIGHTS

You have a right to appeal any decision we make that denies payment on your claim or your request for coverage of a health care service or treatment.

You may request additional explanation when your claim or request for coverage of a health care service or treatment is denied or the health care service or treatment you received was not fully covered. Contact us when you:

- Do not understand the reason for denial;
- Do not understand why the health care service or treatment was not fully covered;
- Do not understand why a request for coverage of a health care service or treatment was denied;
- Cannot find the applicable provision in your Benefit Plan Document;
- Want a copy (free of charge) of the guidelines, criteria or clinical rationale that we used to make our decision; or
- Disagree with the denial or the amount not covered and you want to appeal.

If your claim was denied due to missing or incomplete information, you or your health care provider may resubmit the claim to us with the necessary information to complete the claim.

Internal Appeal: All appeals to us for claim denials (or any decision that does not cover expenses you believe should have been covered) must be sent to [insert address of the health carrier contact person where appeals should be sent] within **180 days** of the date you receive our denial. We will provide a full and fair review of your claim by individuals associated with us, but who were not involved in making the initial denial of your claim. You may provide us with additional information that relates to your claim, and you may request copies of information that we have that pertains to your claim. We will notify you of our decision in writing within **30 days** of receiving your appeal. If you do not receive our decision within **30 days** of receiving your appeal, you may be entitled to file a request for external review.

External Review: We have denied your request for the provision of or payment for a health care service or course of treatment. If our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you requested, **you may have a right to have our decision reviewed** by health care professionals who have no association with us. Requests for external review may be submitted to the Commissioner of Insurance.

You may obtain an external review if:

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- Our decision involved the admission, availability of care, continued stay, or other health care service that is a covered benefit; and
- We denied, reduced or terminated the requested service or treatment or payment for the service or treatment because we determined it did not meet our requirements for medical necessity, health care setting, level of care or effectiveness of the health care service or treatment you requested.
- You have a medical condition that would seriously jeopardize your life or health or would jeopardize your ability to regain maximum function. In this situation, you may file a request for an **expedited external review** of our denial.
- The final adverse determination concerns an admission, availability of care, continued stay, or a health care service for which you received emergency services, but you have not been discharged from a facility. In this situation, you or your authorized representative may request an **expedited external review**.
- Our denial to provide or pay for health care service or course of treatment is based on a determination that the service or treatment is experimental or investigational. In addition, if your treating health care professional certifies in writing that the recommended or requested health care service or treatment that is the subject of the recommendation or request would be significantly less effective if not promptly initiated, then you or your authorized representative may request an **expedited external review**.

You can obtain a copy of the External Review Request Form from: the Iowa Insurance Division, ~~330 Maple, Two Ruan Center, 601 Locust, Fourth Floor, Des Moines, Iowa 50319~~ 50309; telephone 877-955-1212 or 515-281-6348; facsimile 515-281-3059; Web site ~~www.iid.state-ia.us~~ www.iid.iowa.gov.

Within **four months** after receipt of our notice containing the final adverse determination and this Notice of Appeal Rights, you should submit a request for external review to the Iowa Insurance Division, ~~330 Maple, Two Ruan Center, 601 Locust, Fourth Floor, Des Moines, Iowa 50319~~ 50309; telephone 877-955-1212 or 515-281-6348; facsimile 515-281-3059; e-mail iid.marketregulation@iid.iowa.gov.

For standard external review, a decision will be made within **45 days** after the independent review organization receives your request.

For details, please review your Benefit Plan Document, contact us, or contact the Iowa Insurance Division.

Appendix B

EXTERNAL REVIEW REQUEST FORM

SECTION 1. No change.

SECTION 2. WHAT TO SEND AND WHERE TO SEND IT

YOU MUST SUBMIT ITEMS 1 AND 2 BELOW:

1. and 2. No change.

INSURANCE DIVISION[191](cont'd)

WHERE TO SEND IT:

If you are requesting a standard external review, send all paperwork to the Iowa Insurance Division, ~~330 Maple, Two Ruan Center, 601 Locust, Fourth Floor, Des Moines, Iowa 50319~~ 50309; facsimile 515-281-3059; e-mail iid.marketregulation@iid.iowa.gov. If you have questions, telephone 877-955-1212 or 515-281-6348.

If you are requesting an expedited external review, call the Iowa Insurance Division (telephone 877-955-1212 or 515-281-6348) before sending your paperwork, and you will receive instructions on the quickest way to submit the application and supporting information.

SECTIONS 3. to 7. No change.

Appendix C to Appendix E No change.

ARC 2422C**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board (Board) hereby gives Notice of Intended Action to amend Chapter 71, “Administration of the Conveyance Safety Program,” Chapter 72, “Conveyances Installed On or After January 1, 1975,” and Chapter 73, “Conveyances Installed Prior to January 1, 1975,” Iowa Administrative Code.

These amendments set forth new rules for elevators in broadcast towers. Many of the requirements mirror existing occupational safety and health standards and reflect current administrative practices.

The purposes of these amendments are to update the rules to reflect current administrative practices; to protect the health and safety of inspectors and mechanics who inspect, test, and work on broadcast towers; and to implement legislative intent.

Broadcast tower elevators pose unique hazards because they are exposed to the weather and can rise up to 2,000 feet in height. The proposed amendments are necessary to protect inspectors, mechanics, and others who work on about a dozen broadcast towers. The proposed amendments are narrowly tailored to protect workers at minimal expense. The provisions concerning inspection scheduling reflect existing practices. The proposals for anchorage points are designed to prevent falls in accordance with occupational safety and health requirements. A car top emergency stop switch can prevent a worker from being crushed, so the switches are standard on all new elevators. Vision panels allow the inspection of certain elevator components from the relative safety of the car. The proposed amendments do not require that vision panels be installed on an elevator if the hoist ropes, rope guides, and guide rails are already visible from inside the car. The proposed amendments will impose a cost of about \$4,000 for each broadcast tower elevator that must have a vision panel installed. The cost for broadcast tower elevators that do not need a vision panel is less than \$4,000.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on March 22, 2016, a public hearing will be held on March 23, 2016, at 10 a.m. in the Capitol View Room, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral

LABOR SERVICES DIVISION[875](cont'd)

presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted no later than March 23, 2016, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Applicable variance procedures are set forth in 875—Chapter 66.

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Adopt the following new subparagraph **71.11(2)“a”(3)**:

(3) The inspector shall arrange to perform the periodic inspection of a broadcast tower elevator when the maintenance company is on site to perform the periodic tests. If the inspection is to be performed by employees of the commissioner, the inspection shall occur during the division's normal business hours.

ITEM 2. Adopt the following new rule 875—72.28(89):

875—72.28(89) Elevators in broadcast towers. This rule applies to special purpose elevators located in broadcast towers.

72.28(1) Vision panels. Unless the hoist ropes, rope guides, and guide rails are visible from inside the elevator car while the car door is closed, vision panels made of clear acrylic shall be installed on the car in a manner to allow the inspection of hoist ropes, rope guides, and guide rails from inside the elevator car. Vision panels shall open to the inside of the car but shall not open to the outside of the car. Vision panels shall be closed and locked when not in use. Vision panels shall be replaced if they become opaque. A sign that reads “DO NOT OPEN VISION PANEL WHEN CAR IS MOVING” shall be posted inside the car next to the vision panel. A professional engineer who is duly licensed in the state of Iowa shall approve the manner of installation and materials used for the vision panel.

72.28(2) Anchorages. Anchorages compliant with 29 CFR 1926.502(d)(15) shall be attached inside the car and on the car top.

72.28(3) Emergency stop switch. An emergency stop switch compliant with ASME A17.1, Sections 2.26.2.8 and 5.7.19 shall be installed on the car top.

ITEM 3. Adopt the following new rule 875—73.28(89):

875—73.28(89) Elevators in broadcast towers. This rule applies to special purpose elevators located in broadcast towers.

73.28(1) Vision panels. Unless the hoist ropes, rope guides, and guide rails are visible from inside the elevator car while the car door is closed, vision panels made of clear acrylic shall be installed on the car in a manner to allow the inspection of hoist ropes, rope guides, and guide rails from inside the elevator car. Vision panels shall open to the inside of the car but shall not open to the outside of the car. Vision panels shall be closed and locked when not in use. Vision panels shall be replaced if they become opaque. A sign that reads “DO NOT OPEN VISION PANEL WHEN CAR IS MOVING” shall be posted inside the car next to the vision panel. A professional engineer who is duly licensed in the state of Iowa shall approve the manner of installation and materials used for the vision panel.

73.28(2) Anchorages. Anchorages compliant with 29 CFR 1926.502(d)(15) shall be attached inside the car and on the car top.

73.28(3) Emergency stop switch. An emergency stop switch compliant with ASME A17.1, Sections 2.26.2.8 and 5.7.19 shall be installed on the car top.

ARC 2434C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 46, “Withholding,” and Chapter 231, “Exemptions Primarily of Benefit to Consumers,” Iowa Administrative Code.

To reflect the new language of Iowa Code section 99B.21, paragraph 46.1(1)“e” on withholding income tax is updated to include bingo in the list of gambling activities for which income tax must be withheld on prizes over a certain amount.

Iowa Code chapter 99B, “Social and Charitable Gambling,” was recently revised and reorganized by 2015 Iowa Acts, chapter 99. Two of the Department’s administrative rules were impacted by those changes. Rule 701—231.9(423), which is related to an exemption for the sales price from the sale of raffle tickets, cross-references Iowa Code section 99B.5, which regulated raffles prior to the reorganization of Iowa Code chapter 99B. Beginning July 1, 2015, raffles are regulated under Iowa Code section 99B.24, and the Department’s rule is updated accordingly. Also, the current version of the rule says that these sales are “not subject to tax.” It is more accurate to say that they are “exempt from sales and use tax,” so that language in the rule is updated as well.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than April 4, 2016, to Ben Clough, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457. Alternatively, requests may be e-mailed to ben.clough@iowa.gov. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business, or an organization representing at least 25 such persons.

Interested persons may make written comments on the proposed amendments on or before March 22, 2016. Comments on the proposed amendments should be directed to Ben Clough by e-mail at ben.clough@iowa.gov; by telephone at (515)725-2176; or by mail to Ben Clough, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457.

Requests for a public hearing must be received by March 22, 2016.

Any person who believes that the application of the discretionary provisions of these rules 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).

After analysis and review of this rule making, the Department finds that the amendments to these rules are likely to have little or no impact on jobs. The proposed amendments only update the rules to reflect recent changes to the language and organization of Iowa Code chapter 99B.

These amendments are intended to implement Iowa Code sections 422.16 and 423.3(62).

The following amendments are proposed.

ITEM 1. Amend paragraph **46.1(1)“e”** as follows:

e. Withholding from prizes from games of skill, games of chance, or raffles. Every person making any payment of a “prize subject to withholding” must deduct and withhold a tax in an amount equal to 5 percent of the prize from a game of skill, a game of chance, or a raffle. Effective July 1, 2015, any person making any payment of a “prize subject to withholding” for bingo must withhold tax in the same manner

REVENUE DEPARTMENT[701](cont'd)

as persons making payments of prizes subject to withholding for games of skill, games of chance, or raffles. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph "e," with the information required by that paragraph. Payers of prizes subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the prize by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph "f."

"Prizes subject to withholding" means any payment of a prize where the amount won exceeds \$600.

ITEM 2. Amend rule 701—231.9(423) as follows:

701—231.9(423) Raffles.

231.9(1) For raffles conducted prior to July 1, 2015. ~~The~~ Prior to July 1, 2015, the sales price from the sale of tickets for a raffle conducted at a fair pursuant to Iowa Code section 99B.5 is ~~not subject to~~ exempt from sales and use tax.

231.9(2) For raffles conducted on or after July 1, 2015. On or after July 1, 2015, the sales price from the sale of tickets for a raffle licensed and conducted at a fair pursuant to Iowa Code section 99B.24 is exempt from sales and use tax.

This rule is intended to implement ~~2005~~ 2016 Iowa Code subsection ~~423.3(61)~~ 423.3(62).

USURY

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

March 1, 2015 — March 31, 2015	4.00%
April 1, 2015 — April 30, 2015	4.00%
May 1, 2015 — May 31, 2015	4.00%
June 1, 2015 — June 30, 2015	4.00%
July 1, 2015 — July 31, 2015	4.25%
August 1, 2015 — August 31, 2015	4.25%
September 1, 2015 — September 30, 2015	4.25%
October 1, 2015 — October 31, 2015	4.25%
November 1, 2015 — November 30, 2015	4.25%
December 1, 2015 — December 31, 2015	4.00%
January 1, 2016 — January 31, 2016	4.25%
February 1, 2016 — February 29, 2016	4.25%
March 1, 2016 — March 31, 2016	4.00%

ARC 2423C

DENTAL BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.2, the Dental Board adopts an amendment to Chapter 13, "Special Licenses," Iowa Administrative Code.

This rule implements the licensing provisions of 2015 Iowa Acts, House File 202, relating to the licensure of retired volunteer dentists and dental hygienists. The rule establishes the criteria for application and qualification for such a license and establishes standards that must be met in order to retain the license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 25, 2015, as **ARC 2252C**. A public hearing was held on December 16, 2015, at 2 p.m. at the office of the Dental Board. There were no attendees, and no written comments were received. One technical change has been made since publication of the Notice. The cross reference in the implementation sentence of rule 650—13.4(153) has been updated to reflect the codification of 2015 Iowa Acts, House File 202 as Iowa Code section 153.23.

