



IOWA ADMINISTRATIVE BULLETIN

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- Filed, Waivers; licensure; criminal
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- Filed, Solar energy system tax credit,
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- Notice, Waivers, amendments to chs 8
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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.

JACK EWING, Administrative Code Editor
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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, 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)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)
441 IAC 79.1(1)“a”(1)“1”	(Numbered paragraph)

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 2021

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, April 30, 2021	May 19, 2021
25	Wednesday, May 12, 2021	June 2, 2021
26	Friday, May 28, 2021	June 16, 2021

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****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, May 11, at 9 a.m. in Room 103, State Capitol, Des Moines, Iowa. Instructions for participation by videoconference can be found here: www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=705. For more information, contact Jack Ewing at Jack.Ewing@legis.iowa.gov. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

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

Denial of licensure; criminal convictions, 3.1(2), 3.4(3), 4.1(2), 4.2(3), 5.1(1), 5.3, 6.3(3),
6.4(1), 7.2(3), 8.1, 12.1, 13.5(1), 14.3(11) Filed **ARC 5562C** 4/21/21

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Waivers, amendments to chs 8, 90, 91 Notice **ARC 5575C** 4/21/21
Veterinarian certification—removal of reference to pseudorabies advisory committee,
64.162(1) Notice **ARC 5588C** 4/21/21

ARCHITECTURAL EXAMINING BOARD[193B]

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

Board administration; license renewal; continuing education, amendments to chs 1 to 4, 6, 7
Filed **ARC 5563C** 4/21/21

CIVIL RIGHTS COMMISSION[161]

Waivers, 15.3 Notice **ARC 5565C** 4/21/21

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]"umbrella"

Waivers, amendments to ch 23 Notice **ARC 5577C** 4/21/21

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Clinical examinations on manikins, 11.5(2), 11.6 Filed **ARC 5539C** 4/7/21

EDUCATION DEPARTMENT[281]

Therapeutic classrooms; telehealth services on school premises, amendments to ch 14
Notice **ARC 5580C** 4/21/21
Online and virtual learning, adopt ch 15 Notice **ARC 5581C** 4/21/21
Drinking drivers instructional course—online delivery, in-person delivery, 21.31, 21.32(1)
Notice **ARC 5583C** 4/21/21
Educator preparation programs—accreditation, approval criteria, 79.2, 79.4, 79.9 Notice **ARC 5582C** 4/21/21

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

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

Temporary permits; licensure by verification, 3.3(4), 5.3 Filed **ARC 5564C** 4/21/21

HUMAN SERVICES DEPARTMENT[441]

Food assistance—supplemental nutrition assistance program (SNAP), opportunity to waive
right to administrative disqualification hearing, 7.1, 7.2, 7.4(3), 7.19 Notice **ARC 5549C** 4/7/21
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Payment for transportation of students, 151.22(2)"b" Notice **ARC 5585C** 4/21/21
Kinship caregiver program, 156.1, 156.7, 156.8(5), 202.1, 202.4(3)"a" Filed **ARC 5540C** 4/7/21

INSPECTIONS AND APPEALS DEPARTMENT[481]

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Removal of hospital licensing board, 6.2, 6.11(1) Notice **ARC 5551C** 4/7/21
Consumable hemp products—unit of measurement for residual solvent limits, 32.3(2)"b"
Notice **ARC 5552C** 4/7/21
Deaf and hard-of-hearing persons—terminology, 57.24(4), 58.39(7), 63.21(4), 65.25(2),
71.21(3)"b" Notice **ARC 5567C** 4/21/21

INTERIOR DESIGN EXAMINING BOARD[193G]

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

Waivers; license renewal; continuing education, 1.3, 1.8, 2.2, 2.4, 3.2(3), 3.3(2) Filed **ARC 5568C** 4/21/21

IOWA PUBLIC INFORMATION BOARD[497]

Delegation of advisory opinions, 1.3(2) Filed **ARC 5569C** 4/21/21
 Waivers, amendments to ch 9 Notice **ARC 5578C** 4/21/21

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Elevators—controlling or preventing access, alterations, agency address, waivers,
 amendments to chs 65 to 67, 69 to 72 Filed **ARC 5570C** 4/21/21

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

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 to 2.5, 2.7, 2.8, 2.10, 2.11, 3.3, 4.1(7)“b” Filed **ARC 5571C** 4/21/21

LAW ENFORCEMENT ACADEMY[501]

Law enforcement officers and reserve peace officers—training, emergency care providers,
 amend chs 1 to 3, 6, 8, 10; adopt ch 14 Filed **ARC 5572C** 4/21/21

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

EDUCATION DEPARTMENT[281]“umbrella”

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PUBLIC HEALTH DEPARTMENT[641]“umbrella”

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 Pharmacist-interns, 4.6 to 4.8, 4.11, 4.12 Filed **ARC 5544C** 4/7/21
 Pharmacy support persons, amendments to ch 5 Filed **ARC 5543C** 4/7/21
 Temporary designation of controlled substances, 10.39 Filed **ARC 5541C** 4/7/21
 Controlled substances, veterinarian access to data, definitions, 37.2, 37.7(1)“d,” 37.8, 37.16
Filed **ARC 5545C** 4/7/21

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

COMMERCE DEPARTMENT[181]“umbrella”

Waivers; licensure; criminal convictions, amend chs 5, 14; adopt ch 15 Filed **ARC 5573C** 4/21/21

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Barbers—mobile barbershops, licensing, 21.11, 21.19 Notice **ARC 5557C** 4/7/21
 Hearing aid specialists—telehealth appointments, 123.4(1)“g,” 123.5 Notice **ARC 5554C** 4/7/21
 Practice of speech pathologists and audiologists, ch 301 Notice **ARC 5556C** 4/7/21
 Physician assistants—telemedicine, 327.9 Notice **ARC 5555C** 4/7/21

PUBLIC SAFETY DEPARTMENT[661]

