



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]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

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

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CITATION of Administrative Rules

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

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

| | |
|--------------------------|----------------------|
| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1 | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
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The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

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

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

Schedule for Rule Making 2020

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

PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u> | <u>ISSUE DATE</u> |
|---------------------|----------------------------|-------------------|
| 21 | Friday, March 20, 2020 | April 8, 2020 |
| 22 | Friday, April 3, 2020 | April 22, 2020 |
| 23 | Friday, April 17, 2020 | May 6, 2020 |

PLEASE NOTE:

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

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

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

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

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49.2
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Second Floor Conference Room
Wallace State Office Bldg.
Des Moines, Iowa

March 18, 2020
9 to 10 a.m.

Hemp, ch 96
IAB 3/11/20 **ARC 4988C**

Second Floor Conference Room
Wallace State Office Bldg.
Des Moines, Iowa

April 3, 2020
9 to 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 20.2, 22.1(3), 22.100,
22.120, 22.128(4), 23.1, 23.5,
25.1(9), 30.1(1), 33.3
IAB 3/11/20 **ARC 4961C**

DNR Conference Room 2W
Wallace State Office Bldg.
Des Moines, Iowa

April 13, 2020
1 to 2 p.m.

LABOR SERVICES DIVISION[875]

Penalties for occupational safety
and health citations, 3.11(1)
IAB 2/26/20 **ARC 4938C**

150 Des Moines St.
Des Moines, Iowa

March 18, 2020
9 a.m.
(If requested)

Debt collection—technical
and conforming changes,
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150 Des Moines St.
Des Moines, Iowa

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(If requested)

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Iowa nurse assistance program,
19.1, 19.2, 19.4, 19.6
IAB 2/26/20 **ARC 4945C**

Board Office, Suite B
400 S.W. 8th St.
Des Moines, Iowa

March 17, 2020
9 to 10 a.m.

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Licensing sanction prohibition
for student loan debt repayment
default or delinquency;
continuing education
exemptions for funeral
directors, 4.12(1), 4.16
IAB 3/11/20 **ARC 4963C**

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

March 31, 2020
8 to 8:30 a.m.

Dietitians—child abuse and
dependent adult abuse
mandatory reporter training,
81.9(4)
IAB 2/26/20 **ARC 4935C**

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

March 18, 2020
10 to 10:30 a.m.

Nursing home
administrators—child abuse
and dependent adult abuse
mandatory reporter training,
141.9(8)
IAB 2/26/20 **ARC 4936C**

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

March 18, 2020
10:30 to 11 a.m.

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| | | |
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| Psychologists—child abuse and dependent adult abuse mandatory reporter training, 240.13(4) IAB 2/26/20 ARC 4934C | Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa | March 18, 2020 11 to 11:30 a.m. |
|---|---|------------------------------------|

| | | |
|--|---|----------------------------------|
| Respiratory care practitioners and polysomnographic technologists—child abuse and dependent adult abuse mandatory reporter training, 261.8(4) IAB 2/26/20 ARC 4933C | Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa | April 23, 2020 9 to 9:30 a.m. |
|--|---|----------------------------------|

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| | | |
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| Office name and contact information update, 410.1(3) IAB 2/26/20 ARC 4939C | Department of Transportation Motor Vehicle Division 6310 SE Convenience Blvd. Ankeny, Iowa | March 23, 2020 10 a.m. (If requested) |
|---|---|---|

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| Ratemaking principles proceeding, ch 41 IAB 1/15/20 ARC 4865C | Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa | March 12, 2020 9 to 11 a.m. |
|--|--|--------------------------------|

The following list will be updated as changes occur.

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

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

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

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ARC 4988C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

The Agriculture and Land Stewardship Department hereby proposes to rescind Chapter 96, “Hemp,” Iowa Administrative Code, and to adopt a new Chapter 96 with the same title.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 204.

Purpose and Summary

This proposed rule making is in response to additional requirements requested by the United States Department of Agriculture (USDA) to ensure compliance with the Agriculture Improvement Act of 2018, which amended the Agricultural Marketing Act of 1946, and to ensure compliance with further restrictions found in 2019 Iowa Acts, Senate File 599.

Fulfillment of these changes is necessary for the Department to receive USDA approval of the state plan to administer an industrial hemp program.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 3, 2020. Comments should be directed to:

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

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

Public Hearing

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

April 3, 2020
9 to 10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

Emergency Rule Making Adopted by Reference

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 4989C**, IAB 3/11/20). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

ARC 4962C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action****Proposing rule making related to welcome center program
and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to rescind Chapter 34, "Welcome Center Program," Iowa Administrative Code and to adopt a new Chapter 34 with the same title.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 15.271 and 15.272.

Purpose and Summary

2019 Iowa Acts, House File 303, made significant updates to the Authority's Welcome Center Program. This legislation removed outdated references to a statewide long-range plan and pilot program, which no longer exist. The proposed amendment rescinds the existing rules relating to the pilot program and replaces the chapter with more general information about the purpose of welcome centers, which is to provide travel-related services and tourism information to travelers throughout the state.

Fiscal Impact

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

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on March 31, 2020. Comments should be directed to:

Jennifer Klein
Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Phone: 515.348.6144
Email: jennifer.klein@iowaeda.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind 261—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34
WELCOME CENTER PROGRAM

261—34.1(15) Purpose. The primary goal of a statewide program for welcome centers is to provide travel-related services and tourism information to travelers. A program is established to maintain a variety of welcome centers at strategic locations to meet the needs of travelers in the state.

261—34.2(15) Welcome center program. The economic development authority shall establish and administer a statewide welcome center program.

34.2(1) Collaboration with state agencies. The authority shall collaborate with other state agencies as necessary to coordinate the operation of such welcome centers and to provide information to travelers.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

34.2(2) Operation. The authority shall operate, manage, and maintain all state-owned and state-operated welcome centers, including the provision of travel-related services and the collection and distribution of tourism information.

These rules are intended to implement Iowa Code sections 15.271 and 15.272.

ARC 4967C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action****Proposing rule making related to workforce housing tax incentives program and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to amend Chapter 48, "Workforce Housing Tax Incentives Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15.356.

Purpose and Summary

2019 Iowa Acts, House File 772, the Governor's Empower Rural Iowa Act, made changes to the Workforce Housing Tax Incentives Program, including increasing the maximum amount of tax credits the Authority allocates to the program from \$20 million to \$25 million; revising the definition of "small city"; amending or adding provisions to create a disaster recovery component of the program; amending or adding provisions to provide for competitive scoring; and clarifying and supplementing the contracting, notice, award and revocation processes. These proposed amendments implement changes made by that legislation.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on March 31, 2020. Comments should be directed to:

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Jennifer Klein
Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Phone: 515.348.6144
Email: jennifer.klein@iowaeda.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 48.4(1) as follows:

48.4(1) Minimum requirements. To receive workforce housing tax incentives pursuant to the program, a proposed housing project shall meet all of the following requirements:

a. to *d.* No change.

e. The project is not located in a 100-year floodplain.

ITEM 2. Amend rule 261—48.5(15) as follows:

261—48.5(15) Housing project application and agreement.

48.5(1) Application.

a. A housing business seeking workforce housing tax incentives provided in rule 261—48.6(15) shall make application to the authority in the manner prescribed in this rule. ~~The authority may accept applications on a continuous basis and will review applications in the order received. If the total amount of registered projects exceeds the available fiscal year allocation, the authority may stop accepting applications until the registered projects on the wait list have been awarded tax incentives. The authority will acknowledge receipt of the application and notify the applicant within 30 days as to whether the project will be registered pursuant to this rule.~~

b. The application required in paragraph 48.5(1)“*a*” shall include all of the following:

(1) The following information establishing local participation for the housing project:

1. A resolution in support of the housing project by the community where the housing project will be located.

2. Documentation of local matching funds pledged for the housing project in an amount equal to at least \$1,000 per dwelling unit, including but not limited to a funding agreement between the housing business and the community where the housing project will be located. For purposes of this paragraph, local matching funds shall be in the form of cash or cash equivalents or in the form of a local property tax exemption, rebate, refund, or reimbursement.

(2) A report that meets the requirements and conditions of Iowa Code section 15.330(9) if required.

(3) Information showing the total costs and funding sources of the housing project sufficient to allow the authority to adequately determine the financing that will be utilized for the housing project, the actual cost of the dwelling units, and the amount of qualifying new investment.

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(4) Any other information deemed necessary by the authority to evaluate the eligibility and financial need of the housing project under the program.

48.5(2) *Registration. Application review—tax incentive award.*

a. All completed applications shall be reviewed and scored on a competitive basis by the authority pursuant to these rules. Review criteria include but are not limited to project need, project readiness, financial capacity, and project impact.

a. b. Upon review and scoring of the application, the authority may register the housing project under the program. If the authority registers the housing project, the authority shall make a preliminary determination as to the amount of tax incentives for which the housing project qualifies all applications received during an application period, the authority may make a tax incentive award to a housing project. The tax incentive award shall represent the maximum amount of tax incentives the housing project may qualify for under the program. In determining a tax incentive award, the authority shall not use an amount of project costs that exceeds the amount included in the application from the housing business. Tax incentive awards shall be approved by the director of the authority.

b. c. After registering the housing project making a tax incentive award, the authority shall notify the housing business of successful registration under the program its tax incentive award. The notification shall include the amount of tax incentives under rule 261—48.6(15) for which the housing business has received preliminary approval an award and a statement that the amount is a preliminary determination only housing business has no right to receive a tax incentive certificate or claim a tax incentive until all requirements of the program, including all requirements imposed by the agreement entered into pursuant to paragraph 48.5(3) “a,” are satisfied. The amount of tax credits included on a tax credit certificate issued pursuant to this chapter, or a claim for refund of sales and use taxes, shall be contingent upon completion of the requirements in subrule 48.5(3).

d. An applicant that does not receive a tax incentive award during an application period may make additional applications during subsequent application periods. Such applicant shall be required to submit a new application and shall be competitively reviewed and scored in the same manner as other applicants in that application period.

48.5(3) *Agreement and fees.*

a. Upon successful registration of the receiving a tax incentive award for a housing project, the housing business shall enter into an agreement with the authority for the successful completion of all requirements of the program. The agreement shall identify the tax incentive amount, the tax incentive award date, the project completion deadline and the total costs of the housing project.

b. The compliance cost fees imposed in Iowa Code section 15.330(12) shall apply to all agreements entered into under this program and shall be collected by the authority in the same manner and to the same extent as described in that provision.

c. Housing project completion deadline.

(1) Except as provided in subparagraph 48.5(3) “c”(2), a housing business shall complete its housing project within three years from the date the housing project is registered by the authority.

(2) The authority may for good cause within the discretion of the authority extend a housing project’s completion deadline once by up to 12 months upon application by the housing business, which application shall be made prior to the expiration of the three-year completion deadline in subparagraph 48.5(3) “c”(1) in the manner and form prescribed by the authority.

d. Upon completion of a housing project, an examination of the project in accordance with the American Institute of Certified Public Accountants’ statements on standards for attestation engagements, completed by a certified public accountant authorized to practice in this state, shall be submitted to the authority.

e. Upon review of the examination and verification of the amount of the qualifying new investment, the authority may notify the housing business of the amount that the housing business may claim as a refund of the sales and use taxes under subrule 48.6(2) and may issue a tax credit certificate to the housing business stating the amount of workforce housing investment tax credits under rule 261—48.6(15) that the eligible housing business may claim. The sum of the amount that the housing

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business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

f. If, upon review of the examination in paragraph 48.5(3) "d," the authority determines that a housing project has incurred project costs in excess of the amount submitted in the application and identified in the agreement, the authority shall do one of the following:

(1) If the project costs do not cause the housing project's average dwelling unit cost to exceed the applicable maximum amount authorized in subrule 48.4(1), the authority may consider the agreement fulfilled and may issue a tax credit certificate.

(2) If the project costs cause the housing project's average dwelling cost to exceed the applicable maximum amount authorized in paragraph 48.4(1) "c" but do not cause the average dwelling unit cost to exceed 110 percent of such applicable amount, the authority shall reduce the tax incentive award and the corresponding amount of tax incentives the eligible project may claim under rule 261—48.6(15) by the same percentage that the housing project's average dwelling cost exceeds the applicable maximum amount under paragraph 48.4(1) "c," and such tax incentive reduction shall be reflected on the tax credit certificate. If the authority issues a certificate pursuant to this subrule, the department of revenue shall accept the certificate notwithstanding that the housing project's average dwelling unit cost exceeds the maximum amount specified in paragraph 48.4(1) "c."

(3) If the project costs cause the housing project's average dwelling unit cost to exceed 110 percent of the applicable maximum amount authorized in paragraph 48.4(1) "c," the authority shall determine the eligible housing business to be in default under the agreement, shall revoke the tax incentive award and shall not issue a tax credit certificate. The housing business shall not be allowed a refund of sales and use tax under rule 261—48.6(15).

48.5(4) and 48.5(5) No change.

ITEM 3. Amend rule 261—48.6(15) as follows:

261—48.6(15) Workforce housing tax incentives.

48.6(1) Eligibility. A housing business that has entered into an agreement pursuant to rule 261—48.5(15) is eligible to receive the tax incentives described in subrules 48.6(2) and 48.6(3).

48.6(2) Sales tax refunds. A housing business may claim a refund of the sales and use taxes paid under Iowa Code chapter 423 that are directly related to a housing project and specified in the agreement. The refund available pursuant to this subrule shall be as provided in Iowa Code section 15.331A to the extent applicable for purposes of this program.

48.6(3) Income tax credits.

a. A housing business may claim a tax credit in an amount not to exceed the following:

(1) For a housing project not located in a small city, 10 percent of the qualifying new investment of a housing project specified in the agreement.

(2) For a housing project located in a small city, 20 percent of the qualifying new investment of a housing project specified in the agreement.

b. to f. No change.

ITEM 4. Amend rule 261—48.7(15) as follows:

261—48.7(15) Annual program funding allocation, reallocation, and management of excess demand.

48.7(1) Each year the authority will allocate to the program a portion of the maximum aggregate tax credit cap described in Iowa Code section 15.119. ~~For each fiscal year beginning on or after July 1, 2014, the authority will allocate not more than \$20 million for purposes of the program.~~

48.7(2) If, during a fiscal year, the authority determines that program demand is less than the amount initially allocated, the authority may reallocate unused amounts to other programs under Iowa Code section 15.119.

48.7(3) ~~If, in any fiscal year, the authority determines that demand for the tax incentives is more than the amount allocated to the program pursuant to Iowa Code section 15.119, the authority will~~

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~~keep a waiting list of projects registered pursuant to rule 261—48.5(15) and will only enter into new agreements under the program as additional program funding becomes available. The authority will enter into agreements with registered projects on a first come, first served basis as determined by the order in which the projects were registered. A project successfully registered under the program will be considered to have priority as against other subsequently registered projects. However, registration under the program shall not obligate or otherwise bind the authority, or any other agency of the state, to execute a contract or issue tax incentives to an applicant under the program.~~

ARC 4966C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action****Proposing rule making related to renewable chemical production tax credit
and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to amend Chapter 81, “Renewable Chemical Production Tax Credit Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15.316.

Purpose and Summary

Under the renewable chemical production tax credit, Iowa Code section 15.316 provides that the term “building block chemical” includes a prescribed list of chemicals “or such additional molecules as may be included by the authority by rule after consultation with appropriate experts from Iowa state university, including but not limited to the Iowa state university center for biorenewable chemicals.” In accordance with Iowa Code section 15.316 and the procedures set forth in rule 261—81.8(15), the Authority proposes to add the chemicals “ethylyne glycol” and “1,4 butanediol” to the list of approved building block chemicals. Brent Shanks at the Iowa State University Center for Biorenewable Chemicals (CBiRC) has recommended approval of these chemicals, and the Authority concurs.

This rule making was approved by the Iowa Economic Development Authority Board on November 22, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

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Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on March 31, 2020. Comments should be directed to:

Jennifer Klein
Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Phone: 515.348.6144
Email: jennifer.klein@iowaeda.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule **261—81.2(15)**, definition of “Building block chemical,” as follows:

“*Building block chemical*” means a molecule converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product. “Building block chemical” includes but is not limited to high-purity glycerol, oleic acid, lauric acid, methanoic or formic acid, arabonic acid, ~~erythronic~~ erythronic acid, glyceric acid, glycolic acid, lactic acid, 3-hydroxypropionate, propionic acid, malonic acid, serine, succinic acid, fumaric acid, malic acid, aspartic acid, 3-hydroxybutyrolactone, acetoin, threonine, itaconic acid, furfural, levulinic acid, glutamic acid, xylonic acid, xylaric acid, xylitol, arabitol, citric acid, aconitic acid, 5-hydroxymethylfurfural, lysine, gluconic acid, glucaric acid, sorbitol, gallic acid, ferulic acid, nonfuel butanol, nonfuel ethanol, benzene, toluene, xylene, ethylbenzene, butanoic acid, hexanoic acid, octanoic acid, pentanoic acid, ~~and~~ heptanoic acid, ethylyne glycol, and 1,4 butanediol, or such additional molecules as may be included by the authority following the procedure in rule 261—81.8(15).

ARC 4961C**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action****Proposing rule making related to air quality and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 20, “Scope of Title—Definitions,” Chapter 22, “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” Chapter 25, “Measurement of Emissions,” Chapter 30, “Fees,” and Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

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Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455B.133 and 455B.134.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.133 and 455B.134.

Purpose and Summary

The purposes of this proposed rule making are to:

1. Reduce the cost of government while providing streamlined services to the public and the regulated community.
2. Update rules to provide regulatory certainty and flexibility. The amendments implement a portion of the five-year review of rules plan of the Department of Natural Resources (Department) pursuant to Iowa Code section 17A.7(2).
3. Offer uniform rules by making changes that match federal regulations and eliminate inconsistencies between federal regulations and state administrative rules. By adopting federal updates into state administrative rules, the Commission is ensuring that Iowa's air quality rules are no more stringent than the federal regulations. Additionally, the updates allow the Department, rather than the U.S. Environmental Protection Agency (EPA), to be the primary agency to implement the air quality requirements in Iowa, thereby allowing the Department to provide compliance assistance and outreach to affected facilities.

Item 1 amends rule 567—20.2(455B), the definition of “anaerobic lagoon,” to further clarify that this definition is applicable to only the air quality requirements as specified in 567—Chapters 20 through 35. The Commission is clarifying the definition because other Department regulations, such as those for wastewater, may contain different meanings for the term “anaerobic lagoon” that are specific to permitting or other requirements for that particular environmental program area.

Item 1 also amends the definition of “EPA reference method” to adopt the most current EPA methods for measuring air pollutant emissions, performance testing (sometimes called “stack testing”), and continuous monitoring. On November 14, 2018, EPA revised the reference methods in 40 Code of Federal Regulations (CFR) Parts 51, 60, and 63 to eliminate outdated procedures, add alternative testing methods, make technical corrections, and correct typographical and grammatical errors. EPA states that its revisions will improve the quality of data and provide flexibility in the use of approved alternative procedures, while not imposing any new substantive requirements on source owners or operators.

The amendments in **Items 4, 8, 9, and 11** will be adopted concurrently with the amendment in Item 1 to similarly reflect updates to EPA testing and monitoring methods as the methods apply to specific air quality requirements. Item 4 updates the definition of “EPA reference method” for the Title V operating permit rules in 567—Chapter 22 in the same manner as the definition is amended in Item 1. Items 8 and 9 adopt by reference the federal updates into the regulations for New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) in 567—Chapter 23, as explained below. Item 11 adopts the federal updates by reference into the performance testing and continuous monitoring requirements in 567—Chapter 25. Adopting EPA's updates ensures that state reference testing methods match current federal reference methods and are no more stringent than the federal methods.

Additionally, Item 1 updates the definition of “volatile organic compounds” (VOC) to reflect changes that EPA made to the federal definition of VOC. On November 28, 2018, a final regulation was published in the Federal Register to exclude the compound cis-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz-Z) from the federal definition because this compound makes a negligible contribution to tropospheric ozone formation. In Item 13, an amendment to subrule 33.3(1) will be adopted concurrently with the amendment in Item 1 to similarly update the definition of “volatile organic compounds” for the Prevention of Significant Deterioration (PSD) rules in 567—Chapter 33.

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Items 2, 4, 5, 6, and 12 add new definitions for “electronic format,” “electronic submittal,” and “electronic submittal format” to facilitate the Department’s launch of the Iowa Environmental Application System—EASY Air (EASY Air), a new online electronic method for submitting air quality permit applications. EASY Air is expected to make application preparation easier, improve customer service, and expedite the Department’s ability to issue permits while increasing data accuracy and cutting costs. Additionally, EASY Air allows online submittal of streamlined alternatives to traditional applications, such as registrations, notifications, and template applications. EASY Air launched for permit application submittal on December 5, 2019.

Items 3 and 7 amend rules to enable electronic submittal. Item 3 updates the construction permit application provisions to specify the types of submittals that may include an electronic submittal option. Item 7 revises the requirements for acid rain permit applications to specify that only one copy of an application is required to be submitted if paper forms are used or, alternatively, the application may be submitted through the electronic submittal method specified by the Department.

Items 8 and 9 adopt changes to the NSPS and NESHAP, respectively. The U.S. Clean Air Act (CAA) obligates the EPA to issue standards to control air pollution. The NSPS and NESHAP set federal standards and deadlines for industrial, commercial or institutional facilities to meet uniform standards for equipment operation and air pollutant emissions.

NESHAP requirements differ depending on whether a facility is a “major source” or an “area source.” Major sources are typically larger facilities and have potential emissions of 10 tons or more per year of any single hazardous air pollutant (also known as HAP or an air toxic) or 25 tons or more of any combination of HAPs. Area sources have potential air toxics emissions at less than the major source thresholds. Although area sources generally emit lower levels of air toxics than major sources, area sources are more numerous and may collectively cause adverse impacts to public health.

Because the NSPS and NESHAP adopted by reference are federal regulations, affected sources are subject to the federal requirements regardless of whether the Commission adopts the standards into the state rules. However, the CAA allows a state or local agency to implement NSPS and NESHAP as a delegated authority. Upon state adoption of the standards, the Department becomes the delegated authority for the specific NSPS or NESHAP and is the primary implementation agency in Iowa. Two local agencies, those in Polk County and Linn County, implement these standards within their counties. The Department’s rules, including all compliance deadlines, are identical to the federal NSPS and NESHAP as of a specific federal publication date. With delegation authority and adoption of the federal standards into the Department’s rules and the rules of Polk County and Linn County, the state and local agencies have the ability to make applicability determinations for facilities, rather than referring these decisions to EPA.

Stakeholders affected by NSPS and NESHAP typically prefer for the Department, rather than the EPA, to be the primary implementation agency in Iowa. Upon adoption of the new and amended standards, the Department will work with affected facilities to provide compliance assistance as needed. Additionally, affected area sources that are small businesses are eligible for free assistance from the small business technical assistance program.

Item 8 amends the introductory paragraph of subrule 23.1(2) to adopt by reference revised NSPS published in 40 CFR Part 60. The amendment adopts the changes that EPA made to the NSPS test methods, as explained above for Item 1, through revision of the adoption date specified in the introductory paragraph of subrule 23.1(2).

Item 9 amends subrule 23.1(4) to adopt federal amendments to the NESHAP for source categories published in 40 CFR Part 63, as described below. The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(4). The text in parentheses in each section heading below indicates the applicable subpart in 40 CFR Part 63 and the corresponding paragraph in subrule 23.1(4).

Surface Coating of Large Appliances (Subpart NNNN; paragraph “cn”); Printing, Coating, and Dyeing of Fabrics and Other Textiles (Subpart OOOO; paragraph “co”); and Surface Coating of Metal Furniture (Subpart RRRR; paragraph “cr”)

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On March 15, 2019, EPA's amendments to Part 63 for three NESHAP source categories (Surface Coating of Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Surface Coating of Metal Furniture) were published in the Federal Register. The regulations include provisions related to emissions during start-up, shutdown, and malfunction (SSM); electronic reporting for performance test results and compliance reports; the addition of EPA Method 18 and updates to several measurement methods; and the addition of requirements for periodic performance testing.

All three of these NESHAP source categories apply only to major sources of HAP. Currently, one facility is affected by the amendments to Subpart OOOO and two facilities are potentially affected by the amendments to Subpart RRRR. At this time, no facilities in Iowa are affected by Subpart NNNN. However, existing facilities that are area sources for HAP that increase their production and become major sources could be subject to Subpart NNNN. Additionally, new facilities that locate to Iowa, or existing facilities that change their operations to include processes covered by Subpart NNNN, would also be affected.

Surface Coating of Wood Building Products (Subpart QQQQ; paragraph "cq")

Amendments to the NESHAP for Surface Coating of Wood Building Products were published in the Federal Register on March 4, 2019. These amendments are intended to enhance the effectiveness of the existing standards and requirements for periods of SSM to be consistent with recent court decisions. The amendments to Subpart QQQQ apply only to major sources of HAP. At this time, four facilities are potentially affected by these NESHAP amendments.

Wet-Formed Fiberglass Mat Production (Subpart HHHH; paragraph "ch")

Amendments to the NESHAP for Wet-Formed Fiberglass Mat Production were published in the Federal Register on February 28, 2019. These amendments address emissions during periods of SSM; add electronic reporting; revise certain monitoring, record-keeping, and reporting requirements; and include other miscellaneous technical and editorial changes.

The amendments to NESHAP Subpart HHHH affect only major sources of HAP, and at this time no facilities in Iowa are affected by them. However, existing facilities that are area sources for HAP that increase their production and become major sources could be subject to Subpart HHHH. Additionally, new facilities that locate to Iowa, or existing facilities that change their operations to include processes covered by Subpart HHHH, would also be affected.

Leather Finishing Operations (Subpart TTTT; paragraph "ct")

Amendments to the NESHAP for Leather Finishing Operations were published in the Federal Register on February 12, 2019. These amendments address emissions during periods of SSM and provide clarifications to monitoring, record-keeping, and reporting requirements for control equipment.

The amendments to NESHAP Subpart TTTT affect only major sources of HAP, and at this time no facilities in Iowa are affected by them. However, existing facilities that are area sources for HAP that increase their production and become major sources could be subject to Subpart TTTT. Additionally, new facilities that locate to Iowa, or existing facilities that change their operations to include processes covered by Subpart TTTT, would also be affected.

Friction Materials Manufacturing (Subpart QQQQ; paragraph "dq")

Amendments to the NESHAP for Friction Materials Manufacturing were published in the Federal Register on February 8, 2019. EPA finalized minor amendments to the existing regulation and also clarified that the standards are applicable during periods of SSM. EPA also revised the deviation reporting requirements.

The amendments to NESHAP Subpart QQQQ affect only major sources of HAP, and at this time no facilities in Iowa are affected by them. However, existing facilities that are area sources for HAP that increase their production and become major sources could be subject to Subpart QQQQ. Additionally, new facilities that locate to Iowa, or existing facilities that change their operations to include processes covered by Subpart QQQQ, would also be affected.

Manufacture of Amino/Phenolic Resins (Subpart OOO; paragraph "bo")

Amendments to the NESHAP for Amino/Phenolic Resins were published in the Federal Register on October 15, 2018. In this action, EPA revised the maximum achievable control technology (MACT) standard for continuous process vents (CPVs) at existing affected sources. In addition, EPA extended

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the compliance date for CPVs at existing sources. EPA also revised the requirements for storage vessels at new and existing sources during periods when an emission control system used to control vents on fixed roof storage vessels is undergoing planned routine maintenance. To improve the clarity of the NESHAP, EPA also finalized five minor technical rule corrections.

The amendments to NESHAP Subpart OOO affect only major sources of HAP, and at this time no facilities in Iowa are affected by them. However, existing facilities that are area sources for HAP that increase their production and become major sources could be subject to Subpart OOO. Additionally, new facilities that locate to Iowa, or existing facilities that change their operations to include processes covered by Subpart OOO, would also be affected.

The amendment in Item 9 also adopts the changes EPA made to the NESHAP test methods, as explained above for Item 1. The amendments to the NESHAP are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(4).

Item 10 amends rule 567—23.5(455B), provisions for anaerobic lagoons, to update the requirements for industrial anaerobic lagoons.

Industrial anaerobic lagoons are used to treat wastewater that can contain significant organic loading. These lagoons are usually found at industries such as food processing plants or animal slaughter facilities and act as wastewater pretreatment systems. During the 1970s, the Department established the sulfate content limit and the design biochemical oxygen demand (BOD) loading rate limit. These limits were based on the information available at that time about the operating conditions that would ensure that an industrial anaerobic lagoon operated properly and minimized the release of air contaminants. The sulfate content standard applies to industrial lagoons constructed after February 22, 1979. The BOD standard applies to all industrial lagoons.

Because of advances in the design of anaerobic lagoons, higher BOD loading rates are now achievable and are allowed under wastewater construction permitting. The design of an industrial anaerobic lagoon will vary depending on the industry that is the source of the wastewater. There are other parameters besides sulfate content and BOD that can affect the proper operation of the lagoon, including water temperature, water pH, and retention time. It is thus more appropriate that the operating limits for a lagoon be established by the Department's Water Quality Bureau during its review for a wastewater construction permit rather than have the operating limits established by subrule 23.5(2) apply in all situations. Therefore, the Commission is proposing to remove the sulfate content limits and the design BOD loading limits that apply to industrial anaerobic lagoons. The Commission is also proposing to clarify that industrial anaerobic lagoons are subject to the applicable wastewater requirements specified in 567—Chapter 64.

Additionally, the Commission is proposing to add the siting requirements that apply to industrial anaerobic lagoons and are currently set forth in Iowa Code section 455B.134(3)“e”(1)(b). This siting requirement was added to the Iowa Code in 1982, and applies to industrial anaerobic lagoons that were built or expanded on or after July 1, 1982. The statutory requirements established in the Iowa Code in 1982 have applied since that time and have been implemented by the Department. However, for ease of air construction permit review and to provide clarity and transparency for owners and operators of industrial anaerobic lagoons and the public, the Commission is recommending that these statutory provisions also be adopted into the administrative rules. The Commission is proposing to adopt the siting requirements from the Iowa Code into subrule 23.5(2).

Item 11 amends subrule 25.1(9) to adopt the changes EPA made to the federal test methods for measuring emissions, as explained above for Item 1.

Item 12 amends subrule 30.1(1) to add new definitions for “electronic format,” “electronic submittal,” and “electronic submittal format,” as explained above.

Items 13 and 14 amend provisions in 567—Chapter 33 applicable to prevention of significant deterioration (PSD).

The goals of the PSD program as set forth under the federal CAA are to protect human health and welfare while ensuring that economic growth can continue. Before construction, new major stationary sources and major modifications to existing major stationary sources are required to obtain a construction permit under the federal New Source Review (NSR) provisions of the CAA. In attainment areas and

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unclassifiable areas of the state, the relevant federal NSR program is the PSD program. The DNR operates the PSD program in Iowa through an EPA-approved state implementation plan, which includes the administrative rules in 567—Chapter 33.

Item 13 amends subrule 33.3(1) to update the definition of “volatile organic compounds” for the PSD rules, as described above for Item 1.