This rule was approved by the Board on January 28, 2016.

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

This rule is intended to implement Iowa Code section 153.23.

This rule will become effective April 6, 2016

The following amendment is adopted.

Adopt the following new rule 650—13.4(153):

650—13.4(153) Retired volunteer license. Upon application and qualification, the board may issue a retired volunteer license to a dentist or dental hygienist who has retired from the practice of dentistry or dental hygiene to enable the dentist or dental hygienist to provide volunteer dental or dental hygiene services without remuneration.

13.4(1) Applications for a retired volunteer license shall be made on forms provided by the board, which may include online applications, and must be complete. Incomplete applications will not be accepted.

13.4(2) Applications shall be filed with the board and must include:

- a. Satisfactory evidence that the applicant has retired from practice; and
- b. A statement disclosing and explaining any disciplinary actions or criminal charges, or both; and
- c. Satisfactory evidence demonstrating that:

(1) The applicant has held an active dental or dental hygiene license within the previous five years;

or

(2) The applicant possesses sufficient knowledge and skill to practice safely and competently if the applicant has not held an active dental or dental hygiene license within the previous five years.

13.4(3) A person holding a retired volunteer license shall not practice unless an Iowa-licensed dentist with an active license is present at the location of practice at all times. Screenings and educational programs may be performed without the presence of an Iowa-licensed dentist with an active license, provided that all other board rules governing the respective practice in regards to supervision requirements and permitted scope of practice are met.

13.4(4) A person holding a retired volunteer license shall not charge a fee or receive compensation or remuneration in any form from any person or third-party payer, including but not limited to an insurance company, health plan, or state or federal benefit program.

13.4(5) An applicant who has surrendered, resigned, converted, or allowed a license to lapse or expire as the result of or in lieu of disciplinary action shall not be eligible for a retired volunteer license.

13.4(6) A retired volunteer license shall not be considered to be an active license to practice dentistry or dental hygiene and cannot be converted to any regular license type with active or inactive status.

DENTAL BOARD[650](cont'd)

13.4(7) A person holding a retired volunteer license is prohibited from delegating duties to other licensees or registrants and is prohibited from providing any level of supervision to other licensees or registrants. Licensees and registrants assisting persons with a retired volunteer license do so only under the delegation and supervision of the Iowa-licensed dentist with an active license who is required to be present at all times.

13.4(8) A person holding a retired volunteer license is prohibited from prescribing, administering, or dispensing prescription drugs and all controlled substances.

13.4(9) A person holding a retired volunteer license is subject to all rules and regulations governing the practice of dentistry or dental hygiene except those related to the payment of fees, license renewal, and continuing education.

13.4(10) The board shall not charge an application or licensing fee for issuance of a retired volunteer license.

13.4(11) A retired volunteer license is valid for 12 months from the date of issuance, at which time it expires and becomes invalid. A retired volunteer license holder whose license has become invalid is prohibited from the practice of dentistry or dental hygiene until a new retired volunteer license is issued.

13.4(12) The board may cancel a retired volunteer license if the holder has practiced outside the scope of the license or for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code chapters 147, 153, and 272C and 650—30.4(147,153,272C). When cancellation of a retired volunteer license is proposed, the board shall promptly notify the license holder by sending a statement of charges and notice of hearing by certified mail to the last-known address of the license holder or by personal service. The provisions of 650—Chapter 51 shall govern a contested case proceeding following notice of intent to cancel the license.

13.4(13) A person holding a retired volunteer license shall notify the board by written correspondence or through the board's online system of any change in name or home address within seven days of the change. A copy of a certified marriage license or copy of certified court documents is required for proof of a name change.

13.4(14) The dental hygiene committee shall make recommendations to the board regarding the issuance or denial of any retired volunteer license to practice dental hygiene. The board's review of the dental hygiene committee's recommendation is subject to 650—Chapter 1.

13.4(15) The board may deny a retired volunteer license in accordance with 650—11.9(147,153). The procedure for appealing the denial is set forth in 650—11.10(147).

13.4(16) A person holding an inactive Iowa dental or dental hygiene license may also hold a retired volunteer license.

This rule is intended to implement Iowa Code section 153.23.

[Filed 2/10/16, effective 4/6/16]

[Published 3/2/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/16.

ARC 2420C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Pursuant to the authority of 2015 Iowa Code section 15.106A and of 2015 Iowa Acts, chapter 136, section 48, the Economic Development Authority hereby adopts new Chapter 22, "Nuisance Property and Abandoned Building Remediation Assistance," Iowa Administrative Code.

In 2015 Iowa Acts, chapter 136, the General Assembly directed the Authority to establish a fund for purposes of providing financial assistance to cities for the remediation of nuisance properties and abandoned buildings. These rules establish a program to provide such assistance and describe the manner in which the Authority intends to implement and administer the program.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2263C** on November 25, 2015. The Authority has made two technical changes to these rules. In rule 261—22.1(15), the reference to “Senate File 499” has been changed to “chapter 136,” and in the implementation sentence at the end of the chapter, the reference to 2015 Iowa Acts, Senate File 499, section 48, which has been codified, is cited as Iowa Code section 15.338.

The Economic Development Authority Board adopted this amendment at its meeting held on January 29, 2016.

After analysis and review of this rule making, no negative impact on jobs has been found, and the Authority finds that the new program is likely to substantially benefit the Iowa economy by helping improve commercial and residential property values and revitalize blighted areas.

These rules are intended to implement 2015 Iowa Acts, chapter 136, section 48 [Iowa Code section 15.338].

These rules will become effective April 6, 2016.

The following amendment is adopted.

Adopt the following new 261—Chapter 22:

CHAPTER 22

NUISANCE PROPERTY AND ABANDONED BUILDING REMEDIATION ASSISTANCE

261—22.1(15) Authority and purpose. The authority is directed, pursuant to Iowa Code section 15.338, as enacted by 2015 Iowa Acts, chapter 136, section 48, to establish a fund to provide financial assistance to cities for purposes of assisting with the remediation of nuisance properties and abandoned buildings and other structures and to do so in such a manner as to make funds annually available to cities. In order to ensure that funds are continually available, the authority will administer the fund as a revolving fund.

261—22.2(15) Definitions. For purposes of this chapter unless the context otherwise requires:

“*Abandoned building*” or “*abandonment*” means a building that meets either of the following:

1. In the case of a building located within a city’s limits, a building that has remained vacant and has been in violation of the housing code or building code of the city for a period of six consecutive months.

2. In the case of a building located outside a city’s limits, a building that has remained vacant and has been in violation of the housing code or building code applicable in the county in which the building is located for a period of six consecutive months.

“*Agreement*” means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

“*Applicant*” means a city applying for financial assistance under the program.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Building*” means a structure located in a city, or outside the limits of a city in a county, that is either:

1. Used or intended to be used for commercial or industrial purposes; or

2. Used or intended to be used for residential purposes.

“*Building*” includes structures in which some floors may be used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and other floors are used, designed, or intended to be used for residential purposes.

“*Costs directly related*” means expenditures that are incurred for acquisition, demolition, disposal, redevelopment, or rehabilitation of a project to the extent that they are attributable directly to the remediation or redevelopment of the property or its improvements. “Costs directly related” includes expenditures for site preparation work, surveying, construction materials, construction labor, architectural services, engineering services, building permits, building inspection fees, and interest accrued on a construction loan during the time period allowed for project completion under an agreement entered into pursuant to the program. “Costs directly related” does not include expenditures for furnishings, appliances, accounting services, legal services, loan origination and other financing

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

costs, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

“Director” means the director of the authority.

“Financial assistance” means a loan or forgivable loan made by the authority to an applicant approved for funding under the program.

“Low- or moderate-income household” means a household earning 80 percent or less of the applicable area median income, as determined by the U.S. Department of Housing and Urban Development.

“Nuisance property” means a building, structure, or other real estate that is, or is likely to become, a public nuisance.

“Program” means the procedures, agreement, terms, and assistance established and provided pursuant to this chapter.

“Project” means a proposed plan for the remediation or redevelopment of nuisance and abandoned properties in a city. “Project” may include properties at multiple sites and locations, whether contiguous or not, as long as all properties to be remediated or redeveloped are included in the proposed plan upon application and as long as the proposed plan demonstrates the steps and actions necessary to further remediation and redevelopment efforts in a comprehensive and coordinated manner.

“Public nuisance” means a building that is a menace to the public health, welfare, or safety, or that is structurally unsafe, unsanitary, or not provided with adequate safe egress, or that constitutes a fire hazard, or is otherwise dangerous to human life, or that in relation to the existing use constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment. “Public nuisance” includes buildings with blighting characteristics as defined by Iowa Code section 403.2.

“Redevelopment” means development activities associated with a project that are undertaken either for the purpose of remediating nuisance or abandoned properties, for constructing new buildings or improvements at a site where formerly existing buildings have been demolished, or for rehabilitating, reusing or repurposing existing buildings or improvements at a project site. “Redevelopment” typically includes projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

“Remediation” or *“remediating”* means the demolition, disposal, removal, repair, improvement, or rehabilitation of nuisance property or abandoned buildings at a site included in a project.

261—22.3(15) Program description.

22.3(1) *Amount, form, and timing of assistance.* The program provides financial assistance to cities for the redevelopment or remediation of nuisance properties and abandoned buildings and other structures. The amount of assistance awarded will be negotiated between each applicant and the authority based on the total amount of funds available to the authority for the program and based on the project details.

22.3(2) *Application.*

a. Each fiscal year in which funding is available, the authority will accept applications for the assistance under the program and make funding decisions on a rolling basis.

b. Information on submitting an application under the program may be obtained by contacting the economic development authority. The contact information is:

Iowa Economic Development Authority
Community Development Division
200 East Grand Avenue, Des Moines, Iowa 50309
(515)725-3000
<http://iowaeconomicdevelopment.com/>

22.3(3) *Approval of assistance.* The authority will consider, evaluate, and recommend applications for financial assistance under the program to the director. Authority staff will review applications for financial assistance and score the applications according to the criteria described in rule 261—22.4(15). Recommendations on funding amounts will depend upon the amount of funds available, the quality of

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

the project applying, and the number and quality of the other applications received. Applications deemed to meet the minimum scoring criteria will be submitted to the director for a final funding decision. A project that does not receive funding may reapply.

22.3(4) *Contract required.* If the director approves an application for financial assistance under the program, the authority will prepare an agreement stating the terms on which the financial assistance is to be provided, and the applicant shall execute the agreement before funds are disbursed under the program.

22.3(5) *Use of funds.*

a. An applicant shall use funds only for purposes of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for purposes of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

b. If a city receives financial assistance under the program, the amount of any lien created for costs related to remediation of a property included in a project plan shall not include any moneys that the city received pursuant to this chapter for the remediation of the property. The contract executed pursuant to rule 261—22.5(15) will include a provision implementing this requirement.

22.3(6) *Form of financial assistance.* The authority will provide financial assistance in the form of a loan to the applicant. The amount of the loan, the term, the interest rate, any repayment requirements, and other standard terms shall be included in the contract required pursuant to rule 261—22.5(15).

261—22.4(15) Program eligibility, application scoring, and funding decisions.

22.4(1) *Program eligibility.* To be eligible under the program, an applicant shall meet all of the following requirements:

a. The applicant shall be a city interested in developing a plan to address issues of slum and blight through the remediation or redevelopment of nuisance properties and abandoned buildings.

b. The applicant shall be willing to work with the authority's community development division in the development of the plan described in paragraph 22.4(1) "a."

c. The applicant may request an amount of financial assistance in its application, but shall be willing to accept financial assistance in whatever amount and on whatever terms the authority is able to offer, subject to the availability of funds and the prevailing interest rates at the time of application.

d. The applicant shall have closed all existing contracts under the program before it is eligible to apply for additional financial assistance. The authority may waive this requirement at its discretion for good cause shown. The authority will not waive this requirement if doing so would adversely impact other applicants.

e. The applicant shall submit any information the authority requests in order to evaluate and score the application under the criteria described in this rule.

22.4(2) *Application scoring criteria.* All applications for financial assistance under the program will be scored according to the following criteria:

a. The financial need of the city. 20 points.

For purposes of this criterion, the authority will consider the relative size of the city's budget, the relative scope of the city's problem with nuisance properties and abandoned buildings, and the debt capacity of the city.

b. The extent to which the city suffers from severe blighted areas, including the number of nuisance properties and abandoned buildings in a city relative to its size and the extent to which the successful remediation or redevelopment of the properties included in the project plan will reduce or eliminate such blight. 20 points.

For purposes of this criterion, the authority will consider whether the project plan includes areas meeting standard definitions of blight such as in Iowa Code section 403.17 or other state or federal programs. Cities demonstrating more severe blight will receive more points relative to other applicants with less severe blight.

c. The extent to which a city suffers from widespread dilapidated housing stock and the extent to which the successful remediation or redevelopment of the properties included in the project plan will reduce or eliminate such dilapidated housing stock. 20 points.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Cities demonstrating more dilapidated housing stock will receive more points relative to other applicants with less dilapidated housing stock.

d. The extent to which the city has the organizational strength, financial resources, human resources, and community participation necessary to successfully undertake the remediation or redevelopment described in the project plan. 20 points.

e. The number and percentage of low- and moderate-income households in the community. 20 points.