Sex offender registry—continuous sexual abuse of a child, 83.2 to 83.4 Notice **ARC 5586C** 4/21/21
 Blue alert program, 89.300 to 89.307 Filed **ARC 5591C** 4/21/21
 Statewide sobriety and drug monitoring program, 159.12(1) Notice **ARC 5558C** 4/21/21
 Responsibility for installation of light-emitting carbon monoxide alarm for deaf or
 hard-of-hearing tenant, 211.20 Notice **ARC 5559C** 4/21/21
 Standards for electrician and electrical contractor licensing—reciprocity, disqualifying
 convictions, fee structure, military spouses, amendments to chs 500, 502, 506 Notice **ARC 5587C** 4/21/21

REVENUE DEPARTMENT[701]

Payment of fees, taxes, interest, and penalties—remittances payable to the department, 12.2,
 70.17, 78.16, 82.5(2) Notice **ARC 5579C** 4/21/21
 Honey Creek premier destination park bonds, 40.3 Notice **ARC 5553C** 4/7/21
 Geothermal heat pump tax credit, 42.47 Filed **ARC 5589C** 4/21/21
 Solar energy system tax credit, 42.48, 52.44, 58.22 Filed **ARC 5590C** 4/21/21

SCHOOL BUDGET REVIEW COMMITTEE[289]

EDUCATION DEPARTMENT[281]“umbrella”

Applications for modified supplemental amounts, 6.3(3)“k” Filed **ARC 5546C** 4/7/21

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]“umbrella”

Waivers, amendments to chs 8 Notice **ARC 5576C** 4/21/21

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Waivers; attorney fee contracts—indigent defense, amendments to chs 6, 11 Filed **ARC 5574C** 4/21/21**TRANSPORTATION DEPARTMENT[761]**

Transporter plates—contact information, form submission, application process, fees,

424.1(1), 424.4(2) Filed **ARC 5548C** 4/7/21

Federal regulations—federal medical certificate form for commercial driver's license; motor

carriers; hazardous materials, 520.1, 529.1, 607.28(7), 607.37(1)"a," 607.50 Filed **ARC 5547C** 4/7/21**WORKFORCE DEVELOPMENT DEPARTMENT[871]**Contested case proceedings, 26.8, 26.14 Notice **ARC 5561C** 4/21/21**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

Senator Waylon Brown
2415 Highway 218
Osage, Iowa 50461

Senator Jesse Green
2344 360th Street
Harcourt, Iowa 50544

Senator Robert Hogg
P.O. Box 1361
Cedar Rapids, Iowa 52406

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Senator Zach Whiting
P.O. Box 385
Spirit Lake, Iowa 51360

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4470 Highway 71
Sioux Rapids, Iowa 50585

Representative Amy Nielsen
North Liberty, Iowa

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

Representative Mike Sexton
2202 Ogden Avenue
Rockwell City, Iowa 50579

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

NOTE: See also the Advisory Notice on page 2478.

CIVIL RIGHTS COMMISSION[161]

Waivers, 15.3 IAB 4/21/21 ARC 5565C	Room B100 Grimes State Office Bldg. Des Moines, Iowa	May 14, 2021 1:15 p.m.
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EDUCATION DEPARTMENT[281]

Drinking drivers instructional course—online delivery, in-person delivery, 21.31, 21.32(1) IAB 4/21/21 ARC 5583C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: IDOE.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09	May 11, 2021 8 to 8:30 a.m.
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Therapeutic classrooms; telehealth services on school premises, amendments to ch 14 IAB 4/21/21 ARC 5580C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: IDOE.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09	May 11, 2021 9 to 10 a.m.
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Online and virtual learning, adopt ch 15 IAB 4/21/21 ARC 5581C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: IDOE.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09	May 11, 2021 10 to 11 a.m.
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Educator preparation programs—accreditation, approval criteria, 79.2, 79.4, 79.9 IAB 4/21/21 ARC 5582C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: IDOE.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09	May 11, 2021 8:30 to 9 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Barbers—mobile barbershops, licensing, 21.11, 21.19 IAB 4/7/21 ARC 5557C	Webex ID: 187 695 5387 Password: WVmaFmQ*768 (US) +1 408.418.9388 (toll) Access Code: 187 695 5387	April 27, 2021 9 to 9:30 a.m.
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Hearing aid specialists—telehealth appointments, 123.4(1)“g,” 123.5 IAB 4/7/21 ARC 5554C	Option 1: Join Webex hearing on www.webex.com , click “JOIN,” then enter the following information: Meeting ID Number: 1463706783 Password: fEu34rv\$ Option 2: Join by video system: 1463706783@webex.com Option 3: Join by phone: +1 408.418.9388 (toll) Access code: 146 370 678 3	April 28, 2021 8:30 to 9 a.m.
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PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Practice of speech pathologists
and audiologists, ch 301
IAB 4/7/21 **ARC 5556C**

Option 1: Join Webex hearing on
www.webex.com, click “JOIN,” then enter
the following information:
Meeting ID Number: 1873547720
Password: aVDQuj@4
Option 2: Join by video system:
1873547720@webex.com
Option 3: Join by phone:
+1 408.418.9388 (toll)
Access code: 187 354 7720

April 28, 2021
9 to 9:30 a.m.

Physician
assistants—telemedicine, 327.9
IAB 4/7/21 **ARC 5555C**

Via Webex:
[idph.webex.com/idph/j.php?MTID=
mab53252486f2ce8f8ff02111af8c22f5](http://idph.webex.com/idph/j.php?MTID=mab53252486f2ce8f8ff02111af8c22f5)
Password: rfRyMJP4@42
Via telephone: 408.418.9388
Access code: 187 215 8512

April 27, 2021
10:30 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 5575C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 8, “Waiver or Variance of Rules,” Chapter 90, “State Licensed Warehouses and Warehouse Operators,” and Chapter 91, “Licensed Grain Dealers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 159.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

This proposed rule making implements 2020 Iowa Acts, House File 2389, by removing references to “variances” within Chapters 8, 90, and 91 and updating the process by which the Department publishes rule waivers.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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 May 11, 2021. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.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

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

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 **21—Chapter 8**, title, as follows:

WAIVER OR VARIANCE OF RULES

ITEM 2. Amend rule 21—8.1(17A,159) as follows:

21—8.1(17A,159) Definition. For purposes of this chapter, a “waiver or variance” means action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 21—8.4(17A,159) as follows:

21—8.4(17A,159) Criteria for waiver or variance. In response to a petition completed pursuant to rule 21—8.6(17A,159), the department may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend rule 21—8.12(17A,159) as follows:

21—8.12(17A,159) Summary reports Submission of waiver information. ~~Semiannually, the department shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the department shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 5. Amend rule 21—90.1(203C) as follows:

21—90.1(203C) Application of rules. These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable. These rules are subject to such waivers or variances as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203C.5.