Item 14 proposes to adopt in subrule 33.3(2) the federal amendments to 40 CFR Part 51, Appendix W, Guideline on Air Quality Models, applicable to the PSD program set forth in 567—Chapter 33. On January 17, 2017, EPA’s amendments to the guideline were published in the Federal Register. These amendments are expected to increase the efficiency and accuracy of regulatory air quality modeling demonstrations, while also providing regulatory flexibility for affected entities. The changes eliminate the need for PSD permit applicants to request approval to use certain features of EPA’s regulatory air quality model, AERMOD. The revisions also increase the accuracy of model estimates in certain situations where the estimates have been shown to overpredict pollutant concentrations. Additionally, the revisions allow for a screening approach for evaluating the impact of secondary formation of ozone and PM_{2.5}, fine inhalable particles that are 2.5 micrometers or smaller in diameter. Historically, this approach has been possible only by using highly sophisticated and expensive photochemical modeling.

The Commission did not adopt the federal amendments to Appendix W earlier because of potential legal challenges to the federal regulation. At this time, however, there is no active litigation, and EPA has addressed or is addressing several issues identified by stakeholders. The Commission is therefore now proposing adoption of the federal amendments.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. After analysis and review of this rule making, most of the proposed amendments will have a neutral fiscal impact on affected facilities, the general public, and county or local governments. Some of the proposed amendments may benefit the private sector because they streamline current air quality programs. Affected businesses and the public benefit from up-to-date air quality requirements and increased effectiveness. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, most of the proposed amendments will have a neutral impact on private sector jobs. Some of the proposed amendments may benefit the private sector because they streamline current air quality programs. For the amendments specified in Items 8 and 9, it has been determined that there may be jobs impacts to Iowa businesses. However, the amendments are only implementing federally mandated regulations. The amendments are identical to the federal regulations and would not impose any regulations on Iowa businesses not already required by federal law. In some cases, the revised federal standards being adopted provide more flexibility and potential cost savings for affected businesses and would thus have a positive impact on private sector jobs. A copy of the jobs impact statement is available from the Department upon request.

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 13, 2020. Comments should be directed to:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Christine Paulson
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: christine.paulson@dnr.iowa.gov

Public Hearing

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

April 13, 2020
1 to 2 p.m.

DNR Conference Room 2W
Wallace State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **567—20.2(455B)**, definitions of “Anaerobic lagoon,” “EPA reference method” and “Volatile organic compounds,” as follows:

“Anaerobic lagoon,” for purposes of air quality rules contained in 567—Chapters 20 through 35, means an impoundment, the primary function of which is to store and stabilize organic wastes. The impoundment is designed to receive wastes on a regular basis and the design waste loading rates are such that the predominant biological activity in the impoundment will be anaerobic. An anaerobic lagoon does not include:

- a. A runoff control basin which collects and stores only precipitation induced runoff from an open feedlot feeding operation; or
- b. A waste slurry storage basin which receives waste discharges from confinement feeding operations and which is designed for complete removal of accumulated wastes from the basin at least semiannually; or
- c. Any anaerobic treatment system which includes collection and treatment facilities for all ~~off-gases~~ off-gases.

“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through ~~August 30, 2016~~ November 14, 2018); 40 CFR 60, Appendix A (as amended through ~~August 30, 2016~~ November 14, 2018); 40 CFR 61, Appendix B (as amended through August 30, 2016); and 40 CFR 63, Appendix A (as amended through ~~August 30, 2016~~ November 14, 2018).

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~August 7, 2017~~ November 14, 2018); 40 CFR 60, Appendix F (as amended through ~~August 30, 2016~~ November 14, 2018); 40 CFR 75, Appendix A (as amended through August 30, 2016); 40 CFR 75, Appendix B (as amended through August 30, 2016); and 40 CFR 75, Appendix F (as amended through August 30, 2016).

"Volatile organic compounds" or *"VOC"* means any compound included in the definition of "volatile organic compounds" found at 40 CFR Section 51.100(s) as amended through ~~August 1, 2016~~ November 28, 2018.

ITEM 2. Adopt the following **new** definition of "Electronic format" in rule **567—20.2(455B)**:

"Electronic format," "electronic submittal," and "electronic submittal format," for purposes of the rules in 567—Chapters 20 through 35, mean a software, Internet-based, or other electronic means specified by the department for submitting information or fees to the department related to, but not limited to, applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in 567—Chapters 20 through 35 may, as specified by the department, include electronic submittal.

ITEM 3. Amend subrule 22.1(3), introductory paragraph, as follows:

22.1(3) Construction permits. The owner or operator of a new or modified stationary source shall apply for a construction permit. One copy of a construction permit application for a new or modified stationary source shall be presented or mailed to ~~Department of Natural Resources, Air Quality Bureau, 502 East 9th Street, Des Moines, Iowa 50319~~ the air quality bureau of the department of natural resources. Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department. References to "application(s)," "certification(s)," "determination request(s)," "emissions inventory(ies)," "fees," "form(s)," "notification(s)," "payment(s)," "permit application(s)," and "registration(s)," in rules 567—22.10(455B) through 567—22.10(455B) may, as specified by the department, include electronic submittal. An owner or operator applying for a permit as required pursuant to rule 567—31.3(455B) (nonattainment new source review) or rule 567—33.3(455B) (prevention of significant deterioration (PSD)) shall present or mail to the department one hard copy of a construction permit application to the address specified above and, upon request from the department, shall also submit one electronic copy and one additional hard copy of the application. Application submission methods may include, but are not limited to, U.S. Postal Service, private parcel delivery services, and hand delivery. Applications are not required to be submitted by certified mail. The owner or operator of any new or modified industrial anaerobic lagoon shall apply for a construction permit as specified in this subrule and as provided in 567—Chapter 22. The owner or operator of a new or modified anaerobic lagoon for an animal feeding operation shall apply for a construction permit as provided in 567—Chapter 65.

ITEM 4. Amend rule **567—22.100(455B)**, definition of "EPA reference method," as follows:

"EPA reference method" means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through ~~August 30, 2016~~ November 14, 2018); 40 CFR 60, Appendix A (as amended through ~~August 30, 2016~~ November 14, 2018); 40 CFR 61, Appendix B (as amended through August 30, 2016); and 40 CFR 63, Appendix A (as amended through ~~August 30, 2016~~ November 14, 2018).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~August 7, 2017~~ November 14, 2018); 40 CFR 60, Appendix F (as amended through ~~August 30, 2016~~ November 14, 2018); 40 CFR 75, Appendix A (as amended through August 30, 2016); 40 CFR 75, Appendix B (as amended through August 30, 2016); and 40 CFR 75, Appendix F (as amended through August 30, 2016).

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 5. Adopt the following **new** definition of “Electronic format” in rule **567—22.100(455B)**:
“*Electronic format,*” “*electronic submittal,*” and “*electronic submittal format*” mean a software, Internet-based, or other electronic means specified by the department for submitting information or fees to the department related to, but not limited to, applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in rules 567—22.100(455B) through 567—22.116(455B) may, as specified by the department, include electronic submittal.

ITEM 6. Adopt the following **new** definition of “Electronic format” in rule **567—22.120(455B)**:
“*Electronic format,*” “*electronic submittal,*” and “*electronic submittal format*” mean a software, Internet-based, or other electronic means specified by the department for submitting information or fees to the department related to, but not limited to, applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in rules 567—22.120(455B) through 567—22.146(455B) may, as specified by the department, include electronic submittal.

ITEM 7. Amend subrule 22.128(4) as follows:

22.128(4) Submission of copies. ~~Two copies~~ One copy of all permit applications shall be presented or mailed to the ~~Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319~~ air quality bureau of the department of natural resources. Alternatively, the designated representative may, as specified by the department, submit the application through electronic submittal.

ITEM 8. Amend subrule 23.1(2), introductory paragraph, as follows:

23.1(2) New source performance standards. The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~August 7, 2017, November 14, 2018,~~ are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 9. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~August 3, 2018,~~ March 15, 2019, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in rule 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 10. Amend rule 567—23.5(455B) as follows:

567—23.5(455B) Anaerobic lagoons.

23.5(1) No change.

23.5(2) Criteria for approval of industrial anaerobic lagoons constructed or expanded on or after July 1, 1982.

a. Lagoons designed to treat 100,000 ~~gpd~~ gallons per day (gpd) or less shall be located at least 1,250 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

~~(1) The sulfate content of the water supply shall not exceed 250 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.~~

~~(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.~~

b. Lagoons designed to treat more than 100,000 ~~gpd~~ gallons per day (gpd) shall be located at least 1,875 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

~~(1) The sulfate content of the water supply shall not exceed 100 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.~~

~~(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.~~

c. The criteria in subrule 23.5(2) shall apply except in situations in which Iowa Code section 455B.134(3) “e”(2) is successfully invoked.

d. Compliance with the requirements of subrule 23.5(2) shall not constitute an exemption from compliance with any other applicable environmental regulations. In particular, compliance with these requirements shall not absolve any person from compliance with the requirements set forth in 567—Chapter 64 that are applicable to industrial anaerobic lagoons.

This rule is intended to implement Iowa Code section 455B.133.

ITEM 11. Amend subrule 25.1(9) as follows:

25.1(9) Methods and procedures. Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

a. Performance test (stack test). A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended through ~~August 30, 2016~~ November 14, 2018); 40 CFR 60, Appendix A (as amended through ~~August 30, 2016~~ November 14, 2018); 40 CFR 61, Appendix B (as amended through August 30, 2016); and 40 CFR 63, Appendix A (as amended through ~~August 30, 2016~~ November 14, 2018). The owner of the equipment or the owner’s authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

b. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~August 7, 2017~~ November 14, 2018); 40 CFR 60, Appendix F (as amended through ~~August 30, 2016~~ November 14, 2018); 40 CFR 75, Appendix A (as amended through August 30, 2016); 40 CFR 75, Appendix B (as amended through August 30, 2016); and 40 CFR 75, Appendix F (as amended through August 30, 2016). The owner of the equipment or the owner’s authorized agent may use an alternative methodology for continuous monitoring systems if the

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

methodology is approved by the department in writing before the minimum performance ~~specification~~ specifications and quality assurance ~~procedure~~ procedures are conducted.

c. No change.

ITEM 12. Adopt the following **new** definition of “Electronic format” in subrule **30.1(1)**:

“*Electronic format*,” “*electronic submittal*,” and “*electronic submittal format*” mean a software, Internet-based, or other electronic means specified by the department for submitting fees or associated information to the department for the activities specified in this chapter related to, but not limited to, applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications, and registrations. References to these fee or information submittal methods in this chapter may, as specified by the department, include electronic submittal.

ITEM 13. Amend subrule **33.3(1)**, definition of “Volatile organic compounds,” as follows:

“*Volatile organic compounds*” or “*VOC*” means any compound included in the definition of “volatile organic compounds” found at 40 CFR Section 51.100(s) as amended through ~~August 1, 2016~~ November 28, 2018.

ITEM 14. Amend subrule 33.3(2), introductory paragraph, as follows:

33.3(2) Applicability. The requirements of this rule (PSD program requirements) apply to the construction of any new “major stationary source” as defined in subrule 33.3(1) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act. In addition to the provisions set forth in rules 567—33.3(455B) through 567—33.9(455B), the provisions of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models) as amended through ~~November 9, 2005~~ January 17, 2017, are adopted by reference.

ARC 4964C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to pharmacy protocols for naloxone, nicotine replacement therapy, and vaccines and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

The Iowa Board of Pharmacy, in collaboration with the Iowa Department of Public Health, developed statewide protocols for pharmacists ordering and dispensing naloxone and nicotine replacement therapy (NRT) tobacco cessation products, as well as for pharmacists ordering and administering vaccines. In order to allow these expanded pharmacist practice protocols under Medicaid, the following changes are proposed:

- Adding “pharmacist” as a provider type eligible to enroll in the Medicaid program.
- Clarifying qualified prescriber and prescription requirements based on the pharmacist expanded practice standards.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Amending the section related to pharmacies administering influenza vaccine to children to apply to pharmacists providing all Medicaid-covered vaccines to children and adults, pursuant to 657—Chapter 39 and the statewide protocols. The rule making also proposes adding Medicaid verification and reporting requirements. The proposed changes would enable pharmacists to take advantage of the expanded practice standards while clarifying the Medicaid verification and reporting requirements for vaccines.
- Amending the section related to basis of reimbursement for vaccines related to pharmacists. All billing and reimbursement of vaccines, regardless of provider type, would be through the Healthcare Common Procedure Coding System (HCPCS) to ensure consistency among providers as well as a coordinated Medicaid immunization record for the member.

Fiscal Impact

To the extent that naloxone and NRT are currently being provided to Medicaid members based on a currently authorized prescriber prescription, the proposed amendments would create a different access point to the products. If a Medicaid member is not currently accessing these products through a currently authorized Medicaid provider, the proposed amendments could increase the number of prescriptions for these categories of drugs, resulting in an increase in expenditures. The extent of this potential fiscal impact cannot be determined. To the extent pharmacists are currently administering vaccines dispensed through pharmacy point of sale, there could be two potential fiscal impacts depending on the route of vaccine administration.

a. There could potentially be savings related to the difference in the current dispensing fee (\$10.07) paid under pharmacy policy and the transition to the reimbursement of the 90471 (percutaneous, intradermal, subcutaneous or intramuscular injections) administration fee (\$5.09) under medical policy.

b. There could be an increased cost related to the difference in the current dispensing fee (\$10.07) paid under pharmacy policy and the transition to the reimbursement of the 90473 (intranasal or oral route) administration fee (\$12.88) under medical policy.

Additionally, there is a potential for an increase in the number of vaccines billed by the pharmacy with these proposed changes, which could lead to an increase in total vaccine expenditures (product plus administration cost). The extent of this potential fiscal impact cannot be determined.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 31, 2020. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** rule 441—77.57(249A):

441—77.57(249A) Pharmacists. An authorized pharmacist licensed to practice in the state of Iowa is eligible to participate in the program.

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

ITEM 2. Amend subrule 78.2(1) as follows:

78.2(1) Qualified prescriber. All drugs are covered only if prescribed or ordered by a ~~legally qualified practitioner~~ an Iowa Medicaid-enrolled practitioner licensed or registered to prescribe as specified in Iowa Code section 155A.3(38). ~~Pursuant to Public Law 111-148, Section 6401, any practitioner prescribing drugs must be enrolled with the Iowa Medicaid enterprise in order for such prescribed drugs to be eligible for payment.~~

ITEM 3. Amend subrule 78.2(2) as follows:

78.2(2) Prescription required. As a condition of payment for all drugs, including “nonprescription” or “over-the-counter” drugs that may otherwise be dispensed without a prescription or drug order, a prescription or drug order shall be transmitted as specified in Iowa Code sections 124.308, 155A.3 and 155A.27 by the practitioner to the pharmacy, subject to the provisions of Iowa Code section 155A.29 regarding refills. All prescriptions or drug orders shall be available for audit by the department.

ITEM 4. Rescind rule 441—78.42(249A) and adopt the following **new** rule in lieu thereof:

441—78.42(249A) Pharmacists providing covered vaccines. When the authorized pharmacist providing the vaccine meets all Iowa board of pharmacy expanded practice standards and Medicaid requirements, payment will be made for the following:

78.42(1) Vaccines administered to children. Payment will be made to an enrolled provider for an administration fee for vaccines available through the Vaccines for Children (VFC) program administered by the department of public health if the provider is enrolled in the VFC program. Payment will be made for the vaccine cost only if the VFC program stock has been depleted.

78.42(2) Vaccines administered to adults. Payment will be made to an enrolled provider for an administration fee and vaccine cost.

78.42(3) Verification and reporting. Prior to the ordering and administration of an immunization pursuant to statewide protocol, the authorized pharmacist shall consult and review the Iowa Immunization Registry Information System (IRIS) or Iowa Health Information Network (IHIN). Within 30 calendar days following administration of any vaccine, the pharmacist shall report such administration to the patient’s primary health care provider, primary physician, and IRIS or IHIN. If a patient does not have a primary health care provider, the pharmacist shall provide the patient with

HUMAN SERVICES DEPARTMENT[441](cont'd)

a written record of the vaccine administered to the patient and shall advise the patient to consult a physician.

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

ITEM 5. Amend subrule **79.1(2)**, provider category of “Pharmacy administration of influenza vaccine to children,” as follows:

| | | |
|--|--|---|
| Pharmacy Pharmacist vaccine administration of influenza vaccine to children | Physician fee schedule for immunization administration | Fee schedule in effect 6/30/13 plus 1%. |
|--|--|---|

ITEM 6. Amend paragraph **79.1(8)“a,”** introductory paragraph, as follows:

a. Except as provided below in paragraphs 79.1(8)“d” through ~~“i,”~~ “h,” all providers are reimbursed for covered drugs as follows:

ITEM 7. Rescind paragraph **79.1(8)“i.”**

ITEM 8. Reletter paragraphs **79.1(8)“j”** to **“l”** as **79.1(8)“i”** to **“k.”**

ARC 4959C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rule making related to the board of directors and providing an opportunity for public comment

The Iowa Finance Authority (IFA) hereby proposes to amend Chapter 1, “General,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 768, sections 2 and 3, and 2019 Iowa Acts, Senate File 608, section 19.

Purpose and Summary

This rule making is intended to ensure that Chapter 1 of the Authority’s administrative rules conforms to recent amendments to the Iowa Code. 2019 Iowa Acts, House File 768, amended Iowa Code section 16.2, which describes the membership of the IFA Board of Directors, and now requires the Agricultural Development Board (IAD Board) to appoint a member to the IFA Board of Directors and states that the member shall serve at the pleasure of the IAD Board. House File 768 also increased the number of voting members needed to achieve a quorum from five members to six. Lastly, 2019 Iowa Acts, Senate File 608, section 19, added four ex officio, nonvoting legislative members to the IFA Board of Directors.

Fiscal Impact

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

Jobs Impact

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

IOWA FINANCE AUTHORITY[265](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on March 31, 2020. Comments should be directed to:

Kristin Hanks-Bents
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: kristin.hanks-bents@iowafinance.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrules 1.3(2) and 1.3(3) as follows:

1.3(2) Authority board and staff. The powers of the authority are vested in and exercised by a board of nine members, appointed by the governor and subject to confirmation by the senate. The authority also includes one ex officio, voting member of the agricultural development board created in Iowa Code section 16.2C, who must be designated by that board. The ex officio, voting member designated by the agricultural development board shall serve at the pleasure of that board. The authority also includes four ex officio, nonvoting legislative members, as set forth in Iowa Code section 16.2(3). A chairperson, vice-chairperson and treasurer are elected annually by the members, generally at the July board meeting each year. Authority staff consists of an executive director, also appointed by the governor and subject to confirmation by the senate, and additional staff as approved by the executive director.

1.3(3) Meetings. Regular meetings of the authority shall be held on the first Wednesday of each month, unless another time of meeting is designated by the authority. Meetings may also be held at the call of the chairperson or whenever two members so request. The purposes of such meetings shall be to review progress in implementation and administration of authority programs, to consider and act upon proposals for authority assistance, to establish policy as needed, and to take other actions as necessary and appropriate. The authority will give advance public notice of the specific date, time and place of each authority meeting, and will post the tentative agenda for each meeting at the main office of the authority, as well as on the authority’s website, at least 24 hours before commencement of the meeting. Meetings may occasionally be conducted by electronic means. Any interested party may attend and observe board meetings except for any portion of a meeting that may be closed pursuant to Iowa Code

IOWA FINANCE AUTHORITY[265](cont'd)

section 21.5. Minutes of meetings are available for viewing at the authority's offices or via the authority's website. ~~Five~~ Six members of the board constitute a quorum, and the affirmative vote of a majority of the ~~appointed~~ voting board members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

ARC 4968C

MEDICINE BOARD[653]

Notice of Intended Action

Proposing rule making related to appointment of executive director and providing an opportunity for public comment

The Board of Medicine hereby proposes to amend Chapter 1, "Administrative and Regulatory Authority," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.11B.

Purpose and Summary

During the 2019 Legislative Session, the General Assembly passed 2019 Iowa Acts, House File 776, section 59 (now codified as Iowa Code section 135.11B), which provides that the Executive Director of the Board of Medicine shall be appointed by the Director of the Department of Public Health. This proposed rule making amends subrules 1.3(5) and 1.3(6) to reflect this change.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on March 31, 2020. Comments should be directed to:

Joseph Fraioli
Iowa Board of Medicine
400 S.W. Eighth Street, Suite C
Des Moines, Iowa 50309
Phone: 515.281.3614
Email: joseph.fraioli@iowa.gov

MEDICINE BOARD[653](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **1.3(5)“n”** as follows:

n. ~~Hire and supervise the executive director.~~ Advise the director of the department of public health in evaluating potential candidates for the position of executive director, consult with the director in the hiring of the executive director, and review and advise the director on the performance of the executive director in the discharge of the executive director’s duties.

ITEM 2. Amend subrule 1.3(6) as follows:

1.3(6) ~~Appoints~~ Guides and directs a full-time executive director who:

a. Is not a member of the board.

b. Under the supervision of the director of the department of public health and the guidance or direction of the board performs administrative duties of the board including, but not limited to: staff supervision and delegation; administration and enforcement of the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, and the practice of acupuncture; issuance of subpoenas on behalf of the board or a committee of the board during the investigation of possible violations; and enunciation of policy on behalf of the board.

ARC 4963C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Proposing rule making related to continuing education exceptions and removal of licensure sanctions for nonpayment of student debt and providing an opportunity for public comment

The Professional Licensure Division hereby proposes to amend Chapter 4, “Board Administrative Processes,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 272C.2 and 272C.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 272C.2(4) and 272C.4(10).

Purpose and Summary

2019 Iowa Acts, Senate File 304, amended Iowa Code section 272C.4 and removed the requirement that licensing boards impose discipline against a licensee who has defaulted on a repayment or service obligation under any federal or state educational loan or service-conditional scholarship program. This proposed rule making removes the subrule language that adopts the Department of Public Health’s

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

procedures for denying a license or imposing discipline against a license following receipt of a certificate of noncompliance from the College Student Aid Commission and adds language specifying that licensure sanctions for default or delinquency on student debt or a service obligation are prohibited.

This rule making also amends subrule 4.12(1) governing automatic continuing education exemptions to clarify that funeral directors who served honorably on active duty in the military service during the license biennium may be exempt from continuing education requirements.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Division no later than 4:30 p.m. on March 31, 2020. Comments should be directed to:

Steven Garrison
Professional Licensure Division
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.242.6385
Fax: 515.281.3121
Email: steven.garrison@idph.iowa.gov

Public Hearing

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

March 31, 2020
8 to 8:30 a.m.

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

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

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

Review by Administrative Rules Review Committee

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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The following rule-making actions are proposed:

ITEM 1. Amend subrule 4.12(1) as follows:

4.12(1) A licensee, ~~except a funeral director,~~ shall be exempt from the continuing education requirement during the license biennium when the licensee:

a. to d. No change.

ITEM 2. Amend rule 645—4.16(252J,261,272D) as follows:

645—4.16(252J,261,272D) Noncompliance rules regarding child support, loan repayment and nonpayment of state debt.

4.16(1) *Child support noncompliance.* The board hereby adopts by reference 641—Chapter 192, “Child Support Noncompliance,” Iowa Administrative Code.

4.16(2) *Noncompliance of loan repayment. Sanctions for default or delinquency on student loan debt or service obligation prohibited.* ~~The board hereby adopts by reference 641—Chapter 195, “Student Loan Default/Noncompliance with Agreement for Payment of Obligation,” Iowa Administrative Code.~~ The board shall not suspend or revoke the license or certification of a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

4.16(3) *Nonpayment of state debt.* The board hereby adopts by reference 641—Chapter 194, “Nonpayment of State Debt,” Iowa Administrative Code.

ITEM 3. Amend **645—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 252J, ~~261,~~ 272C and 272D.

ARC 4965C

SECRETARY OF STATE[721]

Notice of Intended Action

**Proposing rule making related to elections technology security
and providing an opportunity for public comment**

The Secretary of State hereby proposes to amend Chapter 29, “Elections Technology Security,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 47.1.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 47.1.

Purpose and Summary

While the Secretary of State’s office has seen tremendous voluntary adoption of services and security best practices, there is more work to do to continue to increase the security of Iowa’s elections. The amendments proposed in this rule making will bolster election security by requiring county commissioners of elections to uniformly adopt best practices.

Fiscal Impact

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

SECRETARY OF STATE[721](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on March 31, 2020. Comments should be directed to:

Eric Gookin
Office of the Secretary of State
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: eric.gookin@sos.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 29.3(1) as follows:

29.3(1) A commissioner who identifies or suspects an actual or possible cybersecurity incident or breach shall immediately report the incident to the state commissioner. Upon receiving the report, the state commissioner shall alert the appropriate state or federal law enforcement agencies, including but not limited to the federal United States Department of Homeland Security, Security’s Cybersecurity and Infrastructure Security Agency (CISA) and the OCIO, and the vendor responsible for maintaining the affected technology. The state commissioner may disseminate the information to other federal, state, and local agencies, or their designees, as the state commissioner deems necessary.

ITEM 2. Adopt the following **new** rule 721—29.4(47):

721—29.4(47) Election security by the commissioners.

29.4(1) At the start of each year, the commissioner shall provide to the state commissioner the following information:

a. The full personnel roster and email addresses of the commissioner’s office that identifies who from the office will participate in election administration in any form throughout the year. This does not include precinct election workers.

SECRETARY OF STATE[721](cont'd)

(1) The roster will identify the personnel that the commissioner considers critical to the successful execution of elections.

(2) The roster will further identify a technical point-of-contact (POC) for the state commissioner. If the commissioner wishes to serve as the POC, the commissioner will also designate an additional POC. The POC needs to be a government employee but does not necessarily need to be a person within the commissioner's office.

b. A list of other county employees who may be involved in the event of an incident in the county.

29.4(2) Every commissioner shall be a member of the Elections Infrastructure Information Sharing and Analysis Center. The state commissioner shall provide information on how to become a member upon request by a commissioner.

29.4(3) In every odd-numbered year, every commissioner shall request the following services from CISA. The state commissioner shall provide information on how to request services upon request by a commissioner. A commissioner, with prior written approval from the state commissioner, may choose to use a vendor other than CISA for substantively similar services. A failure of CISA to provide properly requested services to a commissioner does not constitute a technical violation for purposes of Iowa Code section 39A.6.

a. Cyber resilience review.

b. Risk and vulnerability assessment.

c. External dependencies management assessment.

d. Remote penetration testing.

e. Protective security assessment.

29.4(4) Every commissioner shall utilize the following services from OCIO. The state commissioner shall provide information on how to request services upon request by a commissioner. A commissioner, with prior written approval from the state commissioner, may choose to use a vendor other than OCIO for substantively similar services. A failure of OCIO to provide properly requested services to a commissioner does not constitute a technical violation for purposes of Iowa Code section 39A.6.

a. Intrusion detection system.

b. Host and network malware detection.

c. Cybersecurity training, including phishing assessments.

d. Vulnerability management.

29.4(5) Every commissioner shall request a weekly vulnerability scanning by CISA.

29.4(6) A commissioner shall remediate all critical or high-risk vulnerabilities identified by any assessment.

29.4(7) The state commissioner may require every commissioner and commissioner's staff to participate in phishing assessments.

29.4(8) Commissioners may choose to participate in any other assessments or testing from vendors approved by the state commissioner. Commissioners shall notify the state commissioner when any assessments are scheduled.

29.4(9) The state commissioner may require a commissioner and commissioner's staff to participate in any assessment or training that the state commissioner arranges.

29.4(10) No commissioner shall permit the use of personal email for the conduct of elections. This applies to all full-time and part-time staff of the commissioner as well as the commissioner. No other full-time and part-time employees of the county who assist in any part of the administration or security of elections are permitted to use personal email for the conduct of elections. However, this does not apply to precinct election officials who are not normally employed by the county on a regular basis in another capacity. This prohibition applies to forwarding election business emails to a personal email address. This does not include out-of-band emails created as a part of a continuity of government plan or an incident response plan.

29.4(11) Any county information technology infrastructure that is used to access or conduct any part of elections in the state is subject to the following requirements:

a. Passwords to access the county network must be compliant with the standards enumerated by either the National Institute of Standards and Technology or guidance issued by the state commissioner.

SECRETARY OF STATE[721](cont'd)

b. Network timeout standards must be compliant with the standards enumerated by either the National Institute of Standards and Technology or guidance issued by the state commissioner.

c. A current inventory of IT assets assigned to the commissioner's office shall be kept.

d. Periodic back-ups of data belonging to assets within the commissioner's office shall be made.

29.4(12) The website of a commissioner shall have a top-level domain of “.gov” and shall utilize secure socket layer or transport layer security certificates for all publicly facing websites. A commissioner's agreement with OCIO to use a subdomain of “.iowa.gov” is sufficient to satisfy this requirement. A commissioner's site that redirects traffic from a different top-level domain to a “.gov” domain is sufficient to satisfy this requirement.

29.4(13) If the state commissioner is satisfied that a county has an adequate alternative to any requirement in this rule, the state commissioner may waive that requirement. It is the sole discretion of the state commissioner whether a county qualifies for a waiver.

29.4(14) Except where otherwise exempted, failure by a commissioner to follow these rules constitutes a technical violation pursuant to Iowa Code section 39A.6.

ITEM 3. Adopt the following **new** rule 721—29.5(47):

721—29.5(47) Emergency or incident response plans.

29.5(1) Every commissioner shall have an election security incident response plan. A commissioner whose election-specific plan is part of a larger county-level emergency response plan, continuity of government plan, or incident response plan satisfies this requirement.

29.5(2) Every commissioner shall review the plan at least annually and make updates as necessary.

29.5(3) A commissioner shall provide the plan to the state commissioner at the state commissioner's request.

29.5(4) Information shared under this rule shall retain protection as a nonpublic, confidential record pursuant to Iowa Code section 47.1(6).

ITEM 4. Adopt the following **new** rule 721—29.6(47):

721—29.6(47) Social media accounts.

29.6(1) A commissioner using a social media account for official county business shall request “verified” or similar recognition. The state commissioner shall provide information on the subject upon request by a commissioner.

29.6(2) A commissioner using a social media account shall protect the account using multifactor authentication.

29.6(3) The state commissioner may require that commissioners use additional security measures for social media accounts, based on emerging best practices.

ARC 4958C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

**Proposing rule making related to unemployment benefits insurance
and providing an opportunity for public comment**

The Director of the Workforce Development Department hereby proposes to amend Chapter 24, “Claims and Benefits,” and Chapter 25, “Benefit Payment Control,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 96.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Purpose and Summary

This proposed rule making further clarifies the effect vacation pay paid to an employee upon separation of employment has on unemployment insurance benefit payments. This rule making includes changes to the unemployment insurance fact-finding interview process to allow for more flexibility for claimants and employers to choose whether they want to participate verbally in a scheduled fact-finding interview. Additionally, this rule making would ensure that claimants who were overpaid unemployment insurance and have repaid the nonfraud overpayment have the ability to later collect the amount that was repaid if they are eligible for payments in the future.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 31, 2020. Comments should be directed to:

Nicholas Olivencia
Iowa Department of Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: nicholas.olivencia@iwd.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 24.13(1) as follows:

24.13(1) Procedures for deducting payments from benefits. Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

is deductible in the manner prescribed in rule 871—24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer. The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim response, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, the unemployment insurance representative shall determine the days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96) ~~not to exceed five workdays following the separation date of employment.~~ ~~If the employer reports vacation pay in more than one format and the effect on the benefit payment varies depending on how the vacation pay is applied, the unemployment insurance representative shall apply the vacation pay to the individual's weekly benefit payment by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period.~~ If the claimant received vacation pay under rule 871—24.16(96), the maximum number of days the vacation pay shall be applied is five workdays following the separation date. The first day the vacation pay can be applied is the first workday after the separation. The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

ITEM 2. Amend paragraph **24.17(1)“d”** as follows:

d. The claimant shall be instructed to only report vacation pay applicable to the ~~first~~ five workdays following the last date worked. The claimant shall also be instructed that vacation pay designated by the employer in excess of ~~one week~~ the vacation pay the claimant reported may result in an overpayment of benefits.