For purposes of this criterion, the authority will consider U.S. Census Bureau data or data collected from a communitywide income survey that meets the requirements of the state's community development block grant program. Cities demonstrating a higher percentage of low- and moderate-income households will receive more points relative to other applicants with lower percentages.

22.4(3) *Funding decisions.* Each application will be scored by staff in the community development division. The scores assigned by all participating staff will be averaged to reflect one numerical score. The application and the averaged numerical score will be referred to the director with a recommended funding decision. The director will make the final funding decision on each application, taking into consideration the amount of available funding, the numerical score of the application, and the funding recommendation of the community development division staff. The director may approve, deny, or defer funding for any application. The director will not approve funding for an application that receives an average score less than 50 points. A score greater than 50 points does not guarantee that the applicant will receive funding. Each applicant will be notified in writing of the funding decision within 60 days of application unless extenuating circumstances exist.

261—22.5(15) Contract required.

22.5(1) Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority as evidenced by an executed contract. The contract will establish the terms on which the financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program. The authority will develop a standard contract for use in the program, though the contract shall be subject to amendment from time to time as may be necessary to clarify the rights of the parties or to serve the best interests of the state.

22.5(2) The parties may amend the contract required pursuant to this rule at any time upon the mutual agreement of both parties.

22.5(3) The contract developed pursuant to this rule may require the successful applicant to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

These rules are intended to implement Iowa Code section 15.338.

[Filed 2/1/16, effective 4/6/16]

[Published 3/2/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/16.

ARC 2426C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.3(6) and 2015 Iowa Acts, Senate File 505, section 14, the Department of Human Services amends Chapter 52, "Payment," Iowa Administrative Code.

These amendments implement the January 1, 2016, increased personal needs allowance for two State Supplementary Assistance categories: residential care facility and family-life home assistance. These amendments allow the state to adjust the personal needs allowance for residential care facility and family-life home assistance recipients to reflect the increase in the average monthly Medicaid copayment expense for that population.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2362C** on January 6, 2016. These amendments were also Adopted and Filed Emergency and published as **ARC 2363C** on the same date and became effective January 1, 2016. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on February 10, 2016.

These amendments do not provide for waivers in specified situations since the increases are required by federal and state law.

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

These amendments are intended to implement Iowa Code section 217.3(6) and 2015 Iowa Acts, Senate File 505, section 14.

These amendments will become effective April 6, 2016, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

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

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

\$794	Care allowance
\$792	
\$404	Personal allowance
\$103	
<hr/>	
\$895	Total

ITEM 2. Amend subparagraph **52.1(3)“a”(2)** as follows:

(2) An allowance of ~~\$404~~ \$103 to meet personal expenses and Medicaid copayment expenses.

[Filed 2/11/16, effective 4/6/16]

[Published 3/2/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/16.

ARC 2427C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 235B.5(1), the Department of Human Services amends Chapter 176, “Dependent Adult Abuse,” Iowa Administrative Code.

These amendments improve the quality of service, streamline processes, and update expectations. These amendments remove form numbers and alter form names in rule 441—176.10(235B) pertaining to the dissemination of adult abuse information. In addition, these amendments combine information pertaining to child abuse and dependent adult abuse to simplify the process for the requestors of information.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2351C** on January 6, 2016. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on February 10, 2016.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 235B.5(1).

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments will become effective May 1, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 176.10(1) as follows:

176.10(1) Requests for information. Written requests for adult abuse information by the subject of a report as defined in subrule 176.10(3), paragraph “a,” may be submitted to the county office of the department on ~~Form 470-0612~~, the department-prescribed form entitled Request for Child and Dependent Adult Abuse Registry Information.

Oral requests for dependent adult abuse information may be made to the county office or the central registry when the person making the request believes that the information is needed immediately and the person is authorized to access the information, pursuant to the requirements of Iowa Code section 235B.7, subsection 2. If a request is made orally by telephone, a written request shall be filed within 72 hours of the oral request ~~using Form 470-0612~~, on the department-prescribed form entitled Request for Child and Dependent Adult Abuse Registry Information. When an oral request to the county office to obtain dependent adult abuse information is granted by the central registry, the county shall document the approval to the central registry ~~through use of Form 470-0612~~ on the department-prescribed form entitled Request for Child and Dependent Adult Abuse Information.

All other requests for information shall be made to the central registry by mail or fax pursuant to the requirements of Iowa Code section 235B.7.

ITEM 2. Amend subrule 176.10(2) as follows:

176.10(2) Verification of identity. The county office shall verify the identity of the person making the request on ~~Form 470-0612~~, the department-prescribed form entitled Request for Child and Dependent Adult Abuse Registry Information. Upon verification of the identity of the person making the request, the county office shall transmit the request to the central registry. The central registry shall verify the identity of persons making requests for information directly to the central registry by telephone, mail, fax, or in person, on ~~Form 470-0612~~, the department-prescribed form entitled Request for Child and Dependent Adult Abuse Registry Information.

ITEM 3. Amend subrule 176.10(4) as follows:

176.10(4) Requests concerning applicants for employment and employees of health care programs. A health care program making a request for dependent adult abuse information for the purpose of determining employability, as authorized by Iowa Code section 235B.6, subsection 2, paragraph “e,” subparagraphs (6) and (7), and section 135C.33, subsection 6, shall request the information directly from the central registry or obtain the information from the Internet electronic information system maintained by the health facilities division of the department of inspections and appeals.

Requests made directly to the central registry shall be made on ~~Form 470-0612~~, the department-prescribed form entitled Request for Child and Dependent Adult Abuse Registry Information.

Health care programs requesting dependent adult abuse background checks on employee applicants and employees by use of the Internet electronic information system shall complete ~~Form 470-3767, Non-Redissemination Agreement~~ the department-prescribed form entitled Access to Confidential Abuse Information and Non-Redissemination Agreement. The form shall be signed by the administrator of the health care program and be sent to the central registry before receipt of the information from the department. The administrator shall agree not to re-disseminate dependent adult abuse information obtained through the Internet electronic information system, except as authorized in Iowa Code sections 235B.6 and 235B.8.

[Filed 2/11/16, effective 5/1/16]

[Published 3/2/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/16.

ARC 2428C**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 88A.3, the Labor Commissioner hereby rescinds Chapter 61, “Administration of Iowa Code Chapter 88A,” and adopts a new Chapter 61 with the same title; rescinds Chapter 62, “Safety Rules for Amusement Rides, Amusement Devices, and Concession Booths,” and adopts a new Chapter 62 with the same title; and adopts new Chapter 63, “Safety Rules for Bungee Jumps,” Iowa Administrative Code.

The rules concerning amusement rides and devices have seen only minor modifications in the past 40 years and are obsolete. The adopted amendments replace the existing two chapters with three new chapters to reflect new technologies and national industry trends.

Adoption by reference of ASTM Standards on Amusement Rides and Devices is a key component of these rules. These ASTM safety standards are national consensus standards developed with significant input from the amusement ride and device industry, and they are flexible to cover new equipment. Separate standards specific to tramways and a new chapter for bungee jumping are also adopted.

The new rules clarify the scope of jurisdiction over amusement devices and concession booths; set forth procedures for owners to perform the required annual inspections in limited circumstances; set minimum standards for employees of amusement operations; codify existing practices for many administrative functions; set forth procedures for denial, termination, suspension, or revocation of an operating permit or sticker; set forth procedures for leasing covered equipment; and conform to various statutory provisions.

The purposes of these amendments are to implement legislative intent and protect the public health and safety.

Notice of Intended Action was published in the January 6, 2016, Iowa Administrative Bulletin as **ARC 2354C**. Three comments were received on the proposed amendments. One person expressed support for the new provisions that allow owner inspections of inflatable amusement devices to substitute for inspections by state employees. One person expressed uncertainty about the meaning of subrule 62.4(2), and one person expressed uncertainty about the meaning of subrule 62.4(10). The comments were reviewed and it was determined that no changes are necessary.

These amendments are not identical to the amendments published under Notice of Intended Action. The exemption set forth in subrule 61.1(7) has been expanded to include schools, and the format of paragraph 61.3(1)“f” has been revised for consistency.

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

These amendments are intended to implement Iowa Code chapter 88A.

These amendments shall become effective on April 6, 2016.

The following amendments are adopted.

ITEM 1. Rescind 875—Chapter 61 and adopt the following new chapter in lieu thereof:

CHAPTER 61**ADMINISTRATION OF IOWA CODE CHAPTER 88A**

875—61.1(88A) Scope. 875—Chapters 61 through 63 do not apply to the following:

61.1(1) A water park or water park attraction including, but not limited to, a water slide, wave action pool, and lazy river. This subrule does not apply to an amusement ride that propels patrons using a power source other than gravity even though water is present.

61.1(2) A live-animal ride.

61.1(3) A vessel inspected pursuant to Iowa Code chapter 462A.

61.1(4) An amusement structure in which the patrons navigate on their own power and the patrons do not ride, climb, or walk on a mechanical component.

61.1(5) A device that meets all of the following criteria:

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- a. Was designed and built to be operated by a coin, card, or token;
- b. Was designed and built to be operated by the patron rather than an attendant;
- c. Operates on self-contained wiring that was installed by the manufacturer;
- d. Operates on less than 120 volts of electrical power; and
- e. Is within or is part of a structure subject to a state or local building code.

61.1(6) Playground equipment owned, maintained, and operated by any political subdivision of this state.

61.1(7) A concession booth, amusement device, or amusement ride that meets all of the following:

- a. Is owned and operated by a nonprofit organization or school; and
- b. Is located in a building subject to inspection by the state fire marshal or a local government.

61.1(8) Nonmechanized physical fitness and playground equipment unless a fee is charged to use the equipment.

61.1(9) Physical fitness equipment that does not meet the definition of “amusement device.”

61.1(10) A tramway used as a ski lift.

61.1(11) A scenic railway operating on standard-gauge rails.

61.1(12) A zip line or climbing wall located at a camp or retreat owned or operated by a nonprofit religious, educational or charitable institution or association.

875—61.2(88A) Definitions. The definitions in this rule apply to 875—Chapters 61 through 63.

“Air-supported structure” means an amusement device that employs a high-strength fabric or film that achieves its strength, shape and stability from internal air pressure provided by a mechanical device such as an air blower or fan.

“Amusement device” means a climbing wall utilizing an auto-belay system; a bungee jump as defined in 875—Chapter 63; a device allowing a patron to jump on a trampoline while attached to one or more bungee cords; a dry slide; a mechanical bull; a zip line that does not allow the rider to touch the ground at all times; and an air-supported structure.

“ANSI” means the American National Standards Institute.

“Assistant” means a paid or volunteer person working under the direct supervision of an attendant or operator.

“ASTM” means the ASTM Standards on Amusement Rides and Devices published by ASTM International.

“Attendant” means a paid or volunteer person who controls patron restraints or the operation, starting, stopping, or speed of covered equipment.

“Carnival” means an enterprise offering amusement or entertainment to the public in, upon, or by means of amusement devices or rides or concession booths.

“Certificate of noncompliance” means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;
2. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or
3. A certificate of noncompliance issued by the centralized collection unit, department of revenue, pursuant to Iowa Code chapter 272D.

“Commissioner” means the labor commissioner or the labor commissioner’s authorized designee.

“Concession booth” means a structure that is powered by electricity and offers amusements to the public at more than one fair or carnival, or at one fair or carnival for more than seven consecutive days. A structure or enclosure offering only goods, food or beverages, rather than amusements, is not a “concession booth.”

“Covered equipment” means an amusement ride, amusement device, concession booth or related electrical equipment that is covered by Iowa Code chapter 88A.

“Fair” means an enterprise principally devoted to the exhibition of products of agriculture or industry in connection with the operation of covered equipment.

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“Major breakdown” means stoppage of operation from any cause that results in damage, failure, or breakage in a stress-bearing part of covered equipment.

“Major modification” means any change to the structure of or to an operational characteristic, capacity, classification, or mechanism of covered equipment. “Major modification” includes, but is not limited to, changing the mode of transportation from non-wheeled to a truck or flat-bed mount or changing the mode of assembly or other operational functions from manual to mechanical or hydraulic.

“NFPA” means the National Fire Protection Association.

“Operator” means a person, or the agent of a person, who owns or controls or has the duty to control the operation of covered equipment at a carnival or fair. “Operator” includes an agency of the state or any of its political subdivisions. “Operator” shall include a person who leases covered equipment and controls or has the duty to control its operation at a carnival or fair.

“Related electrical equipment” means a portable generator, blower, or other equipment necessary to the operation of an amusement ride, amusement device, or concession booth.

“Reportable incident” means an event described by one or more of the following:

1. Damage, failure or breakage of a stress-bearing part of an amusement ride or amusement device;
2. Cessation of covered equipment for more than 20 minutes with at least one rider aboard;
3. An occurrence that nearly resulted in personal injury; or
4. An occurrence that caused the operator to cease operations unexpectedly to avoid an injury or illness.

“Rope lay” means the length along the rope in which one strand makes a complete revolution around the rope.

“Walkway” means a public passage through a carnival, fair, or park.

875—61.3(88A) Owner and operator requirements. No person shall operate covered equipment at a carnival or fair unless the person holds a current operating permit and the covered equipment has passed an Iowa inspection.