ITEM 6. Amend rule 21—91.1(203) as follows:

21—91.1(203) Application of rules. These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable. These rules are

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

subject to such waivers or variances as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203.2.

ARC 5588C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action****Proposing rule making related to removal of the pseudorabies advisory committee
and providing an opportunity for public comment**

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 64, “Infectious and Contagious Diseases,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 159.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 2413, section 13.

Purpose and Summary

This proposed amendment removes references to the Pseudorabies Advisory Committee, which was repealed in 2020 Iowa Acts, Senate File 2413, section 13.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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 May 11, 2021. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.gov

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](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 action is proposed:

Amend subrules 64.162(1) and 64.162(4) as follows:

64.162(1) Requirements for certification. To be certified, the veterinarian shall meet both of the following requirements:

- a.* Be an accredited veterinarian.
- b.* Attend and complete continuing education sessions as determined by ~~the Iowa pseudorabies advisory committee and the department.~~

64.162(4) Remuneration. Compensation will be made to the veterinarian or veterinarians certified to initiate herd plans and herd agreements. Payment will be made from pseudorabies program funds, if available and authorized for these purposes. Fees for payment shall be ~~approved by the advisory committee and~~ established by the department by order. Payment will be made for the following:

- a. to d.* No change.

ARC 5565C

CIVIL RIGHTS COMMISSION[161]**Notice of Intended Action****Proposing rule making related to waivers and providing an opportunity for public comment**

The Civil Rights Commission hereby proposes to amend Chapter 15, “Miscellaneous Provisions,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 216.5.

Purpose and Summary

These proposed amendments update the rule on requesting a waiver of the Commission's rules in order to remove language on variances in compliance with 2020 Iowa Acts, House File 2389. Also, a new implementation sentence is proposed for Chapter 15, because the chapter did not previously have one.

Fiscal Impact

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

CIVIL RIGHTS COMMISSION[161](cont'd)

Jobs Impact

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

Waivers

This rule does not provide for a waiver of its terms.

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 Commission no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Haley Wurdinger
Iowa Civil Rights Commission
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
Email: haley.wurdinger@iowa.gov

Public Hearing

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

May 14, 2021
1:15 p.m.

Room B100
Grimes 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 Commission 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 161—15.3(17A,ExecOrd11) as follows:

161—15.3(17A,ExecOrd11) Waiver of requirements imposed by commission rule.

15.3(1) *Filing of a request for waiver ~~or variance~~.* Any person may file a request for waiver ~~or variance~~ of an administrative rule of the civil rights commission by writing a proper request which is received by Executive Director, Iowa Civil Rights Commission, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-1004. All requests for waiver ~~or variance~~ of an administrative rule must be in writing and meet all requirements set out in paragraph 15.3(2) "a." A request for a waiver is filed by any of the methods listed in rule 161—3.5(216). The date a request for waiver is filed is governed by 161—subrule 3.5(4). The commission shall provide the requester with a file-stamped copy of the request if the requester provides an extra copy for this purpose.

15.3(2) *Form of request.*

CIVIL RIGHTS COMMISSION[161](cont'd)

a. Required contents. A request for waiver ~~or variance~~ of a rule must:

- (1) Prominently state on its face that it is a request for a waiver ~~or variance~~ of an administrative rule; and
- (2) State the name and address of the entity or person for whom a waiver ~~or variance~~ is requested; and
- (3) Describe or give the citation of the specific rule for which a waiver ~~or variance~~ is requested; and
- (4) State the specific waiver ~~or variance~~ requested.

The commission shall not process a filing as a request for a waiver ~~or variance~~ if that filing does not conform to the requirements of this paragraph.

b. Suggested contents. In addition, a request for waiver ~~or variance~~ of a rule should also:

- (1) State all relevant facts that the requester believes would justify a waiver ~~or variance~~.
- (2) State the reasons the requester believes will justify a waiver ~~or variance~~.
- (3) State the history of the commission's action relative to the requester. If the request is in connection with a complaint of discrimination on file with the commission, the requester should identify the complaint at issue including, if possible, the complaint number.
- (4) State any information regarding the commission's treatment of similar cases, if known.
- (5) State the name, address and telephone number of any person inside or outside state government who would be adversely affected by the grant of the request or who otherwise possesses knowledge of the matter with respect to the waiver ~~or variance~~ request.

15.3(3) Procedure for evaluating requests for waiver.

a. Service of request. Within 30 days after the receipt of a request for waiver ~~or variance~~ of an administrative rule, the commission shall provide a copy to all persons who are required to receive one by a provision of law. The commission may also provide a copy of the request to those individuals whom the requester has identified as being adversely affected by a grant of the request. In the case of a request made in connection with a complaint of discrimination on file with the commission, the commission shall provide a copy of the request to all other parties in the case. Service may occur by regular mail. If necessary for maintenance of the confidentiality of a commission investigation, information may be redacted from a request for ~~variance~~ waiver before the request is provided to persons other than the requester.

b. Decision maker for request. The decision whether to grant a request for waiver ~~or variance~~ shall be made either by the executive director or upon a vote of the commissioners. If the request is made in connection with a complaint of discrimination on file with the commission, any discussion by the commissioners of the request for waiver may be in closed session.

c. Investigation of allegations. The decision maker or a designated member of the commission staff may conduct an investigation into any factual issue which is relevant to the request for a waiver ~~or variance~~. A refusal by the requester to cooperate in this investigation may be grounds to deny the request for waiver ~~or variance~~. In the case of a request made in connection with a complaint of discrimination, if any party to the complaint refuses to cooperate in the investigation, the decision maker may infer that the requested information would be adverse to the uncooperative party.