ITEM 3. Amend subrule 24.19(2) as follows:

24.19(2) Each interested party will be afforded the opportunity to ~~have a fact-finding interview by telephone~~ provide information to the department regarding matters which are ~~scheduled for a hearing awaiting decision to determine eligibility.~~ A telephone fact-finding interview may be set up upon request of either interested party. The request must be received or postmarked within seven calendar days of the notice of claim being issued. An interested party may request an in-person fact-finding interview as a reasonable accommodation under the federal Americans with Disabilities Act of 1990, as amended, or the Iowa Civil Rights Act of 1965, as amended. The department shall reserve the right to call any interested party in for an in-person fact-finding interview.

ITEM 4. Amend subrule 25.8(1) as follows:

25.8(1) *Good faith overpayment.* If an individual has acted in good faith in claiming benefits for any week and it is later determined that the individual was not entitled to receive the benefits, the department shall recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. ~~During a benefit year in which the maximum benefit amount has been paid or the maximum number of weeks has been paid and an overpayment is established for any benefits paid that the individual was not entitled to during that benefit year, no additional benefits will be payable to offset the overpayment.~~ The department shall mail issue the overpayment decision to the claimant's last-known address or through the claimant's preferred contact method. Once the overpayment amount has been established, an overpayment schedule shall be set up to leave a proper audit trail even if the claimant pays to the department a sum equal to the overpayment.

a. to *d.* No change.

ARC 4989C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed Emergency****Rule making related to hemp**

The Agriculture and Land Stewardship Department hereby rescinds Chapter 96, “Hemp,” Iowa Administrative Code, and adopts a new Chapter 96 with the same title.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 204.

Purpose and Summary

This rule making is in response to additional requirements requested by the United States Department of Agriculture (USDA) to ensure compliance with the Agriculture Improvement Act of 2018, which amended the Agricultural Marketing Act of 1946, and to ensure compliance with further restrictions found in 2019 Iowa Acts, Senate File 599.

Fulfillment of these changes is necessary for the Department to receive USDA approval of the state plan to administer an industrial hemp program.

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

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

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Department also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on February 24, 2020, because Iowa Code section 204.3 requires the Department to prepare a state plan to be submitted to the United States Secretary of Agriculture under the federal hemp law. The Department may prepare any number of amended state plans or any number of amendments to an existing state plan to be submitted for approval by the United States Secretary of Agriculture. The Department shall prepare the state plan, any amended state plan, or any amendment to an approved state plan by adopting rules pursuant to Iowa Code chapter 17A. The Department may adopt the rules on an emergency basis as provided in Iowa Code sections 17A.4(3) and 17A.5(2), and the rules shall be effective immediately upon filing unless a later date is specified.

Adoption of Rule Making

This rule making was adopted by the Department on February 24, 2020.

Concurrent Publication of Notice of Intended Action

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 4988C** to allow for public comment.

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

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making became effective on February 24, 2020.

The following rule-making action is adopted:

Rescind 21—Chapter 96 and adopt the following **new** chapter in lieu thereof:

CHAPTER 96
HEMP

21—96.1(204) Definitions.

“*Acceptable hemp THC concentration*” means when an official laboratory tests a sample, the laboratory must report the delta-9 tetrahydrocannabinol (THC) content concentration on a dry weight basis and the measurement uncertainty. The acceptable hemp THC concentration is for the purpose of compliance when the application of the measurement uncertainty to the reported THC concentration on a dry weight basis produces a distribution or range that includes 0.3 percent or less. For example, if the reported THC concentration on a dry weight basis is 0.35 percent and the measurement uncertainty is +/- 0.06 percent, the measured THC concentration on a dry weight basis for this sample ranges from 0.29 percent to 0.41 percent. Because 0.3 percent is within the distribution or range, the sample is within the acceptable hemp THC concentration for the purpose of compliance. This definition of “acceptable hemp THC concentration” affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802(16), in the CSA.

“*Applicant*” means any of the following:

1. An individual with 5 percent, or more, legal or equitable interest in the hemp crop.
2. An individual applying as a member of a business entity, if that individual's legal or equitable interest in the business entity is 5 percent or more.
3. Key participants in a corporate entity at the executive levels including chief executive officer, chief operating officer and chief financial officer.
4. If an applicant is acting on behalf of an institution governed by the state board of regents, as defined in Iowa Code section 262.7, or a community college, as defined in Iowa Code section

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

260C.2, “applicant” means the individual, or individuals, appointed by the president or chancellor of the institution to obtain hemp permits from the department. Other institutions of higher learning may also apply by designating an appropriate authorized representative.

5. If an applicant is acting on behalf of an association, the association shall designate an authorized representative.

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

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

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

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

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

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

“*Cultivar*” means a group of cultivated plants that are not necessarily true to type, or plants whose seed will yield the same type of plant as the original plant. A cultivar may originate as a mutation or may be a hybrid of two plants. To further develop into a variety, or propagate true-to-type clones, cultivars must be propagated vegetatively through cuttings, grafting, and even tissue culture.

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

“*Decarboxylation*” means the removal or elimination of a carboxyl group from a molecule or organic compound.

“*Department*” means the Iowa department of agriculture and land stewardship.

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

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

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

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

“*Dwelling*” means a residence and all permanent or temporary structures attached to the residence.

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

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

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

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

“*Hemp*” means:

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

2. A plant of the genus *Cannabis* other than *Cannabis sativa* L., with a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry weight basis when tested using postdecarboxylation or other similarly reliable methods, but only to the extent allowed by the department in accordance with applicable federal law, including the federal hemp law.

“*Hemp bill of lading*” means a document of title evidencing the receipt of hemp for shipment issued by an individual engaged in the business of directly or indirectly transporting or forwarding hemp. The term does not include a warehouse receipt. The term does not include hemp transported within the state of Iowa by a person for that person’s sole use. A hemp bill of lading shall include the following:

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

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

“*Individual*” means a single human being. An entity is not an individual.

“*Indoor crop site*” means:

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

“*License*” means a license granted by the department to grow hemp in Iowa.

“*License application*” means the department’s form submitted to obtain a license to grow hemp in Iowa.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

96.2(1) A license is nontransferable unless approved by the department.

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

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

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

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

a. The authorized representative's full name and mailing address.
b. A legal description and map of each crop site where the applicant proposes to produce hemp.
c. The geospatial location of the center of the crop site.
d. The number of crop acres intended for hemp production. For fractions of acres, round to the next whole number.

e. The name of the hemp varieties, cultivars or strains proposed to be grown by the applicant.

f. The intended hemp crop to be grown by the applicant; this includes grain, seed, fiber, cannabidiol (CBD), clones, cuttings, plantlets, or other identifying information.

g. The type of crop site (indoor or outdoor).

h. All parties with an ownership interest in the crop site or hemp crop. If the crop site is leased, the name and contact information of all lessors and lessees with any interest in the crop site or hemp crop shall be provided.

i. The destruction method the applicant intends to use to destroy the cannabis if the crop fails to meet the acceptable hemp THC concentration. The destruction method must be approved by the department prior to actual destruction.

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

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

96.2(8) Real-time information, including but not limited to the status and number of the producer's license, shall be accessible via the department's online license application portal. Information submitted to the department via the online license application portal shall be collected, maintained, and reported to the USDA as required by the USDA in 7 CFR Part 990, Subpart C.

96.2(9) A license expires on December 31 of the year the license is issued.

96.2(10) An applicant with a state or federal felony conviction relating to a controlled substance is subject to a ten-year ineligibility from the date of the conviction.

96.2(11) Any applicant who materially falsifies any information contained in an application shall be ineligible for a license.

96.2(12) The department may implement additional reasonable licensing requirements at its discretion.

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

96.3(1) Disqualifying offenses.

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

b. The department or the department of public safety may request additional information to complete a background investigation and national criminal history background check. An applicant

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or authorized representative shall respond within 30 days to any request for additional information. Failure to timely respond shall result in a denial of the license application.

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

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

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

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

21—96.4(204) Licensee reports.

96.4(1) *Planting report.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

96.4(7) Voluntary destruction report. If a licensee chooses to destroy a lot prior to harvest, the authorized representative shall notify the department of the licensee's intent to destroy the crop within seven days prior to the destruction. The hemp crop shall not be destroyed unless the department or local law enforcement either is present during the destruction or has authorized destruction to occur unwitnessed. The voluntary destruction report shall be on a form prepared and distributed by the department that shall include, but is not limited to:

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

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

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

TABLE 1
LICENSE FEES PER CROP SITE

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

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

TABLE 2
PRIMARY FEES

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

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

TABLE 3
SECONDARY FEES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a.* License number;
- b.* Name and contact information of the sampling agent;
- c.* Name and contact information of the licensee;
- d.* Date sample was taken;

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

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

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

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

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

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

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

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

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

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

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

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

21—96.9(204) Harvesting timing.

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

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

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

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

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

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

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

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

21—96.10(204) Order of destruction.

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

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

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

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

96.10(5) Failure to harvest any portion of a hemp lot 15 or more days after the lot was officially sampled may result in the issuance of an order of destruction.

96.10(6) The department may require the licensee to utilize a reverse distributor for destruction.

96.10(7) The department shall notify the USDA hemp administrator when the destruction is complete.

21—96.11(204) Negligent violations.

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

a. The production of hemp that exceeds the acceptable hemp THC concentration but is less than 0.5 percent THC on a dry weight basis.

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

c. Failure to provide a legal description of the land on which the licensee produces hemp.

The department may determine additional negligent violations as needed.

96.11(2) All licensees associated with the license shall receive the negligent violation.

96.11(3) The failure to obtain a license is not a negligent violation.

21—96.12(204) Negligent violation program.

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

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

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

c. Any other requirement established by the department.

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

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

96.12(4) A licensee who is participating in, or who successfully completes, the corrective action plan shall not be subject to any criminal enforcement action pertaining to the negligent violations by the federal, state, tribal, or local government.

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

These rules are intended to implement Iowa Code section 204.3.

[Filed Emergency 2/21/20, effective 2/24/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4969C

ATTORNEY GENERAL[61]**Adopted and Filed****Rule making related to annual notification fees**

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

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 537.6117.

State or Federal Law Implemented

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

Purpose and Summary

The amendment reflects a change in the notification fee that creditors engaged in consumer credit transactions are required to pay annually. The amendment is in response to 2017 Iowa Acts, chapter 138, section 23, which amended Iowa Code section 537.6203 by increasing the annual notification fee from \$10 to \$50. This amendment conforms subrule 22.5(1) with Iowa Code section 537.6203.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 15, 2020, as **ARC 4862C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Attorney General on February 19, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The Attorney General has been collecting a \$50 annual fee since 2018 as required by Iowa Code section 537.6203. The amendment simply brings subrule 22.5(1) in line with the requirements of Iowa Code section 537.6203.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

ATTORNEY GENERAL[61](cont'd)

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making action is adopted:

Amend subrule 22.5(1) as follows:

22.5(1) Annual fees. All creditors and debt collectors, including assignees, who are required to file notification statements shall pay to the administrator an annual fee of ~~\$10~~ **\$50**. This fee shall be paid with the filing of the first notification and on or before January 31 of each succeeding year.

[Filed 2/19/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4970C**CIVIL RIGHTS COMMISSION[161]****Adopted and Filed****Rule making related to assistance animal as reasonable accommodation in housing**

The Civil Rights Commission hereby amends Chapter 9, "Discrimination in Housing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in 2019 Iowa Acts, Senate File 341.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 341.

Purpose and Summary

The purpose of the amendment to Chapter 9 is to comply with Iowa Code section 216.8C(3) as enacted by 2019 Iowa Acts, Senate File 341, section 3, which provides requirements pertaining to a request for an assistance animal as a reasonable accommodation for a disability in housing. The legislation requires the Commission to adopt a form for a health care professional, as defined by the statute, to make a written finding regarding whether a patient or client has a disability and whether the need for an assistance animal is related to the disability.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4551C**. This rule making was also adopted and filed emergency and published in the Iowa Administrative Bulletin as **ARC 4552C** on the same date. A public hearing was held on September 13, 2019, at 12:30 p.m. at Grimes State Office Building, Room B100, 400 East 14th Street, Des Moines, Iowa. No one attended the public hearing.

At the Commission meeting on October 11, 2019, commissioners had comments regarding the bottom portion of the form: the organization of the requirements portion, the inclusion/exclusion of a title for the signatory, and the addition of cautionary language regarding the dissemination of protected health information. The feedback from commissioners is reflected in the revised version of the form adopted herein.

Adoption of Rule Making

This rule making was adopted by the Commission on February 7, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 161—Chapter 15.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making action is adopted:

Adopt the following **new** Appendix A in 161—Chapter 9:

**Appendix A
Form 1**

Request for Assistance Animal as a Reasonable Accommodation in Housing:
Health Care Professional Form

Requester’s Name: _____

Address: _____

Telephone: _____ E-mail: _____

I, _____, intend to request that _____
permit me to keep an assistance animal as a reasonable accommodation in housing for my disability. In
connection with that application, I am requesting that you complete this form regarding my disability.

Requester’s Signature

Date

TO BE COMPLETED BY HEALTH CARE PROFESSIONAL

1. Does the individual identified above have a disability?
 Yes No
2. If yes, is the need for an assistance animal related to that disability? For example, does or would an assistance animal alleviate one or more of the symptoms or effects of the disability?
 Yes No

By signing below, the undersigned health care professional/licensee certifies that he/she 1) has met with the patient or client in person or by telemedicine, 2) is sufficiently familiar with the patient or client and the disability, **and** 3) is legally and professionally qualified to make the finding.

Health Care Provider's Name (printed): _____

Signature: _____

Date: _____

References: Iowa Code sections 216.8B and 216.8C

Resources: <https://icrc.iowa.gov/>, 515-281-4121, 1-800-457-4416

This document may contain privileged and confidential information and/or protected health information intended solely for the use by the recipient housing provider. Please exercise care to avoid dissemination.

[Filed 2/12/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4990C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

**Rule making related to rescinding the sunset date for
the targeted jobs withholding tax credit program**

The Economic Development Authority hereby amends Chapter 71, "Targeted Jobs Withholding Tax Credit Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 403.19A.

Purpose and Summary

This adopted amendment rescinds the sunset date for the Targeted Jobs Withholding Tax Credit Program. This sunset date is also found in Iowa Code section 403.19A(3)"c"(2). Because the sunset date has been amended legislatively and may be extended again in the near future, rescinding paragraph 71.4(2)"e" will prevent confusion and conflict between the Iowa Code and these rules.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 6, 2019, as **ARC 4737C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Authority on December 20, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making action is adopted:

Amend subrule 71.4(2) as follows:

71.4(2) Entering into a withholding agreement.

a. to d. No change.

e.—~~*Sunset date.* A pilot project city and the authority shall not enter into a withholding agreement with a business after June 30, 2019.~~

f. e. *Board approval of withholding agreements.* Prior to entering into a withholding agreement with a business, a pilot project city shall request board approval of the withholding agreement. The process for requesting approval from the board is described in subrule 71.5(1).

[Filed 2/12/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4971C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rule making related to building block chemicals

The Economic Development Authority hereby amends Chapter 81, “Renewable Chemical Production Tax Credit Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 15.108 and 15.321.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15.316.

Purpose and Summary

Under the renewable chemical production tax credit, Iowa Code section 15.316 provides that the term “building block chemical” includes a prescribed list of chemicals “or such additional molecules as may be included by the authority by rule after consultation with appropriate experts from Iowa state university, including but not limited to the Iowa state university center for biorenewable chemicals.” In accordance with Iowa Code section 15.316 and the procedures set forth in rule 261—81.8(15), the Authority is adding five chemicals to the definition of “building block chemical”: butanoic acid, hexanoic acid, octanoic acid, pentanoic acid, and heptanoic acid. Brent Shanks, Director for the Center for Biorenewable Chemicals (CBiRC) at Iowa State University, has recommended approval of all five chemicals, and the Authority concurs.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019, as **ARC 4669C**. No public comments were received. One change from the Notice has been made to correct the spelling of pentanoic acid.

Adoption of Rule Making

This rule making was adopted by the Economic Development Authority Board on November 22, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making action is adopted:

Amend rule **261—81.2(15)**, definition of “Building block chemical,” as follows:

“*Building block chemical*” means a molecule converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product. “Building block chemical” includes but is not limited to high-purity glycerol, oleic acid, lauric acid, methanoic or formic acid, arabonic acid, erythronic acid, glyceric acid, glycolic acid, lactic acid, 3-hydroxypropionate, propionic acid, malonic acid, serine, succinic acid, fumaric acid, malic acid, aspartic acid, 3-hydroxybutyrolactone, acetoin, threonine, itaconic acid, furfural, levulinic acid, glutamic acid, xylonic acid, xylaric acid, xylitol, arabitol, citric acid, aconitic acid, 5-hydroxymethylfurfural, lysine, gluconic acid, glucaric acid, sorbitol, gallic acid, ferulic acid, nonfuel butanol, nonfuel ethanol, benzene, toluene, xylene, ethylbenzene, butanoic acid, hexanoic acid, octanoic acid, pentanoic acid, and heptanoic acid, or such additional molecules as may be included by the authority following the procedure in rule 261—81.8(15).

[Filed 2/12/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4972C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to appeals and hearings

The Human Services Department hereby amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 17A and section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and section 217.6.

Purpose and Summary

In light of the State's transition to Medicaid managed care, and in an ongoing effort to improve the Department's processes and accessibility to consumers, the Department has revised its appeals rules with the following goals in mind: simplification, uniformity, clarification of scope, clearly defining appeal rights, and protecting self-represented litigants. In this effort, the Department has sought to eliminate redundancies and ambiguities, streamline processes across programs where permissible under state and federal law, explicitly clarify the circumstances in which contested case hearings are granted, ensure conformity with substantive federal and state standards, and include procedural protections for self-represented litigants.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019, as **ARC 4674C**. One respondent, representing Iowa Legal Aid, provided written comments. The comments and the Department's responses follow and are grouped into areas of concern.

1. Concerns regarding the Appeals Advisory Committee. In three comments, the respondent referenced the removal of all references to the Appeals Advisory Committee. The Appeals Advisory Committee acted as an initial screening device for the Director and had the authority to recommend that the Director review a proposed decision. Committee members voted to allow the review to proceed to the Director or deny the request for review.

Department response: Based on the volume of programs the Department administers, Committee members did not feel comfortable making recommendations about programs they did not manage. The Department established a process that better aligns with the process used by appellants and their representatives when submitting a review request and, therefore, omitted the references to the Committee. As this is an internal Department process, it is not required to be in the rules. No changes were made based on this comment.

2. Concerns about party-in-interest. The respondent commented twice about the change in paragraph 7.3(1)"b" indicating that a party-in-interest must have an ongoing, specific and personal interest in the outcome of the contested case hearing. The respondent questioned whether this change was intended to address third parties filing appeals on behalf of individuals.

Department response: The change reflected in paragraph 7.3(1)"b" was made to ensure that appeals are limited to live issues by an aggrieved party and that the person filing the appeal has an interest in the outcome of the appeal. No changes were made based on this comment.

3. Contractual rights. The respondent asked what problem the Department was trying to address in subrule 7.3(2) dealing with appeals regarding contractual rights that are not eligible for a contested case hearing. The respondent commented twice that the language used in new subrule 7.3(2) is broader than current language regarding provider claims disputes with a managed care organization.

Department response: The purpose of the subrule is to clarify that contract issues are not subject to an appeal through the Department's appeals process because disputes regarding contract issues between the appellant and another party are handled within the court system. No changes were made based on this comment.

4. Removal of definitions and other language regarding appeal process. In 11 comments, the respondent expressed concerns about the removal of definitions of, and other language regarding, "aggrieved person," "appeal," "due process," "electronic case record," "ex parte communication," "informal conference," "local office," "prehearing conference," and "reconsideration."

Department response: The definition of "aggrieved person" was removed because some conditions provided in the current rule were overly inclusive and others were overly narrow. The amendments clarify that persons entitled to an administrative appeal hearing by a Constitution or statute will receive such a hearing.

The definition of "appeal" was removed because it was overly broad and allowed for an expanded meaning of a contested case as defined in Iowa Code chapter 17A. Due process is required for contested cases, but the entitlement to due process is created by a Constitution or statute, not by the regulations. The reference to due process cannot expand or contract the entitlement to due process, and therefore, the definition of "due process" was omitted.

An appellant has the right to view the Department's case file. The appellant's right to view the electronic case record is not affected by eliminating the definition of "electronic case record."

While the respondent did not provide any specifics as to why there was concern about the removal of "ex parte communication" as a definition, ex parte communication is covered extensively in Iowa Code section 17A.17 and in subrule 7.9(1).

The definition of "informal conference" was removed since the other references to an informal conference were eliminated from the amendments; however, based on the comment, a new subrule 7.6(7) is added to address informal conferences.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The removal of the definition of “local office” was not problematic to the respondent, but the respondent wanted to ensure that applicants and recipients could continue to file an appeal request at their local offices. Subrule 7.5(1) details the way a contested case hearing may be requested, including at the applicant’s or recipient’s local office.

The definition of “prehearing conference” was removed, but rule 441—7.2(17A) indicates that in the absence of an applicable rule, the Department of Inspections and Appeals rules found at 481—Chapter 10 govern Department of Human Services appeals. Prehearing conferences are addressed at rule 481—10.16(10A,17A).

The definition of “reconsideration” was removed because it was circular and did not accurately reflect when reconsideration was allowed. The exclusion of the definition does not negate the reconsideration process, when allowed. No changes were made based on the respondent’s comments, other than the change noted regarding informal conferences.

5. Removal of the conditions of an aggrieved person and the lists of appealable issues. In four comments, the respondent expressed concern about the removal from Chapter 7 of the conditions of an aggrieved person and the lists of appealable issues because the removal could cause confusion for appellants.

Department response: Iowa Code chapter 17A provides for administrative appeal hearings only in contested cases and defines what constitutes a contested case. The conditions provided in the current rule were overly inclusive in some areas and overly narrow in others. The amendments to Chapter 7 clarify that persons entitled to an administrative appeal hearing by a Constitution or statute will receive such a hearing. No changes were made based on the respondent’s comments.

6. Removal of language regarding the presiding officer. The respondent commented on the removal of language stating that a presiding officer cannot be connected in any way with the previous actions or decisions on which the appeal is made and requested that this information be retained.

Department response: Maintaining a separate and impartial adjudicative function is a bedrock principle of administrative law and is a fundamental component of due process. Rule 441—7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules govern Department of Human Services appeals. The rule that addresses when an administrative law judge shall withdraw from a contested case is rule 481—10.9(17A).

7. Exhaustion of other remedies. The respondent asked if there are remedies other than those mentioned in subrule 7.4(2) that must be exhausted prior to initiation of an appeal. The respondent requested further clarification on what is meant by exhausting all other appeal remedies available to the party-in-interest and requested that any other applicable regulations be cross-referenced.

Department response: Subrule 7.4(2) addresses exhaustion only with respect to Medicaid managed care organization claims, which are not covered in other program-specific provisions. Subrule 7.4(1) generally requires exhaustion in accordance with each program’s specific procedures. However, subrule 7.4(1) has been revised for clarification, but rather than include numerous cross-references, the subrule directs the reader to the specific program.

8. Removal of notification of hearing procedures. In five comments, the respondent expressed concern about the removal of the notification of hearing procedures, especially the section relating to providing auxiliary aids to individuals with disabilities, and about the removal of language requiring local offices of the Department to advise individuals of the availability of legal services in the community.

Department response: All notices issued by the Department notify the appellant to contact a local office of the Department to obtain information about legal services, but based on the respondent’s comments, a new subrule 7.4(4) has been added to address written and oral notification of hearing procedures, and a new subrule 7.9(6) has been added to provide the assistance that shall be offered to persons living with disabilities.

9. Request additional information. The respondent questioned what would happen if the Department had to request additional information to determine the scope of the appeal.

Department response: Based on the comment, subrule 7.5(2) has been revised.

10. Appeals filed in writing. The respondent suggested a change in the catchwords of subrule 7.5(4) and requested that a definition be added for the term “in writing.”

HUMAN SERVICES DEPARTMENT[441](cont'd)

Department response: The Department agrees about the catchwords and has updated the catchwords of subrule 7.5(4) for clarification; however, the term “in writing” is commonly understood and not all methods for requesting an appeal hearing are done in writing, so no changes were made based on that comment.

11. Forwarding appeal summaries and exhibit materials. The respondent requested a clarification that entities contracted by the Department are required to follow the same protocol as Department staff when forwarding appeal summary and exhibit materials to the judge.

Department response: Subrule 7.5(5) refers to the Department worker or agent responsible for representing the Department at hearing. This would include contracted entities, so no changes were made based on this comment.

12. Designating issues for hearing. The respondent asserted that subrule 7.6(3) regarding designating issues for hearing seems too technical for pro se litigants and possibly burdensome for representatives who may be joining an appeal close to the hearing date for various reasons.

Department response: This provision does not change the previous practice for designating issues for hearing; therefore, the provision does not increase the burden on a pro se litigant. If a pro se litigant obtains legal representation and it is determined additional issues need to be designated for hearing, the newly obtained legal representation can request a continuance to allow time to prepare for hearing and can file a motion to designate additional issues. No changes were made based on this comment.

13. Case file. The respondent pointed out that the term “case file” is not defined in subrule 7.6(6) regarding the appellant’s right to examine the contents of the appellant’s own case file.

Department response: Rule 441—7.2(17A) indicates that in the absence of an applicable rule in this chapter, the Department of Inspections and Appeals rules govern Department of Human Services appeals. Evidence is addressed at rule 481—10.21(17A). No changes were made based on this comment.

14. Closed hearings. Subrule 7.8(5) indicates that contested case hearings are closed to the public and provides a list of individuals who may participate in appeal hearings. The respondent expressed concern that there is no language regarding child abuse registry hearings and the right to intervene.

Department response: The list of individuals who may participate includes permissible intervenors; therefore, no changes were made based on this comment.

15. Default decisions. The respondent was concerned about the changes included in subrule 7.9(2) regarding deadlines with default decisions.

Department response: No changes were made based on this comment, as the process has not changed and the subrule adequately captures the default process.

16. Withdrawal requests. The respondent requested clarification on how to withdraw a fair hearing request for appeals that must be filed in writing.

Department response: Based on the comment, subrule 7.9(3) has been revised.

17. Request for a medical exam. The respondent commented twice that subrule 7.9(4) does not allow an enrollee or appellant to request a medical exam.

Department response: Federal regulations at 42 CFR 431.240(b) allow a hearing official to request a medical assessment other than that of the individual involved in making an original decision if a hearing involves issues such as those concerning a diagnosis, an examining physician’s reports or a medical team’s decision. The regulation does not allow an enrollee or appellant to request the medical exam. No changes are made based on this comment.

18. Submitting proposed findings of facts. The respondent commented that the rules fail to indicate whether parties are allowed to submit proposed findings of fact and requested that the Department define the term “record.”

Department response: No one is precluded from offering findings of fact. The presiding officer will rule on the proposed findings of fact, if offered. Subrule 7.10(2) requires that appellants be given reasonable access to the record at a convenient place and time. There is no need to define what the term “record” means, as it is a common term. No changes were made based on this comment.

19. Right to seek judicial review. Subrule 7.12(3) provides that the Department will notify the appellant of the appellant’s right to seek judicial review, where applicable. However, the respondent commented three times that the subrule fails to indicate that the appellant does not need to seek a

HUMAN SERVICES DEPARTMENT[441](cont'd)

rehearing to exhaust the appellant's administrative remedies before filing the judicial review or a stay request.

Department response: Rule 441—7.12(17A) makes clear that a proposed decision becomes a final decision if there is no appeal to the Director, language which mirrors that in Iowa Code section 17A.15(3). A final decision is subject to judicial review, and therefore, further action following the final decision is not required to exhaust administrative remedies. The Department's authority to grant a stay of the agency decision pending judicial review is adequately stated in Iowa Code section 17A.19. No changes were made based on this comment.

20. Authorized representatives. The respondent stated that the second sentence in subrule 7.16(1) regarding regulations for authorized representatives has nothing to do with regulations and requested that the statement be moved to its own section. The respondent also expressed concern about what is meant by the words "or similar" in the subrule and confusion about what is meant by subrule 7.16(2).

Department response: The language in subrule 7.16(2) regarding designation of authority of an authorized representative is intended to clarify that an authorized representative does not become a party-in-interest in the representative's own right as an outgrowth of that representation. However, based on the respondent's comments on the other two issues, subrules 7.16(1) and 7.16(2) have been revised.

21. Receipt of a notice. The respondent stated a concern that there is no definition of "receipt of a notice."

Department response: Based on the respondent's comments, subrule 7.17(1) has been revised to provide guidance on how the Department determines receipt of a notice.

22. Emergency adjudicative proceedings. The respondent mentioned that proposed rule 441—7.18(17A) regarding emergency adjudicative proceedings fails to state the means by which the order is to be delivered to the persons who are required to comply with the order and does not include any reference to oral notification.

Department response: Based on the respondent's comments, subrule 7.18(2) has been revised.

23. Accessibility of hearing decisions. The respondent recommended keeping Chapter 7's current language regarding accessibility of hearing decisions.

Department response: Iowa Code section 17A.3 requires agencies to adopt rules setting forth the method by which the public may obtain information or make submissions or requests and the location of said information. The Department has adopted rules in 441—Chapter 9 describing the procedures for access to Department records. No changes were made based on this comment.

24. Contested cases with no factual dispute. While Iowa Code section 17A.10A provides for handling of contested cases with no factual dispute, the respondent requested that the corresponding rules continue to provide guidance on this situation.

Department response: Based on the respondent's comments, a new subrule 7.8(7) has been added to provide guidance.

All other comments made by the respondent were positive and supported the proposed amendments. Except for the changes described above and a change to replace the word "their" with "the appellant's" in subrule 7.9(5), no other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on February 12, 2020.

Fiscal Impact

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

Jobs Impact

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Waivers

These amendments do not include a waiver provision because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Rescind rule 441—7.1(17A) and adopt the following **new** rule in lieu thereof:

441—7.1(17A) Definitions.

“Adverse benefit determination” means any adverse action taken as to any individual's benefits pursuant to an assistance program administered by the department or on the department's behalf, excluding determinations related to requests for exceptions to policy.

“Appeals section” means the director's designee who is charged with administering the department's appeals.

“Appellant” means a person, including an authorized representative acting on the person's behalf, seeking to appeal some action pursuant to this chapter.

“Assistance program” means a program administered by the department or on the department's behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, food assistance, Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, and aftercare services.

“Authorized representative” means a person lawfully designated by an individual to act on the individual's behalf or who has legal authority to act on behalf of the individual.