61.3(1) Operating permit. No later than May 1 and at least 14 days before operation begins each calendar year, the operator of covered equipment shall apply to the commissioner for an operating permit. Application shall be made on a form provided by the commissioner. Each of the following shall be submitted with the completed operating permit application:

- a. The applicable fee;
- b. A certificate of insurance issued by an insurance company authorized to do business in Iowa. The certificate of insurance shall:
 - (1) Certify a policy in the minimum amount of \$1 million for bodily injury, death, or property damage in any one occurrence;
 - (2) List the specific pieces of equipment that are covered and, if applicable, those that are not covered; and
 - (3) Include “Division of Labor Services—Amusements” as a certificate holder;
- c. The operator’s itinerary identifying the covered equipment to be operated and the dates and locations where each will be operated;
- d. General design criteria, safety factors, materials utilized, and stress analysis unless the amusement ride or amusement device was granted an Iowa amusement inspection sticker during the previous calendar year;
- e. Certification of compliance with applicable training and maintenance requirements;
- f. With an application submitted after May 1, proof that the applicant could not have reasonably complied with the May 1 deadline and proof that the application was filed immediately after need for the permit was known;
- g. Separately for each bungee jump:
 - (1) A site operating manual;
 - (2) A report which is prepared and sealed by a professional engineer who is licensed in Iowa and which certifies that the design and construction of the equipment and structure are suitable for the

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intended use and conform to Iowa law, recognized engineering practices, procedures, standards and specifications;

(3) Site plan drawings depicting the preparation area, the jump space, the landing area, the recovery area and other features to be included in the approved operating site;

(4) Specifications of equipment and structures; and

(5) Depictions of the location, specifications, dimensions, and type of air bag, pool or body of water where the jumper will land.

61.3(2) *Changes to information submitted with application.* The operator shall immediately notify the commissioner of any changes to the operator's itinerary. The operator shall promptly notify the commissioner of other changes to information provided with the operating permit application.

61.3(3) *Leases.* The requirements of this subrule apply when covered equipment is leased for use at a fair or carnival.

a. The owner shall notify the commissioner within 48 hours of leasing the covered equipment. The notification shall include the name, address, and contact information for the lessee and lessor, a description of the covered equipment, and the dates and location of its intended operation.

b. The lessor shall give the lessee a copy of the manual for the leased covered equipment and shall train the lessee or the lessee's designated representatives on the use of the equipment.

c. The lessee shall obtain an operating permit.

61.3(4) *Personal injuries and deaths.*

a. The operator shall immediately report by telephone any accident that results in medical care beyond first aid.

b. Within 48 hours after an operator is notified of a claim or report to the operator's insurance provider, the operator shall submit a duplicate copy of the report or claim to the commissioner.

c. The commissioner may require that the scene of an accident be secured and not disturbed to any greater extent than necessary for removal of the deceased or injured person. If covered equipment is removed from service by the commissioner, the covered equipment shall be returned to service only upon the commissioner's authorization.

61.3(5) *Major breakdown report.* The operator shall report a major breakdown of covered equipment to the commissioner immediately and provide a detailed report in writing within 48 hours. The commissioner may order the covered equipment to be withheld from operation, and in such case, the commissioner shall conduct an immediate investigation. The covered equipment shall be released for repair and operation only after the commissioner's investigation is complete.

61.3(6) *Advance notice of major modification.* The operator shall notify the commissioner in writing at least ten days prior to a major modification. If requested by the commissioner, the operator shall provide plans, diagrams, and ride analysis documentation consistent with ASTM F2291-15.

61.3(7) *Technical data.* If requested by the commissioner, the operator shall provide an English language version of the following:

a. Data concerning constant, reversible, or eccentric forces generated by acceleration, deceleration, wind, centrifugal action, or inertia.

b. Stress analysis and other data pertinent to the structural materials, design, structure, factors of safety or performance characteristics.

875—61.4(88A) Inspections. Pursuant to Iowa Code chapter 88A, covered equipment must pass an inspection at least annually. Inspections will be performed according to the rules set forth and standards adopted in 875—Chapters 61 to 63.

61.4(1) *Inspection types.* In addition to the inspections listed below, an inspection may be conducted by the commissioner at any time. The fee schedule for annual inspections set forth in Iowa Code section 88A.4 shall apply to all inspections performed by division of labor services inspectors. No person shall operate covered equipment at a fair or carnival unless the covered equipment has passed an inspection in the current calendar year.

a. Annual inspection by owner. At the discretion of the commissioner, the owner of an air-supported structure may be designated by the commissioner to perform the annual inspection of

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the owner's air-supported structure and blower. An owner designated pursuant to this paragraph shall perform the inspection according to applicable standards. The owner shall submit in the format required by the commissioner an affidavit attesting to the performance of the inspection, correction of code violations, and other required information.

b. Annual inspection by a division of labor services inspector. Unless an inspection is waived pursuant to Iowa Code section 88A.13, or the inspection is performed by the owner pursuant to paragraph 61.4(1) "a," a division of labor services inspector shall inspect covered equipment prior to operation.

c. Major modification inspection. After covered equipment has undergone a major modification, the covered equipment must pass an inspection by a division of labor inspector before it is put back into use.

61.4(2) Safety order. If the division of labor services inspector finds a code violation, the inspector will issue a safety order requiring that the condition be corrected. The deadline for correction of the code violation shall be set forth in the safety order. If the inspector finds one or more code violations pertaining to more than one-half of the seating capacity of an amusement ride, the amusement ride shall not be operated until the violations are corrected. If code violations pertain to one-half or less of the seating capacity of an amusement ride, the amusement ride may be shut down at the discretion of the inspector.

61.4(3) Cessation order. If the inspector identifies covered equipment that is hazardous or unsafe, the inspector shall issue a cessation order. The commissioner shall establish that the code violation is corrected before operation of the covered equipment is resumed.

875—61.5(88A) Amusement inspection sticker. Covered equipment shall not be operated without a current sticker.

61.5(1) After covered equipment has passed an annual inspection by the division of labor services inspector, the division of labor services inspector shall affix an amusement inspection sticker to a basic part of the covered equipment in such a manner as to be readily accessible by the inspector.

61.5(2) After the commissioner receives satisfactory proof of inspection from an owner designated by the labor commissioner pursuant to paragraph 61.4(1) "a," the commissioner shall mail the sticker to the owner. The owner shall properly affix the sticker to a basic part of the air-supported structure or blower before operation.

61.5(3) After covered equipment passes a major-modification inspection, a new amusement inspection sticker will be issued.

61.5(4) Before covered equipment is sold, the seller shall remove the amusement inspection sticker. If a current amusement inspection sticker is no longer legible, the operator may request a replacement sticker.

875—61.6(88A,252J,261,272D) Termination, denial, suspension, or revocation of an operating permit.

61.6(1) All active operating permits shall terminate automatically on December 31 of the year of issuance.

61.6(2) The commissioner may suspend or revoke an operating permit for any of the following reasons:

- a.* Negligence in the operation of covered equipment;
- b.* Repeated failure to perform or document proper daily inspections;
- c.* Misrepresentation of material information required as a part of the operating permit application package;
- d.* Failure to comply with a safety order or cessation order issued by the commissioner;
- e.* Operation of covered equipment in disregard of public health, safety and welfare;
- f.* Termination of the required insurance coverage;
- g.* Failure to pay a liquidated debt owed to the commissioner;
- h.* Receipt by the commissioner of a certificate of noncompliance;
- i.* Failure of an operator to comply with the proper procedures;

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j. Failure of an operator to provide an adequate number of properly trained and qualified assistants and attendants; or

k. Submission of a false affidavit of annual inspection by the owner of an air-supported structure.

61.6(3) The commissioner may deny an application for an operating permit if the application packet is inadequate or for any reason set forth as grounds for suspension or revocation of an operating permit.

875—61.7(17A,88A,252J,261,272D) Procedures for revocation, suspension, or denial of an operating permit or amusement inspection sticker. The procedures set forth in this rule govern the revocation, suspension or denial of an operating permit or amusement inspection sticker.

61.7(1) If the commissioner initiates revocation, suspension or denial due to the receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

61.7(2) In the event that immediate action is required due to imminent danger to the public health, safety or welfare, the following procedures shall apply:

a. The commissioner shall prepare a safety order describing the hazardous condition and shall give the operator, or the operator's representative on site, a copy of the safety order.

b. The commissioner shall remove the amusement inspection sticker or stickers from covered equipment as necessary to protect the public health, safety or welfare.

c. The commissioner shall proceed as quickly as feasible to give the operator an opportunity for a hearing as set forth in subrule 61.7(3).

61.7(3) In all other cases, the following procedures shall apply:

a. The commissioner shall serve a notice by restricted certified mail to the address listed on the operating permit application or by other service as permitted by Iowa Code chapter 17A.

b. The operator shall have 20 days to file a written notice of contest with the commissioner. If the operator does not file a written notice of contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. The hearing procedures in 875—Chapter 1 shall govern.

d. Within five business days of final agency action revoking or suspending an operating permit, the operator shall forfeit the operating permit to the commissioner.

875—61.8(88A) Payments. Fees due for inspections and operating permits shall be paid by money order or certified check unless the commissioner has given prior approval for a check written on a business account.

These rules are intended to implement Iowa Code chapters 17A, 88A, 252J, 261, and 272D.

ITEM 2. Rescind 875—Chapter 62 and adopt the following new chapter in lieu thereof:

CHAPTER 62
SAFETY RULES FOR AMUSEMENT RIDES, AMUSEMENT DEVICES,
AND CONCESSION BOOTHS

875—62.1(88A) Scope. Rule 875—62.2(88A) applies to all covered equipment. The remaining rules of this chapter apply to all covered equipment, except a bungee jump covered by 875—Chapter 63.

875—62.2(88A) Other codes.

62.2(1) Carnivals, fairs, operators, and covered equipment may be regulated by city or county ordinances. Iowa Code chapter 92 and 875—Chapter 32 concerning child labor apply when an operator has employees who are under the age of 18. Iowa Code chapters 91A and 91D and 875—Chapters 35 and 215 to 218 govern payment of wages to an operator's employees. Nothing in 875—Chapters 61 through 63 shall be viewed as providing an exemption, waiver, or variance from any otherwise applicable regulation or statute.

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62.2(2) State fire marshal rules set forth at 661—Chapter 201, General Fire Safety Requirements, are adopted by reference.

62.2(3) The following occupational safety and health standards are adopted by reference:

- a. 29 CFR 1910, Subpart D, Walking-working surfaces;
- b. 29 CFR 1910, Subpart H, Hazardous material;
- c. 29 CFR 1910, Subpart I, Personal protective equipment;
- d. 29 CFR 1910.147, Control of hazardous energy (lockout/tagout);
- e. 29 CFR 1910.151, Medical services and first aid;
- f. 29 CFR 1910, Subpart N, Materials handling and storage;
- g. 29 CFR 1910, Subpart O, Machinery and machine guarding;
- h. 29 CFR 1910, Subpart Q, Welding, cutting and brazing; and
- i. 29 CFR 1910, Subpart S, Electrical.

875—62.3(88A) Site requirements.

62.3(1) Design. The grounds of a fair or carnival shall be designed according to the following criteria:

- a. Clearance around covered equipment shall meet or exceed the manufacturer's recommendations.
- b. Clearance around covered equipment shall be at least 6 feet unless a fence that is designed by the manufacturer as an integral part of the equipment is properly installed.
- c. Clearance between covered equipment and a facility for cooking shall be at least 10 feet.
- d. Walkways shall be wide, unobstructed, and open at each end.
- e. Walkways through concession booth backyards and over water lines and electrical lines shall be avoided.
- f. Intermingling of water lines and electrical lines shall be avoided.
- g. Guy wires, braces and ropes used for support:
 - (1) Shall not be placed in walkways or in the entrances or exits for covered equipment; and
 - (2) Shall be clearly marked with streamers or other devices when located adjacent to walkways.
- h. Stakes shall be covered.

62.3(2) Housekeeping. Adequate containers for refuse shall be provided. Accumulations of trash shall be removed promptly.

62.3(3) Lighting. Entrances and exits for covered equipment shall be provided with at least 5 foot-candles of light measured at grade level. No less than 10 foot-candles of lighting shall be provided at all work levels for assembly and disassembly of covered equipment.

62.3(4) Internal combustion engines. Internal combustion engines shall be a minimum of 5 feet from an air-supported structure and shall be guarded or fenced to prevent patron exposure or access. An internal combustion engine operated in an enclosed area shall be provided with fresh-air intake and an exhaust discharge flue.

62.3(5) Tents. A tent enclosed with walls or sides and erected over covered equipment during operation or assembly of the covered equipment shall resist flame propagation after weathering. The operator shall have a certificate or a test report indicating the material meets the flame propagation performance criteria for tents set forth in Standard Methods of Fire Tests for Flame Propagation of Textiles and Films, NFPA 701-2010.

62.3(6) Flammable waste and materials. An operator shall provide identified covered and labeled metal containers for flammable waste. The containers shall be available to staff and attendants but shall not be accessible to patrons.

62.3(7) Storage of hazardous or flammable materials. Storage of more than 50 gallons of fuel, other flammable material, or hazardous gas is not permitted in any area accessible to the public.