d. Time frame for decision on request. The commission shall render a decision on a request for waiver ~~or variance~~ of a rule within 120 days of receipt of the request. During this period the commission may extend the time for rendering a decision by notifying all persons who were notified of the request pursuant to paragraph 15.3(3) "a" that the time for rendering a decision has been extended. This notice shall include a new time frame for rendering the decision. Failure to render a decision or extend the time for rendering a decision within the required period shall be deemed a denial of the request.

e. Notification of decision. The commission shall send any decision rendered concerning the request for waiver ~~or variance~~ to all persons who were notified of the request pursuant to paragraph 15.3(3) "a."

f. Form of grant of request. Any waiver ~~or variance~~ shall be the narrowest exception possible to the provisions of the rule. A waiver ~~or variance~~ shall not be permanent unless the requester has shown that a temporary waiver ~~or variance~~ is impracticable. The commission may renew a temporary waiver

CIVIL RIGHTS COMMISSION[161](cont'd)

~~or variance~~ without a request if the commission finds that the factors of paragraph 15.3(4) “b” remain valid.

15.3(4) Standard for evaluating request for waiver.

a. *Burden of persuasion.* The burden of persuasion rests with the person who requests from the commission a waiver ~~or variance~~ of a rule.

b. *Standard.* A request for a waiver ~~or variance~~ shall be evaluated based on the unique, individual circumstances set out in the request. A waiver ~~or variance~~ may be granted only if the decision maker finds clear and convincing evidence that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver ~~or variance~~ is requested; and

(2) The waiver ~~or variance~~ from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person; and

(3) The provisions of a rule subject to a request for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law; and

(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested; and

(5) Granting the request would not waive ~~or vary~~ any requirement created or duty imposed by statute.

15.3(5) Exceptions to waiver.

a. *Waiver in contested cases.* This rule does not apply to any request for a waiver ~~or variance~~ of a rule which is made in connection with a contested case before the commission. Waiver ~~or variance~~ requests made in connection with a contested case are governed by rule 161—4.29(17A).

b. *Not applicable to this rule.* No person may request a waiver ~~or variance~~ from the requirements of this rule.

c. *Requests by commission officials.* No commissioner, commission staff member or other commission official may file a request for a waiver of a requirement placed upon that individual as part of that individual’s official duties.

d. *Time requirements.* This rule does not authorize the commission to waive ~~or vary~~ any time requirement of an administrative rule.

e. *No effect on case status.* In the case of a request made in connection with a complaint of discrimination on file with the commission, the commission may not grant a request for waiver ~~or variance~~ if this would either close a case which was open at the time of the request or reopen a case which was closed at the time of the request. The reopening provisions of rule 161—3.16(216), however, shall apply.

15.3(6) Public inspection of waiver requests. All waiver ~~or variance~~ requests and responses shall be indexed by administrative rule number and available to members of the public for inspection at the offices of the Civil Rights Commission, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. Identifying information concerning any person, including parties to complaints on file, may be withheld by the commission in order to protect the confidentiality of case-related information as required by 2009 Iowa Code Supplement section 216.15(5).

ITEM 2. Adopt the following new implementation sentence in **161—Chapter 15:**

These rules are intended to implement Iowa Code chapter 216.

ARC 5577C

CREDIT UNION DIVISION[189]

Notice of Intended Action

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

The Credit Union Division hereby proposes to amend Chapter 23, “Uniform Waiver and Variance Rules,” Iowa Administrative Code.

CREDIT UNION DIVISION[189](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 533.104.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

The proposed amendments update rules in accordance with changes to Iowa Code section 17A.9A. The changes call for deletion of the word “variance” when the word is used in relation to “waiver.” Amendments are also proposed relating to submission of information regarding waivers on the Legislative Services Agency’s Internet site.

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

Since this is an amendment to the uniform waiver rules, no waiver is permissible.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Jessica Pollmeier
Credit Union Division
200 East Grand Avenue, Suite 370
Des Moines, Iowa 50309-1827
Fax: 515.725.0519
Email: jessica.pollmeier@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 **189—Chapter 23**, title, as follows:

UNIFORM WAIVER AND VARIANCE RULES

CREDIT UNION DIVISION[189](cont'd)

ITEM 2. Amend rule 189—23.1(17A,ExecOrd11), introductory paragraph, as follows:

189—23.1(17A,ExecOrd11) Scope of chapter. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the board or the superintendent in situations where no other more specifically applicable law provides for waivers. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the board or the superintendent. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the division does not possess delegated authority to bind the courts to any extent with its definition. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

ITEM 3. Amend subrule **23.1(1)**, definition of “Waiver or variance,” as follows:

“*Waiver ~~or variance~~*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

ITEM 4. Amend subrule 23.1(2) as follows:

23.1(2) Applicability.

a. The superintendent may grant a waiver ~~or variance~~ from a rule adopted by the board or superintendent only if (1) the board or superintendent has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver ~~or variance~~ from the rule from which waiver ~~or variance~~ is requested; and (3) the requested waiver ~~or variance~~ is consistent with applicable statutes, constitutional provisions, or other provisions of law.

b. No waiver ~~or variance~~ may be granted from a requirement which is imposed by statute.

ITEM 5. Amend rules 189—23.2(17A,ExecOrd11) to 189—23.3(17A,ExecOrd11) as follows:

189—23.2(17A,ExecOrd11) Superintendent discretion. The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the superintendent upon consideration of all relevant factors. Each petition for a waiver ~~or variance~~ shall be evaluated by the superintendent based on the unique, individual circumstances set out in the petition.

23.2(1) Criteria for waiver ~~or variance~~. The superintendent may, in response to a completed petition ~~or on the superintendent's own motion~~, grant a waiver ~~or variance~~ from a rule, in whole or in part, as applied to the circumstances of a specified situation if the superintendent finds all of the following:

a. The application of the rule would result in an undue hardship on the person for whom the waiver ~~or variance~~ is requested;

b. The waiver ~~or variance~~ from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

In determining whether a waiver ~~or variance~~ should be granted, the superintendent shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the superintendent shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

23.2(2) Special waiver ~~or variance~~ rules not precluded. These uniform waiver ~~and variance~~ rules shall not preclude the superintendent from granting waivers ~~or variances~~ in other contexts including, without limitation, those described in Iowa Code sections 533.303 and 533.401 or on the basis of other standards if a statute or other rule authorizes the superintendent to do so and the superintendent deems it appropriate to do so.