“Contested case” refers to an evidentiary hearing mandated by state or federal constitutional or statutory authority whereupon a presiding officer makes a determination pertaining to the relative rights and obligations of parties to an appeal under this chapter.

“Department” means the Iowa department of human services.

“DIA” means the Iowa department of inspections and appeals and may include presiding officers where appropriate.

“Director” means the director of the department or the director's designee.

“Enrollee” means any applicant to or recipient of benefits or services pursuant to an assistance program.

“Good cause” means an intervening cause, not attributable to the negligence of a party, reasonably resulting in a delay or in attendance, for purposes of subrules 7.4(3) and 7.9(2).

“Intentional program violation” means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing any act that is a violation of the Food and Nutrition Act of 2008, food assistance program regulations, or any state law relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of an electronic benefit transfer (EBT) card. An intentional program violation is determined through a food assistance administrative

HUMAN SERVICES DEPARTMENT[441](cont'd)

disqualification hearing. The hearing may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

“*Managed care organization*” or “*MCO*” has the meaning assigned to it in rule 441—73.1(249A) and includes prepaid ambulatory health plans.

“*Medicaid*” means Iowa’s medical assistance program administered under Iowa Code chapter 249A.

“*Party-in-interest*” refers to the party, including enrollees, whose rights or obligations are the subject of a contested case hearing under this chapter. Parties-in-interest may or may not be the appellant.

“*Presiding officer*” means an administrative law judge charged with the administration and adjudication of the contested case hearing process for a particular appeal.

“*Self-represented*” means representing oneself without an attorney.

ITEM 2. Rescind rule 441—7.2(17A) and adopt the following new rule in lieu thereof:

441—7.2(17A) Governing law and regulations. In the absence of an applicable rule in this chapter, the DIA rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIA rules, the program-specific federal or state law shall control. For example, food assistance appeals shall be conducted in accordance with 7 CFR 273.15 and 7 CFR 273.16, and medical assistance appeals shall be conducted in accordance with 42 CFR Part 431, subpart E, and Part 438, subpart F.

ITEM 3. Adopt the following new 441—Chapter 7, Division I title:

DIVISION I
GENERAL APPEALS PROCESS

ITEM 4. Rescind rule 441—7.3(17A) and adopt the following new rule in lieu thereof:

441—7.3(17A) When a contested case hearing will be granted.

7.3(1) Requirements. A person shall be granted a contested case hearing if the party-in-interest fulfills all of the following requirements:

- a. The party-in-interest is entitled to a contested case hearing;
- b. The party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing; and
- c. The party-in-interest meets all of the other requirements contained in these rules.

7.3(2) Contractual rights not subject to contested case hearing. Unless otherwise provided by law, when an appellant seeks a contested case hearing of an issue predicated upon or governed by the terms of a contract between appellant and another party, including the department, a contested case hearing shall not be provided.

7.3(3) Change in law. A contested case hearing shall not be granted when the sole issue raised is a federal or state law requiring an automatic change adversely affecting some or all beneficiaries to an assistance program.

7.3(4) Competitive procurement bid appeals. Competitive procurement bid appeals shall be adjudicated pursuant to Division II of this chapter.

ITEM 5. Rescind rule 441—7.4(17A) and adopt the following new rule in lieu thereof:

441—7.4(17A) Initiating an appeal.

7.4(1) Exhaustion of remedies. An appellant shall only be granted a contested case hearing if the appellant has exhausted all other appeal remedies available to the party-in-interest. An appellant should refer to program-specific provisions for the appropriate procedures applicable to specific programs.

7.4(2) Medicaid managed care enrollees exhaustion of remedies.

- a. A Medicaid managed care enrollee shall be granted a contested case hearing only if the enrollee has either received a decision from a managed care organization in the time and manner required by rule

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441—73.12(249A) or has been deemed to have exhausted the managed care organization appeals under paragraph 7.4(2)“b.”

b. If a Medicaid enrollee’s managed care organization fails to provide a decision in the time and manner required by rule 441—73.12(249A), the enrollee shall be deemed to have exhausted the managed care organization’s appeals process and may initiate a contested case hearing.

7.4(3) Time to appeal. For a contested case hearing to be granted, the following timelines must be met:

a. *Food assistance, Medicaid eligibility, healthy and well kids in Iowa (HAWK-I), fee-for-service Medicaid coverage, family planning program and autism support program.* For appeals pertaining to food assistance, Medicaid eligibility, healthy and well kids in Iowa (HAWK-I), fee-for-service Medicaid coverage, the family planning program or the autism support program, the appellant must appeal on or before the ninetieth day following the date of notice of an adverse benefit determination.

b. *Managed care organization medical coverage.* For appeals pertaining to medical services coverage under Medicaid managed care, the appellant must appeal on or before the one hundred twentieth day following the date of exhaustion, actual or deemed, of the managed care organization appeal process outlined in rule 441—73.12(249A).

c. *Tax offsets.* Except for counties appealing an offset under 441—Chapter 14, for appeals of state or federal tax offsets, the appellant must appeal on or before the fifteenth day following the date of notice of the action. For counties appealing a debtor offset under 441—Chapter 14, the county must appeal on or before the thirtieth day following the date of notice of the offset.

d. *Iowa individual disaster assistance program.* For appeals pertaining to the Iowa individual disaster assistance program, the appellant must appeal on or before the fifteenth day following the date of the department’s reconsideration decision, pursuant to 441—subrule 58.7(1).

e. *Iowa disaster case management program.* For appeals pertaining to the Iowa disaster case management program, the appellant must appeal on or before the fifteenth day following the date of the department’s reconsideration decision, pursuant to 441—subrule 58.7(1).

f. *Dependent adult abuse.* For appeals regarding dependent adult abuse, the appellant must appeal within six months of the date of notice of the action as provided in Iowa Code section 235B.10.

g. *Child abuse.* For appeals regarding child abuse, the person alleged responsible for the abuse must appeal on or before the ninetieth day following the date of notice of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the appeal on or before the tenth day following the date of notice of the right to intervene.

h. *Sex offender risk assessment.* For appeals regarding a sex offender risk assessment, the appellant must appeal in writing on or before the fourteenth day following the date of notice.

i. *Assistance program overpayments.* For appeals pertaining to the family investment program, refugee cash assistance, PROMISE JOBS, child care assistance, medical assistance, healthy and well kids in Iowa (HAWK-I), family planning program or food assistance overpayments, the party-in-interest’s right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first notice informing the party-in-interest of the overissuance or overpayment.

j. *All other appeals.* For all other appeals, and unless federal or state law provides otherwise elsewhere, the appellant must appeal on or before the thirtieth day following the date of notice of the action being appealed. If such an appeal is made more than 30 days, but less than 90 days, of the date of notice, the director or director’s designee may, at the director’s or designee’s sole discretion, allow a contested case hearing if the delay was for good cause, substantiated by the appellant.

7.4(4) Written and oral notification. The department shall advise each applicant and recipient of the right to appeal any adverse decision affecting the person’s status.

a. Written notification of the following shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

- (1) The right to request a hearing.
- (2) The procedure for requesting a hearing.

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(3) The right to be represented by others at the hearing unless otherwise specified by statute or federal regulation.

b. Written notification shall be given on the application form and all notices of decision.

ITEM 6. Rescind rule 441—7.5(17A) and adopt the following new rule in lieu thereof:

441—7.5(17A) How to request an appeal.

7.5(1) Ways to request a hearing. An appellant may request a contested case hearing:

- a. Via the department's website,
- b. By telephone, except as specified in subrule 7.5(4),
- c. By mail,
- d. In person, except as specified in subrule 7.5(4), or
- e. Through other commonly available electronic means (such as email or facsimile).

7.5(2) Hearing request. The request for a contested case hearing must be sufficiently detailed so that the department can reasonably understand the action being appealed. The department may request additional information to determine the scope of the appeal. The department may deny if there is not sufficient information to determine the action being appealed.

7.5(3) Filing date. The date of filing for appeal requests sent by regular mail shall be the date postmarked on the envelope sent to the department or, when a postmarked envelope is not available, on the date the appeal is stamped received by the agency. The date of filing for appeal requests sent electronically shall be determined by the date on which the electronic submission was completed.

7.5(4) Appeals that must be filed in writing. Appeal requests pertaining to foster care, adoption, state supplementary assistance, the autism support program, the Iowa individual disaster assistance program, the Iowa disaster case management program, sex offender risk assessment, record check evaluation, child care registered or nonregistered homes, child abuse, dependent adult abuse or child support must be made in writing.

7.5(5) Department's responsibilities. Unless the appeal is voluntarily withdrawn, the department worker or agent responsible for representing the department at the hearing shall:

a. Within one working day of receipt of an appeal request, forward Form 470-0487 or 470-0487(S), Appeal and Request for Hearing; the written appeal; the postmarked envelope, if there is one; and a copy of the notification of the proposed adverse action to the appeals section.

b. Within ten days of the receipt of the appeal, forward a summary and supporting documentation of the worker's or agent's factual basis for the proposed action to the appeals section. When practicable, the summary may also include suggested relevant legal authorities.

c. Copies of all materials sent to the appeals section or the presiding officer to be considered in reaching a decision on the appeal are to be provided to the appellant at the same time as the materials are sent to the appeals section or the presiding officer.

ITEM 7. Rescind rule 441—7.6(17A) and adopt the following new rule in lieu thereof:

441—7.6(17A) Prehearing procedures.

7.6(1) Acknowledgment of appeal. When the appeals section receives a request for appeal, it shall send acknowledgment of the receipt of the appeal to the parties to the appeal. For appeals regarding child abuse, all subjects other than the person alleged responsible (party-in-interest) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

7.6(2) Acceptance or denial of appeal. The appeals section will determine with reasonable promptness whether the party-in-interest is entitled to a contested case hearing under rule 441—7.3(17A). If a request is accepted, the appeals section will certify the appeal to DIA and designate the issues on appeal pursuant to subrule 7.6(3). If a request for a contested case hearing is denied, the appeals section will provide written notice of and the reasons for the denial. On or before the thirtieth day following the denial, the individual requesting the appeal may provide additional information related to the individual's asserted right to a contested case hearing and request reconsideration of the denial.

7.6(3) Designation of issues for appeal.

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a. Initial designation. After determining that the party-in-interest is entitled to a contested case hearing, the appeals section will designate the issues to be decided at the contested case hearing. The issues identified may include all issues raised by the appellant and may also include additional issues identified by the appeals section. The issues designated shall be certified to DIA and be identified in the notice of hearing issued pursuant to subrule 7.6(5).

b. Additional designation of issues. If any party believes additional issues should be designated, on or before the tenth day following the date of the notice of hearing, the party shall identify those additional issues. The presiding officer shall determine whether all issues have properly been preserved. If the hearing is within ten days of the date of the notice of hearing, the party shall identify any additional issues at the hearing.

7.6(4) Group hearings regarding medical assistance. The appeals section may respond to a series of related, individual requests for hearings regarding medical assistance by consolidating individual hearings into a single group hearing where the sole issue is based on state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

7.6(5) Notice of hearing.

a. Issuance of hearing notice. Except as provided in paragraph 7.6(5) "b," DIA shall send notice to the parties of the appeal at least ten calendar days in advance of the hearing setting forth the date, time, method, and place of the hearing; that evidence may be presented orally or documented to establish pertinent facts; that the parties may bring and question witnesses and refute testimony; and that the parties may be represented by others, including an attorney, at the parties' own cost and as subject to state and federal law. Notice shall be mailed by first-class mail, postage prepaid, and addressed to the appellant at the appellant's last-known address.

b. Intentional program violation hearing notices. DIA shall send notices of hearing regarding alleged intentional program violations at least 30 days in advance of the hearing date. The notices under this paragraph shall otherwise comply with the requirements of paragraph 7.6(5) "a."

7.6(6) Appellant's right to department's case file. Prior to and during the contested case hearing, the department must provide enrollees or their authorized representative with the opportunity to examine the content of the appellant's case file, if any, and all documents and records to be used by the department at the hearing.

7.6(7) Informal conference. The purpose of an informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action or position, and to provide an opportunity for the appellant to examine the contents of the case record.

a. When requested by the appellant, an informal conference with a representative of the department or one of its contracted partners, including a managed care organization, shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the informal conference, unless precluded by federal rule or state statute.

b. An informal conference need not be requested for the appellant to examine the contents of the case record.

ITEM 8. Rescind rule 441—7.7(17A) and adopt the following **new** rule in lieu thereof:

441—7.7(17A) Timelines for contested case hearings.

7.7(1) Medical assistance. In cases involving the determination of medical assistance, the contested case hearing shall be held within a time frame such that the final administrative action is timely pursuant to 42 CFR 431.244(f).

7.7(2) Community spouse resource allowance. In cases involving the determination of the community spouse resource allowance, the hearing shall be held within 30 days of the date of the appeal request.

7.7(3) Sex offender risk assessment. In cases involving an appeal of a sex offender risk assessment, the hearing or administrative review shall be held within 30 days of the date of the appeal request.

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ITEM 9. Rescind rule 441—7.8(17A) and adopt the following **new** rule in lieu thereof:

441—7.8(17A) Contested case hearing procedures.

7.8(1) Method. Contested case hearings may be conducted via telephone or videoconference. Upon request of a party to the appeal or order of the presiding officer, the contested case hearing shall be conducted in person.

7.8(2) Evidence.

a. The parties to a contested case hearing shall be permitted to:

- (1) Bring witnesses,
- (2) Submit competent evidence to establish all pertinent facts and circumstances,
- (3) Present arguments without undue interference,
- (4) Question or refute any testimony or evidence, including through cross-examination, and
- (5) Respond to evidence and arguments on all issues.

b. Evidence shall be received or excluded as provided in Iowa Code section 17A.14.

7.8(3) Right to counsel. Parties to an appeal shall be permitted to be represented by counsel at the parties' own expense.

7.8(4) Self-represented appellants. The presiding officer shall, at the officer's discretion, provide reasonable assistance to self-represented appellants. The presiding officer must, however, ensure that such assistance does not impact the independence and fairness of the contested case hearing process.

7.8(5) Closed to public. Contested case hearings are closed to the public, and unless otherwise provided by state or federal law, only the parties, their representatives, permissible intervenors, and witnesses may be present for a contested case hearing in the absence of mutual agreement of the parties.

7.8(6) Administration of appeals. Except as otherwise provided in this chapter or other applicable federal or state law, discretion in the conduct and administration of appeals is vested in the contested case hearing presiding officer.

7.8(7) Contested cases with no factual dispute. If the parties in a contested case agree that there is no dispute of material fact, the parties may present all admissible evidence either by stipulation, or as otherwise agreed, in lieu of an evidentiary hearing. If an agreement is reached, the parties shall jointly submit a schedule for submission of the record, briefs and oral arguments to the presiding officer for approval.

ITEM 10. Rescind rule 441—7.9(17A) and adopt the following **new** rule in lieu thereof:

441—7.9(17A) Miscellaneous rules governing contested case hearings.

7.9(1) Ex parte communication. Ex parte communications between the presiding officer and person or party in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of the provisions of Iowa Code section 17A.17 apply.

7.9(2) Default. If a party fails to appear at a scheduled hearing or prehearing conference without good cause as determined by the presiding officer, the party's appeals may be denied and dismissed or may be heard and ruled upon, consistent with Iowa Code section 17A.12. Defaulting parties may file a timely motion to vacate, which shall be granted if the presiding officer determines good cause has been shown.

7.9(3) Withdrawal. An appellant may submit a withdrawal of a fair hearing request at any time prior to hearing through any of the methods identified in subrule 7.5(1), except for programs listed in subrule 7.5(4). For programs listed in subrule 7.5(4), a written request may be submitted via the department's website, by mail, in person, or through other commonly available electronic means (such as email or facsimile). Unless otherwise provided, a withdrawal shall be with prejudice.

7.9(4) Medical assessment. For Medicaid enrollees engaged in an appeal involving medical issues, the department may request, at the department's own expense, that the appellant submit to an appropriate medical assessment. The presiding officer shall order such assessment upon sufficient showing of necessity.

7.9(5) Interpreters. The department shall provide translation and interpretation services to appellants not fluent in English. Appellants are entitled to have an interpreter present during appeal

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hearings. In all cases when an appellant is illiterate or semiliterate, the presiding officer shall advise the appellant of the appellant's rights to the satisfaction of the appellant's understanding.

7.9(6) *Persons living with disabilities.* Persons living with disabilities shall be provided assistance through the use of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

ITEM 11. Rescind rule 441—7.10(17A) and adopt the following **new** rule in lieu thereof:

441—7.10(17A) Proposed decision.

7.10(1) *Contents.* The presiding officer shall issue a written proposed decision to all parties clearly identifying the issues on appeal, holding, findings of fact, conclusions of law, and order. The findings of fact shall cite and be based exclusively on the record as defined by Iowa Code section 17A.12(6). The conclusions of law shall be limited to the contested issues of fact, policy or law and shall identify the specific provisions of law that support the ultimate conclusion.

7.10(2) *Access to record.* After receiving the proposed decision, appellants shall be given reasonable access to the record at a convenient place and time.

ITEM 12. Rescind rule 441—7.11(17A) and adopt the following **new** rule in lieu thereof:

441—7.11(17A) Director's review.

7.11(1) *Time.* Parties, including the department, may appeal the proposed decision to the director.

a. A request for director's review shall be in writing and postmarked or received within ten calendar days of the date on which the proposed decision was issued, except as provided for under paragraph 7.11(1)"*b.*" A request for director's review may be accompanied by a brief written summary of the arguments in favor of director's review.

b. A managed care organization appealing a proposed decision reversing an adverse benefit determination shall request director's review within 72 hours from the date it received notice of the proposed decision.

7.11(2) *Grant or denial of review.* The department has full discretion to grant or deny a request for review. In addition, the director may initiate review of a proposed decision on the director's own motion at any time on or before the tenth day following the issuance of the proposed decision.

When the department grants a request for director's review, the appeals section shall notify the parties to the appeal of the review request and enclose a copy of the request. All other parties shall have ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

7.11(3) *Cross-appeal.* When a party requests director's review in accordance with subrule 7.11(1), the remaining parties shall have ten calendar days from that date to submit cross-requests for director's review. The party originally seeking director's review shall have ten calendar days from the date of the cross-request for director's review to submit further written arguments or objections for consideration upon review.

7.11(4) *Limited record.* Director's review shall be limited to the issues and record before the contested case hearing presiding officer.

7.11(5) *Oral arguments.* Upon specific request, the director may, at the director's discretion, permit parties to present oral arguments with the parties' requests for director's review.

ITEM 13. Rescind rule 441—7.12(17A) and adopt the following **new** rule in lieu thereof:

441—7.12(17A) Final decisions.

7.12(1) *No appeal or denial of director review.* If there is no timely appeal from or review of the proposed decision, the presiding officer's proposed decision becomes the final decision of the agency.

7.12(2) *Timelines.*

a. The department or director will issue a final decision within the timelines prescribed by federal or state law. For all appeals for which there is no federal or state timeliness standard, the department or

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director will issue a final decision on or before the ninetieth day from the date the department receives an appeal request.

b. Except as otherwise provided by state or federal law, the time frames for a final decision provided under this rule may be tolled when:

- (1) The appellant requests a delay;
- (2) The appellant fails to take a required action; or
- (3) There is an administrative or other emergency beyond the department's control.

c. DIA shall document in the record the reasons for any delay and the requesting party.

7.12(3) *Written notice of final decision.* The parties to the appeal shall be provided written notice of the department's final decision. The department shall also notify the appellant of the appellant's right to seek judicial review, where applicable.

ITEM 14. Rescind rule 441—7.13(17A) and adopt the following **new** rule in lieu thereof:

441—7.13(17A) Expedited review.

7.13(1) *Expedited review criteria.* Appellants to a medical assistance appeal may, at any time, file with the department a request for expedited review of the appeal. Expedited review shall be granted when the department determines, or a provider acting on behalf or in support of an appellant indicates, that taking the time for a standard resolution could seriously jeopardize the party-in-interest's life, physical or mental health, or ability to attain, maintain, or regain maximum function.

7.13(2) *Managed care expedited proceedings.*

a. If the appellant is granted an expedited review pursuant to subrule 7.13(2), all subsequent proceedings shall also be expedited without an additional request if the appeal request indicates that the managed care organization appeal was expedited and provides the basis for expedited relief.

b. When review is expedited pursuant to paragraph 7.13(2) "a," the presiding officer shall issue a proposed decision as expeditiously as the enrollee's health condition requires, but no later than three working days after the department receives from the managed care organization the case file and information for any appeal of a denial of a service that, as indicated by the managed care organization:

- (1) Meets the criteria for expedited resolution but was not resolved within the time frame for expedited resolution; or
- (2) Was resolved within the time frame for expedited resolution but reached a decision wholly or partially adverse to the enrollee.

7.13(3) *Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review expedited proceedings.* For expedited appeals related to Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review requirements, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than seven working days after the department receives a request for expedited fair hearing.

7.13(4) *Medicaid-covered benefits or services expedited proceedings.* For expedited appeals related to Medicaid-covered benefits or services, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than provided in paragraph 7.13(2) "b."

7.13(5) *Final decision for expedited proceeding.* The department shall issue its final decision in accordance with this rule, except as provided by subrule 7.12(2).

7.13(6) *Notification if expedited relief is granted or denied.* The department shall notify the appellant as expeditiously as possible whether the request for expedited relief is granted or denied. Such notice must be provided orally or through electronic means to the extent consistent with federal and state law. If oral notice is provided, the department shall follow up with written notice, which may be through electronic means to the extent consistent with federal and state law.

ITEM 15. Rescind rule 441—7.14(17A) and adopt the following **new** rule in lieu thereof:

441—7.14(17A) Effect.

7.14(1) If the contested case hearing presiding officer's proposed decision is favorable to an enrollee in a Medicaid appeal, the department must promptly make corrective payments retroactive to the date

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an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility. If the presiding officer reverses a decision of a managed care organization to deny, limit, or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires, but no later than 72 hours from the date the managed care organization receives notice reversing the determination.

7.14(2) Unless there is contravening federal or state law, all final decisions shall be put into effect within seven days of the issuance of the final decision.

ITEM 16. Rescind rule 441—7.15(17A) and adopt the following new rule in lieu thereof:

441—7.15(17A) Calculating time. In computing any time period specified in this chapter, the period:

1. Excludes the day of the event that triggers the period;
2. Includes every day of the time period (including Saturdays, Sundays, and holidays on which the department is closed); and
3. Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

ITEM 17. Rescind rule 441—7.16(17A) and adopt the following new rule in lieu thereof:

441—7.16(17A) Authorized representatives.

7.16(1) Regulations. The provisions of this rule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law.

7.16(2) Designation of authority. Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar designations, shall be sufficient for a delegate to serve as authorized representative under this chapter. A person who is not designated a legally recognized delegation of authority but who otherwise seeks to act as an authorized representative for an individual in an appeal under this chapter shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative's representation.

7.16(3) Written designation. For persons seeking to act as authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative's written designation of authority pursuant to subrule 7.16(2) shall be Form 470-5526, Authorized Representative for Managed Care Appeals.

7.16(4) Appearance by attorney. Legal counsel appearing on behalf of any person in a proceeding under this chapter shall enter an appropriate written appearance identifying the legal counsel.

ITEM 18. Rescind rule 441—7.17(17A) and adopt the following new rule in lieu thereof:

441—7.17(17A) Continuation and reinstatement of benefits.

7.17(1) Programs for which no federal or state law applies. For all assistance programs for which there is no contravening federal or state law, benefits or services shall not be suspended, reduced, restricted, or discontinued, nor shall a license, registration, certification, approval, or accreditation be revoked or other adverse action taken pending a final decision when:

- a. An appeal is filed before the effective date of the intended action; or
- b. The appellant requests a hearing within ten days of receipt of a notice to suspend, reduce, restrict, or discontinue benefits or services. The date on which the notice is received is considered to be five days after the date on the notice, unless the appellant shows the notice was not received within the five-day period.

7.17(2) Sole issue is state or federal law or policy. Benefits or services continued pursuant to subrule 7.17(1) may be suspended, reduced, restricted, or discontinued if the presiding officer determines at the

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contested case hearing that the sole issue is one of state or federal law or policy and the department has notified the enrollee in writing that services are to be suspended, reduced, restricted, or discontinued pending the proposed decision.

7.17(3) *Recoup cost of services or benefits.* The department or managed care organization may recoup the cost of benefits or services provided pursuant to this chapter if the adverse action appealed from is affirmed, consistent with state and federal law.

ITEM 19. Rescind rule 441—7.18(17A) and adopt the following new rule in lieu thereof:

441—7.18(17A) Emergency adjudicative proceedings.

7.18(1) *Necessary emergency action.* When and to the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with state and federal law, a contested case hearing presiding officer may issue a written order to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. In determining the necessity of such an action, the presiding officer shall consider factors including, but not limited to, the following:

- a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;
- b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;
- c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of 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 is necessary to avoid the immediate danger.

7.18(2) *Issuance of order.* An emergency adjudicative order shall contain, or shall be expeditiously followed by, a written analysis, including findings of fact, conclusions of law, and policy reasons to justify the order. The agency shall provide written notice that best ensures prompt, reliable delivery. Such order shall be immediately delivered to the persons required to comply with the order.

7.18(3) *Completion of proceedings.* Upon issuance of an order under this rule, the department shall proceed as quickly as reasonably practicable to complete any proceedings that would be required if the matter did not involve an immediate danger. An order issued under this rule shall include notice of the date on which proceedings under this chapter are to be completed. After issuance of an order under this rule, continuance of further proceedings under this chapter shall only be granted in compelling circumstances upon application in writing. Before issuing an emergency adjudicative order, the presiding officer shall consider factors including, but not limited to, the following:

- a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;
- b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;
- c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of 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 is necessary to avoid the immediate danger.

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ITEM 20. Rescind rules **441—7.19(17A)** to **441—7.21(17A)**.

ITEM 21. Rescind rules **441—7.23(17A)** and **441—7.24(17A)**.

ITEM 22. Amend rule 441—7.41(17A) as follows:

441—7.41(17A) Scope, bidder and applicability. The rules in Division II apply to appeals based on the department's competitive procurement bid process. A bidder is an entity that submits a proposal in response to a solicitation issued through the department of human services' competitive procurement process.

ITEM 23. Amend subrule 7.43(6) as follows:

7.43(6) Method of hearing. The department of inspections and appeals shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. All parties shall be granted the same rights during a teleconference hearing as specified in rule ~~441—7.13(17A)~~ 441—7.8(17A).

ITEM 24. Amend rule 441—7.46(17A) as follows:

441—7.46(17A) Request for review of the proposed decision. A request for review of the proposed decision shall follow the provisions outlined in ~~subrules 7.16(5) to 7.16(8)~~ rule 441—7.11(17A).

ITEM 25. Amend subrule 7.47(2) as follows:

7.47(2) Presiding officer. Appeal hearings shall be conducted by an administrative law judge appointed by the department of inspections and appeals ~~pursuant to rule 441—7.3(17A)~~.

ITEM 26. Amend subrule 7.47(3) as follows:

7.47(3) Rights of appellants during hearings. All rights afforded appellants at rule ~~441—7.13(17A)~~ 441—7.8(17A) shall apply.

ITEM 27. Amend subrule 7.48(1) as follows:

7.48(1) The appeal record shall consist of all items specified in ~~subrule 7.16(1)~~ Iowa Code section 17A.16.

ITEM 28. Amend rule 441—7.50(17A) as follows:

441—7.50(17A) Ex parte communications. The rules regarding ex parte communications ~~listed at 441—7.18(17A)~~ specified in subrule 7.9(1) and Iowa Code section 17A.17 apply.

ITEM 29. Amend rule 441—7.51(17A) as follows:

441—7.51(17A) Right of judicial review. The rules regarding right of judicial review ~~listed at 441—7.20(17A)~~ specified in subrule 7.12(3) and Iowa Code section 17A.19 apply.

[Filed 2/20/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4973C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to timely and adequate notice

The Human Services Department hereby amends Chapter 14, "Offset of County Debts Owed Department"; adopts new Chapter 16, "Notices"; and amends Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," Chapter 46, "Overpayment Recovery," Chapter 74, "Iowa

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Health and Wellness Plan,” Chapter 75, “Conditions of Eligibility,” Chapter 76, “Enrollment and Reenrollment,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Chapter 82, “Intermediate Care Facilities for Persons with an Intellectual Disability,” Chapter 83, “Medicaid Waiver Services,” Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Chapter 90, “Case Management Services,” Chapter 91, “Medicare Drug Subsidy,” Chapter 93, “PROMISE JOBS Program,” Chapter 106, “Certification Standards for Children’s Residential Facilities,” Chapter 109, “Child Care Centers,” Chapter 153, “Funding for Local Services,” Chapter 170, “Child Care Services,” and Chapter 187, “Aftercare Services Program,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

These amendments adopt a new Chapter 16, “Notices,” to centralize administrative rules regarding timely and adequate notices. In addition, these amendments correct cross references found in administrative rules regarding timely and adequate notices. Based on changes in Chapter 7 (see **ARC 4972C**, IAB 3/11/20), cross references to that chapter are also corrected. Whenever the Department proposes to approve or deny an application for assistance or services, the Department must provide adequate notice. Whenever the Department proposes to terminate or reduce assistance or services, the Department must provide timely and adequate notice. Rules regarding timely and adequate notices are currently in Chapter 7, “Appeals and Hearings.” Because notices relate to all parts of the Department and are not specific to appeals, the rules regarding timely and adequate notices are being moved from Chapter 7 into Chapter 16, which solely relates to notices. An individual’s right to due process is not impacted by these changes. The Department is still required to provide timely and adequate notice to applicants and recipients. The rules are simply being moved from one chapter into another.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019, as **ARC 4675C**. One respondent, representing Iowa Legal Aid, provided written comments. The comments and the Department’s responses follow.

1. Concerns on adequate notice. The respondent noted that current paragraph 7.7(1)“c” of the Department’s rules indicates the Department will give “adequate notice of...the approval or denial of a license, certification, approval, registration, or accreditation” but the language is missing from proposed subrule 16.3(1). Noting that it appears the Department intends to send adequate notices when a license, certification, approval, registration or accreditation is approved or denied, the respondent requested clarification regarding this issue.

Department response: Based on the respondent’s comment, the introductory paragraph of subrule 16.3(2) in Item 2 has been revised to read as follows:

“16.3(2)Adequate notice. The department shall give adequate notice of the approval or denial of assistance or services; the approval or denial of a license, certification, approval, registration, or accreditation; pending action for a state or federal tax or debtor offset; or to the extent standards provided elsewhere in state or federal law are inapplicable. Adequate notice shall include:”

2. Ninety-day time limit for late-filed appeals. The respondent indicated the proposed amendment to subrule 95.13(3) would impose a 30-day appeal period for individual obligees to file an appeal of a Child Support Recovery Unit decision when the obligee disputes having received all or part of a support payment to which the obligee is entitled. The respondent stated that the proposed change did not include a 90-day time limit for late appeals for good cause and seemed to do away with the procedure. The

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respondent inquired if the change was intentional and, if it was, questioned why the late appeal time limit for good cause was eliminated.

Department response: The opportunity to file a late appeal when there is good cause for filing late is standard in Department appeals and provides recognition that there are situations in which delay in action is effectively unavoidable. Based on the respondent's comments, the proposed amendments to subrule 95.13(3) were not adopted and Item 30 was removed from the rule making, and subsequent Items 31 through 36 have been renumbered.