62.3(8) Walking surfaces. Entrances and exits for covered equipment shall be adequate, unobstructed, and in accordance with the manufacturer's instructions. Hazards such as protruding nails, splinters, holes, loose boards, debris, obstructions, and projections are prohibited. Stairways, ramps and

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railings that meet the requirements of 29 CFR 1910.23 shall be provided where patrons enter or exit covered equipment above or below grade.

62.3(9) Fences. Fences or other barriers shall be staked or sandbagged securely to prevent movement. Placement of fences shall be consistent with the recommendations of the manufacturer. If the manufacturer's recommendation regarding fences is not available, fences shall be located to keep patrons at least 6 feet away from moving parts.

62.3(10) Crowd control. Chains, bars, gates or similar devices shall be used to direct and control patrons in a queue line.

62.3(11) Setup. Operators shall follow the manufacturer's instructions to ensure that covered equipment is level and stable. If the manufacturer's instructions are not available, the following shall apply:

- a. Permanent rides shall be placed on poured, reinforced concrete.
- b. Blocking for temporary rides shall meet the following criteria:
 - (1) Blocking shall be wider than it is high.
 - (2) The top level of the blocking shall be wider than the mud sill or landing gear.
 - (3) Blocks shall not be soft, damaged, deteriorated, hollow, porous, or brick.
 - (4) Blocking shall be placed on ground that was leveled by digging rather than by filling.
 - (5) Voids larger than 1/4 inch between blocks are prohibited.
 - (6) Two or more layers of blocks shall be crossed.

875—62.4(88A) Design and manufacture of covered equipment. This rule sets forth requirements for the design and manufacture of all covered equipment, except a bungee jump covered by 875—Chapter 63.

62.4(1) Codes adopted by reference. ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10.

a. *All covered equipment.* Effective July 1, 2016, all covered equipment shall comply with National Electric Code, NFPA 70-2014.

b. *Tramways.* All tramways subject to the rules of this chapter and in use prior to July 1, 2016, shall be designed and tested in accordance with the ANSI B77.1 standard in effect at the time of installation.

c. *New covered equipment.* Effective July 1, 2016, new covered equipment and covered equipment undergoing a major modification shall be designed and tested in accordance with ANSI B77.1-2011 and ANSI B77.1A-2012 and ASTM F1159-15a, F1193-14, F1957-99(2011), F2007-12, F2137-15, F2291-15, F2374-10, F2375-09, F2376-13, F2460-11, F2959-14, and F2960-15, as applicable.

d. *Existing covered equipment.* Covered equipment manufactured before July 1, 2016, must comply with the applicable design criteria of subrule 62.4(2) through July 1, 2021. After July 1, 2021, covered equipment, except tramways, shall meet the criteria for service-proven equipment set forth in ASTM F2291-15.

62.4(2) Design criteria. Structural materials and construction of covered equipment shall conform to recognized engineering practices, procedures, standards and specifications. The design, materials and construction features shall incorporate a safety factor of 5 or alternative safety factors recommended by the original manufacturer or by a professional engineer with credentials and experience acceptable to the commissioner.

62.4(3) Data plate. A manufacturer's data plate in compliance with ASTM F1193-14, section 10, shall be affixed to covered equipment.

62.4(4) Speed-limiting device. Covered equipment capable of exceeding its maximum safe operating speed shall be provided with a speed-limiting device. Steam engines that require an overspeed throttle setting to initiate the operation are exempt from the requirement of this subrule.

62.4(5) Patron restraint and containment. Covered equipment shall be designed to safely contain and restrain patrons during the intended action. Any surface within reach of a patron shall be smooth, rounded, and free from projections such as bolts, screws, or splinters. Padding shall be installed to prevent or minimize the possibility of injury.

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62.4(6) *Safety stop devices.* Electrical safety stop devices shall cause covered equipment to fail safe in the event of power failure or any malfunction.

62.4(7) *Chains.* If a chain is used as a safety device or in a stress-bearing application, the chain shall be certified with adequate load-carrying capacity. Twisted wire or stamped chain shall not be used for safety devices or in stress-bearing applications.

62.4(8) *Front openings and awnings.* Front openings and awnings shall be stabilized with safety latches, safety pins, or other devices.

62.4(9) *Shooting galleries.* A shooting gallery shall use only equipment, shells, pellets, and bullets designed for shooting galleries. Means shall be provided to prevent turning the weapon away from the intended target.

62.4(10) *Flying objects.* Where flying objects such as darts, balls, pellets, shot, and bullets are a potential hazard:

- a. Ricocheting shall be prevented by absorbent wings or panels; and
- b. Absorbing walls, sandbags, or other mechanisms shall be installed along the bottom, back, and sides of the booth to protect passersby.

875—62.5(88A) Maintenance of covered equipment. An operator shall conduct periodic inspections, repairs, tests, and maintenance as set forth in this rule, the manufacturer's recommendations, ANSI B77.1-2011 and ANSI B77.1A-2012 and ASTM F770-15, F1159-15a, F1193-14, F2007-12, F2137-15, F2374-10, F2375-09, F2376-13, F2460-11, F2959-14, and F2960-15, as applicable. ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10. An operator shall make a written record of all inspections, maintenance, tests, and repairs of covered equipment, and the records shall be available to the commissioner.

62.5(1) *Pressure equipment.* The operator shall inspect and maintain all air and gas compressors, tanks, piping and equipment pursuant to the manufacturer's recommendations.

62.5(2) *Wire rope rollers, drums and sheaves.* The operator shall periodically inspect and maintain for cleanliness and safety the mechanical devices, such as rollers, drums and sheaves, that brake, control, or come into contact with wire rope. The operator shall immediately replace mechanical devices that have broken or damaged parts, missing pieces, undue roughness or uneven wear.

62.5(3) *Mechanical members.* The operator shall periodically inspect pinions, frames, sweeps, eccentrics and other mechanical members for wear, cracks and other signs of deterioration. The operator shall make necessary repairs.

62.5(4) *Bearings.* The operator shall periodically inspect, lubricate, clean and repair bearing surfaces, ball joints and other single or multiple direction mechanical surfaces.

62.5(5) *Gears.* The operator shall keep gears properly aligned and in good repair.

62.5(6) *Nondestructive testing.* The operator shall ensure that appropriate nondestructive testing (NDT) is conducted and that documentation is available for review. NDT shall be performed at the following times:

- a. At intervals recommended by the manufacturer;
- b. When required by the commissioner due to a welded repair;
- c. When required by the commissioner due to a visual indication of a potentially hazardous condition; and
- d. When recommended by a bulletin prepared according to ASTM F1193-14.

62.5(7) *Electrical wiring.* Electrical wiring shall meet the requirements of National Electrical Code, NFPA 70-2014. The operator shall regularly inspect wiring for wear, cracks, or other signs of deterioration and shall replace worn wiring.

62.5(8) *Patron restraint.* The operator shall inspect retaining, restraining and containing devices daily before use and shall immediately repair or replace worn or damaged areas.

62.5(9) *Hydraulic systems.* The operator shall inspect each hydraulic system for leaks, damaged pipes, and worn or deteriorated hoses. Material that hinders visible inspection is prohibited. The operator shall make appropriate repairs.

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62.5(10) Relief devices. The operator shall periodically exercise pressure relief valves or devices to ensure that they operate properly. The operator shall periodically inspect pressure relief devices to ensure that they are set at appropriate limits.

62.5(11) Wire rope inspection. The operator shall regularly inspect the entire length of each wire rope according to the manufacturer's recommendations. At a minimum, wire rope shall be inspected each time covered equipment is set up.

62.5(12) Wire rope replacement. The operator shall replace a wire rope if:

a. There are six or more distributed broken wires in one rope lay or three broken wires in one strand in one rope lay;

b. There is more than one broken wire in one rope lay and one of the following conditions exists:

(1) The wire rope is subject to constant pressure during operation, assembly, or disassembly of covered equipment;

(2) The wire rope is subject to surge shocks; or

(3) The wire rope could cause serious injuries by its failure; or

c. At least one of the following conditions exists on at least one location on the wire rope:

(1) Abrasion, nicking, scrubbing or peening causing loss of more than one-third of the original diameter of the outside wires;

(2) Severe corrosion or rust;

(3) Severe kinking, crushing, bird-caging or other damage resulting in distortion of the rope structure;

(4) Heat damage;

(5) For a rope with an original diameter of 3/4 inch or less, a loss in diameter of more than 3/64 inch;

(6) For a rope with an original diameter of 7/8 inch to 1 1/8 inch, a loss in diameter of more than 1/16 inch; or

(7) For a rope with an original diameter of 1 1/4 inches to 1 1/2 inches, a loss in diameter of more than 3/32 inch.

62.5(13) Wire rope repair. Without lengthening or splicing, the operator shall replace the entire length of a wire rope that is damaged in one location with new rope of equivalent design and capacity. However, if feasible, wire rope that is worn near an attachment point may be repaired by shortening the length of the wire rope, rather than by replacing the entire rope; and wire ropes on tramways may be lengthened or repaired by splicing in accordance with the applicable ANSI code.

62.5(14) Rope-fastening devices. The operator shall inspect couplings, sockets and fittings to ensure that they are in accordance with the instructions and specifications of the designer, engineer or manufacturer.

62.5(15) Wood components. The operator shall inspect footings, splices, uprights, track timbers, ledgers, sills, laps, bracing, flooring and all other wood components of covered equipment for deterioration, cracks, or fractures. The operator shall replace defective wood members with material of equal or greater strength and capacity.

The operator shall remove a sufficient amount of soil around piling or wood members embedded in dirt to check for deterioration. When a wood piling requires replacement, the operator shall install a concrete pier. The top of the pier shall be installed so that the attached wood member is not exposed to dirt or water accumulation.

62.5(16) Welding, cutting, or brazing. Welding, cutting, or brazing shall not be performed where the point of operation is more than 4 feet above grade if patrons are on site. Where the point of operation is less than 4 feet above grade, welding, cutting or brazing may be performed if at least one of the following applies:

a. Patrons are not on site.

b. Patrons are separated from the point of operation by a solid barrier.

c. A fence or similar barrier is erected to keep the public at least 150 feet from an arc welding operation that uses an electrode with a diameter of 3/16 inch or less.

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d. A fence or similar barrier is erected to keep the public at least 35 feet from gas welding, soldering, cutting or brazing of materials 1/2 inch thick or less.

e. A fence or similar barrier is erected to keep the public at least 50 feet from gas welding, soldering, cutting or brazing of materials more than 1/2 inch thick.

62.5(17) Fasteners. The operator shall inspect nails, bolts, lag bolts and other fasteners for tightness, torque, and deterioration. The operator shall follow the manufacturer's recommendations for torque, replacement intervals, and fastener types.

62.5(18) Brakes and rollback devices. Brakes and rollback devices shall be inspected and maintained according to the manufacturer's recommendations.

875—62.6(88A) Operations. Operations shall conform to ANSI B77.1 and ANSI B77.1A-2012 and ASTM F770-15, F1957-99(2011), F2007-12, F2137-15, F2374-10, F2375-09, F2376-13, F2460-11, and F2959-14, as applicable. ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10.

62.6(1) Attendants and assistants. The operator shall provide a sufficient number of competent, trained workers, who shall be recognizable by their uniforms. Covered equipment shall have continuous, direct supervision while in use by a patron.

a. Each attendant of a concession booth, except a shooting gallery or dart game, shall be at least 14 years of age. All other attendants shall be at least 18 years of age.

b. Each assistant shall be at least 16 years of age.

c. Each attendant and assistant shall be trained according to ANSI B77.1 and ANSI B77.1A-2012 and ASTM F770-15, F2007-12, F2460-11, and F2959-14, as applicable. Training documentation shall be available to the commissioner.

d. An attendant shall have control of the covered equipment when it is in operation. When the covered equipment is shut down, provision shall be made to prevent unauthorized operation.

e. Under normal operations, the duties of an assistant shall be limited to securing or removing seat restraints; checking height compliance; and loading and unloading patrons. In case of emergency, an assistant who has received appropriate training may terminate operations.

62.6(2) Signal systems. When an attendant does not have a clear view of the point where passengers are loaded or unloaded, signal systems shall be provided and utilized for controlling, starting and stopping covered equipment. Where coded signals are required, the code of signals shall be printed and kept posted at both the attendant's station and the location from which the signals are given. Attendants who use the signals shall be trained in their use. Signal systems shall be tested each day prior to operation of the covered equipment. Covered equipment that requires a signal system shall not be operated if the system is not performing correctly.

62.6(3) Overspeeding and overloading. An attendant shall not load covered equipment beyond its rated capacity nor operate the covered equipment at a speed other than that prescribed by the design engineer or manufacturer.

62.6(4) Refueling. Fuel tanks for internal combustion engines should be large enough to run without interruption during normal operating hours. Where it is impossible to provide tanks of proper capacity for a complete day's operation, the covered equipment shall be shut down and evacuated during refueling.

62.6(5) Safety stop device. After actuation of a safety stop device, the cause of the actuation shall be determined and corrected before operation of covered equipment is resumed. No person shall operate covered equipment if a safety stop device has been bypassed.

875—62.7(88A) Patrons.

62.7(1) Notice to patrons. The operator shall post signs as set forth in Iowa Code section 88A.16.

62.7(2) Patron injury report. Where covered equipment is operated, the operator shall make available an injury report form for use by patrons. The form shall comply with Iowa Code section 88A.15.