189—23.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver ~~or variance~~ petition.

CREDIT UNION DIVISION[189](cont'd)

23.3(1) Application. All petitions for waiver ~~or variance~~ must be submitted in writing to the Credit Union Division, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

23.3(2) Content of petition. A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester (for an example of a petition for waiver ~~or variance~~, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.
- b. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.
- c. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~ under each of the four criteria specified in subrule 23.2(1).
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.
- e. A history of any prior contacts between the superintendent and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver ~~or variance~~, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Any information known to the requester regarding the treatment of similar cases by the superintendent.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver ~~or variance~~.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver ~~or variance~~.

23.3(3) Burden of persuasion. When a petition is filed for a waiver ~~or variance~~ from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the superintendent should exercise the superintendent's discretion to grant the petitioner a waiver ~~or variance~~.

ITEM 6. Amend rule **189—23.5(17A,ExecOrd11)**, catchwords, as follows:

189—23.5(17A,ExecOrd11) Superintendent's responsibilities regarding petition for waiver ~~or variance~~.

ITEM 7. Amend subrules 23.5(1) to 23.5(4) as follows:

23.5(1) Additional information. Prior to issuing an order granting or denying a waiver ~~or variance~~, the superintendent may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the superintendent may, on the superintendent's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the superintendent or the superintendent's designee.

23.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver ~~or variance~~ of rule filed within a contested case; (b) when the board or superintendent so provides by rule or order; or (c) when a statute so requires.

23.5(3) Ruling. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

CREDIT UNION DIVISION[189](cont'd)

23.5(4) Conditions. The superintendent may place any condition on a waiver ~~or variance~~ that the board or superintendent finds desirable to protect the public health, safety, and welfare.

ITEM 8. Amend subrule 23.5(7) as follows:

23.5(7) Time for ruling. The superintendent shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the superintendent shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

ITEM 9. Amend rules 189—23.6(17A,ExecOrd11) to 189—23.11(17A,ExecOrd11) as follows:

189—23.6(17A,ExecOrd11) Public availability. All orders granting or denying waivers ~~and variances~~ under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver ~~or variance~~ and orders granting or denying a waiver ~~or variance~~ petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the superintendent is authorized or required to keep confidential. The superintendent may accordingly redact confidential information from petitions or orders prior to public inspection.

189—23.7(17A,ExecOrd11) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver ~~or variance~~ issued by the superintendent pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the superintendent issues an order finding any of the following:

1. to 3. No change.

189—23.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver ~~or variance~~ order is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

189—23.9(17A,ExecOrd11) Defense. After the superintendent issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

189—23.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver ~~or variance~~ is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the order in response to the request unless a contrary time is provided by rule or statute.

189—23.11(17A,ExecOrd11) ~~Summary reports~~ Submission of waiver information. ~~Semiannually, the superintendent shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the superintendent shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the superintendent's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

CREDIT UNION DIVISION[189](cont'd)

Exhibit A

Sample Petition (Request) for Waiver/~~Variance~~

BEFORE THE SUPERINTENDENT OF CREDIT UNIONS

Petition by (insert name of petitioner) for
the waiver of (insert rule citation) relating
to (insert the subject matter).



PETITION FOR
WAIVER

A request for waiver ~~or variance~~ from a rule adopted by the superintendent shall include the following information in the petition for waiver ~~or variance~~ where applicable and known:

- a. Provide the petitioner's (person asking for a waiver ~~or variance~~) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver ~~or variance~~ is requested.
- c. Describe the specific waiver ~~or variance~~ requested; include the exact scope and operative time period that the waiver ~~or variance~~ will extend.
- d. Explain the important facts that the petitioner believes justify a waiver ~~or variance~~. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver ~~or variance~~ will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.
- e. Provide a history of prior contacts between the superintendent and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver ~~or variance~~; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Provide information known to the petitioner regarding the treatment by the superintendent of similar cases.
- g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver ~~or variance~~.
- h. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver ~~or variance~~.
- i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver ~~or variance~~.
- j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver ~~or variance~~.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

Petitioner should note the following when requesting or petitioning for a waiver ~~or variance~~:

1. The petitioner has the burden of proving to the superintendent, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver ~~or variance~~ in the specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

CREDIT UNION DIVISION[189](cont'd)

2. The superintendent may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver ~~or variance~~.

3. All petitions for waiver ~~or variance~~ must be submitted in writing to the Credit Union Division, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

ARC 5580C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rule making related to therapeutic classrooms and telehealth services on school premises and providing an opportunity for public comment**

The State Board of Education hereby proposes to amend Chapter 14, "School Health Services," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate Files 2360 (behavioral health screening) and 2261 (classroom management, therapeutic classrooms).

Purpose and Summary

This proposed rule making provides guidance on therapeutic classrooms and telehealth services on school premises. The Department conducted five separate meetings with the following stakeholder groups in the drafting of the rules: the Area Education Agency Joint Chiefs and Special Education Directors, the American Civil Liberties Union of Iowa, the Adverse Childhood Experiences Policy Coalition, the ASK Resource Center, Disability Rights Iowa, and the University of Northern Iowa School Psychology Program. The Department also provided opportunity for written comment from the Area Education and Local Education Agency Wellness Committee to collect input on the rules. This rule making incorporates feedback from the stakeholder groups.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa, due to a related appropriation to implement 2020 Iowa Acts, Senate File 2360.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

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Thomas Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

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

May 11, 2021
9 to 10 a.m.

ICN Room, Second Floor
Grimes State Office Building
Des Moines, Iowa
Via videoconference:
IDOE.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09

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 by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new 281—Chapter 14**, Division I heading:

DIVISION I
IN GENERAL

ITEM 2. Amend rule 281—14.5(256,280) as follows:

281—14.5(256,280) Severability. If any provisions of ~~these rules~~ this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of ~~these rules~~ this chapter which can be given effect, and to this end the provisions of ~~these rules~~ this chapter are declared to be severable.