In addition to the changes described above, the following additional changes have been made since publication of the Notice. The proposed amendments to update cross-references in subrules 90.4(2) and 90.6(2) have been removed because Chapter 90 has been rescinded and replaced with a new Chapter 90, thus making those amendments obsolete. Also, amendments to update similar cross-references in paragraph 90.2(3)“b” and subrule 90.3(2) of new Chapter 90 have been added.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on February 12, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

These amendments do not include waiver provisions because they confirm benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 441—14.5(217,234), introductory paragraph, as follows:

441—14.5(217,234) Implementing the final decision. When the final decision issued pursuant to rule 441—7.16(17A) 441—7.12(17A) upholds the department's action or modifies the amount of offset, the division of fiscal management shall certify to the department of administrative services that the requirements for offset under Iowa Code section 8A.504 have been met. When the final decision reverses the department's action, the division of fiscal management shall notify the department of administrative services to release the offset.

ITEM 2. Adopt the following **new** 441—Chapter 16:

CHAPTER 16 NOTICES

HUMAN SERVICES DEPARTMENT[441](cont'd)

PREAMBLE

This chapter applies to any notice of decision or notice of action issued by or on behalf of the department.

441—16.1(17A) Definitions.

“*Adequate notice*” means any notice of decision or notice of action issued in compliance with subrule 16.3(2).

“*Adverse benefit determination*” means any adverse action taken in regard to any individual’s benefits pursuant to an assistance program administered by the department or on the department’s behalf, excluding determinations related to requests for exceptions to policy.

“*Assistance program*” means a program administered by the department or on the department’s behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, food assistance, Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, and aftercare services.

“*Department*” means the Iowa department of human services.

“*Enrollee*” means any applicant for, or recipient of, benefits or services pursuant to an assistance program.

“*Timely*” means that the notice is sent at least ten calendar days before the date the adverse benefit determination would become effective. The timely notice period shall begin on the day after the notice is sent.

441—16.2(17A) Governing laws and regulations. Notwithstanding the rules contained in this chapter, to the extent that state or federal law (including regulations and rules) related to a specific program is more specific than or contradicts these rules, the program-specific state or federal law shall control.

441—16.3(17A) Notices.

16.3(1) *Timely notice.* For individuals applying for, or receiving, benefits pursuant to an assistance program, the department will provide timely, written notice of the right to appeal any adverse benefit determinations affecting the individual’s benefits or eligibility, when required to do so under state or federal law.

The department will also provide timely, written notice of pending actions for a state or federal tax or debtor offset.

Timely notice must also be adequate as provided in subrule 16.3(2).

16.3(2) *Adequate notice.* The department shall give adequate notice of the approval or denial of assistance or services; the approval or denial of a license, certification, approval, registration, or accreditation; pending action for a state or federal tax or debtor offset; or to the extent standards provided elsewhere in state or federal law are inapplicable. Adequate notice shall include:

- a. A description of the action taken;
- b. The effective date of the action;
- c. The specific reasons supporting the action, stated in clear language likely to be understood by the average program applicant or enrollee;
- d. References to applicable provisions of law supporting the action;
- e. An explanation of the right to appeal; and
- f. The circumstances under which assistance is continued when an appeal is filed.

16.3(3) *Dispensing with timely notice.* Timely notice may be dispensed with, but adequate notice shall be sent no later than the date benefits would have been issued, when:

- a. There is factual information confirming the death of the enrollee or of the family investment program payee and there is no relative available to serve as a new payee.
- b. The enrollee provides a clear written, signed statement that the enrollee no longer wishes to receive assistance, or gives information which requires termination or reduction of assistance, and the

HUMAN SERVICES DEPARTMENT[441](cont'd)

enrollee has indicated, in writing, that the enrollee understands that the consequence of supplying the information is termination or reduction of assistance.

c. The enrollee has been admitted or committed to an institution that does not qualify for payment under an assistance program.

d. The enrollee has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

e. The whereabouts of the enrollee are unknown and mail directed to the enrollee has been returned by the post office indicating no known forwarding address. When the whereabouts of the enrollee become known during the payment period covered by the returned warrant, the warrant shall be made available to the enrollee.

f. The department establishes that the enrollee has been accepted for assistance in another state.

g. Cash assistance or food assistance is changed because a child is removed from the home as a result of a judicial determination or is voluntarily placed in foster care.

h. A change in the level of medical care is prescribed by the enrollee's physician.

i. A special allowance or service granted for a specific period is terminated and the enrollee has been informed in writing at the time of initiation that the allowance or service shall terminate at the end of the specified period.

j. The notice involves an adverse determination made with regard to the preadmission screening requirements.

k. The department terminates or reduces benefits or makes changes based on a completed Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS), Review/Recertification Eligibility Document, as described at 441—subrule 40.27(3) or rule 441—75.52(249A).

l. The department terminates benefits for failure to return a completed report form, as described in paragraph 16.3(3)“*k.*”

m. The department approves or denies an application for assistance.

n. The department implements a mass change based on law or rule changes that affect a group of enrollees.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 3. Amend paragraph **40.27(5)“b”** as follows:

b. When cancellation of assistance occurs later because issuance of a timely notice, as required by 441—7.7(17A) rule 441—16.3(17A), requires that the action be delayed until the first day of the second calendar month, any overpayment received in the first calendar month shall be recouped.

ITEM 4. Amend subparagraph **40.27(5)“c”(2)** as follows:

(2) Recoupment shall be made for any overpayment, with one exception. When a change in income is timely reported by a recipient and timely acted upon by the department, but the timely notice, as required by 441—7.7(17A) rule 441—16.3(17A), requires the action be delayed until the second calendar month following the month of change, and eligibility continues, recoupment shall not be made.

ITEM 5. Amend subrule 41.24(8) as follows:

41.24(8) ~~The limited~~ Limited benefit plan (LBP). When a participant responsible for signing and meeting the terms of a family investment agreement as described at rule 441—93.4(239B) chooses not to sign or fulfill the terms of the agreement, the FIP assistance unit or the individual participant shall enter into a limited benefit plan. A limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to the participant as defined at ~~441—subrule 7.7(1)~~ rule 441—16.3(17A). Once the limited benefit plan is imposed, FIP eligibility no longer exists as of the first of the month after the month in which timely and adequate notice is given to the participant. Upon the issuance of the notice to impose a limited benefit plan, the person who chose the limited benefit plan can reconsider and end the limited benefit plan, but only as described at paragraphs 41.24(8)“*d*” and “*e*.”

a. to *g.* No change.

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ITEM 6. Amend subparagraph **41.27(9)“c”(2)** as follows:

(2) Nonrecurring lump-sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 41.26(4), and 41.26(7); and paragraphs 41.27(8)“b,” and 41.27(8)“c,” shall be treated in accordance with this rule. Nonrecurring lump-sum income shall be considered as income in the month received and counted in computing eligibility and the amount of the grant, unless the income is exempt. Nonrecurring lump-sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. When countable income, exclusive of the family investment program grant but including countable lump-sum income, exceeds the needs of the eligible group, the case shall be canceled or the application rejected. In addition, the eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter. The period of ineligibility shall begin with the month the lump sum is received.

When a nonrecurring lump sum is timely reported as required by 441—paragraph 40.27(4)“f,” recoupment shall not be made for the month of receipt. When a nonrecurring lump sum is timely reported, but the timely notice as required by rule 441—7.7(17A) 441—subrule 16.3(1) requires that the action be delayed until the second calendar month following the month of change, recoupment shall not be made for the first calendar month following the month of change. When a nonrecurring lump sum is not timely reported, recoupment shall be made beginning with the month of receipt.

The period of ineligibility shall be shortened when the schedule of living costs as defined in 41.28(2) increases.

The period of ineligibility shall be shortened by the amount that is no longer available to the eligible group due to a loss or a theft or because the person controlling the lump sum no longer resides with the eligible group.

The period of ineligibility shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 441—Chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over \$25 per incident; cost of replacement of exempt resources as defined in subrule 41.26(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump-sum income, is less than the needs of the eligible group, the lump sum shall be counted as income for the month received. For purposes of applying the lump-sum provision, the eligible group is defined as all eligible persons and any other individual whose lump-sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump-sum income was received may be eligible for the family investment program as a separate eligible group. Income of this eligible group plus income, excluding the lump-sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant.

ITEM 7. Amend rule 441—46.23(239B) as follows:

441—46.23(239B) Notification and appeals. All clients shall be notified by the department of inspections and appeals, as described at 441—subrule ~~7.5(6)~~, 441—paragraph 7.4(3)“i,” when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The department shall provide additional information regarding the computation of the overpayment upon the client's request. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with 441—subrule ~~7.5(6)~~. 441—paragraph 7.4(3)“i.”

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ITEM 8. Amend paragraph **74.6(3)“a”** as follows:

a. Timely notice of adverse action is required as specified in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(1); or

ITEM 9. Amend paragraph **75.21(12)“b”** as follows:

b. The department shall provide timely and adequate notice as defined in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) to inform the household of a decision to discontinue payment of the health insurance premium because:

(1) and (2) No change.

ITEM 10. Amend subrule 75.22(9) as follows:

75.22(9) Notices.

a. An adequate notice as defined in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(2) shall be provided under the following circumstances:

(1) to (5) No change.

b. A timely and adequate notice as defined in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) shall be provided to the recipient informing the recipient of a decision to discontinue payment of the health insurance premium when the recipient no longer meets the eligibility requirements of the program or fails to cooperate in providing information to establish eligibility.

ITEM 11. Amend subrule 75.52(5) as follows:

75.52(5) Effective date. After assistance has been approved, eligibility for continuing assistance shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month, subject to timely notice requirements at rule ~~441—7.6(217)~~ 441—16.3(17A) for any adverse actions.

a. When the change creates ineligibility, eligibility under the current coverage group shall be canceled and an automatic redetermination of eligibility shall be completed in accordance with rule ~~441—76.11(249A)~~.

b. Rescinded IAB 10/4/00, effective 10/1/00.

c. When an individual included in the eligible group becomes ineligible, that individual's Medicaid shall be canceled effective the first of the next month unless the action must be delayed due to timely notice requirements at rule ~~441—7.6(217)~~ 441—16.3(17A).

ITEM 12. Amend subrule 76.16(1) as follows:

76.16(1) After assistance has been approved, except as provided in subrule 76.13(1), action based on a change reported during a month shall be effective the first day of the next calendar month unless timely notice of adverse action is required as specified in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(1).

ITEM 13. Amend paragraph **79.2(7)“a”** as follows:

a. Any order of sanction shall be in writing and include the name of the person subject to sanction, identify the ground for the sanction and its effective date, and be sent to the person's last-known address. If the department sanctions a provider, the order of sanction shall also include the national provider identification number of the provider and be sent to the provider's last address on file within the medical assistance program. Proof of mailing to such address shall be conclusive evidence of proper service of the sanction upon the provider. ~~The department of inspections and appeals is not required to comply with the additional notification provisions of 441—paragraph 7.10(7)“c” for appeals certified for hearing under this chapter.~~

ITEM 14. Amend subrule 79.8(9) as follows:

79.8(9) The Iowa Medicaid enterprise shall issue a notice of decision to the recipient upon a denial of request for prior approval pursuant to ~~441—Chapter 7~~ 441—Chapter 16. The Iowa Medicaid enterprise shall mail the notice of decision to the recipient within five working days of the date the prior approval form is returned to the provider.

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ITEM 15. Amend subrule 82.7(4) as follows:

82.7(4) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—16.3(17A).

ITEM 16. Amend rule 441—83.9(249A) as follows:

441—83.9(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234). The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.

ITEM 17. Amend rule 441—83.29(249A) as follows:

441—83.29(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 18. Amend rule 441—83.49(249A) as follows:

441—83.49(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 19. Amend rule 441—83.69(249A) as follows:

441—83.69(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 20. Amend rule 441—83.89(249A) as follows:

441—83.89(249A) Appeal rights. Notice of adverse ~~actions~~ action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 21. Amend rule 441—83.109(249A), introductory paragraph, as follows:

441—83.109(249A) Appeal rights. Notice of adverse ~~actions~~ action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 22. Amend rule 441—83.129(249A) as follows:

441—83.129(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 23. Amend rule 441—86.11(514I) as follows:

441—86.11(514I) Notice requirements. The applicant shall be provided an adequate written notice of the decision regarding the applicant's eligibility for the HAWK-I program. The enrollee shall be notified in writing of any decision that adversely affects the enrollee's eligibility or the amount of benefits. The notice shall be timely and adequate as provided in 441—~~subrule 7.7(1)~~ rule 441—16.3(17A).

ITEM 24. Amend paragraph **90.2(3)“b”** as follows:

b. Application decision for targeted case management. The case manager shall inform the applicant, or the applicant's guardian or representative, of any decision to approve, deny, or delay the service in accordance with the notification requirements at 441—~~subrule 7.7(1)~~ rule 441—16.3(17A).

ITEM 25. Amend subrule 90.3(2) as follows:

90.3(2) The provider shall notify the member or the member's guardian or representative in writing of the termination of targeted case management, in accordance with 441—~~subrule 7.7(1)~~ rule 441—16.3(17A).

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 26. Amend subrule 91.4(2) as follows:

91.4(2) The department shall give a recipient timely and adequate written notice as provided in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) when any decision or action is taken that adversely affects subsidy eligibility or the level of subsidy.

ITEM 27. Amend subrule 91.4(3) as follows:

91.4(3) In the circumstances described in ~~441—subrule 7.7(2)~~ 441—subrule 16.3(3), the department may dispense with timely notice but shall send adequate notice no later than the effective date of action.

ITEM 28. Amend paragraph **93.10(1)“b”** as follows:

b. Notice of decision. PROMISE JOBS shall send written notice to each participant in accordance with ~~441—Chapter 7~~ 441—Chapter 16 when services are approved, rejected, renewed, changed, canceled, or terminated for failure to cooperate or participate. PROMISE JOBS services are approved when the participant is assigned to begin participation in an activity as written in the FIA.

ITEM 29. Amend subrule 93.12(2) as follows:

93.12(2) The department of inspections and appeals shall notify the participant or the provider when it is determined that an overpayment exists, as described at ~~441—subrule 7.5(6)~~. 441—paragraph 7.4(3)“i.”

a. Notification shall include the amount, date, and reason for the overpayment. Upon the participant's request, the local office shall provide additional information regarding the computation of the overpayment.

b. The participant may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with ~~441—subrule 7.5(6)~~. 441—paragraph 7.4(3)“i.” If a participant or provider files an appeal request, the PROMISE JOBS unit shall notify the DIA within three working days of receipt of the appeal request.

ITEM 30. Amend subrule 106.5(7) as follows:

106.5(7) Right to appeal suspension or revocation. The holder of the certificate of approval has the right to appeal a suspension or revocation of the certificate of approval, but initiation of an appeal does not alter the suspension or revocation. Notices of adverse actions and the right to appeal shall be given to applicants and certificate of approval holders in accordance with ~~441—Chapter 7~~ and rule 441—16.3(17A).

ITEM 31. Amend paragraph **109.2(6)“a”** as follows:

a. Notice of adverse actions for a denial, revocation, or suspension and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with ~~441—Chapter 7~~ and rule 441—16.3(17A).

ITEM 32. Amend paragraph **153.57(2)“b”** as follows:

b. The department shall notify the member and the CPC when a member is to be disenrolled. The department shall give the member at least ten days' notice of disenrollment pursuant to ~~rule 441—7.7(17A)~~ 441—subrule 16.3(1). The department shall give a member receiving any residential service 30 days' notice of disenrollment from the program consistent with department of inspections and appeals' rule ~~481—57.36(135C)~~ 481—57.14(135C).

ITEM 33. Amend subrule 153.58(1) as follows:

153.58(1) Decisions regarding denial or termination of state payment program eligibility, including disenrollment, may be appealed to the department pursuant to ~~441—Chapter 7~~. Continuation of assistance will be granted pursuant to rule ~~441—7.9(17A)~~ 441—7.17(17A).

ITEM 34. Amend subrule 170.9(1) as follows:

170.9(1) *Notification and appeals.* All clients or providers shall be notified as described at subrule 170.9(6), when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The department shall provide additional information regarding the computation of the overpayment upon the client's or provider's request. The client or provider may

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appeal the computation of the overpayment and any action to recover the overpayment in accordance with ~~441—subrule 7.5(9).~~ 441—paragraph 7.4(3)“i.”

ITEM 35. Amend subparagraph **187.3(6)“c”(9)** as follows:

(9) Recoupment shall not be made when a youth timely reports a change in income and the change is timely acted upon, but the timely notice policy in rule ~~441—7.7(17A)~~ 441—16.3(17A) requires that the action be delayed until the second calendar month following the month of change.

[Filed 2/19/20, effective 4/15/20]

[Published 3/11/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4974C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to assertive community treatment rates and brain injury waiver budget maximum

The Human Services Department hereby amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

Legislation from the 2019 Legislative Session directed the Department to eliminate the monthly budget maximum or cap for individuals eligible for the Medicaid home- and community-based services (HCBS) brain injury waiver. Legislation also appropriated additional funds to adjust the per diem rates for assertive community treatment (ACT) services. These amendments implement those changes.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4819C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on February 12, 2020.

Fiscal Impact

Based on June 2018 data, annualized ACT costs were estimated at \$5,794,035. The cost per unit was increased by approximately 9.32 percent to achieve the \$211,332 state share target. Based on a previously completed fiscal note, no fiscal impact is expected from eliminating the monthly budget maximum or cap for individuals eligible for the brain injury waiver. During calendar year 2018, the Iowa Medicaid Enterprise received 126 exception-to-policy (ETP) requests for brain injury waiver members to exceed the monthly cap for services, and of these, only two requests were denied. Since the ETP process is an

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existing practice, costs related to exceptions would already be incorporated into the base data used to set managed care organization rates.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule **79.1(2)**, provider category of "Assertive community treatment," as follows:

| <u>Provider category</u> | <u>Basis of reimbursement</u> | <u>Upper limit</u> |
|-------------------------------|-------------------------------|--|
| Assertive community treatment | Fee schedule | \$51.08 per day for each day on which a team meeting is held. Fee schedule in effect 7/1/19. Maximum of 5 days per week. |

ITEM 2. Rescind paragraph **83.82(2)"d."**

[Filed 2/13/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4975C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to medical assistance advisory council

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

Legal Authority for Rule Making

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

State or Federal Law Implemented

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

Purpose and Summary

These amendments update Medical Assistance Advisory Council (MAAC) and executive committee meeting rules regarding MAAC membership, voting and duties and include removal of the executive committee and responsibilities.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4818C**. One respondent provided comments. A summary of the comments and the Department's responses follows.

1. Comment regarding the roles of voting and nonvoting members. The respondent suggested that there should be an explicit change to allow the professional or business entity members, who are not elected as voting members, to be identified as nonvoting members of the MAAC.

Department response: 2019 Iowa Acts, House File 766, revised the membership and voting provisions and duties of the MAAC. House File 766 specified the number of voting members as five professional or business entity members and five public members. The legislation also designated the 41 entities eligible for election as voting members of the MAAC. All 41 entities are eligible to participate and cast a ballot in the election of the five voting members. The legislation also specifically identifies the nonvoting members.

The legislation does not describe the role of the remaining 36 entities not elected as voting members of the MAAC. The Department will distribute meeting information and materials to all 41 entities. It is expected that the representatives of the remaining 36 entities will attend MAAC meetings and be engaged with all MAAC committee members regarding policy development, program administration and recommendations. Those 36 entity representatives have voted the five members to the committee and should work collaboratively with the voting members outside of meetings to share their thoughts on advising the Medicaid agency. The representatives of the 36 entities will be responsible for electing new members annually or when any vacancy occurs.

The legislation specifically describes the nonvoting members, who do not include the remaining 36 professional or business entities.

These amendments are consistent with the legislation, and no changes from the Notice have been made.

2. Public hearing information requested. The respondent requested information regarding how to request a public hearing and the required time frames for requesting a public hearing.

Department response: A request for a public hearing must be made during the time frame provided in the Notice of Intended Action. For this rule making, a request for public hearing would need to have been made by the close of business on January 7, 2020. This information was provided to the respondent by email. The respondent's request regarding information on a public hearing does not necessitate changes to these amendments.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on February 12, 2020.

Fiscal Impact

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

Jobs Impact

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 79.7(1) as follows:

79.7(1) Officers.

~~a. Definitions.~~

~~“Co-chairpersons” means the public health director co-chairperson and the public co-chairperson.~~

~~“Public co-chairperson” means the individual selected by the other publicly appointed members of the council to serve as a co-chairperson of the council.~~

~~“Public health director co-chairperson” means the director of the department of public health, who serves as a co-chairperson of the council.~~

~~b. a.~~ The public co-chairperson's term of office shall be two years. A public co-chairperson shall serve no more than two consecutive terms.

~~e. b.~~ The public co-chairperson shall have the right to vote on any issue before the council. The public health director co-chairperson serves as a nonvoting member of the council.

~~d. c.~~ The position of public co-chairperson shall be held by one of the ~~ten publicly appointed~~ five public council members. Ballots will be distributed to the public council members at the quarterly meeting closest to the beginning of the next state fiscal year and will be collected in paper and electronic format and administered by department of human services staff. The initial ballot following July 1, 2019, will be distributed by email prior to the first meeting in that fiscal year in order to identify the public co-chairperson prior to the council's first meeting.

~~e. d.~~ The co-chairpersons shall appoint members to other committees approved by the council.

~~f.~~ ~~The co-chairpersons shall also serve on the executive committee and will serve as the co-chairpersons of that committee.~~

~~g. e.~~ Responsibilities.

(1) The co-chairpersons shall be responsible for development of the agendas for meetings of the ~~full~~ council. Agendas will be developed and distributed in compliance with the advance notice requirements of Iowa Code section 21.4. Agendas will be developed in consultation with the staff and director of human services, taking into consideration the following:

1. Workplans. Items will be added to the council's agenda as various tasks for the council are due to be discussed based on calendar requirements. Council deliberations are to be conducted within a time frame to allow the ~~executive committee council~~ to receive ~~the council's feedback~~ and make recommendations to the director and for the director to consider those recommendations as budgets and policy for the medical assistance program are developed for the review of the council on human services and the governor, as well as for the upcoming legislative session.

2. Requests from the director of human services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

3. Discussion and action items from council members. The co-chairpersons will review any additional suggestions from council members at any time, including after the draft agenda has been distributed. The agenda will be distributed in draft form five business days prior to the council meeting, and the final agenda will be distributed no later than 24 hours prior to the council meeting.

(2) The co-chairpersons shall preside over all council ~~and executive committee~~ meetings, calling roll, determining a quorum, counting votes, and following the agenda for the meeting.

(3) The co-chairpersons shall consult with the department of human services on other administrative tasks to oversee the council and shall participate in workgroups and subcommittees as appropriate.

ITEM 2. Rescind subrule 79.7(2) and adopt the following new subrule in lieu thereof:

79.7(2) Membership. The membership of the council shall be as prescribed in Iowa Code section 249A.4B.

a. Council membership of professional and business entities shall number five and be identified from a vote among those entities outlined in Iowa Code section 249A.4B(3). Professional and business entities shall vote every year to identify the entities and their subsequent representatives that will represent the body of professional and business stakeholders on the council. Professional and business entities will also report their contact information to the department of human services.

(1) An initial election in SFY 2020 of five professional and business members shall be held. From this initial election of five members, three members with the most votes shall serve a three-year term and the other two members shall serve a two-year term. Once these members have served their initial term, the length of term for all following elected members shall be two years.

(2) Elections shall be organized along the following guidelines.

1. Ballots will be distributed at the quarterly meeting closest to the beginning of the next state fiscal year and will be collected in paper and electronic format and counted by department of human services staff.

2. The entities that receive the most votes shall serve on the council.

(3) Should any vacancy occur on the council, the entity that received the next highest number of votes in the most recent election shall serve on the council.

(4) If a voting entity's representative does not attend more than three consecutive meetings, the department of human services will notify the entity and representative and verify whether an alternative contact is needed. If a fourth consecutive meeting is missed after the notification, the voting entity's seat will be considered vacant and will be filled as outlined in subparagraph 79.7(2) "a"(3).

b. Council membership of public representatives shall consist of five representatives, of which one must be a recipient of medical assistance. All five public representatives will be appointed by the governor for staggered terms of two years each. All five public representatives will be voting members of the council.

c. A member of the hawki board, created in Iowa Code section 514I.5, selected by the members of the hawki board, shall be a member of the council. The hawki board member representative will be a nonvoting member of the council.

d. Council membership shall also consist of state agency and medical school partners, including representatives from the department of public health, the department on aging, the office of the long-term care ombudsman, Des Moines University and the University of Iowa College of Medicine.

(1) Partner agency and medical school representatives will be nonvoting members of the council.

(2) If an agency's or school's representative does not attend more than three consecutive meetings, the department of human services will notify the agency or school.

(3) Partner agencies and medical schools shall determine the length of appointment of their representatives. The department of human services will confirm each representative's participation every two years.

e. The following members of the general assembly shall be members of the council, each for a term of two years as provided in Iowa Code section 69.16B. Members appointed from the general assembly will serve as nonvoting members of the council.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Two members of the house of representatives, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives from their respective parties.

(2) Two members of the senate, one appointed by the president of the senate after consultation with the majority leader of the senate and one appointed by the minority leader of the senate from their respective parties.

ITEM 3. Amend subrules 79.7(3) to 79.7(5) as follows:

79.7(3) Responsibilities, duties and meetings. The responsibility of the medical assistance advisory council is to provide recommendations on the medical assistance program to the department of human services ~~through the executive committee of the council.~~

a. Recommendations. Recommendations made by ~~the executive committee from~~ the council shall be advisory and not binding upon the department of human services or the professional and business entities represented. The director of the department of human services shall consider the recommendations in the director's preparation of medical assistance budget recommendations to the council on human services, pursuant to Iowa Code section 217.3 and implementation of medical assistance program policies.

b. Council. The council shall be provided with information to deliberate and provide input on the medical assistance program. ~~The executive committee will use that input in making final recommendations to the department of human services.~~ The council will use that input in making final recommendations to the department of human services.

(1) to (5) No change.

~~(6) The council shall review the recommendations submitted by the executive committee regarding feedback received at the IA Health Link statewide public comment meetings outlined in 2016 Iowa Acts, chapter 1139, section 102.~~

~~*e. Executive committee.*~~

~~(1) Executive committee meetings.~~

~~1. The executive committee shall meet on a monthly basis.~~

~~2. Meetings may be called by the co-chairpersons; upon written request of at least 50 percent of executive committee members; or by the director of the department of human services.~~

~~3. Meetings shall be held in the Des Moines, Iowa, area unless other notification is given. Meetings will also be made available via teleconference, when available.~~

~~4. In a month when a council meeting is held, the executive committee shall meet after the council meeting, allowing committee members to discuss and make recommendations based on the topics discussed by council members.~~

~~(2) Based on the deliberations of the full council, the executive committee shall make recommendations to the director of human services regarding the budget, policy, and administration of the medical assistance program. Such recommendations may include:~~

~~1. Recommendations on the reimbursement for medical services rendered by providers of services.~~

~~2. Identification of unmet medical needs and maintenance needs which affect health.~~

~~3. Recommendations for objectives of the program and for methods of program analysis and evaluation, including utilization review.~~

~~4. Recommendations for ways in which needed medical supplies and services can be made available most effectively and economically to program recipients.~~

~~5. Advice on such administrative and fiscal matters as the director of human services may request.~~

~~(3) Pursuant to 2016 Iowa Acts, chapter 1139, section 102, the executive committee shall review the compilation of the input and recommendations from the public meetings convened statewide and shall submit recommendations based upon the compilation to the director of human services on a quarterly basis through December 31, 2017.~~

79.7(4) Procedures.

~~*a.* Procedures shall apply to both the council and the executive committee.~~

~~*b. a.* A quorum shall consist of 50 percent (five persons) of the current voting members.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~e. b.~~ Where a quorum is present, a position is carried by two-thirds of the present council members present.

~~d. c.~~ Minutes of council meetings and other written materials developed by the council shall be distributed by the department to each member of the full council.

~~e. d.~~ In cases not covered by these rules, Robert's Rules of Order shall govern.

79.7(5) Expenses, staff support, and technical assistance. Expenses of the council ~~and executive committee~~, such as those for clerical services, mailing, telephone, and meeting place, shall be the responsibility of the department of human services. The department shall arrange for a meeting place, related services, and accommodations. The department shall provide staff support and independent technical assistance to the council ~~and the executive committee~~.

a. to c. No change.

d. The department shall maintain a current list of members on the council ~~and executive committee~~.

e. The department shall be responsible for the organization of all council ~~and executive committee~~ meetings and notice of meetings.

f. As required in Iowa Code section 21.3, minutes of the meetings of the council ~~and of the executive committee~~ will be kept by the department. The ~~co-chairpersons~~ council will review minutes before distribution to the public.

~~g.~~ ~~The department shall compile input and recommendations received at the public meetings established in 2016 Iowa Acts, chapter 1139, section 102, and submit the information to the executive committee for review.~~

[Filed 2/13/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4976C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to regulation of elder group homes, assisted living programs, and adult day services

The Inspections and Appeals Department hereby amends Chapter 67, "General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services," Chapter 68, "Elder Group Homes," Chapter 69, "Assisted Living Programs," and Chapter 70, "Adult Day Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 10A.104, 231B.2, 231C.3 and 231D.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 231B, 231C and 231D.

Purpose and Summary

The Department completed a review of Chapters 67 and 69 in conjunction with input received from industry stakeholders. The amendments to Chapter 67 expressly direct programs that handle, store, or administer controlled substances to be registered with the Iowa Board of Pharmacy pursuant to 657—Chapter 10, "Controlled Substances," in accordance with the Board's standing interpretation

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

of its rules; revise the types of personnel permitted to administer medications from any certified or noncertified staff in accordance with nurse delegation procedures to certified medication aides or medication managers; modify the time frames for investigation of complaints or program-reported incidents depending on the severity of the potential regulatory insufficiency; clarify the contents of the plan of correction with respect to detailing how regulatory insufficiencies will be corrected; and remove citations to previously rescinded rules.

The amendments to Chapter 69 clarify the policies and procedures that programs shall have in place, including requiring that programs have a policy and procedure for extraordinary lifesaving measures; clarify that annual updates to service plans shall include a process of reviewing, updating if necessary, and signing and dating the service plan; require that perishable or potentially hazardous foods be cooked to and held at recommended and safe temperatures; update managed risk policy and consensus agreements so that they may be used when tenant decision making could result in poor tenant outcomes; and also make nonsubstantive changes to make rules easier to read.

The amendments to Chapters 68 and 70 update internal citations to Chapter 67 resulting from the amendments noted above.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 15, 2020, as **ARC 4867C**. The Department received questions and comments from two sources. One commenter submitted questions related to implementation of Item 2 and the intent of Item 4. Another commenter submitted a suggested change to the language of Item 4. A change has been made to Item 4 to clarify the intent of the amendment.

Adoption of Rule Making

This rule making was adopted by the Department on February 21, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

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

ITEM 1. Amend rule 481—67.2(231B,231C,231D) as follows:

481—67.2(231B,231C,231D) Program policies and procedures, including those for incident reports. A program's policies and procedures must meet the minimum standards set by applicable requirements. ~~The program shall follow the policies and procedures established by a program.~~ All programs shall have policies and procedures related to the reporting of incidents including allegations of dependent adult abuse.