62.7(3) Emergency procedure. When lightning, high wind, tornado warning, severe storm warning, fire, violence, riot or civil disturbance creates a direct threat to patrons, the operators, assistants, and

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attendants shall cease operation of covered equipment and evacuate all patrons. Operation shall not resume until conditions have returned to a normal, safe operating environment.

62.7(4) Medical and first aid. The operator shall make available to patrons the same medical and first-aid provisions that are available to employees pursuant to 29 CFR 1910.151.

62.7(5) Evacuation plan. The operator shall plan for prompt retrieval of patrons from covered equipment that will not operate.

These rules are intended to implement Iowa Code chapter 88A.

ITEM 3. Adopt the following new 875—Chapter 63:

CHAPTER 63
SAFETY RULES FOR BUNGEE JUMPS

875—63.1(88A) Definitions.

“Air bag” means a device that cradles the body by using an air release breather system to dissipate the energy due to a fall, thereby allowing the jumper to land without an abrupt stop or bounce.

“Approved operating site” means the area, including the preparation area, the jump space, the landing area and the recovery area, reflected on the site plan drawings submitted to the commissioner by the operator.

“Bungee catapulting” means the action by which a jumper is held on the ground while the bungee cord is stretched causing the jumper to fly up when the jumper is released.

“Bungee cord” means the elastic rope to which the jumper is attached.

“Bungee jump” means the covered amusement device. “Bungee jump” does not mean a device allowing a patron to jump on a trampoline while attached to one or more bungee cords.

“Bungee jumping” means the action by which a jumper free falls from a height and the jumper’s descent is limited by attachment to the bungee cord.

“Bungee jump operation” means a site at which bungee jumping is conducted.

“Carabiner” means a shaped metal or alloy device used to connect sections of the jump rigging, equipment or safety gear.

“Cord” means a bungee cord.

“Dynamic load” means the load placed on the rigging and attachments by the initial free fall of the jumper and the bouncing movements of the jumper.

“Equipment” means each component that is utilized in a bungee jump operation, including devices used to raise, lower, and hold loads.

“Fence” means a structure designed and constructed to restrict people, animals and objects from entering the jump area.

“G-force” means acceleration felt as weight.

“Jump area” means the ground level area of the jump space.

“Jump direction” means the direction a jumper jumps when leaving the platform from the jump point. Jump direction is not affected by whether the jumper faces forward, backward or sideways.

“Jumper” means the person who, while attached to a bungee cord, falls or jumps from a platform or structure.

“Jump harness” means an assembly worn by a jumper and attached to a bungee cord.

“Jump height” means the distance from the jump point to the position on the ground where an object dropped from the jump point would impact in the absence of an air bag or other impediment.

“Jump master” means the person who is responsible for the bungee jump operation and who takes a jumper through the final stages to the actual jump or release.

“Jump point” means the location on the platform from which the jumper leaves the platform.

“Jump space” means the cylinder-shaped space with a center line extending downward from the jump point along the line of the jump height. The top of the jump space cylinder is at least 10 feet above the jump point. For jumps over land, the bottom of the jump space cylinder is the air bag. For jumps over water, the bottom of the jump space cylinder is the water surface. The distance from the jump point

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to the bottom of the jump space must be the maximum system length plus at least 30 feet. The radius of the cylinder must be at least 70 percent of the jump height.

"Landing area" means the surface where the jumper lands. If a lifting device moves the jumper so that landing occurs away from the jump area, the area covered by the movement of the lifting device shall be considered part of the landing area.

"Loaded length" means the length of the bungee cord when the cord is extended to its fullest designed length.

"Lowering system" means manual or mechanical equipment capable of lowering a jumper to the designated landing area.

"Maximum system length" means the maximum extended length of a bungee cord system including all attachments.

"Mechanically powered lowering system" means a system that utilizes a machine, rather than a human or other power source, to lower the jumper to the landing area.

"Platform" means the apparatus that is attached to a structure and from which a jumper falls or jumps.

"Preparation area" means the area where the jumper is registered, weighed, notified of potential risks, and otherwise prepared for the jump.

"Recovery area" means the area next to the landing area where the jumper may recover from the jump before exiting the bungee jump operation site.

"Rigging system" means the bungee cord plus any combination of components that connect the jumper through the bungee cord to an attachment point on the structure, lifting device or platform.

"Rigging system attachment point" means a device on the structure, lifting device or platform to which the rigging system is connected.

"Safety line" means a line used to connect a safety harness or belt to an anchor point.

"Sandbagging" means the practice of loading excess weight to a jumper in order to gain extra momentum on the rebound.

"Site operating manual" means the document containing the procedures and forms for the operation of bungee jumping activities and equipment.

"Structure" means a tower or similar structure used for bungee jumping.

"Tandem jumping" means the practice of having two or more people harnessed together while they jump or fall simultaneously from the same jump platform.

875—63.2(88A) Prohibited activities. The following activities are prohibited:

1. Bungee catapulting where an overhead obstruction exists;
2. Sandbagging;
3. Tandem jumping; and
4. Jumping from a bridge, television tower, crane, grain bin, hot air balloon or any height not designed for the purpose of bungee jumping.

875—63.3(88A) Site requirements.

63.3(1) Storage. Adequate storage shall be provided to protect equipment from physical, chemical and ultraviolet-ray damage. The storage area shall be secured against unauthorized entry.

63.3(2) Communications.

- a. There shall be a public address system in operation during the hours of business.
- b. A radio communication link shall be established between the platform and the staff responsible for jumper registration, landing, and recovery.
- c. There shall be a means on site to communicate with local emergency responders.
- d. A clearly visible sign shall be placed at the entrance to the operating site setting forth medical restrictions for jumpers, the minimum-age requirement of 18 years of age, and instructions for jumpers.

63.3(3) Wind meter: An anemometer shall be installed in accordance with the manufacturer's recommendations and in a location easily visible to the staff.

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63.3(4) Lighting. Adequate lighting shall be provided at a site that operates at any time during the period of one-half hour prior to sunset until one-half hour after sunrise. At a minimum, the lighting system shall be capable of lighting the jump platform, the jump space and the landing area.

63.3(5) Fences. The operator shall use fences in compliance with ASTM 2291-14, Part 14, to limit access to the site.

875—63.4(88A) Design.

63.4(1) Platform. A platform shall:

- a. Be capable of supporting at least five times the rated capacity or maximum intended load of the platform. If the jump equipment is attached to the platform as distinct from the structure, the dynamic load factor shall be added to the rated capacity or maximum intended load;
- b. Be attached with devices and to a part of the structure which is able to support at least five times the weight of the platform plus the rated capacity or maximum intended load;
- c. Have a slip-resistant floor surface;
- d. Have safety harness anchor points that are designed and located to facilitate ease of movement on the platform;
- e. Have a permanent enclosure, separate from the jump point, to contain the jumper during preparations such as fitting the jumper with a jump harness;
- f. Be equipped with a gate across the jump point. The gate shall open to the inside of the platform and shall have a safety lock or restraining device to prevent accidental opening;
- g. Be permanently marked with the maximum capacity of the platform and the rated capacity or maximum intended load; and
- h. Be configured to ensure that a jumper shall not come into contact with the supporting structure or tower during the jump.

63.4(2) Lowering system.

- a. The system for lowering the jumper to the landing area shall be capable of supporting at least five times the rated capacity or maximum intended load of the system. The lowering system shall be mechanically powered and shall not be capable of free fall.
- b. There shall be under the control of site personnel and described in the site emergency plan an alternative method for jumper recovery.

63.4(3) Bungee cord specifications.

- a. The bungee cords shall be designed and tested to perform within the prescribed limits of stretch and load as stated in this subrule. The cord shall be made from natural or synthetic rubber or rubber blend. The extended length of the cord shall be consistent each time the same load is applied.
- b. The G-force on a jumper using a waist and chest harness shall not exceed 4.5. The G-force on a jumper using an ankle harness shall not exceed 3.5.
- c. The operator shall ensure that the minimum factor of safety for any cord configuration attached to a jumper is at least 5. The cord configuration's minimum breaking strength divided by the maximum dynamic load possible for a jumper must be equal to or greater than 5.
- d. The design, manufacturing and testing of the bungee cords shall meet the following specifications:
 - (1) In a single-cord system, the binding shall hold the cord threads in the designed positions. The binding shall have the same characteristics as the cord itself. In a multiple-cord system, the cords shall be bound together in a manner that prevents potential entanglement of the jumper. The binding shall not damage or affect the performance of the cords.
 - (2) A bungee cord shall be designed and tested to perform in accordance with this rule.
 - (3) A load-versus-elongation curve shall be used to calculate the maximum G-force and factor of safety of the lot of bungee cords tested. These test results shall be readily available to the commissioner upon request.

- (4) The end connections shall have a minimum safety factor of five times the maximum dynamic load for the bungee cord configuration. End connections shall be of a size and shape to allow easy attachment to the jumper harnesses and to the rigging. On multiple-cord systems, each cord shall meet

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its own independent end connection. On multiple-cord systems, end attachment points shall be bound together in a protective sheath that allows the individual ends to move with respect to each other.

(5) The operator shall ensure that the manufacturer of a bungee cord performs conclusive minimum break strength testing on a representative sample of all manufactured bungee cords. Construction of bungee cord samples shall be consistent with the manufacturer's standard methods, including bungee cord loop end connections that meet the specifications in this rule. The tests shall be performed or supervised by an independent certified testing authority or an independent licensed professional engineer. The testing authority shall determine the ultimate tensile strength of each test specimen and use the lowest failure value recorded as the ultimate tensile strength value for the corresponding lot of bungee cords. The ultimate tensile strength is reached when the applied load reaches a maximum before failure. Test results shall be readily available to the commissioner upon request.

63.4(4) *Jump harness and hardware.*

a. The harnesses, webbing, bindings, ropes and hardware shall be capable of supporting at least five times the rated capacity or maximum intended load.

b. A jumper shall be secured to the bungee cord at two separate points on the jumper's body. The jump harness system shall be one of the following:

- (1) A full body harness with two different and separate attachment points.
- (2) A waist harness used with a shoulder harness.
- (3) An ankle harness system with a safety line to a waist harness or a full body harness.

c. Harnesses shall be available to fit the range of patron sizes accepted for jumping.

d. Harnesses shall be specifically designed and manufactured for mountaineering or bungee jumping.

e. The load-supporting slings or webbing shall be flat or tubular mountaineering webbing or its equivalent. Minimum breaking strength shall be 6,000 pounds. Slings or webbings shall be formed by sewing or shall be tied properly with a water knot with taped ends.

f. Carabiners shall be the steel screw, gate type with a minimum breaking strength of 6,000 pounds. The carabiners shall be designed and constructed using the standards for mountaineering gear.

g. The ropes, pulleys and shackles used to raise, lower or hold the jumper shall have a minimum breaking strength of 6,000 pounds. The pulleys shall be compatible with the rope.

h. The rigging system shall be attached to at least two rigging system attachment points. Each rigging system attachment point shall meet or exceed the following:

(1) Each rigging system attachment point shall have a safety factor of 5 and shall be capable of bearing a weight of at least 8,000 pounds.

(2) If a rigging system attachment point is made of wire rope, it shall have swaged ends with the thimble eyes.

(3) If a rigging system attachment point is made of webbing, it shall be manufactured by a company that manufactures the devices for crane and rigging companies.

63.4(5) *Landing area, recovery area and jump area.*

a. A jump over land requires the use of an air bag certified by the manufacturer to be capable of protecting a body falling from the height of the jump point.

(1) The minimum impact surface area of the air bag shall be as follows:

Jump Height	Minimum Impact Surface Area
0 - 99 feet	20 feet by 25 feet
100 - 149 feet	23 feet by 35 feet
150 - 200 feet	25 feet by 40 feet

(2) The air bag shall be in position before jumper preparation begins on the platform.

(3) Upon completion of a jump, the jumper shall be lowered into the landing area.

(4) The landing area shall be free of spectators at all times.

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(5) The jump space shall be free of equipment and people when a jumper is being prepared on the jump platform and until the jumper lands in the landing area.

(6) A place for the jumper to sit and recover shall be provided close to, but outside, the landing area.

b. The following requirements apply where a body of water is used instead of an air bag:

(1) The size of the body of water shall meet the requirements for the minimum impact surface area set forth in this subrule for air bags.

(2) The minimum water depth of the minimum impact surface area shall be 10 feet.

(3) A vessel with at least two staff members shall be positioned nearby to recover jumpers. The recovery vessel's crew shall wear U.S. Coast Guard-approved life jackets. The recovery vessel shall be equipped with U.S. Coast Guard-approved life jackets for jumpers and with rescue equipment.

(4) The jump area shall be free of other vessels, floating or submerged objects, the public, and spectators. When the landing area is in open waters, it shall be defined by the deployment of buoys. Signs of appropriate size stating "BUNGEE JUMPING—KEEP CLEAR" shall be displayed.

c. The following requirements apply where a pool of water is used instead of an air bag:

(1) The pool size shall meet the requirements for the minimum impact surface area set forth in this subrule for air bags.

(2) The minimum water depth shall be 10 feet.

(3) Rescue equipment shall be available.

(4) Only the operators and participants of the bungee jump shall be within the landing area.

(5) The landing area shall be enclosed by a fence of adequate height and design to prevent persons other than operators and jumpers from entering.

(6) The pool shall conform to any applicable requirements enforced by the Iowa department of public health.