ITEM 3. Amend **281—Chapter 14**, implementation sentence, as follows:

~~These rules are~~ This division is intended to implement Iowa Code sections 135.185, 256.7(33), 279.70 and 280.16.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 4. Adopt the following **new 281—Chapter 14**, Division II heading:

DIVISION II
COMPREHENSIVE HEALTHY AND SAFE LEARNING ENVIRONMENTS

ITEM 5. Adopt the following **new** rules 281—14.6(279) to 281—14.16(279):

281—14.6(279) Purpose and objectives: comprehensive healthy and safe learning environments.

The purpose of this division is to provide uniform definitions and rules for public schools, accredited nonpublic schools, and area education agencies (AEAs) regarding standards for professional development and training in evidence-based classroom management practices, evidence-based interventions, appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person, and in accordance with 281—Chapter 103 for the reasonable, necessary, and appropriate physical restraint of a student. This division gives clear guidance that classroom clearance may be used only to terminate or prevent a threat of bodily injury and clarifies the required parental notification, response, and reporting of school behavior challenges.

This division also provides clarification of Iowa AEAs', public school districts', and accredited nonpublic school districts' responsibilities and the responsibilities of behavioral health service providers as required by Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

This division is intended to promote a comprehensive safe learning space for learners and school staff, and to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies resulting in increased learning for all students; lessen disruption to instruction; and expand supports for educators through teacher preparation, revised protocols, training and professional learning.

281—14.7(279) Definitions. For the purposes of this chapter:

"Assault" means the same as defined in Iowa Code section 708.1.

"Bodily injury" or *"injury"* means physical pain, illness, or any other impairment of physical condition. For purposes of required reporting, the injury must be the result of intentional act and not accidental and must be a physical injury to a person's body that is apparent within 24 hours after the incident and may include damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition. Mental or verbal insult is not covered by this definition.

"Classroom clear" means clearing all other students out of the classroom to calm a child or to address disruption by a child. It is not necessary to use the phrase "classroom clear" to be covered by this division. The mere use of the term "classroom clear" does not bring that activity within the coverage of this division. Using another term for a "classroom clear" does not remove that activity from the coverage of this division. A classroom clear is not either of the following:

1. Removing other students from a classroom to preserve a student's dignity/privacy in the event of a medical emergency, health issue, or both, or
2. Emergency procedures a school/district may use in the event of a school crisis or natural disaster.

"Classroom management" means the set of skills, practices, and strategies teachers use to maintain productive and prosocial behaviors that enable effective instruction in whole class or small group settings.

"Department" means the Iowa department of education.

"Evidence-based" means an activity, strategy or intervention that demonstrates a significant effect on improving student outcomes or other relevant outcomes. Activities, strategies, or interventions with strong or moderate evidence should be prioritized.

"Parent" means an individual included in the definition of "parent" in rule 281—41.30(256B,34CFR300) and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

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“Physical restraint” means the same as defined in rule 281—103.2(256B,280).

“Property damage” means serious damage to property of significant monetary value or significant nonmonetary value or importance because of violence. For purposes of required reporting, the property damage must be the result of intentional act and not accidental. In assessing significant nonmonetary value for purposes of this definition, the following shall be considered: the property is not of significant monetary value but difficult to replace or its loss or damage impedes learning, or an object(s) used as a weapon resulting in damage to the object or property.

“Reasonable and necessary force” means that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 281—103.5(256B,280).

“School district” means an Iowa public school district directly supported in whole or in part by tax dollars, as defined in Iowa Code section 280.2, and with the power and jurisdiction provided by Iowa Code section 274.1.

“Social-emotional-behavioral health” or *“SEBH”* means social, emotional, behavioral and mental well-being that affects how one thinks, feels, communicates, acts, and learns. These contribute to resilience and to how one relates to others, responds to stress and emotions, and makes choices. Foundational knowledge and skills that promote SEBH include self-awareness, self-management, responsible decision-making, social awareness, and relationship skills that support positive well-being and academic success.

“Therapeutic classroom” means a classroom designed for the purpose of providing support for any student whose emotional, social, or behavioral needs interfere with the student’s ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student’s current education environment, with or without supports, including but not limited to the general education classroom. It is not necessary to use the phrase “therapeutic classroom” to be covered by this division. The mere use of the term “therapeutic classroom” does not bring those services or locations within the coverage of this division. Using another term for a “therapeutic classroom” does not remove that service or location from the coverage of this division.

281—14.8(279) Classroom clears.

14.8(1) A classroom teacher may clear students from the classroom only if necessary to prevent or terminate an imminent threat of bodily injury to a student or another person in the classroom. A threat is imminent when it is reasonably likely to inflict pain, illness, or any other impairment of physical condition.

14.8(2) A classroom clear means clearing all other students out of the classroom to calm a child. A classroom clear in which an adult remains with a student to calm the student shall not be considered seclusion.

14.8(3) The restrictions on use of classroom clears pertains to all classrooms, general and special education, ages 3 through 21, when a child is served in a setting that is using public funds for educational purposes.

14.8(4) If a classroom clear is included within a school or district’s crisis response plan, the school or district must also follow the additional requirements outlined in 2020 Iowa Acts, Senate File 2360, and this division.

14.8(5) In determining if a classroom clear may be used to prevent or terminate an imminent threat, the following factors shall be applied:

- a. The size and physical, mental, and psychological condition of the student;
- b. The nature of the student’s behavior;
- c. The presence of a weapon or material that can be weaponized;
- d. The extent and nature of resulting bodily injury to the student and other persons in the classroom; and
- e. The prevention of physical intervention that will likely escalate behavior and result in bodily injury.

281—14.9(279) Required parent/guardian notifications and responses.