67.2(1) and **67.2(2)** No change.

67.2(3) The program shall follow the policies and procedures established by the program.

ITEM 2. Amend rule 481—67.5(231B,231C,231D) as follows:

481—67.5(231B,231C,231D) Medications.

67.5(1) If a program handles, stores, or administers controlled substances, the program shall be registered with the Iowa board of pharmacy as a care facility in accordance with 657—Chapter 10.

67.5(2) Each program shall follow its own written medication policy, which shall include the following:

~~**67.5(1)**~~ a. The program shall not prohibit a tenant from self-administering medications.

~~**67.5(2)**~~ b. A tenant shall self-administer medications unless:

~~a.~~ (1) The tenant or the tenant's legal representative delegates in the occupancy agreement or signed service plan any portion of medication setup to the program.

~~b.~~ (2) The tenant delegates medication setup to someone other than the program.

~~c.~~ (3) The program assumes partial control of medication setup at the direction of the tenant. The medication plan shall not be implemented by the program unless the program's registered nurse deems it appropriate under applicable requirements, including those in Iowa Code section 231C.16A and subrule 67.9(4). The program's registered nurse must agree to the medication plan.

~~**67.5(3)**~~ c. A tenant shall keep medications in the tenant's possession unless the tenant or the tenant's legal representative, if applicable, delegates in the occupancy agreement or signed service plan partial or complete control of medications to the program. The service plan shall include the tenant's choice related to storage.

~~**67.5(4)**~~ d. When a tenant has delegated medication administration to the program, the program shall maintain a list of the tenant's medications. If the tenant self-administers medications, the tenant may choose to maintain a list of medications in the tenant's apartment or to disclose a current list of medications to the program for the purpose of emergency response. If the tenant discloses a medication list to the program in case of an emergency, the tenant remains responsible for the accuracy of the list.

~~**67.5(5)**~~ e. When medication setup is delegated to the program by the tenant, staff via nurse delegation may transfer medications from the original prescription containers or unit dosing into medication reminder boxes or medication cups.

~~**67.5(6)**~~ f. When medications are administered traditionally by the program:

~~a.~~ (1) The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa, ~~or by certified and noncertified staff in accordance with subrule 67.9(4)~~ an individual who has successfully completed a department-approved medication aide or medication manager course and passed the respective department-approved medication aide or manager examination, or by a physician assistant (PA) in accordance with 645—Chapter 327. Injectable medications shall be administered as permitted by Iowa law by a registered nurse, licensed practical nurse, advanced registered nurse practitioner, physician, pharmacist, or physician assistant (PA).

~~b.~~ (2) Medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

~~c.~~ (3) The program shall maintain a list of each tenant's medications and document the medications administered.

~~d.~~ (4) Medications ~~and treatments~~ shall be administered as prescribed by the tenant's physician, advanced registered nurse practitioner or physician assistant.

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

67.5(7) g. Narcotics protocol, including destruction and reconciliation, shall be determined by the program's registered nurse.

ITEM 3. Amend subrule 67.11(3) as follows:

67.11(3) *Time frames for investigation of complaints or program-reported incident reports.* Upon receipt of a complaint or program-reported incident report made in accordance with this rule, the department shall conduct a preliminary review of the complaint or report to determine if a potential regulatory insufficiency has occurred. If a potential regulatory insufficiency exists, the department shall institute a monitoring of the program within ~~20 working days unless there is the possibility of immediate danger, in which case the department shall institute a monitoring of the program within the following time frames:~~ within 2 working days of receipt of the complaint or incident report if there is the possibility of immediate danger, including that the potential regulatory insufficiency has caused or is likely to cause serious injury, harm, impairment, or death to a resident; or within 20 working days of receipt of the complaint or incident report if the potential regulatory insufficiency has caused or may cause harm that negatively impacts a tenant's mental, physical, or psychosocial status or function and is of such consequence to the tenant's well-being that a rapid response is warranted; or within 45 working days of receipt of the complaint or incident report for any other complaint or incident investigation, including a potential regulatory insufficiency that may have caused harm of limited consequence and does not significantly impair the tenant's mental, physical, or psychosocial status or function.

ITEM 4. Amend subparagraph **67.13(3)"a"(1)** as follows:

(1) Elements detailing how the program will correct each regulatory insufficiency, including at the system level;

ITEM 5. Amend subrules 67.17(4) and 67.17(5) as follows:

67.17(4) *Civil penalties due.* The civil penalty shall be paid to the department within 30 days following the program's receipt of the final report and demand letter. The program may appeal in accordance with rule ~~481—67.12(17A,231B,231D)~~ or ~~481—67.14(17A,231C,85GA,SF394)~~. If the program appeals, the civil penalty shall be deemed suspended until the appeal is resolved.

67.17(5) *Reduction of civil penalty amount by 35 percent.* If an assisted living program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if both of the following requirements are met:

a. The program does not request a formal hearing pursuant to rule ~~481—67.12(17A,231B,231D)~~ or ~~481—67.14(17A,231C,85GA,SF394)~~, or withdraws its request for formal hearing within 30 calendar days of the date that the civil penalty was assessed; and

b. The civil penalty is paid and payment is received by the department within 30 calendar days of receipt of the final report.

ITEM 6. Amend subparagraph **67.22(1)"b"(6)** as follows:

(6) Findings of fact, conclusions of law, decisions and orders issued pursuant to rules ~~481—67.10(17A,231B,231C,231D)~~, ~~481—67.12(17A,231B,231C,231D)~~, and ~~481—67.13(17A,231B,231C,231D)~~;

ITEM 7. Amend paragraph **68.16(1)"j"** as follows:

j. Medication lists, which shall be maintained in conformance with ~~481—subrule 67.5(4)~~ ~~481—paragraph 67.5(2)"d"~~;

ITEM 8. Amend subrule 69.2(2) as follows:

69.2(2) *Dementia-specific programs and door alarms.* If a program meets the definition of a dementia-specific assisted living program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule ~~481—69.30(231C)~~, subrules 69.29(2) and 69.29(4), paragraph 69.35(1) "d," and subrules 69.32(2) and 69.32(3), which include the requirements relating to door alarms and specialized locking systems, within 90 days of receiving the final report from the second sequential certification monitoring.

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

ITEM 9. Amend rule 481—69.4(231C) as follows:

481—69.4(231C) Nonaccredited program—application content. An application for certification or recertification of a nonaccredited program shall include the following:

69.4(1) to 69.4(19) No change.

69.4(20) The policy and procedure for addressing sexual relationships between tenants and staff ~~or~~, and between tenants with dementia greater than Stage 5 on the Global Deterioration Scale.

69.4(21) The policy and procedure for extraordinary lifesaving measures, such as cardiopulmonary resuscitation (CPR).

69.4(22) The program shall follow the policies and procedures established.

ITEM 10. Amend rule 481—69.22(231C) as follows:

481—69.22(231C) Evaluation of tenant.

69.22(1) Evaluation prior to occupancy. A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit in order to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale (GDS) shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional ~~or~~, a human service professional, or a licensed practical nurse via nurse delegation.

69.22(2) Evaluation within 30 days of occupancy ~~and with significant change.~~ A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy. The evaluation shall be conducted by a health care professional, a human service professional, or a licensed practical nurse via nurse delegation when the tenant has not exhibited a significant change.

69.22(3) Evaluation annually and with significant change. A program shall ~~also~~ evaluate each tenant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional ~~or~~, a human service professional, or a licensed practical nurse via nurse delegation when the tenant has not exhibited a significant change. A licensed practical nurse ~~may~~ shall not complete the evaluation ~~via nurse delegation~~ when the tenant has ~~not~~ exhibited a significant change.

ITEM 11. Amend paragraph **69.25(1)“j”** as follows:

j. Medication lists, which shall be maintained in conformance with ~~481—subrule 67.5(4)~~ 481—paragraph 67.5(2)“d”;

ITEM 12. Adopt the following **new** paragraph **69.26(3)“e”**:

e. The service plan shall be reviewed, updated if necessary, and signed and dated by all parties at least annually.

ITEM 13. Adopt the following **new** subrule 69.28(8):

69.28(8) All perishable or potentially hazardous food shall be cooked to recommended temperatures and held at safe temperatures of 41°F (5°C) or below, or 135°F (57°C) or above.

ITEM 14. Amend subrule 69.31(1) as follows:

69.31(1) An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making ~~results~~ could result in poor outcomes for the tenant or others; and

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

ITEM 15. Amend paragraph **70.25(1)“j”** as follows:

j. Medication lists, which shall be maintained in conformance with ~~481—subrule 67.5(4)~~
~~481—paragraph 67.5(2)“d”~~;

[Filed 2/21/20, effective 4/15/20]

[Published 3/11/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4977C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rule making related to boiler and pressure vessel codes

The Boiler and Pressure Vessel Board hereby amends Chapter 90, “Administration of the Boiler and Pressure Vessel Program,” and Chapter 91, “General Requirements for All Objects,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 89.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 89.

Purpose and Summary

These amendments adopt by reference the most recent versions of national consensus codes pertaining to boilers and pressure vessels. Adoption of the new codes is due to significant changes concerning the design, manufacture, installation, and inspection requirements. Due to the quantity and wide range of the revisions, please contact the Division of Labor Services with any specific questions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 15, 2020, as **ARC 4863C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on February 20, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 81.

LABOR SERVICES DIVISION[875](cont'd)

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 90.6(1) as follows:

90.6(1) General. All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code ~~(2015)~~ (2019), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

ITEM 2. Amend subrule 91.1(1) as follows:

91.1(1) ASME boiler and pressure vessel codes adopted by reference. The ASME Boiler and Pressure Vessel Code ~~(2017)~~ (2019) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code ~~(2017)~~ (2019) except for objects that meet one of the following criteria:

- a. An object with an ASME stamp and National Board Registration that establish compliance with an earlier version of the ASME Boiler and Pressure Vessel Code;
- b. A miniature boiler installed before March 31, 1967;
- c. A power boiler or unfired steam pressure vessel installed before July 4, 1951; or
- d. A steam heating boiler, hot water heating boiler, or hot water supply boiler installed before July 1, 1960.

ITEM 3. Amend subrules 91.1(3) to 91.1(6) as follows:

91.1(3) Inspection code adopted by reference. The National Board Inspection Code ~~(2017)~~ (2019) is adopted by reference, and reinstallations, installations, alterations, and repairs after ~~September 1, 2018~~ April 15, 2020, shall comply with it.

91.1(4) Electric code adopted by reference. The National Electrical Code ~~(2017)~~ (2020) is adopted by reference, and reinstallations and installations after ~~September 1, 2018~~ April 15, 2020, shall comply with it.

91.1(5) Piping codes adopted by reference. The Power Piping Code, ASME B31.1 ~~(2016)~~ (2018), and the Building Services Piping Code, ASME B31.9 (2017), are adopted by reference, and reinstallations and installations after ~~September 1, 2018~~ April 15, 2020, shall comply with them up to and including the first valve.

91.1(6) Control and safety device code adopted by reference. Controls and Safety Devices for Automatically Fired Boilers (CSD-1) ~~(2015)~~ (2018) is adopted by reference, and reinstallations and installations after ~~September 1, 2018~~ April 15, 2020, shall comply with it. Reporting requirements concerning CSD-1 are set forth at rule 875—90.11(89).

ITEM 4. Amend subrules 91.1(10) and 91.1(11) as follows:

91.1(10) Liquefied petroleum gas code adopted by reference. National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 ~~(2017)~~ (2020), is adopted by reference, and installations and reinstallations after ~~September 1, 2018~~ April 15, 2020, shall comply with it.

LABOR SERVICES DIVISION[875](cont'd)

91.1(11) *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (~~2015~~) (2019), is adopted by reference, and installations and reinstallations after ~~April 1, 2016~~ April 15, 2020, shall comply with it.

[Filed 2/20/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4979C

MEDICINE BOARD[653]

Adopted and Filed

Rule making related to the prohibition of licensing sanctions for student loan debt default or delinquency

The Board of Medicine hereby amends Chapter 2, "Public Records and Fair Information Practices," rescinds Chapter 16, "Student Loan Default or Noncompliance," and amends Chapter 20, "Licensure of Genetic Counselors," and Chapter 23, "Grounds for Discipline," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 147.76 and 2019 Iowa Acts, Senate File 304.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 304.

Purpose and Summary

During the 2019 Legislative Session, changes were made to the Iowa Code that resulted in the repeal of Iowa Code sections 261.121 through 261.127 on July 1, 2019, and prohibited the suspension or revocation of a license issued by the Board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency. This rule making implements the legislative changes as they pertain to the licensing of physicians, surgeons, acupuncturists, and genetic counselors in Iowa.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4806C**. A public hearing was held on January 8, 2020, at 9 a.m. at the Board's office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. One change from the Notice has been made to add a rule implementation sentence to new rule 653—23.2(272C).

Adoption of Rule Making

This rule making was adopted by the Board on February 6, 2020.

Fiscal Impact

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

MEDICINE BOARD[653](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 2.13(4) as follows:

2.13(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit, and the department of revenue, ~~and the college student aid commission~~ through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J, ~~261~~, 272D or 598.

ITEM 2. Rescind and reserve **653—Chapter 16**.

ITEM 3. Rescind rule 653—20.17(272C) and adopt the following **new** rule in lieu thereof:

653—20.17(272C) Student loan default or delinquency—prohibited grounds for discipline. The board shall not suspend or revoke a license issued by the board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

ITEM 4. Rescind and reserve subrule **20.20(27)**.

ITEM 5. Amend rule 653—23.1(272C), introductory paragraph, as follows:

653—23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 252J, ~~261~~, or 272C or 2008 Iowa Acts, Senate File 2428, division II, or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 6. Rescind and reserve subrule **23.1(35)**.

ITEM 7. Adopt the following **new** rule 653—23.2(272C):

653—23.2(272C) Student loan default or delinquency—prohibited grounds for discipline. The board shall not suspend or revoke a license issued by the board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans

MEDICINE BOARD[653](cont'd)

or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

This rule is intended to implement Iowa Code section 272C.4(10).

[Filed 2/19/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4978C

MEDICINE BOARD[653]

Adopted and Filed

Rule making related to training for identifying and reporting child abuse and dependent adult abuse

The Board of Medicine hereby amends Chapter 11, "Continuing Education and Training Requirements," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 272C.2.

State or Federal Law Implemented

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

Purpose and Summary

During the 2019 Legislative Session, Iowa Code sections 232.69 and 235B.16 were amended to revise the training requirements for persons required to report child abuse and dependent adult abuse. Those amendments direct the Iowa Department of Human Services to create and provide this training and increase the frequency with which this training must be completed. This rule making implements this legislation as it pertains to physicians, surgeons, acupuncturists, and genetic counselors licensed by the Board.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4820C**. A public hearing was held on January 8, 2020, at 9 a.m. at the Board's office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on February 6, 2020.

Fiscal Impact

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

Jobs Impact

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

MEDICINE BOARD[653](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 11.4(1) as follows:

11.4(1) Continuing education and training requirements.

a. Continuing education for permanent license or administrative medicine license renewal. Except as provided in these rules, a total of 40 hours of category 1 credit or board-approved equivalent shall be required for biennial renewal of a permanent license or an administrative medicine license. This may include up to 20 hours of credit carried over from the previous license period and category 1 credit acquired within the current license period.

(1) To facilitate license renewal according to birth month, a licensee's first license may be issued for less than 24 months. The number of hours of category 1 credit required of a licensee whose license has been issued for less than 24 months shall be reduced on a pro-rata basis.

(2) A licensee desiring to obtain credit for carryover hours shall report the carryover, not to exceed 20 hours of category 1 credit, on the renewal application.

b. Continuing education for special license renewal. A total of 20 hours of category 1 credit shall be required for annual renewal of a special license. No carryover hours are allowed.

c. Training for identifying and reporting child and dependent adult abuse for permanent or special license renewal. The licensee in Iowa shall complete the training for identifying and reporting child and dependent adult abuse as part of a category 1 credit or an approved training program. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1) "a."

(1) Training to identify child abuse. A licensee who regularly provides primary health care to children in Iowa must complete at least two hours of training provided by the department of human services pursuant to Iowa Code section 232.69(3) "c" in child abuse identification and reporting every ~~five~~ three years. If a licensee completes at least one hour of additional child abuse identification and reporting training prior to the three-year expiration period, the licensee shall be deemed in compliance with the training requirements of this subparagraph for an additional three years. "A licensee who regularly provides primary health care to children" means all emergency physicians, family physicians, general practice physicians, pediatricians, and psychiatrists, and any other physician who regularly provides primary health care to children.

(2) Training to identify dependent adult abuse. A licensee who regularly provides primary health care to adults in Iowa must complete at least two hours of training provided by the department of human services pursuant to Iowa Code section 235B.16(5) "c" in dependent adult abuse identification and reporting every ~~five~~ three years. If a licensee completes at least one hour of additional dependent adult abuse identification and reporting training prior to the three-year expiration period, the licensee shall be deemed in compliance with the training requirements of this subparagraph for an additional

MEDICINE BOARD[653](cont'd)

three years. “A licensee who regularly provides primary health care to adults” means all emergency physicians, family physicians, general practice physicians, internists, obstetricians, gynecologists, and psychiatrists, and any other physician who regularly provides primary health care to adults.

~~(3) Combined training to identify child and dependent adult abuse. A licensee who regularly provides primary health care to adults and children in Iowa must complete at least two hours of training in the identification and reporting of abuse in dependent adults and children every five years. The training may be completed through separate courses as identified in subparagraphs 11.4(1) “e”(1) and (2) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. “A licensee who regularly provides primary health care to children and adults” means all emergency physicians, family physicians, general practice physicians, internists, and psychiatrists, and any other physician who regularly provides primary health care to children and adults.~~

d. Training for chronic pain management for permanent or special license renewal. The licensee shall complete the training for chronic pain management as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1) “a.”

(1) A licensee who has prescribed opioids to a patient during the previous license period must complete at least two hours of category 1 credit regarding the United States Centers for Disease Control and Prevention (CDC) guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, every five years. A licensee may attest as part of the license renewal process that the licensee is not subject to the requirement to receive continuing medical education credits pursuant to this paragraph, due to the fact that the licensee did not prescribe opioids to a patient during the previous licensure cycle.

(2) A licensee who had a permanent or special license on January 1, 2019, has until January 1, 2024, to complete the chronic pain management training and shall then complete the training once every five years thereafter.

e. Training for end-of-life care for permanent or special license renewal. The licensee shall complete the training for end-of-life care as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1) “a.”

(1) A licensee who regularly provides direct patient care to actively dying patients in Iowa must complete at least two hours of category 1 credit for end-of-life care every five years.

(2) A licensee who had a permanent or special license on January 1, 2019, has until January 1, 2024, to complete the end-of-life care training and shall then complete the training once every five years thereafter.

ITEM 2. Amend paragraph **11.4(2)“b,”** introductory paragraph, as follows:

b. The requirements for training on ~~identifying and reporting abuse~~, chronic pain management and end-of-life care for license renewal shall be suspended for a licensee who provides evidence for:

ITEM 3. Amend subrule 11.4(7) as follows:

11.4(7) Audits. The board may audit continuing education and training documentation at any time within the ~~five-year~~ five- or three-year period, as applicable. If the board conducts an audit of continuing education and training, a licensee shall respond to the board and provide all materials requested, within 30 days of a request made by board staff or within the extension of time if one has been granted.

[Filed 2/19/20, effective 4/15/20]

[Published 3/11/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4980C**MEDICINE BOARD[653]****Adopted and Filed****Rule making related to expedited licensure for spouses of active duty military service members**

The Board of Medicine hereby amends Chapter 18, “Military Service and Veteran Reciprocity,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 272C.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 288.

Purpose and Summary

During the 2019 Legislative Session, a change was made to the Iowa Code to require agencies to establish procedures to expedite the licensing of an individual who is licensed in a similar profession or occupation in another state and who is the spouse of an active duty member of the military forces of the United States. These amendments implement this change as it pertains to physicians, surgeons, acupuncturists, and genetic counselors.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4805C**. A public hearing was held on January 8, 2020, at 9 a.m. at the Board’s office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on February 6, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Review by Administrative Rules Review Committee

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

MEDICINE BOARD[653](cont'd)

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 653—18.1(85GA,ch1116) as follows:

653—18.1(85GA, ~~ch1116~~ 272C) Definitions. As used in this chapter:

“*License*” means a license issued by the board, including a permanent medical license, resident physician license, special physician license, temporary physician license or licensed acupuncturist license.

“*Military service*” means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

“*Military service applicant*” means an individual who is requesting credit toward licensure that is subject to the jurisdiction of the board for military education, training, or service obtained or completed in military service including, but not limited to, a medical physician or surgeon, osteopathic physician or surgeon, or licensed acupuncturist.

“*Provisional license*” means a license that is issued by the board to a veteran who is licensed in another jurisdiction in which licensure requirements are not substantially equivalent to those required in Iowa and that will allow the veteran an opportunity to obtain additional experience or education required for licensure in Iowa. A provisional license may be issued for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare or safety of the public.

“*Spouse*” means the spouse of an active duty member of the military forces of the United States.

“*Veteran*” means an individual who meets the definition of “veteran” in Iowa Code section 35.1(2).

ITEM 2. Amend rule 653—18.3(85GA,ch1116) as follows:

653—18.3(85GA, ~~ch1116~~ 272C) Veteran and spouse reciprocity.

18.3(1) A veteran or spouse with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran or spouse must pass any examinations required for licensure to be eligible for licensure through reciprocity. A fully completed application for licensure submitted by a ~~veteran~~ an applicant under this subrule shall be given priority and shall be expedited.

18.3(2) An application for licensure by reciprocity shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including but not limited to completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. In addition, the applicant shall provide such documentation as is reasonably needed to verify the applicant’s status as a veteran under Iowa Code section 35.1(2) or as a spouse.

18.3(3) Upon receipt of a fully completed licensure application, the board shall promptly determine if the professional or occupational licensing requirements of the jurisdiction where the veteran or spouse is licensed are substantially equivalent to the licensing requirements in Iowa. The board may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, and postgraduate experiences.

18.3(4) The board shall promptly grant a license to the veteran or spouse if the veteran or spouse is licensed in the same or similar profession in another jurisdiction whose licensure requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example, the applicant’s disciplinary or malpractice history or criminal background.

18.3(5) If the board determines that the licensing requirements in the jurisdiction in which the veteran or spouse is licensed are not substantially equivalent to those required in Iowa, the board shall promptly inform the ~~veteran~~ applicant of the additional experience, education, or examinations required

MEDICINE BOARD[653](cont'd)

for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or malpractice history or criminal background, the following shall apply:

a. If a ~~veteran~~ the applicant has not passed the required examination(s) for licensure, the ~~veteran applicant~~ may request that the application be placed in pending status.

b. to d. No change.

18.3(6) A veteran or spouse who is aggrieved by the board's decision to deny an application for a reciprocal license or a provisional license or is aggrieved by the terms under which a provisional license will be granted may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. There shall be no fees or costs assessed against the veteran or spouse in connection with a contested case conducted pursuant to this subrule.

ITEM 3. Amend **653—Chapter 18**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 147, 148, 148E, and 272C ~~and 2014 Iowa Acts, chapter 1116, division VI.~~

[Filed 2/19/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4981C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to continuing education and mandatory reporting requirements

The Board of Social Work hereby amends Chapter 280, "Licensure of Social Workers," and Chapter 281, "Continuing Education for Social Workers," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 154C.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 606, and 2019 Iowa Acts, House File 731.

Purpose and Summary

This rule making implements 2019 Iowa Acts, House File 606, which required the Board to not limit the number of hours of continuing education licensees can earn online, and 2019 Iowa Acts, House File 731, which changed Iowa's mandatory reporting requirements. The amendments to Chapter 281 remove the Board's requirement that no more than 12 hours of continuing education can be completed via independent study. The amendment to Chapter 280 changes the mandatory reporting rule to coincide with changes passed in House File 731.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 23, 2019, as **ARC 4727C**. A public hearing was held on November 12, 2019, at 8 a.m. in the Fifth Floor Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Adoption of Rule Making

This rule making was adopted by the Board on February 10, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 280.9(3) as follows:

280.9(3) Mandatory reporting of child abuse and dependent adult abuse.

a. ~~A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “f.”~~ Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats children in Iowa shall complete an initial two-hour child abuse mandatory reporter training course offered by the department of human services within six months of employment, or prior to the expiration of a current certificate. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certificate.

b. ~~A licensee who regularly examines, attends, counsels or treats dependent adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “f.”~~ Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats adults in Iowa shall complete an initial two-hour dependent adult abuse mandatory reporter training course offered by the department of human services within six months of employment, or prior to the expiration of a current certificate. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certificate.

c. ~~A licensee who regularly examines, attends, counsels or treats both dependent adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting in dependent adults and children or condition(s) for waiver of this requirement as identified in paragraph “f.”~~

d. ~~Training may be completed through separate courses as identified in paragraphs “a” and “b” or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~e.~~ The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs “a” to “e,” including program date(s), content, duration, and proof of participation.

~~f. c.~~ The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including waiver of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 281.

~~g. d.~~ The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.” and “b.”

ITEM 2. Rescind the definition of “Independent study” in rule 645—281.1(154C).

ITEM 3. Rescind paragraph 281.3(2)“b.”

ITEM 4. Reletter paragraphs 281.3(2)“c” to “k” as 281.3(2)“b” to “j.”

[Filed 2/11/20, effective 4/15/20]

[Published 3/11/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4982C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to child and dependent adult abuse mandatory reporter training

The Board of Athletic Training hereby amends Chapter 351, “Licensure of Athletic Trainers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 232.69(3)“e,” 235B.16(5)“e,” and 272C.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 232.69 and 235B.16 as amended by 2019 Iowa Acts, House File 731.

Purpose and Summary

2019 Iowa Acts, House File 731, amended Iowa Code sections 232.69 and 235B.16, which govern mandatory training in child and dependent adult abuse for certain professionals. This rule making amends the Board’s requirements for mandatory training in child and dependent adult abuse to reflect the statutory changes and requires that athletic trainers who must make reports for child and dependent adult abuse comply with the training requirements provided in the amended Iowa Code sections 232.69 and 235B.16 every three years. This rule making also updates subrule 351.9(4) to remove a reference to a rescinded rule provision.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4690C**. A public hearing was held on October 29, 2019, at 10 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on December 10, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making action is adopted:

Amend subrule 351.9(4) as follows:

351.9(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of ~~two hours~~ of training in child abuse identification and reporting as required by Iowa Code section 232.69(3) "b" in the previous ~~five~~ three years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of ~~two hours~~ of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) "b" in the previous ~~five~~ three years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. ~~A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."~~

~~Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~dependent adult abuse. The course course(s) shall be a the curriculum approved provided by the Iowa department of public health abuse education review panel human services.~~

d. The licensee shall maintain written documentation for ~~five~~ three years after mandatory training as identified in paragraphs “a” to “c,” including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, ~~including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645 Chapter 352.~~

f. The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.”

[Filed 2/21/20, effective 4/15/20]

[Published 3/11/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4983C

**TELECOMMUNICATIONS AND TECHNOLOGY
COMMISSION, IOWA[751]**

Adopted and Filed

**Rule making related to education telecommunications council and regional
telecommunications councils**

The Iowa Telecommunications and Technology Commission hereby amends Chapter 1, “Description of Organization,” rescinds Chapter 8, “Scheduling Disputes,” and amends Chapter 15, “Advisory Councils, Committees and Groups,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 8D.3(3)“b.”

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 367.

Purpose and Summary

This rule making implements the statutory changes made by 2019 Iowa Acts, Senate File 367, by eliminating rules associated with the Education Telecommunications Council and the Regional Telecommunications Councils. These entities were eliminated by Senate File 367.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 28, 2019, as **ARC 4626C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on February 20, 2020.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 751—Chapter 9.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

- ITEM 1. Rescind and reserve rule **751—1.4(17A,8D)**.
- ITEM 2. Rescind and reserve **751—Chapter 8**.
- ITEM 3. Rescind and reserve rule **751—15.4(8D)**.
- ITEM 4. Rescind and reserve rule **751—15.5(8D)**.

[Filed 2/20/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4984C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to outdoor advertising signs

The Department of Transportation hereby amends Chapter 117, "Outdoor Advertising," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 306B.3, 306C.11, 306D.4 and 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 306B and 306C; Iowa Code section 306D.4; 23 U.S.C. 131; and 23 CFR 750.705(h).

TRANSPORTATION DEPARTMENT[761](cont'd)

Purpose and Summary

This rule making amends Chapter 117 and concerns the regulation of outdoor advertising signs on private property. The amendments ease some placement restrictions for companies that are applying for new sign locations, remove all fees for signs measuring 32 square feet or less, and alter the method used to determine when a sign is destroyed. The following paragraphs explain the amendments in more detail:

Definitions. The amendments add definitions of “destroyed” and “widening” due to the changes included within subrule 117.5(5) and new subrule 117.6(10).

The definition of “modification” is amended to exclude situations where the trim on the advertising sign has been reduced or eliminated. Modern industry practice is to use less trim than was used for the advertising signs constructed in the 1970s and 1980s. Provided the actual copy size for the advertisement remains the same, the size of the trim is not a factor that will be used to determine if a sign has been modified. This exclusion will eliminate the cancellation of a permit for a reason which is not of substantial importance.

The definition of “nonconforming sign” is amended to more accurately reflect the definition in the Code of Federal Regulations (CFR). The current definition narrows the eligible situations to only those regarding size and spacing requirements. In contrast, 23 CFR 750.707(b) and 23 CFR 750.707(d)(4) include all legally erected and lawfully maintained signs which subsequently fail to meet state requirements. The Department has followed the more inclusive and traditionally accepted definition of “nonconforming” set forth in the federal regulations.

Effect of scenic byways. This rule making amends paragraph 117.3(1)“1” to state that although the erection of advertising signs is prohibited along scenic byways, the signs that already exist at the time a highway is designated as a scenic byway may remain in existence subject to normal permitting requirements. Federal law, 23 U.S.C. 131(s), prohibits the erection of new advertising signs, not the continued maintenance and permitting of signs already in existence along the scenic byways.

LED sign spacing. The amendments make changes to subrule 117.5(5) to establish the same spacing requirements for LED signs as standard traditional signs. The Federal Highway Administration conducted an eye-glance tracking study which found that overall attention to the forward roadway was not decreased when properly regulated LED signs were present in the surrounding environment. Therefore, a more restrictive spacing standard for LED signs is not necessary. LED signs, however, will continue to be regulated by subrule 117.3(1) so that messages do not flash, scroll, move, or change at a rate of less than eight seconds per message in accordance with the federal guidance issued in September 2007.

Spacing requirements between interchanges. This rule making amends subrule 117.5(5) concerning areas between interchanges where continuous acceleration and deceleration lanes exist. Rather than having these areas completely blocked out for advertising purposes, this amendment will make these areas eligible for permitting provided that the placement of the sign is not within 250 feet of the point at which lanes join/separate with the mainline. This standard will be more consistent with the rest of the subrule because only 250 feet is protected from the ramp taper in cases where the ramp does taper to a close. Driver attention at places where merging is necessary is likely higher than where merging is not required. Therefore, a more restrictive standard for the latter does not serve a compelling safety interest, and it is not required by federal law. Due to these amendments to subrule 117.5(5), a definition of “widening” is added in rule 761—117.1(306B,306C) to describe the point where the measurement begins for the 250 feet of protection for each scenario.