875—63.5(88A) Maintenance. The operator shall follow the inspection and testing recommendations of the equipment manufacturers. When those recommendations conflict with the testing and inspection provisions of this rule, the provisions affording the higher degree of safety shall be followed. Inspections, findings and corrective action shall be recorded in the site log.

63.5(1) Tests and inspections by the operator.

a. The jump rigging, harness, lowering system and safety gear shall be regularly inspected and tested as set forth in the site operating manual.

b. In accordance with the site operating manual, the ropes, webbing and bindings shall be inspected visually and by feel for signs of wear, fraying or damage.

c. The cord ends shall be inspected as often as the manufacturer specifies or no less than daily for wear, slippage or other abnormalities.

63.5(2) Replacement of rigging and equipment.

a. Hardware that displays surface damage shall be replaced immediately.

b. Hardware that has been subjected to an abnormal loading or impact against hard surfaces shall be replaced immediately.

c. Substandard equipment, rigging or personal protective equipment shall be replaced immediately.

d. Bungee cords shall be replaced when they have been subjected to the maximum number of jumps recommended by the manufacturer, when they exhibit deterioration or damage, or when they do not react according to specifications. Retired bungee cords shall be cut into lengths of not more than 75 inches. The attachment points shall be retired when the cord is retired.

63.5(3) Replacement equipment. Replacement equipment shall be stored in a secure area to prevent tampering or vandalism. Replacement equipment for the following shall always be available on the approved operating site:

a. Bungee cords;

b. Rigging ropes;

c. Binding and ankle straps for jumpers;

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- d. Jump harnesses; and
- e. Lifelines and clips.

63.5(4) Identification of equipment.

- a. Each bungee cord shall have its own permanent identification number.
- b. The form of identification may not damage or detract from the integrity of the material.
- c. The identification shall be clearly visible to the operators during daily operations.
- d. The identification of each piece of equipment shall be recorded in the site operating manual.

875—63.6(88A) Operations.

63.6(1) Site operating manual. The operator shall ensure that the site has an operating manual that includes the following elements:

- a. A site plan showing the fencing, the site furniture, the preparation area, the jump space, the jump area, the jump direction, the landing area and the recovery area.
- b. A site plan showing a profile of the site and defining the jump platform and its supporting structure, the maximum system length of the bungee cord, the jump space and the jump area.
- c. A complete description of each of the following:
 - (1) The system of operation;
 - (2) The components in the rigging system, including the manufacturer's specification or a laboratory test certificate of each component;
 - (3) All safety and rescue equipment;
 - (4) A job description for the personnel employed on the site and the minimum qualifications for each person;
 - (5) Emergency procedures for all foreseeable scenarios;
 - (6) Standard operating procedures for every person employed in processing the jumper;
 - (7) The procedure for reporting accidents and reportable incidents to the commissioner;
 - (8) Equipment inspection procedures, including inspection record keeping;
 - (9) Maintenance procedures; and
 - (10) The method of verifying and recording each jump master's qualifications.

63.6(2) Emergency provisions and procedures.

- a. Each approved operating site shall have a written emergency plan. The plan shall be made available to any local emergency service responsible for providing emergency rescue service.
- b. At least one member of a bungee jump operation staff shall have current first-aid and cardiopulmonary resuscitation certification and shall complete an annual refresher course that includes evaluation of hands-on skills from the American Red Cross or equivalent.
- c. For a jump over water, the jump master and at least one landing assistant shall have current lifeguarding certification from the American Red Cross or equivalent.
- d. Emergency lighting shall be available in case of power failure at a site that operates at any time during the period of one-half hour prior to sunset until one-half hour after sunrise. The emergency lighting system shall be capable of lighting the jump platform, the jump space and the landing area. The emergency lighting system shall have its own power source.
- e. A backup means of communication shall be available in case of a power failure.
- f. The jump master or operator shall cease jumping operations if wind speed exceeds 25 miles per hour or thunder is audible.

63.6(3) Minimum staff requirements.

- a. Prior to the opening of a bungee jump operation, the operator shall train site personnel to be familiar with the boundaries of the jump space, the jump area, the site operating manual and the emergency plan.
- b. A bungee jump operation shall have at least one jump master, one jump assistant, one landing assistant, and one registration assistant present at all times during which jumping is being conducted.
- c. The staff shall be easily identifiable by their clothing.
- d. Staff shall be briefed for each day's operations. This briefing shall include assignment of the designated jump master.

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e. Each jump shall be directly controlled by a jump master.

63.6(4) *Jump master.*

a. A jump master shall be at least 18 years of age, shall have assisted at least 25 jumpers, and shall have received a minimum of 30 hours of jump training.

b. A jump master shall have a thorough knowledge of the bungee jump site, its equipment, operating manual, procedures, emergency plan and staff duties.

c. A jump master shall:

- (1) With the jump assistant, escort the jumper from the preparation area to the jump point;
- (2) Select the appropriate bungee cord and adjust the rigging for each jump;
- (3) Brief each jumper on the procedures for jumping, landing, lowering and recovery;
- (4) Take the jumper through the final stages before the jump;
- (5) Securely attach to the platform rigging bar or to the rigging the top end of the bungee cords before preparing the jumper;
- (6) Be present at the jump point during each jump;
- (7) Close the platform gate while no jumper is present;
- (8) Direct the operation of the lowering system;
- (9) Train other bungee jump operation staff; and
- (10) Ensure that the procedures set out in the site operating manual are followed.

63.6(5) *Jump assistant.* The operator or jump master shall designate at least one individual to act as a jump assistant. The jump assistant shall:

- a.* With the jump master, escort the jumper from the preparation area to the jump point;
- b.* Assist the jump master in preparing the jumper;
- c.* Assist in attaching the jumper to the harness and rigging;
- d.* Perform check procedures;
- e.* Operate the lowering system; and
- f.* Assist in controlling the public.

63.6(6) *Landing assistant.* The operator or jump master shall designate at least one individual to act as a landing assistant. The landing assistant's duties include the following:

- a.* Assisting the jumper to the landing pad;
- b.* Assisting the jumper to the recovery area;
- c.* Overseeing the recovery of the jumper; and
- d.* Assisting in controlling the public.

63.6(7) *Registration assistant.* The operator or jump master shall designate at least one individual to act as a registration assistant at each bungee jump operation site. The registration assistant shall:

- a.* Register the jumper;
- b.* Inform each jumper that there are medical conditions that could be adversely affected by bungee jumping and that prior to jumping, the jumper should consult with a physician for more specific information regarding the medical risks;
- c.* Weigh the jumper and mark the jumper's weight on the jumper;
- d.* Control the movement of the jumper to the jump platform; and
- e.* Assist in controlling the public.

63.6(8) *Jumper restrictions.*

- a.* The minimum age for jumping is 18 years of age.
- b.* A person who is visibly intoxicated or who is otherwise impaired shall not be allowed to jump.

63.6(9) *Jumper registration.* The operator shall ensure that a jumper provides the following information on the operator's registration form:

- a.* The jumper's contact information, including name, address, and telephone number.
- b.* The jumper's age and weight.

63.6(10) *Equipment replacement.*

- a.* Jumping shall cease immediately when substandard equipment is identified.

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b. The operator shall obtain from the bungee cord manufacturer a written verification of the maximum number of jumps for which a particular cord may be used. The written verification shall be kept on site and shall be available to the commissioner.

c. The operator shall keep a current, written record of each bungee cord used at the site. The bungee cord records shall be organized by permanent, unique identification number and shall include the number of jumps for each cord by date. The bungee cord records shall be available to the commissioner.

63.6(11) *Jump space and jump area.*

a. Persons other than a jumper and objects other than the jumper's equipment shall not be in the jump space at any time during jump operations.

b. Persons other than site personnel and objects other than air bags and similar safety devices shall not be in the jump area at any time during jump operations.

c. The jump space and jump area shall be identical to the jump space and jump area that the commissioner approved.

d. The preparation area shall be separate from the jump area.

These rules are intended to implement Iowa Code chapter 88A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/16.

ARC 2425C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation, on February 10, 2016, adopted amendments to Chapter 160, "County and City Bridge Construction Funds," Chapter 161, "Federal-Aid Highway Bridge Replacement and Rehabilitation Program," Chapter 170, "Allocation of Farm-to-Market Road Funds," Chapter 172, "Availability of Instructional Memorandums to County Engineers," Chapter 173, "Preparation of Secondary Road Construction Programs, Budgets, and County Engineers' Annual Reports," Chapter 174, "Reimbursable Services and Supplies," and Chapter 178, "Project Cost Reporting Requirements for Cities and Counties," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the December 23, 2015, Iowa Administrative Bulletin as **ARC 2319C**.

The amendments to Chapter 160 add new rules concerning the purpose of the chapter and contact information, remove the requirement that city bridge construction funds cannot be spent on primary road extensions, and make a clarifying change concerning the county and city bridge construction eligibility lists.

The amendments to Chapter 161 change the title of the chapter to reflect the state's current program title. The Federal-Aid Highway Bridge Replacement and Rehabilitation Program was replaced with the Highway Bridge Program under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Subsequently, the Highway Bridge Program was eliminated under the Moving Ahead for Progress in the 21st Century Act. Iowa's associations representing cities and counties requested, and the Iowa Transportation Commission approved, the Department's continuing to administer a program similar to the Highway Bridge Program using a portion of the "50 percent available to any area of the state" Federal-Aid Surface Transportation Program funding. Amendments to this chapter reflect the continuation of a bridge program administered by the Department as determined by the cities' and counties' associations. Other amendments add new rules concerning the purpose of the chapter and contact information.

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The amendments to Chapter 170 add new rules concerning the purpose of the chapter and contact information, update the chapter's implementation sentence, and require a county wanting to receive a temporary, advance allocation to include the request in its final plan submittal to the Department.

The amendments to Chapter 172 change the title of the chapter and make corresponding amendments to reflect that the Department is providing instructional memorandums to local public agencies and not just county engineers. The instructional memorandums are available at no cost on the Department's Web site. Other amendments add new rules concerning the purpose of the chapter and contact information and update the implementation sentence.

The amendments to Chapter 173 change the title of the chapter, make corresponding amendments to reflect the correct name of the annual report, update the chapter's implementation sentence, and add new rules concerning the purpose of the chapter and contact information.

The amendments to Chapter 174 add a new rule concerning the purpose of the chapter, update the implementation sentence, and make changes to the Department's list of highway-related services and supplies that counties and cities may request from the Department.

The amendments to Chapter 178 correct Iowa Code citations, update the chapter's implementation sentence and remove the requirement that the Department publish a paper copy of the instructions for cities and counties to report project cost information. Also, the definition of "city" is amended to clarify the requirement that the Amana Colonies complete the project cost report when completing its annual Street Financial Report, and "highway" was changed to "roadway" so that roadway, not just highway, lighting projects are included in the report.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 307.12, 307.24, 307.44, 309.22, 309.93, 310.27, 312.2, 312.14, 314.1 and 314.1A.

These amendments will become effective April 6, 2016.

Rule-making actions:

ITEM 1. Renumber rules **761—160.1(312)** and **761—160.2(312)** as **761—160.3(312)** and **761—160.4(312)**.

ITEM 2. Adopt the following new rule 761—160.1(312):

761—160.1(312) Purpose. The purpose of these rules is to establish requirements for the counties' and cities' bridge construction funds, in accordance with Iowa Code section 312.2.

ITEM 3. Adopt the following new rule 761—160.2(312):

761—160.2(312) Contact information. Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 4. Amend renumbered rule 761—160.4(312) as follows:

761—160.4(312) Administration of funds. The department shall allocate the funds to counties and cities for bridge construction and reconstruction projects based on needs. The funds shall be administered by the department's office of local systems.

160.4(1) No change.

160.4(2) The city bridge construction fund shall be allocated for projects on city streets as determined by the department after consultation with city officials through their representative organizations. ~~City streets do not include primary road extensions.~~

160.4(3) To be considered for funding, a proposed project must be on the appropriate eligibility list maintained by the department.

a. No change.

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b. A local jurisdiction may propose a project by submitting a project application to the following address: ~~Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010~~ office of local systems.

c. Unless otherwise agreed to by the city and county, a proposed project for a bridge located on the line dividing incorporated and unincorporated areas shall be placed on the eligibility list that corresponds to the jurisdiction submitting the application.

160.4(4) Prior to allocation, the department shall rank the proposed projects within each eligibility list by a priority system based on needs, as developed under subrules ~~160.2(1)~~ 160.4(1) and ~~160.2(2)~~ 160.4(2). The priority system will include various items such as, but not limited to, structural condition, traffic, and detour length. For each list, the department shall allocate funds, within the limits of funding availability, to those projects ranked as having the greatest needs.

ITEM 5. Amend **761—Chapter 161**, title, as follows:

**FEDERAL-AID HIGHWAY BRIDGE REPLACEMENT
AND REHABILITATION PROGRAM**

ITEM 6. Renumber rules **761—161.1(307)** and **761—161.2(307)** as **761—161.3(307)** and **761—161.4(307)**.

ITEM 7. Adopt the following new rule 761—161.1(307):

761—161.1(307) Purpose. The purpose of these rules is to establish requirements for the counties' and cities' federal-aid highway bridge program, in accordance with Iowa Code section 307.44.