14.9(1) General. If a classroom clear is used to prevent an imminent threat, the following notifications and actions shall occur:

- a.* The school principal shall, by the end of the school day if possible, but at least within 24 hours after the incident, notify the parents/guardians of all students assigned to the classroom that it was cleared.
- b.* The notification shall not identify, directly or indirectly, any students involved in the incident giving rise to the classroom clearance.
- c.* The principal shall request that the parent/guardian of the student whose behavior caused the classroom clear meet with the principal, the classroom teacher, and other staff as appropriate.

14.9(2) Students with disabilities. When a student with a disability whose behavior caused a classroom clear and has an individualized education program (IEP) or a behavioral intervention plan (BIP), the classroom teacher shall call for and be included in a review and potential revision of the student's IEP or BIP by the student's IEP team. The AEA, in collaboration with the school district, may, when the parent or guardian meets with the IEP team during the review or reevaluation of the student's IEP, inform the parent or guardian of individual or family counseling services available in the area. The public agencies must provide those services if those services are necessary for a free appropriate public education, pursuant to 281—subrule 41.320(7).

14.9(3) Students without disabilities.

- a.* If a student does not have an IEP or a BIP, the meeting shall include an intervention plan that reduces the likelihood of the recurrence of behaviors requiring a classroom clear.
- b.* If a student has a BIP but does not have an IEP, the classroom teacher shall call for and be included in a review and potential revision of the student's behavioral intervention plan.
- c.* If the school suspects the student whose behavior resulted in a classroom clear might be eligible for a BIP, individual health plan (IHP), safety plan, or IEP, the public agencies shall promptly determine the child's eligibility in accordance with the procedures required for determining eligibility.

14.9(4) Parent input. The team must consider parent input in identifying supports to address behaviors that caused the classroom clear.

- a.* If the parent of a student with an IEP chooses not to participate in the meeting, the school must follow procedures to document efforts to invite the parent, as required by rule 281—41.322(256B,34CFR300), and inform the parent of proposed changes to the IEP or BIP, or both, as required by rule 281—41.503(256B,34CFR300).
- b.* If the parent of a student without an IEP chooses not to participate in the meeting, the school will continue to support the student's needs by planning and providing intervention for the student.

14.9(5) Additional provisions. When calling for a meeting, the classroom teacher may be required to follow procedures established by the school district or AEA to request such a meeting. Any recommended change to a student's behavior intervention plan, individual health plan, safety plan, or educational placement shall be made in accordance with the procedures required for amending said plan or changing said placement.

281—14.10(279) Documentation and reporting.

14.10(1) General. A classroom teacher shall report to the principal any incident of assault or violence that results in injury or property damage by a student enrolled in the school. The school district shall report to the department, in a manner prescribed by the department, an annual count of disaggregated incidents of assault, violence resulting in injury, violence resulting in property damage, and referral/transfer to a therapeutic classroom that includes the therapeutic components as described in subrule 14.12(2). Incidents shall be reported if they occurred by a student in a school building, on school grounds, or at a school-sponsored function.

14.10(2) Contents of report. The report shall include demographic information on students reported as victims and perpetrators, disaggregated by race, gender, national origin, age, grade level, and disability status, along with any other data required by the department to implement the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act, Public Law 114-95, and with safeguards to ensure student privacy.

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14.10(3) Documentation; further reporting to the department. Districts should document all incidents that occur in a school building, on school grounds, or at a school-sponsored function by students attending school in the district. Attending students includes all students who are actively attending school, suspended or expelled during the reporting school year. Districts shall report these data in a manner and at a time specified by the department. The department of education shall compile, summarize, and submit a report to the general assembly each year by November 1.

281—14.11(256) Crisis response.

14.11(1) General. The following consists of appropriate responses to classroom behavior that presents an imminent threat of bodily injury and consistent with rules for seclusion and restraint:

- a. Responses shall include nationally recognized best practices of crisis response/intervention to de-escalate behaviors that are likely to result in bodily harm.
- b. Crisis response strategies shall include a safety assessment and continuum of strategies informed by the level of risk and the safety assessment.
- c. When possible, response strategies shall use less disruptive, nonphysical intervention prior to the use of physical interventions, unless the circumstances are such that physical intervention is necessary to ensure the safety of the student and others.

14.11(2) Use of reasonable force. Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from using reasonable and necessary force in compliance with this chapter and 281—Chapter 103. An employee is not privileged to use unreasonable force to accomplish any of the purposes listed in this chapter and 281—Chapter 103. If physical force is used, school employees shall comply with any requirements imposed by 281—Chapter 103 and this chapter.

281—14.12(256) Prevention of classroom behaviors that present an imminent threat.

14.12(1) Appropriate responses to behaviors, including classroom behavior that presents an imminent threat of bodily injury, shall be part of evidence-based tiered supports within the department's continuous improvement framework to support student SEBH.

14.12(2) The evidence-based tiered supports shall:

- a. Include universal support for all students that foster the emotional well-being of students through schoolwide safe and supportive environments.
- b. Be culturally responsive.
- c. Be trauma responsive.
- d. Include positive school discipline practices.
- e. Include crisis prevention, intervention and de-escalation that is based on student SEBH needs and reasonable in response to the behavior that is being exhibited.
- f. Include proactive strategies which enable schools to identify and intervene early in order to minimize the escalation of identified behavioral health symptoms and other barriers to school success.
- g. Include classroom management practices that include the following evidence-based practices:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- h. Engage parents and guardians as partners in identifying appropriate supports for the students.
- i. Support student development of social-emotional competencies and skills through planned universal instruction.
- j. Have a set of specific supplemental interventions and intensive intervention supports that:
 - (1) Are for students whose behaviors are unresponsive to low-intensity strategies.
 - (2) Are based on functional behavior assessment (FBA).
 - (3) Are supported by individuals trained to handle such issues.

- (4) Involve parents in development and ongoing review.

281—14.13(256) Therapeutic classroom. A school district may include therapeutic classrooms as part of its district's or building's tiers of SEBH supports. A therapeutic classroom is designed for the purpose of providing support for any student, with or without an IEP, whose emotional, social, or behavioral needs interfere with the student's ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student's current education environment, with or without supports, including but not limited to the general education classroom. For the purpose of this chapter, the word "classroom" is a descriptor of an educational set of services that create the educational environment that may include but is not required to include a separate physical setting from other students.