Applications required for each face. This rule making amends subrule 117.6(1) so that, without exception, permits are required for each face of an advertising sign. The original purpose behind allowing owners of smaller signs to obtain just one permit for a sign with a face on each side was to cap the fees (initial fee and annual renewal fee) to one permit only. However, because of the amendments to subrule 117.6(2) to completely exempt owners of small signs from any fees at all, there is less of a need to retain this exception. In addition, the Department’s electronic permitting system associates a unique permit number for each sign face for billing and spacing purposes.

TRANSPORTATION DEPARTMENT[761](cont'd)

Exempt fees for small signs. This rule making amends subrule 117.6(2) to exempt fees for applications and renewals for small signs measuring 32 square feet or less. Currently, any sign, regardless of size, is subject to the initial application fee of \$100 per face and the annual renewal fees in accordance with the fee and size schedule in subrule 117.6(2). Application and renewal fees are intended to help cover the cost of field reviews and program administration, but the effect of not charging fees for signs of this size will be minimal because so few applications are received. Small business operators who use small signs for advertising will be able to obtain permits in conforming areas at no charge. Local permit fees may vary.

Outdoor advertising permits—not transferrable and protection of property rights. The amendments add a sentence to subrule 117.6(3) to make clear that permits are not transferrable to other advertising signs or to other locations. While it is rare, Department staff have found permit plates which have been moved from one sign to another, or signs (with permit plates attached) moved to other locations. The application forms identify a precise location and the subsequent field reviews by Department staff are conducted to ensure that location requirements are met.

Language is also added to subrule 117.6(3) for the protection of property rights (for advertising purposes) when highway improvement projects are pending. Currently, if a highway improvement project is planned and the future design will result in a change in eligibility of an area for the issuance of advertising permits, those issuances cease once the Department completes the plans for the project and appraisers and buyers begin to contact property owners for the acquisition of additional right-of-way. Because this process can occur months or years in advance of the actual construction work, property owners and sign companies are being prevented from what could be construed as a legal use of property at the time the application is made. The new language narrows the window of time for denials so that permits may be issued for conforming locations up until the time when contact occurs with the property owner for the purposes of acquiring the additional right-of-way at the site of the proposed sign.

Destroyed sign. This rule making adds new subrule 117.6(10), which alters the method of handling for signs which have been damaged by storms. The Federal Highway Administration requires states to have a method of determining when a nonconforming sign is destroyed and to have it removed. Existing protocol for Iowa is to assess damage following a storm to see if the repair cost for damaged plywood, poles, stringers, vinyl wrap, light ballasts, etc., exceeds 60 percent of the replacement cost (see definition of “reconstruction” in Iowa Code section 306C.10). If so, the permit is subject to cancellation and, if the area is not conforming, removal of the sign must follow. Damage assessments are labor intensive, are subjective, and cause delays in repairs, which can frustrate companies, landowners, and advertisers. In recent years, the Federal Highway Administration has worked with state regulators and stakeholders (Scenic America and Outdoor Advertising Association of America) to develop an easy “bright line” to follow instead of using the more common method of having regulators sort through damaged parts to determine whether they are reusable and attempt to assign values to those parts, which may be cause for litigation. This new method involves a simple count of the broken support poles to determine if a given percentage of the total is reached. If so, the sign is considered destroyed. A definition of “destroyed” (60 percent of supports broken) is added in rule 761—117.1(306B,306C), which falls within the Federal Highway Administration’s recommended guidelines. New subrule 117.6(10) is added to replace the existing method of determining when a permit needs to be revoked and a sign needs to be removed.

Finally, the amendments amend the chapter’s implementation sentence to include references to Iowa Code section 306D.4, 23 U.S.C. 131, and 23 CFR 750.705(h).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 15, 2020, as **ARC 4868C**. No public comments were received. An additional item, Item 11, was added to correct a cross reference within subrule 117.7(3). The subsequent items were then renumbered as appropriate.

TRANSPORTATION DEPARTMENT[761](cont'd)

Adoption of Rule Making

This rule making was adopted by the Department on February 19, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. Although applications for advertising signs measuring 32 square feet or less in size will no longer be subject to fees, the average annual number of new advertising signs erected for this size has been fewer than five for the last eight years. Therefore, the effect to the Highway Beautification Fund will be minimal.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Destroyed” and “Widening” in rule **761—117.1(306B,306C)**:

“*Destroyed*” means that at least 60 percent of the supports are broken, if wooden, or broken, bent or twisted, if metal, such that normal repair practices would call for the replacement of the damaged supports.

“*Widening*” means the point at which it is detectable that a deceleration or exit ramp is beginning to form alongside the main traveled way, or an acceleration or merging ramp has tapered to a close alongside the main traveled way. In the case where an entrance ramp becomes an auxiliary lane and the auxiliary lane becomes an exit ramp at the adjacent interchange, the widening shall be the point at which a deceleration ramp completely separates from the main traveled way as evidenced by the inside lane marking of such ramp, or an acceleration ramp joins with the main traveled way as evidenced by the inside lane marking of the ramp intersecting with the outside lane marking of the main traveled way.

ITEM 2. Amend rule **761—117.1(306B,306C)**, definitions of “Modification” and “Nonconforming sign,” as follows:

“*Modification*” means any addition to or change in dimensions, lighting, structure or advertising face, except as incidental to the customary maintenance of an advertising device.

1. A change in the number or type of support posts is a modification. A change in dimensions is a modification. However, the addition of extensions or cutouts, including forward projecting, is not a modification if the extensions or cutouts are added for a period of 90 days or less and if they are illuminated only by existing sign lighting and do not contain internal lighting.

2. A lawful change in advertising message is not a modification. The use of a vinyl overlay or wrap on either a poster panel or paint unit is a change in advertising message, not a modification.

TRANSPORTATION DEPARTMENT[761](cont'd)

3. On an advertising device that conforms to all current requirements, the replacement of one metal-framed face with another metal-framed face of the same size, using dissimilar component parts or assembly methods, or both, is not a modification.

4. The addition of LED display capabilities to an advertising device is a modification.

5. The elimination of trim surrounding the area used for advertising copy is not a modification, provided the advertising copy retains the same dimensions as the original advertising copy.

“Nonconforming sign” means an advertising device that was lawfully erected and continues to be lawfully maintained, but that does not comply fully with current ~~size and spacing~~ requirements due to changed conditions, such as a change in zoning, establishment of a new highway, or a similar change that affects compliance.

ITEM 3. Amend subrule 117.2(2) as follows:

117.2(2) Contact information. Inquiries, requests for forms, and applications regarding this chapter shall be directed to the Advertising Management Section, ~~Office of~~ Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 4. Amend rule ~~761—117.3(306B,306C)~~, parenthetical implementation statute, as follows:

761—117.3(306B,306C,306D) General criteria.

ITEM 5. Amend paragraph **117.3(1)“1”** as follows:

l. No off-premises advertising device may be erected within the adjacent area of any primary highway that has been designated a scenic highway or scenic byway if the advertising device will be visible from the highway. However, if the off-premises advertising device was in existence at the time of the designation, subsequent permitting may occur in accordance with Iowa Code section 306C.18.

ITEM 6. Amend subrule 117.5(5) as follows:

117.5(5) Advertising devices erected after July 1, 1972. Except as otherwise provided in this chapter, an advertising device which is visible from the main traveled way of any primary highway shall not be erected after July 1, 1972, or subsequently maintained within the adjacent area unless the advertising device complies with the following:

a. and *b.* No change.

c. Spacing within city—interstate and freeway-primary highway. Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) The advertising device shall not be located within 250 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 500 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite from the nearest point of widening for a lane constructed for the purpose of acceleration or deceleration of traffic movement to or from the main traveled way to the advertising device. The measurement shall be taken parallel to the centerline of the main traveled way and shall be taken from whichever point of widening extends the furthest from the interchange.

~~(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.~~

d. Spacing outside city—interstate and freeway-primary highway. Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) The advertising device shall not be located within 500 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display,~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~the advertising device shall not be located within 1000 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite from the nearest point of widening for a lane constructed for the purpose of acceleration or deceleration of traffic movement to or from the main traveled way to the advertising device. The measurement shall be taken parallel to the centerline of the main traveled way and shall be taken from whichever point of widening extends the furthest from the interchange.

~~(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.~~

e. Spacing within city—nonfreeway-primary highway. Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a nonfreeway-primary highway:

(1) The advertising device shall not be located within 100 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 500 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) No change.

f. Spacing outside city—nonfreeway-primary highway. Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a nonfreeway-primary highway:

(1) The advertising device shall not be located within 300 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 1000 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) No change.

g. to l. No change.

ITEM 7. Amend paragraph **117.6(1)“a”** as follows:

a. A permit is required for each face of an advertising device; thus, a permit application must be submitted for each face. Three permits are required for a tri-face device if all three faces are visible from the main traveled way of a primary highway. ~~However, only one application and permit are required for a back-to-back advertising device that identifies the same business or service on each face if each face is no larger than 8 feet in width or height and 32 square feet in area.~~

ITEM 8. Amend subrule 117.6(2) as follows:

117.6(2) Fees. Fees are applicable to all advertising devices measuring over 32 square feet in size.

a. No change.

b. The annual renewal fee for each permit, due on or before June 30 of each year, is as follows:

| Area of Sign | Annual Renewal Fee |
|-------------------------------------|--------------------|
| Up 33 to 375 square feet | \$15 |
| 376 to 999 square feet | \$25 |
| 1000 square feet or more | \$50 |

For tri-vision signs, the area shall be calculated by multiplying the area of the face by three.

(1) and (2) No change.

c. and *d.* No change.

ITEM 9. Amend subrule 117.6(3) as follows:

117.6(3) Permits to be issued.

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a. The department shall issue an outdoor advertising permit in accordance with Iowa Code section 306C.18. Permits shall not be transferrable to other advertising devices or to other locations.

b. No change.

c. The department shall not prevent nor unnecessarily delay the issuance of a permit for the reason of a proposed future highway improvement project, except under any of the following conditions:

(1) The property upon which the advertising device is proposed has been appraised for the purposes of acquisition.

(2) Contact by department staff has been made with the property owner regarding compensation for the affected area.

(3) The placement of the advertising device would fail to meet the requirements of an existing corridor preservation plan in effect for the proposed location.

(4) A construction contract for the project has been initiated by the department.

ITEM 10. Adopt the following **new** subrule 117.6(10):

117.6(10) Destroyed sign.

a. The permit for an advertising device which has been destroyed shall be revoked.

b. An advertising device which has been destroyed is in a condition which, if repaired, would meet the definition of reconstruction in Iowa Code section 306C.10 and is subject to subrule 117.6(5).

c. An advertising device which has been damaged, but not destroyed, may be repaired. The repair shall not be deemed an act of reconstruction.

ITEM 11. Amend subrule 117.7(3) as follows:

117.7(3) Service club and religious notices. Service club and religious notices may be placed upon private property with the permission of the land owner provided the notice complies with the definition of “service club or religious notice” in rule 761—117.1(306B,306C), complies with the general criteria of rule 761—117.3(306B,306C,306D), and does not exceed eight square feet in area.

ITEM 12. Amend rule 761—117.10(17A,306C) as follows:

761—117.10(17A,306C) Contested cases.

117.10(1) An applicant who has been denied an outdoor advertising permit by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the ~~office of~~ traffic and safety bureau at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the department’s mailing of the letter denying the application.

117.10(2) The owner of an outdoor advertising permit which has been revoked or canceled by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the ~~office of~~ traffic and safety bureau at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the owner’s receipt of the revocation notice issued by the department.

117.10(3) No change.

ITEM 13. Amend **761—Chapter 117**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 306B and 306C and section 306D.4, 23 U.S.C. 131, and 23 CFR 750.705(h).

[Filed 2/19/20, effective 4/15/20]

[Published 3/11/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4960C**TRANSPORTATION DEPARTMENT[761]****Adopted and Filed****Rule making related to towable recreational vehicles,
special farm trucks, and certifications of trust**

The Department of Transportation hereby amends Chapter 400, “Vehicle Registration and Certificate of Title,” and Chapter 425, “Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321.466 as amended by 2019 Iowa Acts, House File 769, section 4; section 322C.4 as amended by 2019 Iowa Acts, House File 391; chapter 322C as amended by 2019 Iowa Acts, Senate File 435, sections 2 to 8; and section 633A.4604 as amended by 2019 Iowa Acts, Senate File 112.

Purpose and Summary

The amendments to Chapters 400 and 425 correct the name of the Vehicle and Motor Carrier Services Bureau and conform the rules with 2019 Iowa Acts, House File 391; 2019 Iowa Acts, House File 769, section 4; 2019 Iowa Acts, Senate File 112; and 2019 Iowa Acts, Senate File 435, sections 2 to 8. The specific Iowa Acts referenced amend Iowa Code sections related to certification of trust documents accepted for vehicle transactions, special farm truck weights, towable recreational vehicle dealers and surety bond amounts for towable recreational vehicle dealers. The following paragraphs further explain the amendments.

Towable recreational vehicles. This rule making amends rule 761—400.2(321) to provide that for purposes of registration and titling under Chapter 400 and Iowa Code chapter 321, a towable recreational vehicle as defined in Iowa Code section 322C.2 as amended by 2019 Iowa Acts, Senate File 435, section 2, shall be considered a travel trailer or fifth-wheel travel trailer, as those terms are defined in Iowa Code section 321.1, as applicable.

This rule making amends Chapter 425, regarding motor vehicle and travel trailer dealers, to change the reference to a “travel trailer dealer” to instead reference a “towable recreational vehicle dealer” throughout the chapter and to raise the required surety bond amount for a towable recreational vehicle dealer from \$25,000 to \$75,000. These amendments align with 2019 Iowa Acts, Senate File 435, sections 2 to 8, and 2019 Iowa Acts, House File 391.

Certifications of trust. This rule making amends subrules 400.4(9) and 400.14(3) relating to vehicle transaction applications by a trust and vehicle ownership by a trust to incorporate provisions related to certification of trust documents under Iowa Code section 633A.4604 as amended by 2019 Iowa Acts, Senate File 112. The legislation provides that a certification of trust must be signed by a currently acting trustee or the attorney of an acting trustee. Prior to the legislation, the certification of trust was required to be signed by all the currently acting trustees. The intent of the legislation is to make it easier for a single trustee to conduct the business of the trust without requiring the signature of all trustees, and that is also the goal of these amendments in implementing the signature requirements when a vehicle is owned by a trust.

Special farm truck weights. This rule making amends rule 761—400.47(321) relating to special farm truck weights to incorporate the requirements in Iowa Code section 321.466(4) as amended by 2019 Iowa Acts, House File 769, section 4, providing that the gross weight of a special farm truck

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operating on a public highway shall not exceed the maximum gross weight allowed under Iowa Code section 321.463(6).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4770C**.

The Department received comments from the Iowa State Bar Association concerning the Department's proposed amendments to subrule 400.4(9) and paragraph 400.14(3)"b."

The Iowa State Bar Association felt that the proposed amendments made it appear as if the Department would only require one signature on an application or title for a vehicle owned by a trust, even if the trust or certification of trust document required multiple trustees to sign all documents on behalf of the trust. Because the proposed amendments were not meant to subvert the intent of the trust by requiring fewer signatories than are required, the Department is making additional changes to subrule 400.4(9) and paragraph 400.14(3)"b" to incorporate the edits suggested by the Iowa State Bar Association, which also clarify that the applicant or transferor shall provide the document specifying the required signatories for the trust to the Department, and that if neither document specifies the required signatories, then the Department may accept the signature of any trustee or attorney for the trustee.

Adoption of Rule Making

This rule making was adopted by the Department on February 11, 2020.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule **761—400.1(321)**, definition of "Manufacturer's certificate of origin," as follows:

"*Manufacturer's certificate of origin*" means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named and that the transfer is the first transfer of the vehicle in ordinary trade and commerce.

1. The terms "manufacturer's statement," "importer's statement or certificate," "MSO" and "MCO" shall be synonymous with the term "manufacturer's certificate of origin."

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2. In addition to the requirements of Iowa Code subsection 321.45(1), the certificate shall contain a description of the vehicle which includes the make, model, style and vehicle identification number. The description of a motorized bicycle shall also specify the maximum speed.

3. For 1992 and subsequent model year vehicles, the form used for manufacturers' certificates of origin shall be the universal form adopted in 1990 by the American Association of Motor Vehicle Administrators (AAMVA). This requirement does not apply to trailer-type vehicles. A copy of this universal form may be obtained from the ~~office of~~ vehicle and motor carrier services bureau at the address in subrule 400.6(1).

ITEM 2. Amend rule 761—400.2(321) as follows:

761—400.2(321) Vehicle registration and certificate of title—general provisions.

400.2(1) to 400.2(8) No change.

400.2(9) Towable recreational vehicles. For purposes of registration and titling under Iowa Code chapter 321 and this chapter, a towable recreational vehicle as defined in Iowa Code section 322C.2 shall be considered a travel trailer or fifth-wheel travel trailer, as those terms are defined in Iowa Code section 321.1, as applicable.

This rule is intended to implement Iowa Code sections 321.18 to 321.22, 321.24, ~~and 321.123~~ and 322C.2(19).

ITEM 3. Amend subrule 400.4(9) as follows:

400.4(9) Applications in the name of trusts. An application in the name of a trust shall be accompanied by a copy of all documents creating or otherwise affecting the trust or by the certification of trust as defined in Iowa Code section 633A.4604. The certification of trust may be signed by any trustee or the attorney for any trustee. The application shall be signed by ~~each trustee unless otherwise~~ the number of trustees as specified in the trust agreement or the certification of trust and the applicant shall provide the department with the document specifying the required signatories for the trust. The If neither the trust nor the certification of trust specifies the required signatories, the application may be signed by any trustee or attorney for the trustee. Each signature on the application shall be followed by the words “as trustee.” “as trustee” or “as attorney for the trustee.”

ITEM 4. Amend rule 761—400.5(321) as follows:

761—400.5(321) Where to apply for registration or certificate of title.

400.5(1) No change.

400.5(2) Application shall be made to the department's ~~office of~~ vehicle and motor carrier services bureau for the following:

a. to *g.* No change.

400.5(3) Application for a certificate of title for a vehicle subject to apportioned registration under Iowa Code chapter 326 may be made to either the county treasurer or to the department's ~~office of~~ vehicle and motor carrier services bureau.

400.5(4) Application for apportioned registration shall be made to the department's ~~office of~~ vehicle and motor carrier services bureau. See 761—Chapter 500.

This rule is intended to implement Iowa Code sections 321.18 to 321.23, 321.46(2), and 321.170.

ITEM 5. Amend subrule 400.6(1) as follows:

400.6(1) Information and forms for vehicle registration, certificate of title, or other procedures covered under Iowa Code sections 321.18 to 321.173 may be obtained from the county treasurer or by mail from the ~~Office of~~ Vehicle and Motor Carrier Services Bureau, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa 50021; by telephone at (515)237-3264; or on the department's website at www.iowadot.gov.

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ITEM 6. Amend paragraph **400.13(1)“a”** as follows:

a. The applicant shall submit a bond application to the ~~office of vehicle and motor carrier services bureau~~ on a form prescribed by the department. The application shall be accompanied by evidence of ownership of the vehicle.

ITEM 7. Amend subrule 400.14(3) as follows:

400.14(3) Organizational ownership.

a. No change.

b. When a vehicle is owned by a trust, ~~the signature of each trustee is required, unless otherwise~~ the title shall be accompanied by a copy of all documents creating or otherwise affecting the trust or by the certification of trust as defined in Iowa Code section 633A.4604. The certification of trust may be signed by any trustee or the attorney for any trustee. The title shall be signed by the number of trustees as specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604 and the transferor shall provide the department with the document specifying the required signatories for the trust. ~~The~~ If neither the trust nor the certification of trust specifies the required signatories, the title may be signed by any trustee or attorney for the trustee. Each signature on the title shall be followed by the words “as trustee.” In addition, the title shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification of trust. “as trustee” or “as attorney for the trustee.”

ITEM 8. Amend rule 761—400.47(321) as follows:

761—400.47(321) Raw farm products. A vehicle may be operated with a gross weight of 25 percent in excess of the gross weight for which it is registered when transporting a load of raw farm products or soil fertilizers under Iowa Code section 321.466 except that nothing in this rule shall be construed to allow operation of a special truck on the public highways with a gross weight exceeding the maximum gross weight allowed under Iowa Code section 321.463(6). In addition, the following products shall be considered raw farm products. This list shall not be deemed conclusive and shall not exclude other commodities which might be considered raw farm products:

| | |
|----------------------------------|--------------------------|
| Animals which are dead | Hides |
| Berries, fresh | Honey, comb or extracted |
| Blood | Melons |
| Corn, ear corn including hybrids | Milk, raw |
| Corn, shelled | Nursery stock |
| Corn, cobs | Potatoes |
| Cream, separated | Peat |
| Eggs, fresh or frozen in shell | Poultry, live |
| Flax | Saw logs |
| Flaxseed | Sod |
| Fodder | Soybeans |
| Fruit, fresh | Straw, baled or loose |
| Grain, threshed or unthreshed | Vegetables, fresh |
| Hair | Wood, cord or stove wood |
| Hay, baled or loose | Wool |

This rule is intended to implement Iowa Code sections 321.466(4) and 321.466(5).

ITEM 9. Amend rule 761—400.50(321,326) as follows:

761—400.50(321,326) Refund of registration fees.

400.50(1) Vehicles registered by county treasurer.

a. to d. No change.

e. If the claim for refund is for excess credit or no replacement vehicle:

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- (1) No change.
- (2) The claim for refund shall be approved or denied by the ~~office of~~ vehicle and motor carrier services bureau.

f. All other claims for refund shall be forwarded to the ~~office of~~ vehicle and motor carrier services bureau for processing.

400.50(2) Vehicles registered by department. Forms and instructions for claiming a refund on apportioned registration fees under Iowa Code section 326.15 may be obtained from the ~~office of~~ vehicle and motor carrier services bureau at the address in subrule 400.6(1). The claim for refund shall be filed at the same address.

This rule is intended to implement Iowa Code sections 25.1, 321.126 to 321.128 and 326.15.

ITEM 10. Amend rule 761—400.56(321) as follows:

761—400.56(321) Hearings. The department shall send notice by certified mail to a person whose certificate of title, vehicle registration, license, or permit is to be revoked, suspended, canceled, or denied. The notice shall be mailed to the person's mailing address as shown on departmental records and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the ~~office of~~ vehicle and motor carrier services bureau at the address in subrule 400.6(1). The request for a contested case shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation, or denial.

This rule is intended to implement Iowa Code sections 17A.10 to 17A.19, 321.101 and 321.102.

ITEM 11. Amend paragraph **400.60(3)“b”** as follows:

b. Pursuant to Iowa Code sections 321.126 and 321.127, the owner or lessee of a motor vehicle may claim credit for the apportioned registration fees due when changing the vehicle's registration from registration by the county treasurer to apportioned registration. Application for apportioned registration shall be submitted to the department's ~~office of~~ vehicle and motor carrier services bureau; see 761—Chapter 500.

ITEM 12. Amend **761—Chapter 425**, title, as follows:

**MOTOR VEHICLE AND ~~TRAVEL TRAILER TOWABLE RECREATIONAL VEHICLE DEALERS,~~
MANUFACTURERS, DISTRIBUTORS AND WHOLESALERS**

ITEM 13. Amend rule 761—425.1(322) as follows:

761—425.1(322) Introduction.

425.1(1) This chapter applies to the licensing of motor vehicle and ~~travel trailer towable recreational~~ vehicle dealers, manufacturers, distributors and wholesalers. Also included in this chapter are the criteria for the issuance and use of dealer plates.

425.1(2) The ~~office of~~ vehicle and motor carrier services bureau administers this chapter. The mailing address is: ~~Office of~~ Vehicle and Motor Carrier Services Bureau, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

a. Applications required by the chapter shall be submitted to the ~~office of~~ vehicle and motor carrier services bureau.

b. Information about dealer plates and the licensing of motor vehicles and ~~travel trailer towable recreational vehicle~~ dealers, manufacturers, distributors and wholesalers is available from the ~~office of~~ vehicle and motor carrier services bureau or on the department's website at www.iowadot.gov.

ITEM 14. Amend rule 761—425.3(322) as follows:

761—425.3(322) Definitions. The following definitions, in addition to those found in Iowa Code sections 322.2 and 322C.2, apply to this chapter of rules:

“*Certificate of title*” means a document issued by the appropriate official which contains a statement of the owner's title, the name and address of the owner, a description of the vehicle, a statement of all

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security interests, and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms “title certificate,” “title only” and “title” shall be synonymous with the term “certificate of title.”

“*Consumer use*” means use of a motor vehicle or ~~travel-trailer~~ towable recreational vehicle for business or pleasure, not for sale at retail, by a person who has obtained a certificate of title and has registered the vehicle under Iowa Code chapter 321.

“*Dealer*,” unless otherwise specified, means a person who is licensed to engage in this state in the business of selling motor vehicles or ~~travel-trailers~~ towable recreational vehicles at retail under Iowa Code chapter 322 or 322C.

“*Engage in this state in the business*” or similar wording means doing any of the following acts for the purpose of selling motor vehicles or ~~travel-trailers~~ towable recreational vehicles at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, advertise as being engaged in any of those acts, or to act as an agent for the purpose of doing any of those acts. A person selling at retail more than six motor vehicles or six ~~travel-trailers~~ towable recreational vehicles during a 12-month period may be presumed to be engaged in the business. See rule 761—425.20(322) for provisions regarding fleet sales and retail auction sales.

“*Manufacturer’s certificate of origin*” means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. The terms “manufacturer’s statement,” “importer’s statement or certificate,” “MSO” and “MCO” shall be synonymous with the term “manufacturer’s certificate of origin.” See rule 761—400.1(321) for more information.

“*Principal place of business*” means a building actually occupied where the public and the department may contact the owner or operator during regular business hours. In lieu of a building, a ~~travel-trailer~~ towable recreational vehicle dealer may use a manufactured or mobile home as an office if taxes are current or a ~~travel-trailer~~ towable recreational vehicle as an office if registration fees are current. The principal place of business must be located in this state.

“*Registered dealer*” means a dealer licensed under Iowa Code chapter 322 or 322C who possesses a current dealer certificate under Iowa Code section 321.59.

“*Regular business hours*” means to be consistently open to the public on a weekly basis at hours reported to the ~~office of~~ vehicle and motor carrier services bureau. Except as provided in Iowa Code section 322.36, regular business hours for a motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer shall include a minimum of 32 posted hours between 7 a.m. and 9 p.m., Monday through Friday.

“*Salesperson*” means a person employed by a motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer for the purpose of buying or selling vehicles.

“*Vehicle*,” unless otherwise specified, means a motor vehicle or ~~travel-trailer~~ towable recreational vehicle.

“*Wholesaler*” means a person who sells new vehicles to dealers and not at retail.

This rule is intended to implement Iowa Code chapters 322 and 322C.

ITEM 15. Amend rule 761—425.10(322) as follows:

761—425.10(322) Application for dealer’s license.

425.10(1) Application form. To apply for a license as a motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer, the applicant shall complete an application on a form prescribed by the department.

425.10(2) Surety bond.

a. The applicant shall obtain a surety bond in the following amounts and file the original with the ~~office of~~ vehicle and motor carrier services bureau:

(1) For a motor vehicle dealer’s license, \$75,000. However, an applicant for a motor vehicle dealer’s license is not required to file a bond if the person is licensed as a towable recreational vehicle dealer under the same name and at the same principal place of business.

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(2) For a ~~travel trailer~~ towable recreational vehicle dealer's license, ~~\$25,000~~ \$75,000. However, an applicant for a ~~travel trailer~~ towable recreational vehicle dealer's license is not required to file a bond if the person is licensed as a motor vehicle dealer under the same name and at the same principal place of business.

b. The surety bond shall provide for notice to the ~~office of~~ vehicle and motor carrier services bureau at least 30 days before cancellation.

c. The ~~office of~~ vehicle and motor carrier services bureau shall notify the bonding company of any conviction of the dealer for a violation of laws related to the operations of the dealership.

d. If the bond is canceled, the ~~office of~~ vehicle and motor carrier services bureau shall notify the dealer by first-class mail that the dealer's license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

e. If an applicant whose dealer's license was revoked pursuant to paragraph 425.10(2) "d" establishes that the applicant obtained a reinstated or new bond meeting the requirements of ~~this~~ subrule 425.10(2) that was effective on or before the date of cancellation, but due to mistake or inadvertence failed to file the original bond with the ~~office of~~ vehicle and motor carrier services bureau, the applicant may file the original of the reinstated or new bond. Upon filing, the department will rescind the revocation of the dealer's license.

425.10(3) Franchise.

a. An applicant who intends to sell new motor vehicles or ~~travel trailers~~ towable recreational vehicles shall submit to the ~~office of~~ vehicle and motor carrier services bureau a copy of a signed franchise agreement with the manufacturer or distributor of each make the applicant intends to sell.

b. If a signed franchise agreement is not available at the time of application, the department may accept written evidence of a franchise which includes all of the following:

(1) No change.

(2) The make of motor vehicle or ~~travel trailer~~ towable recreational vehicle that the applicant is authorized to sell.

(3) and (4) No change.

c. No change.

425.10(4) and 425.10(5) No change.

425.10(6) Zoning. The applicant shall provide to the ~~office of~~ vehicle and motor carrier services bureau written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

425.10(7) Separate licenses required.

a. No change.

b. A separate license is required for each county in which an applicant for a ~~travel trailer~~ towable recreational vehicle dealer's license maintains a place of business.

425.10(8) to 425.10(11) No change.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

ITEM 16. Amend subrule 425.13(3) as follows:

425.13(3) Notification to the department. A motor vehicle dealer shall notify the ~~office of~~ vehicle and motor carrier services bureau in writing no fewer than ten days before moving the dealer's business records to another licensed location.

ITEM 17. Amend rule 761—425.14(322) as follows:

761—425.14(322) ~~Travel trailer~~ Towable recreational vehicle dealer's place of business.

425.14(1) Telephone service and office area. A ~~travel trailer~~ towable recreational vehicle dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all ~~travel trailers~~ towable recreational vehicles offered for sale.

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Telephone service must be a land line and not cellular phone service. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

425.14(2) *Facility for displaying ~~travel-trailers~~ towable recreational vehicles.* A ~~travel-trailer~~ towable recreational vehicle dealer's principal place of business shall include a space of sufficient size to permit the display of one or more ~~travel-trailers~~ towable recreational vehicles. The display facility may be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil. If an outdoor display facility is maintained, it may be used only to display, recondition or repair ~~travel-trailers~~ towable recreational vehicles or to park vehicles.

425.14(3) *Facility for repairing and reconditioning ~~travel-trailers~~ towable recreational vehicles.* A ~~travel-trailer~~ towable recreational vehicle dealer's principal place of business shall include a facility for reconditioning and repairing ~~travel-trailers~~ towable recreational vehicles. The facility:

a. Shall be equipped and of sufficient size to repair and recondition one or more ~~travel-trailers~~ towable recreational vehicles of a type sold by the dealer.

b. to d. No change.