ITEM 8. Adopt the following new rule 761—161.2(307):

761—161.2(307) Contact information. Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 9. Amend renumbered rule 761—161.3(307) as follows:

761—161.3(307) Source of funds. The Surface Transportation Program established in Section 444 133 of Title 23 of the United States Code provides for the use of federal funds to replace or rehabilitate public road bridges that are unsafe because of structural deficiencies, physical deterioration, or functional obsolescence. At least 15 percent, but not more than 35 percent, of the funds apportioned to the state shall be expended to replace or rehabilitate bridges on public roads which are not a part of a federal-aid system. The department, in consultation with county and city officials through their representative organizations, has dedicated a portion of these funds for replacement and rehabilitation of city and county bridges.

ITEM 10. Amend renumbered rule 761—161.4(307) as follows:

761—161.4(307) Administration of funds. The Highway Bridge Program funds ~~apportioned to the state~~ shall be made available for obligation throughout the state on a fair and equitable basis. The department shall administer the program by dividing each fiscal year Highway Bridge Program apportionment into ~~three~~ two separate funds: ~~one for the state~~; one for the counties; and one for the incorporated cities. The amount allocated to each of the ~~three~~ two funds shall be determined by the department after consultation with county and city officials through their representative organizations. This consultation shall precede any change in allocation.

~~**161.4(1)** The state share shall be administered and obligated by the department.~~

161.4(2) 161.4(1) The counties' share shall be administered by the department's office of local systems and shall be divided among the counties as determined by the department after consultation with county officials through their representative organizations.

~~**161.4(3)**~~ **161.4(2)** The cities' share shall be administered by the department's office of local systems and shall be divided among the cities as determined by the department after consultation with city officials through their representative organizations.

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~~161.4(4) To be eligible, the bridge must have a completed structural inventory and appraisal (SI & A) report on file with the department in accordance with National Bridge Inspection Standards, be structurally deficient or functionally obsolete, and have a sufficiency rating that complies with federal requirements.~~

ITEM 11. Renumber rule **761—170.1(310)** as **761—170.3(310)**.

ITEM 12. Adopt the following new rule 761—170.1(310):

761—170.1(310) Purpose. The purpose of these rules is to establish requirements for the counties' allocation of farm-to-market funds, in accordance with Iowa Code section 310.27.

ITEM 13. Adopt the following new rule 761—170.2(310):

761—170.2(310) Contact information. Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 14. Amend renumbered rule 761—170.3(310) as follows:

761—170.3(310) Temporary allocation. Temporary, advance allocation of farm-to-market road funds to counties is permitted under this rule up to an amount equal to the current fiscal year's anticipated receipts plus the four succeeding fiscal years' anticipated receipts to the requesting county's farm-to-market road fund.

170.3(1) Requesting an advance allocation. A county wishing to receive a temporary, advance allocation shall include its request as part of ~~the secondary road budget and program documents~~ its final plan submittal to the department.

170.3(2) Limitations on advancements. In making the determination to advance allocations to any requesting county, and in determining the priority that each county shall have in the request for funds, the department shall consider the following factors:

a. to c. No change.

d. The county must have met the local effort requirements of funds raised under Iowa Code subsection ~~312.2(8)~~ 312.2(5).

e. to h. No change.

~~**170.3(3) Contact information.** Questions regarding this rule may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.~~

~~This rule is intended to implement Iowa Code section 310.27.~~

ITEM 15. Adopt the following new implementation sentence in **761—Chapter 170**:
These rules are intended to implement Iowa Code section 310.27.

ITEM 16. Amend **761—Chapter 172**, title, as follows:

AVAILABILITY OF INSTRUCTIONAL MEMORANDUMS
TO COUNTY ENGINEERS LOCAL PUBLIC AGENCIES

ITEM 17. Renumber rule **761—172.1(307A)** as **761—172.3(307A)**.

ITEM 18. Adopt the following new rule 761—172.1(307):

761—172.1(307) Purpose. The purpose of these rules is to establish requirements for instructional memorandums, in accordance with Iowa Code section 307.24.

ITEM 19. Adopt the following new rule 761—172.2(307):

761—172.2(307) Contact information. Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

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ITEM 20. Amend renumbered rule 761—172.3(307A) as follows:

761—172.3(307A 307) Instructional memorandums to ~~county engineers~~ local public agencies. The department shall produce a manual of instructional memorandums to ~~county engineers~~ regarding secondary and farm-to-market roads. The manual shall communicate instructions, requirements and guidance information to the counties. The department shall produce instructional memorandums that communicate instructions, requirements, and guidance information on a variety of transportation-related topics to local public agencies. The instructional memorandums and updates shall be available electronically, at no cost, to all local public agencies on the department's Web site, www.iowadot.gov.

172.3(1) The manual of instructional memorandums and updates shall be available to all county engineers free of charge from the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

172.3(2) Reserved.

This rule is intended to implement Iowa Code section 307A.2.

ITEM 21. Adopt the following new implementation sentence in **761—Chapter 172**:
These rules are intended to implement Iowa Code section 17A.3 and section 307.24.

ITEM 22. Amend **761—Chapter 173**, title, as follows:

PREPARATION OF SECONDARY ROAD CONSTRUCTION PROGRAMS,
BUDGETS, AND COUNTY ENGINEERS' ANNUAL REPORTS

ITEM 23. Renumber rules **761—173.1(309)** to **761—173.3(309)** as **761—173.3(309)** to **761—173.5(309)**.

ITEM 24. Rescind rule **761—173.4(309)**.

ITEM 25. Adopt the following new rule 761—173.1(309):

761—173.1(309) Purpose. The purpose of these rules is to establish requirements for preparation of secondary road construction programs, budgets, and county annual reports, in accordance with Iowa Code sections 309.22 and 309.93.

ITEM 26. Adopt the following new rule 761—173.2(309):

761—173.2(309) Contact information. Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 27. Amend renumbered rule 761—173.3(309) as follows:

761—173.3(309) County Secondary road construction program. Each year the department shall distribute to the counties a set of detailed instructions for the preparation of the ~~county~~ secondary road construction program required by Iowa Code section 309.22. The instructions shall constitute the form, content and method of preparation acceptable to the department.

~~This rule is intended to implement Iowa Code section 309.22.~~

ITEM 28. Amend renumbered rule 761—173.4(309) as follows:

761—173.4(309) County secondary road budget. Each year the department shall distribute to the counties a set of detailed instructions for the preparation of the county secondary road budget required by Iowa Code section 309.93. The instructions shall constitute the form, content and method of preparation acceptable to the department.

~~This rule is intended to implement Iowa Code section 309.93.~~

ITEM 29. Amend renumbered rule 761—173.5(309) as follows:

761—173.5(309) County engineer's annual report. Each year the department shall distribute to the counties a set of detailed instructions for the preparation of the county engineer's county annual report

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required by Iowa Code section 309.22. The instructions shall constitute the standard requirements which must be followed and the forms to be completed.

~~This rule is intended to implement Iowa Code section 309.22.~~

ITEM 30. Adopt the following **new** implementation sentence in **761—Chapter 173**:

These rules are intended to implement Iowa Code sections 309.22 and 309.93.

ITEM 31. Renumber rules **761—174.1(307)** and **761—174.2(307)** as **761—174.2(307)** and **761—174.3(307)**.

ITEM 32. Adopt the following **new** rule 761—174.1(307):

761—174.1(307) Purpose. The purpose of these rules is to list highway-related services and supplies that counties and cities may typically request from the department, in accordance with Iowa Code sections 17A.3 and 307.12.

ITEM 33. Amend renumbered rule 761—174.3(307) as follows:

761—174.3(307) Reimbursable services and supplies.

174.3(1) ~~The purpose of this rule is to list highway-related services and supplies that counties and cities may typically request from the department. The list is not exhaustive. The department may require reimbursement for the services and supplies furnished. If an item to be reimbursed is for a farm-to-market project, the cost of the item will be charged to the county's farm-to-market road fund. The following list is not exhaustive:~~

~~a. Structural analysis: A~~ The department will provide standards, a detailed field or office study inspection of an existing or proposed structure to determine condition or load-carrying capacity and advise on capacity calculations.

~~b. Hydraulic analysis: An in-depth field or office review of hydraulic functioning and adequacy of a proposed or existing drainage complex. The department will review structures in a detailed flood insurance study area, when a culvert will replace a bridge, and when a proposed structure is smaller than the existing structure.~~

~~c. Shop inspection: Inspection~~ The department will assist with arranging inspection of steel fabrication at the assembly point to determine compliance with plans, specifications and approved shop drawings.

~~d. Physical testing: Inspection, laboratory or field testing, and documentation of results to a county or city on any material samples for any purpose obtained by the department, county, city or consultant. The department will provide specialized materials inspection, sampling, and testing when a project has federal funding or when requested for a project that has state assistance and involves work on a primary road. When requested for farm-to-market projects, limited specialized materials inspection, sampling, and testing will be provided.~~

~~e. Inspection supplies and equipment repairs: All inspection equipment furnished by the laboratory will be on loan to a county or city and shall be returned upon completion of the project or the season. All inspection supplies furnished from warehouse stock shall be paid for by the receiving county or city and shall not be returned for credit. The cost of all equipment repairs performed for a county or city shall be charged to that county or city.~~

~~f. Manuals and publications: The department will provide each county with a single copy of each publication required to be used by the county (e.g., standard specifications). Any additional copies requested by a county will require reimbursement from the county. All other publications requested by a county or city will be at the county's or city's expense~~ manuals and publications on its Web site, www.iowadot.gov.

~~g. Office supplies.~~

~~h. Printing services: Preparation and printing of plans, offset prints, photo processes, and other printing performed for a county or city.~~

~~i. h. Schools Training: Extended instruction~~ The department will provide training on various road subjects, attended by for county or and city personnel on an application basis.

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~~j. Pile bearing tests: Test loading of piles to determine pile load-bearing capacity.~~
~~k. i. Tabulation of bids: All lettings, by subscription. The department will publish the tabulation of bids for projects let through the department on its Web site, www.iowadot.gov.~~

~~l. Lease of department equipment to a county or city. See paragraph "e" of this subrule for inspection equipment.~~

~~m. j.~~ Special traffic counts requested by a county or city.

174.3(2) Reserved.

ITEM 34. Amend **761—Chapter 174**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 307~~ and section sections 17A.3 and 307.12.

ITEM 35. Amend rule 761—178.1(314) as follows:

761—178.1(314) Purpose. The purpose of these rules is to establish requirements for the reporting by cities and counties of project cost information to the department, in accordance with ~~2001 Iowa Acts, chapter 32, sections 4 and 5~~ Iowa Code section 314.1A.

ITEM 36. Amend rule **761—178.3(314)**, definition of “City,” as follows:

“City” means a municipal corporation as defined in Iowa Code section 312.8 or 362.2.

ITEM 37. Amend subrule 178.4(1), introductory paragraph, as follows:

178.4(1) Each year the department shall ~~distribute~~ provide to cities and counties a set of detailed instructions for reporting the following information:

ITEM 38. Amend rule 761—178.5(314) as follows:

761—178.5(314) Project reporting. Reporting under ~~2001 Iowa Acts, chapter 32, sections 4 and 5, Iowa Code section 314.1A~~ of projects accomplished by day labor or contract is required for any construction, reconstruction or improvement project that has a total cost of 90 percent or more of the applicable bid threshold (~~see 2001 Iowa Acts, chapter 32, sections 7 and 9, for an explanation of bid thresholds~~). Other reporting requirements set out in the Iowa Code still apply.

178.5(1) Types of projects. Project type shall be identified. The project types are:

a. *Bridge.* The definition of “bridge” in Iowa Code section ~~309.75~~ 309.1 applies. This project type includes removal of existing structures and all new construction, reconstruction and improvement of bridges.

b. *Culvert.* The definition of “culvert” in Iowa Code section ~~309.75~~ 309.1 applies. This project type includes new construction or installation of an individual box or pipe culvert with a span or diameter that is greater than four feet but no greater than 20 feet.

c. to e. No change.

f. *Traffic control.* This project type includes, but is not limited to, installation of major signs, traffic signals, railroad crossing signals, guardrail, highway roadway lighting, construction signing, and pavement markings on newly paved roads and streets.

g. No change.

178.5(2) and 178.5(3) No change.

ITEM 39. Amend **761—Chapter 178**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 309.22, 309.93, 312.14, ~~and 314.1,~~ and ~~2001 Iowa Acts, chapter 32, sections 4, 5, 7, 8, 9, and 12~~ 314.1A.

[Filed 2/10/16, effective 4/6/16]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/2/16.

ARC 2424C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321.200A, the Iowa Department of Transportation, on February 10, 2016, adopted an amendment to Chapter 615, "Sanctions," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the January 6, 2016, Iowa Administrative Bulletin as **ARC 2344C**.

The amendment is required by Iowa Code section 321.200A and concerns identity theft complaints. The amendment provides instruction for a person to request that the Department investigate fraudulent use of a person's name or other fraudulent identification that resulted in a record of conviction for a scheduled violation under Iowa Code chapter 321 and listed in Iowa Code section 805.8A. The Department will review the request for investigation to determine if an investigation is warranted based on the facts of the complaint.

This amendment does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

This amendment is identical to the one published under Notice of Intended Action.

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

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

The amendment will become effective April 6, 2016.

Rule-making action:

Adopt the following new rule 761—615.41(321):

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

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

[Filed 2/10/16, effective 4/6/16]

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