425.14(4) *Travel-trailer Towable recreational vehicle dealer also licensed as a motor vehicle dealer.* If a ~~travel-trailer~~ towable recreational vehicle dealer is also licensed as a motor vehicle dealer under the same name and at the same principal place of business, separate facilities for displaying, repairing and reconditioning ~~travel-trailers~~ towable recreational vehicles are not required.

This rule is intended to implement Iowa Code sections 322C.1 to 322C.6.

ITEM 18. Amend rule 761—425.17(322) as follows:

761—425.17(322) Extension lot license. Extension lots of motor vehicle and ~~travel-trailer~~ towable recreational vehicle dealers must be licensed. Application to license an extension lot shall be made on a form prescribed by the department.

425.17(1) No change.

425.17(2) For a ~~travel-trailer~~ towable recreational vehicle dealer, an extension lot is a ~~travel-trailer~~ towable recreational vehicle lot for the sale of ~~travel-trailers~~ towable recreational vehicles that is located within the same county as, but is not adjacent to, the ~~travel-trailer~~ towable recreational vehicle dealer's principal place of business.

425.17(3) and **425.17(4)** No change.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

ITEM 19. Amend rule 761—425.18(322) as follows:

761—425.18(322) Supplemental statement of changes. A motor vehicle dealer shall file a written statement with the ~~office of~~ vehicle and motor carrier services bureau at least ten days before any change of name, location, hours, or method or plan of doing business. A license is not valid until the changes listed in the statement have been approved by the ~~office of~~ vehicle and motor carrier services bureau.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

ITEM 20. Amend rule 761—425.24(322) as follows:

761—425.24(322) Miscellaneous requirements.

425.24(1) No change.

425.24(2) A motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer shall not represent or advertise the dealership under any name or style other than the name which appears on the dealer's license.

425.24(3) No change.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

ITEM 21. Amend rule 761—425.26(322) as follows:

761—425.26(322) State fair, fairs, shows and exhibitions.

425.26(1) Definitions. As used in this rule:

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“*Community*” means an area of responsibility as defined in Iowa Code section 322A.1.

“*Display*” means having new motor vehicles or new ~~travel-trailers~~ towable recreational vehicles available for public viewing at fairs, vehicle shows or vehicle exhibitions. The dealer may also post, display or provide product information through literature or other descriptive media. However, the product information shall not include prices, except for the manufacturer’s sticker price. “Display” does not mean offering new vehicles for sale or negotiating sales of new vehicles.

“*Fair*” means a county fair or a scheduled gathering for a predetermined period of time at a specific location for the exhibition, display or sale of various wares, products, equipment, produce or livestock, but not solely new vehicles, and sponsored by a person other than a single dealer.

“*Offer*” new vehicles “*for sale*,” “*negotiate sales*” of new vehicles, or similar wording, means doing any of the following at the state fair or a fair, vehicle show or vehicle exhibition: posting prices in addition to the manufacturer’s sticker price, discussing prices or trade-ins, arranging for payments or financing, and initiating contracts.

“*State fair*” means the fair as discussed in Iowa Code chapter 173.

“*Vehicle exhibition*” means a scheduled event conducted at a specific location where various types, makes or models of new vehicles are displayed either at the same time or consecutively in time, and sponsored by a person other than a single dealer.

“*Vehicle show*” means a scheduled event conducted for a predetermined period of time at a specific location for the purpose of displaying at the same time various types, makes or models of new vehicles, which may be in conjunction with other events or displays, and sponsored by a person other than a single dealer.

425.26(2) and **425.26(3)** No change.

425.26(4) *Permits for dealers of new ~~travel-trailers~~ towable recreational vehicles.* A fair, vehicle show or vehicle exhibition permit allows a ~~travel-trailer~~ towable recreational vehicle dealer to display and offer new ~~travel-trailers~~ towable recreational vehicles for sale and negotiate sales of new ~~travel-trailers~~ towable recreational vehicles at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

a. No change.

b. The permit is limited to the line makes for which the ~~travel-trailer~~ towable recreational vehicle dealer is licensed in Iowa.

c. A ~~travel-trailer~~ towable recreational vehicle dealer who does not have a permit may display vehicles at fairs, vehicle shows and vehicle exhibitions.

425.26(5) *Permit application.* A motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer shall apply for a permit on an application form prescribed by the department. The application shall include the dealer’s name, address and license number and the following information about the event: name, location, sponsor(s) and duration, including the opening and closing dates.

425.26(6) *Display of permit.* The motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer shall display the permit in close proximity to the vehicles being exhibited.

This rule is intended to implement Iowa Code sections 322.5(2) and 322C.3(9).

ITEM 22. Amend subrule 425.40(1) as follows:

425.40(1) Every motor vehicle and ~~travel-trailer~~ towable recreational vehicle dealer shall:

a. and b. No change.

ITEM 23. Amend rule 761—425.50(322) as follows:

761—425.50(322) Manufacturers, distributors, and wholesalers. This rule applies to the licensing of manufacturers, distributors, and wholesalers of new motor vehicles and ~~travel-trailers~~ towable recreational vehicles.

425.50(1) No change.

425.50(2) *Licensing requirements.*

a. and b. No change.

c. A licensee shall notify the ~~office of~~ vehicle and motor carrier services bureau in writing at least ten days prior to any:

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(1) and (2) No change.

(3) Change in the trade name of a ~~travel-trailer~~ towable recreational vehicle manufactured for delivery in this state.

d. A licensee shall notify the ~~office of~~ vehicle and motor carrier services bureau in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.

ITEM 24. Amend subrule 425.62(4) as follows:

425.62(4) The department shall send notice by certified mail to a person whose certificate, license or permit is to be revoked, suspended, canceled or denied. The notice shall be mailed to the person's mailing address as shown on departmental records or, if the person is currently licensed, to the principal place of business, and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the ~~office of~~ vehicle and motor carrier services bureau at the address in subrule 425.1(2). The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation or denial.

ITEM 25. Amend subrule 425.70(2) as follows:

425.70(2) *Persons who may be issued dealer plates.* Dealer plates as provided in Iowa Code sections 321.57 to 321.63 may be issued to:

- a.* No change.
- b.* Licensed ~~travel-trailer~~ towable recreational vehicle dealers.
- c.* A person engaged in the business of buying, selling or exchanging trailer-type vehicles subject to registration under Iowa Code chapter 321, other than ~~travel-trailers~~ towable recreational vehicles, and who has an established place of business for such purpose in this state.
- d. to h.* No change.

[Filed 2/11/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4985C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to annual raw forest products permit

The Department of Transportation hereby amends Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321E.15.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.463, 321E.2, 321E.3, 321E.7, 321E.9, 321E.14 and 321E.26, and 2019 Iowa Acts, Senate File 629, sections 1 and 3 to 6.

Purpose and Summary

This rule making updates Chapter 511 to align the rules with Iowa Code section 321.463 and chapter 321E as amended by 2019 Iowa Acts, Senate File 629, sections 1 and 3 to 6.

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The amendments establish the new annual raw forest products permit rule as required by Iowa Code section 321E.26, which was newly enacted by 2019 Iowa Acts, Senate File 629, section 6. Annual raw forest products permits are issued for vehicles transporting divisible loads of raw forest products when the weight of the vehicle exceeds the statutory limits. As provided in the Iowa Code, a vehicle traveling under this permit is not authorized to travel on the interstate and must contact the appropriate local authority for route approval to use this permit on county roads or city streets.

Additionally, the amendments align the Department's rules with the Iowa Code by adding a new definition of "raw forest products," incorporating the new statutory \$175 permit fee for divisible loads of raw forest products, and subjecting a vehicle operating under the annual raw forest products permit to the same maximum axle weights and permitted tandem axle weights as the annual oversize/overweight permit.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 15, 2020, as **ARC 4869C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on February 19, 2020.

Fiscal Impact

The Department issued 109 raw forest products permits from July 1, 2019, through January 29, 2020, with a resulting revenue amount of approximately \$19,211. Based on the current number of permits issued and the nature of this small industry, the Department does not anticipate a revenue impact that would exceed \$100,000 annually or \$500,000 over five years.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule **761—511.1(321E)**, definition of "Permit-issuing authority," as follows:
"Permit-issuing authority" means the:

1. Department's ~~office of~~ vehicle and motor carrier services bureau for permits for movement on the primary road system.
2. Authority responsible for the maintenance of a nonprimary system of highways or streets for permits for movement on that system. However, the ~~office of~~ vehicle and motor carrier services bureau

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may issue single-trip permits on primary road extensions in cities in conjunction with movement on the rural primary road system.

ITEM 2. Adopt the following **new** definition of “Raw forest products” in rule **761—511.1(321E)**:
 “*Raw forest products*” means the same as defined in Iowa Code section 321E.26.

ITEM 3. Amend rule **761—511.1(321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321E.9, 321E.15, 321E.26, 321E.29, 321E.30 and 321E.34.

ITEM 4. Amend subrule 511.2(1) as follows:

511.2(1) Applications, forms, instructions and restrictions are available on the department’s website at www.iowadot.gov and by mail from the ~~Office of~~ Vehicle and Motor Carrier Services Bureau, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3264; or by facsimile at (515)237-3257. Permits may be obtained electronically upon making application to the ~~office of~~ vehicle and motor carrier services bureau.

ITEM 5. Amend subrule 511.2(4), introductory paragraph, as follows:

511.2(4) Except as provided in subrule 511.7(6) and rule ~~761—511.14(321,321E)~~ 761—511.15(321,321E), permits may be issued only for the transporting of a single article which exceeds statutory size or weight limits or both, and which cannot reasonably be divided or reduced to statutory size and weight limits. However, permits may be issued for the transporting of property consisting of more than one article when:

ITEM 6. Amend rule 761—511.4(321E), introductory paragraph, as follows:

761—511.4(321E) Permits. Permits issued shall be in writing or in electronic format and may be either single-trip, multitrip, annual, annual oversize/overweight, annual raw forest products, compacted rubbish or all-systems permits.

ITEM 7. Amend paragraph **511.4(3)“a”** as follows:

a. Annual, annual oversize/overweight, annual raw forest products, compacted rubbish, and all-systems permits shall expire one year from the date of issuance.

ITEM 8. Amend rule 761—511.5(321,321E) as follows:

761—511.5(321,321E) Fees and charges.

511.5(1) and **511.5(2)** No change.

511.5(3) Annual raw forest products permit. A fee of \$175 shall be charged for each annual permit issued pursuant to Iowa Code section 321E.26 for divisible loads of raw forest products, payable prior to the issuance of the permit.

~~511.5(3)~~ **511.5(4)** Annual oversize/overweight permit. A fee of \$400 shall be charged for each annual oversize/overweight permit, payable prior to the issuance of the permit. Transfer of current annual oversize/overweight permit to a replacement vehicle may be allowed when the original vehicle has been damaged in an accident, junked or sold.

511.5(4) **511.5(5)** All-systems permit. A fee of \$160 shall be charged for each annual all-systems permit, payable prior to the issuance of the permit.

511.5(5) **511.5(6)** Bridge-exempt permit. A fee of \$25 shall be charged for each bridge-exempt permit issued pursuant to Iowa Code section 321E.7, payable prior to the issuance of the permit.

~~511.5(6)~~ **511.5(7)** Multitrip permit. A fee of \$200 shall be charged for each multitrip permit, payable prior to the issuance of the permit.

511.5(7) **511.5(8)** Raw milk permit. A fee of \$25 shall be charged for each raw milk permit issued pursuant to Iowa Code section 321E.29A, payable prior to the issuance of the permit.

~~511.5(8)~~ **511.5(9)** Single-trip permit. A fee of \$35 shall be charged for each single-trip permit, payable prior to the issuance of the permit.

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~~511.5(9)~~ **511.5(10)** *Compacted rubbish permit.* A fee of \$100 shall be charged for each compacted rubbish permit, payable prior to the issuance of the permit.

~~511.5(10)~~ **511.5(11)** *Duplicate permit.* A fee of \$2 shall be charged for each duplicate permit, payable prior to the issuance of the permit.

~~511.5(11)~~ **511.5(12)** *Registration fee.* A registration fee shall be charged for vehicles transporting buildings, except mobile homes and factory-built structures, on a single-trip basis. The vehicle shall be registered for the combined gross weight of the vehicle and load. The fee shall be 5 cents per ton exceeding the weight registered under Iowa Code section 321.122 per mile of travel and shall be payable prior to the issuance of the permit. Fees shall not be prorated for fractions of miles.

~~511.5(12)~~ **511.5(13)** *Fair and reasonable costs.* Permit-issuing authorities may charge any permit applicant:

a. A fair and reasonable cost for the removal and replacement of natural obstructions or official signs and signals.

b. A fair and reasonable cost for measures necessary to avoid damage to public property including structures and bridges.

~~511.5(13)~~ **511.5(14)** *Methods of payment.* Fees and costs required under this chapter shall normally be paid by credit card, certified check, cashier's check, traveler's check, bank draft or cash. Personal checks may be accepted at the discretion of the permit-issuing authority.

This rule is intended to implement Iowa Code sections 321.12, 321.122, 321E.14, 321E.29, 321E.29A and 321E.30.

ITEM 9. Amend paragraph **511.6(1)“a”** as follows:

a. Public liability insurance in the amounts of \$100,000 bodily injury each person, \$200,000 bodily injury each occurrence, and \$50,000 property damage with an expiration date to cover the tenure of the annual, annual oversize/overweight, annual raw forest products, all-systems, multitrip or single-trip permit shall be required. In lieu of filing with the permit-issuing authority, a copy of the current certificate of public liability insurance in these amounts shall be carried in the vehicle for which the permit has been issued. Proof of liability insurance may be either in writing or in electronic format.

ITEM 10. Amend rule 761—511.7(321,321E) as follows:

761—511.7(321,321E) Annual permits. Annual permits are issued for indivisible vehicles or indivisible loads for travel when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The owner or operator shall select a route using the vertical clearance map and road construction and travel restrictions map provided by the department. Detour and road embargo information may also be found online at: www.511ia.org. Prior to making the move, the owner or operator shall contact the department by telephone at (515)237-3264 between 8 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays, to verify that the owner or operator is using the most recent information. Annual permits are issued for the following:

511.7(1) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. Weight. See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. Distance. Movement is allowed for unlimited distance; routing through the ~~office~~ of vehicle and motor carrier services bureau is not required.

511.7(2) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. Weight. See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. Distance. Movement is restricted to 50 miles unless trip routes are obtained from the ~~office~~ of vehicle and motor carrier services bureau or the route continues on at least four-lane roads. Trip routes are valid for five days.

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511.7(3) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. Weight. See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. Distance. Trip routes must be obtained from the ~~office of~~ vehicle and motor carrier services bureau.

511.7(4) No change.

511.7(5) Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

a. to c. No change.

d. Weight. See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. to g. No change.

511.7(6) Vehicles with divisible loads of hay, straw, stover, or bagged livestock bedding provided the following are not exceeded:

a. to c. No change.

d. Weight. See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. No change.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.8, 321E.10, 321E.29 and 321E.29A.

ITEM 11. Amend subrule 511.8(1) as follows:

511.8(1) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. Weight. See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. Routing. The owner or operator shall select a route using a vertical clearance map, ~~kip map,~~ bridge embargo map, pavement restrictions map, and ~~detour and road embargo construction and travel restrictions~~ map provided by the department. Detour and road embargo information may also be found online at www.511ia.org. The owner or operator shall contact the department by telephone at (515)237-3264 between 8 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays, prior to making the move to verify that the owner or operator is using the most recent information.

ITEM 12. Amend rule ~~761—511.8(321,321E)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, ~~and~~ 321E.8 and 321E.9.

ITEM 13. Amend rule ~~761—511.9(321,321E)~~ as follows:

761—511.9(321,321E) All-systems permits. All-systems permits are issued by the ~~office of~~ vehicle and motor carrier services bureau for indivisible vehicles or indivisible loads for travel on the primary road system and specified city streets and county roads when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The ~~office of~~ vehicle and motor carrier services bureau will provide a list of the authorized city streets and county roads. Permit holders shall consult with local officials when traveling on county roads or city streets for bridge embargo, vertical clearance, detour, and road construction information. These permits are issued for the following:

511.9(1) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. Weight. See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. Distance. Movement is allowed for unlimited distance; routing through the ~~office of~~ vehicle and motor carrier services bureau and city and county jurisdictions is not required.

511.9(2) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

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a. to c. No change.

d. *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. *Distance.* Movement is restricted to 50 miles unless trip routes are obtained from the ~~office of~~ vehicle and motor carrier services bureau and city and county jurisdictions or the route continues on at least four-lane roads. Trip routes are valid for five days.

511.9(3) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. *Distance.* Trip routes must be obtained from the ~~office of~~ vehicle and motor carrier services bureau and city and county jurisdictions.

511.9(4) No change.

511.9(5) Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

a. to c. No change.

d. *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. to g. No change.

511.9(6) Vehicles with divisible loads of hay, straw, stover, or bagged livestock bedding provided the following are not exceeded:

a. to c. No change.

d. *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

e. *Distance.* Movement is allowed for unlimited distance; routing through the ~~office of~~ vehicle and motor carrier services bureau and city and county jurisdictions is not required.

511.9(7) No change.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.8, 321E.10 and 321E.29.

ITEM 14. Amend paragraph **511.12(1)“d”** as follows:

d. *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

ITEM 15. Renumber rules **761—511.13(321,321E)** to **761—511.18(321)** as **761—511.14(321,321E)** to **761—511.19(321)**.

ITEM 16. Adopt the following new rule 761—511.13(321,321E):

761—511.13(321,321E) Annual raw forest products permits. Annual raw forest products permits are issued for vehicles transporting divisible loads of raw forest products when the weight exceeds statutory limits. Travel is not allowed on the interstate. The owner or operator shall select a route using the vertical clearance map, bridge embargo map, pavement restrictions map, and construction and travel restrictions map provided by the department. The owner or operator must contact the appropriate local authority for route approval to use this permit on county roads or city streets. Detour and road embargo information may be found online at: www.511ia.org. Routing is subject to embargoed bridges and roads and posted speed limits. Annual raw forest products permits are issued for the following:

511.13(1) Vehicles with divisible loads of raw forest products provided the following are not exceeded:

a. *Width.* Statutory: 8 feet 6 inches.

b. *Length.* Limited to the maximum dimensions in Iowa Code section 321.457.

c. *Height.* Statutory: 13 feet 6 inches.

d. *Weight.* See rule 761—511.14(321,321E).

e. *Distance.* Unlimited.

511.13(2) Reserved.

This rule is intended to implement Iowa Code sections 321.463, 321E.2, 321E.3 and 321E.26.

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ITEM 17. Amend renumbered rule 761—511.14(321,321E) as follows:

761—511.14(321,321E) Maximum axle weights and maximum gross weights for vehicles and loads moved under permit.

511.14(1) *Annual and all-systems permits.*

a. No change.

b. See subrule ~~511.13(5)~~ 511.14(5) for exceptions for special mobile equipment.

511.14(2) *Annual oversize/overweight permits or annual raw forest products permits.*

a. For movement under an annual oversize/overweight permit or an annual raw forest products permit, the gross weight on any axle shall not exceed 20,000 pounds, with a maximum of 156,000 pounds total gross weight.

b. See subrule ~~511.13(5)~~ 511.14(5) for exceptions for special mobile equipment.

511.14(3) *Multitrip permits.*

a. No change.

b. See subrule ~~511.13(5)~~ 511.14(5) for exceptions for special mobile equipment.

511.14(4) *Single-trip permits.*

a. to c. No change.

d. See subrule ~~511.13(5)~~ 511.14(5) for exceptions for special mobile equipment.

511.14(5) No change.

511.14(6) *Permitted tandem axle weights.*

a. Vehicles operating under an annual oversize permit, annual oversize/overweight permit, annual raw forest products permit, single-trip permit, or multitrip permit may have a gross weight not to exceed 46,000 pounds on a single-tandem axle of the truck tractor and a gross weight not to exceed 46,000 pounds on a single-tandem axle of the trailer or semitrailer if each axle of each tandem group has at least four tires.

b. and c. No change.

This rule is intended to implement Iowa Code sections 321.463, 321E.7, 321E.8, 321E.9, 321E.9A, 321E.26 and 321E.32.

ITEM 18. Amend renumbered subrule 511.15(2) as follows:

511.15(2) At the discretion of the permit-issuing authority, the combined gross weight may exceed the statutory weight, but the axle weights shall be subject to rule 761—~~511.13(321,321E)~~ 761—511.14(321,321E).

ITEM 19. Amend renumbered rule 761—511.18(321,321E) as follows:

761—511.18(321,321E) Permit violations.

Permit violations are to be reported to the permit-issuing authority by the arresting officer and the permit holder. If a permit holder is found to have willfully violated permit provisions, the ~~office of~~ vehicle and motor carrier services bureau may, after notice and hearing, suspend, modify or revoke the permit privileges of the permit holder consistent with Iowa Code section 321E.20.

This rule is intended to implement Iowa Code sections 321.492, 321E.16 and 321E.20.

ITEM 20. Amend renumbered paragraph **511.19(1)“c”** as follows:

c. The department shall exercise due regard for the safety of the traveling public and the protection of the highway surfaces and structures when establishing an economic export corridor. Factors to be considered include ability of the proposed economic export corridor to safely accommodate combinations of vehicles described in subrule ~~511.18(2)~~ 511.19(2), taking into account physical configurations and restrictions and traffic demands and capacity, as well as connection to markets that will benefit from the established economic export corridor.

ITEM 21. Amend renumbered paragraph **511.19(2)“a”** as follows:

a. In addition to combinations of vehicles lawful for operation on roads or road segments not designated as an economic export corridor, the following combinations of vehicles may be operated

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on an economic export corridor designated under subrule ~~511.18(4)~~ 511.19(1) if the combinations of vehicles meet the requirements in paragraph ~~511.18(2) "b"~~ 511.19(2) "b":

(1) to (3) No change.

[Filed 2/19/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4986C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to commercial driver licensing

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

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

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

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

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

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

Waiver of CDL knowledge test for military members. The CDL knowledge test rule is amended to add a new subrule addressing waiver of the knowledge test for an applicant who is a current or former military service member. Iowa Code section 321.188 provides that the Department shall adopt rules to administer the CDL program in compliance with federal regulations, and 49 CFR Section 383.77 was recently amended to provide that the Department may waive the CDL knowledge test for an applicant who is regularly employed or was regularly employed within the past year in a military position as outlined in the regulation and operated a vehicle representative of the CMV the applicant expects to operate. The Department already has the authority to waive a CDL skills test for a current or former military service member and, under this rule making, also has the ability to offer a waiver of the knowledge test.

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

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

Third-party CDL skills test examiners. The rule addressing CDL skills tests administered by a third party is amended to conform with Iowa Code section 321.187 as amended by 2019 Iowa Acts,

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

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

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

CDL disqualification due to fraud. The rule related to CDL disqualifications is amended to add a new subrule that aligns with 49 CFR Section 383.73(k), Iowa Code section 321.201(2)“b,” and the Department’s current process for disqualifying a person’s CDL or CLP if the person is convicted or suspected of fraud related to the testing or issuance of a commercial driving privilege. Upon the Department’s receipt of a person’s conviction for fraud, the person’s CDL shall be disqualified for one year. Upon the Department’s receipt of credible evidence that the person is suspected of committing fraud, the person shall be required to retake the applicable knowledge or skills test and will face a disqualification if the person either fails or does not retake the applicable test.

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

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 1, 2020, as **ARC 4836C**. No public comments were received. No changes from the Notice have been made.

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Adoption of Rule Making

This rule making was adopted by the Department on February 11, 2020.

Fiscal Impact

The fiscal impact to the State of Iowa cannot be determined. The parts of these rules adopting federal regulations were subject to fiscal impact review by FMCSA when enacted and were determined not to be cost prohibitive.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—607.2(17A) as follows:

761—607.2(17A) Information.

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

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

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

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

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

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

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

a. and *b.* No change.

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c. 49 CFR Part 380, Subpart F.

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

(1) to (4) No change.

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

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

607.16(1) No change.

607.16(2) *Validity.*

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

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

c. to h. No change.

607.16(3) *Requirements.*

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

b. No change.

607.16(4) No change.

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

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

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

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

TRANSPORTATION DEPARTMENT[761](cont'd)

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

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

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

607.17(7) No change.

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

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

d. The issuance of a commercial learner’s permit is a precondition to the initial issuance of a commercial driver’s license. The issuance of a commercial learner’s permit is also a precondition to the upgrade of a commercial driver’s license if the upgrade requires a skills test. If the permit holder is subject to the requirement to complete entry-level driver training as provided in Iowa Code section 321.188, the permit holder shall complete the training after the permit holder obtains the commercial learner’s permit, but before the permit holder takes the required skills test. The holder of a commercial learner’s permit is not eligible to take a required driving skills test for the first 14 days after the permit holder is issued the permit. The 14-day period includes the day the commercial learner’s permit was issued.

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

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

761—607.27(321) Knowledge tests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

761—607.28(321) Skills test.

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

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

a. No change.

b. To obtain a school bus endorsement, the applicant must qualify for a passenger vehicle endorsement and take the skills test in a school bus, as defined in rule 761—607.3(321), in the same vehicle class as the applicant will drive, as required in 49 CFR Section 383.123. ~~Up to and including September 30, 2005, the skills test for a school bus endorsement is waived for an applicant meeting the requirements of 49 CFR Section 383.123(b).~~

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

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

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

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

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

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

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

761—607.30(321) Third-party testing.

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

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

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

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

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

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

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

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

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

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

607.30(2) Certification of third-party testers.

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

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

c. No change.

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

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

b. No change.

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

d. No change.

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

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

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

This rule is intended to implement Iowa Code section 321.187.

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Issue the applicant a CLP or CDL.

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

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

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

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

761—607.39(321) Disqualification.

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

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

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

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

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

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

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

1. A drug or alcohol offense.

2. Leaving the scene of an accident.

3. A felony involving the use of any motor vehicle.

4. Any moving violation while operating a commercial motor vehicle.

(5) The department may request, and the person shall provide, any additional information or documentation necessary to determine the person's eligibility for reinstatement or general fitness for licensure.

b. If the department finds the person is eligible for reinstatement under this subrule, the person shall do all of the following prior to reinstatement:

(1) Pay all outstanding reinstatement fees.

(2) Meet all outstanding reinstatement requirements.

(3) Pass the required knowledge, vision, and skills tests as specified in Iowa Code section 321.188.

(4) Complete any other courses or requirements as required by the director.

c. As provided in 49 CFR Section 383.51(a)(6), a person who has previously had the person's commercial driving privileges reinstated pursuant to this subrule shall not be eligible to apply for reinstatement following conviction of a subsequent disqualifying offense.

d. If the department determines the person is not eligible for reinstatement as provided in this subrule, the department shall send notice by first-class mail to the person's mailing address as shown on departmental records that the lifetime disqualification remains in effect.

607.39(5) Fraud related to testing and issuance.

a. As required by 49 CFR Section 383.73(k) and Iowa Code section 321.201(2)“b,” the department shall disqualify the commercial driver's license or commercial learner's permit of a person convicted or suspected of fraud related to the testing for or issuance of a commercial driver's license or commercial learner's permit.

b. Upon receipt of a person's conviction of fraud related to the issuance of the commercial driver's license or commercial learner's permit, the department shall disqualify the person's commercial driver's license or commercial learner's permit for one year.

c. Upon receipt of credible evidence that a person is suspected of committing fraud relating to the issuance of a commercial driver's license or a commercial learner's permit, the department shall notify the person of the requirement to retake the applicable knowledge or skills test. Within 30 days of receiving notice from the department, the person is required to contact the department to retake the

TRANSPORTATION DEPARTMENT[761](cont'd)

knowledge or skills test. If the person fails to contact the department within 30 days after the notice, or the person fails the knowledge or skills test, or does not take the test, the department shall disqualify the person's commercial driver's license or commercial learner's permit.

d. Once a person's commercial driver's license or commercial learner's permit has been disqualified, the person must reapply following the usual procedures as provided in Iowa Code section 321.188 and this chapter.

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

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

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

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

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

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

607.49(4) Requirements.

a. and b. No change.

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

607.49(5) No change.

607.49(6) Issuance.

a. to e. No change.

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

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

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

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

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

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

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

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

- (1) to (3) No change.
 - (4) Renewal of a commercial driver's license, ~~or~~
 - (5) A license upgrade for a commercial driver's license or an endorsement authorizing the operation of a commercial motor vehicle not covered by the current commercial driver's license, ~~or~~ or
 - (6) A restricted commercial driver's license.
- b.* No change.

[Filed 2/11/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

ARC 4987C

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Adopted and Filed

Rule making related to injured veterans grant program

The Iowa Department of Veterans Affairs hereby amends Chapter 11, "Injured Veterans Grant Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 35A.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 35A.14.

Purpose and Summary

2019 Iowa Acts, House File 288, amends Iowa Code section 35A.14 related to veteran eligibility for the injured veterans grant program. Veterans no longer have to have been injured in a combat zone to be eligible for the program. This rule making amends rule 801—11.3(35A) to reflect this change.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4767C**. A public hearing was held on December 10, 2019. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on February 19, 2020.

Fiscal Impact

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

Jobs Impact

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

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making action is adopted:

Amend rule 801—11.3(35A) as follows:

801—11.3(35A) Eligible veterans.

11.3(1) For purposes of this program, the term “veteran” means:

a. A resident of this state who is or was a member of the national guard, reserve, or regular component of the armed forces of the United States who has served on active duty at any time after September 11, 2001, and, if discharged or released from service, was discharged or released under honorable conditions; or

b. A nonresident of this state who is or was a member of a national guard unit located in this state prior to alert for mobilization who has served on active duty at any time after September 11, 2001, was injured while serving in the national guard unit located in this state, is not eligible to receive a similar grant from another state for that injury, and, if discharged or released from service, was discharged or released under honorable conditions.

11.3(2) In addition to the requirements set out in subrule 11.3(1), an eligible veteran must meet all of the following conditions:

a. The veteran must have sustained a combat-related service-related injury in a combat zone or the line of duty, based upon the circumstances known at the time of evacuation or injury; in support of a named overseas operation; or in a hostile fire zone; and

b. The combat-related service-related injury was serious enough to require medical evacuation from the combat zone theater of operation to a military hospital or the injury required at least 30 consecutive days of hospitalization at a military hospital; and,

c. ~~The combat-related injury was or is considered by the military to have been received in the line of duty, based upon the circumstances known at the time of evacuation or injury.~~

11.3(3) The veteran shall remain eligible for the grant after discharge from the military so long as the veteran continues to receive medical treatment or rehabilitation services for the specific injury or illness.

11.3(4) The commission may consider a request for a waiver of any of these requirements only pursuant to the provisions of Iowa Code section 17A.9A.

[Filed 2/21/20, effective 4/15/20]

[Published 3/11/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.

CORRECTION TO EFFECTIVE DATE OF ARC 4928C

ARC 4928C, an Adopted and Filed rule making to amend Chapter 154 of the Iowa Department of Public Health's administrative rules, was published in the Iowa Administrative Bulletin (IAB) on February 12, 2020. The Iowa Department of Public Health provides this informational notice to correct the erroneous effective date of March 18, 2020, that was published in the preamble of **ARC 4928C**. The correct effective date for **ARC 4928C** is June 1, 2020. This June 1, 2020, date is the effective date that was adopted by the State Board of Health on January 8, 2020. The Iowa Administrative Code will be corrected accordingly.