14.13(1) *Continuum of programming.* Therapeutic classrooms include the therapeutic programming students may need to support them across a range of educational settings or learning spaces, or both, and are not necessarily standalone or isolated classrooms. Therapeutic classroom supports are part of a district's tiers of SEBH supports.

14.13(2) *Therapeutic classroom requirements.* For state cost reimbursement and reporting purposes, a therapeutic classroom shall:

- a. Include the following therapeutic components:

- (1) A multidisciplinary team who collaborates regularly to support design, implementation and decision-making regarding therapeutic program supports including but not limited to an individual qualified to conduct diagnostic assessments and support SEBH programming for individuals with social-emotional concerns;

- (2) Practices that enhance positive childhood experiences;

- (3) Clearly articulated and taught behavioral expectations and routines;

- (4) Regular assessment of social-emotional competencies with targeted individualized instruction, small group social-emotional instruction, or both;

- (5) Individualized BIPs developed based on FBAs and trauma-informed practice;

- (6) Regular engagement of family to review progress and make decisions for more or less restrictive programming;

- (7) Supports for generalization and transition to less restrictive supports/settings since a therapeutic classroom is a temporary intervention. Supports include opportunities to practice social-emotional skills in natural contexts with same-age/grade peers.

- b. Be operated by and housed in the school district seeking reimbursement.

- c. Have appropriately licensed and certified teacher(s).

- d. Follow program standards for the age(s) served and the full extent of the district's comprehensive education program, including:

- (1) Preschool programs must follow preschool program standards, as specified in 281—Chapter 16;

- (2) Prekindergarten-twelfth grade programs must follow 281—Chapter 12;

- (3) Programs that serve students with IEPs must also follow 281—Chapter 41.

- e. Not solely consist of any one of the following:

- (1) Calming room/space;

- (2) Single strategy or program without individualization;

- (3) Space/location for disciplinary action;

- (4) Seclusion room.

14.13(3) *General education students.* When general education students are served through a therapeutic classroom, the following must occur:

- a. The therapeutic classroom must have clear requirements for referral, admission, progress monitoring, and exit that focus on supporting learners to return to general services,

- b. Each general education student must have an individualized BIP developed based on an FBA,

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c. When a student receives therapeutic services for 50 percent or more of the school day, a team of qualified professionals, the teacher, and the family must review the BIP every 60 days to consider the need for transition to more or less intensive programming,

d. If, at any point, public agencies suspect a disability, the public agencies must request consent for a full and individual evaluation for special education from the parent as required by 281—Chapter 41.

14.13(4) *Special education students.* Districts operating therapeutic classrooms that serve learners with IEPs shall follow 281—Chapter 41, including requirements for education in the least restrictive environment.

14.13(5) *Consortium agreements.* A district may enter into a cost-sharing consortium agreement with one or more school districts or area education agencies to provide therapeutic classroom supports. Districts shall not enter into an agreement to purchase or hold seats in a therapeutic classroom. If a district seeks cost reimbursement for student(s) who attend a therapeutic classroom:

- a. The therapeutic classroom shall be housed within the district's boundaries;
- b. The district seeking reimbursement shall be fiscally responsible for the therapeutic classroom;
- c. The district seeking reimbursement shall be responsible for operating the therapeutic classroom.

281—14.14(256) *Therapeutic classroom—claims.* A school district may submit claims to the department for the costs of providing therapeutic classroom services and transportation services in accordance with this rule.

14.14(1) *Reimbursement of transportation services.* If the general assembly appropriates moneys for purposes of transportation claims reimbursement in accordance with this subrule, the resident school district may submit a claim to the department for reimbursement for transportation services for a student who is transported to a therapeutic classroom operated by another school district or accredited nonpublic school and located more than 30 miles from the student's designated school or accredited nonpublic school.

- a. Claims are allowable for students enrolled in the school district or in an accredited nonpublic school located in the district boundary and who do not have an assigned special education weighting.
- b. Such claims may be allowable when the school districts or school district and accredited nonpublic school have a shared agreement to provide the therapeutic classroom.
- c. Claims shall be made to the department of education using an invoice supplied by the department and completed by the school district providing transportation during the school year.
- d. Claims must include a listing of actual costs per student transported to a therapeutic classroom, including number of days transported, transportation miles, and other actual costs.

14.14(2) *Claims for reimbursement of services.*

- a. By June 15, 2022, and annually by June 15 thereafter, districts may submit a claim for reimbursement of therapeutic classroom services for the prior school year.
- b. By July 1 of each year, the department shall draw warrants payable to school districts for such claims.
- c. On June 15, 2022, and continuing each June 15 thereafter, districts providing therapeutic classrooms may submit a claim for reimbursement to the department for students served by their therapeutic classroom during the prior school year who have BIPs but no IEP. Districts may submit claims for 1.5 weighting for the number of days they served the student and the number of days in the school district's calendar.
- d. School districts will collect student-level data throughout the year and submit it at the end of the year using a department invoice.
- e. In order for the school district to submit a claim for reimbursement for students attending an accredited nonpublic school or receiving competent private instruction, the student shall be counted as a shared-time student in the district in which the nonpublic school of attendance is located.
- f. Reimbursement will be prorated if claims exceed the amount appropriated.
- g. Claims must include: student served in a therapeutic classroom, confirmation the student has a BIP, number of days served and the number of days in the school district's calendar.

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h. The costs of providing transportation to nonpublic school pupils as provided in this rule shall not be included in the computation of district cost under Iowa Code chapter 257 but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a school district for transporting nonpublic school pupils shall not affect district cost limitations of Iowa Code chapter 257. The reimbursements provided in this rule are miscellaneous income as defined in Iowa Code section 257.2.

281—14.15(256,279,280) Required training. This rule applies to public schools, nonpublic school districts and area education agencies.

14.15(1) An employee must receive training that complies with 281—Chapter 103 prior to using any form of physical restraint or seclusion and includes research-based alternatives to physical restraint and seclusion.

14.15(2) An employee must receive training regarding the least restrictive environment. While there is a presumption that the general education environment is the least restrictive environment, data may overcome that presumption. “General education classroom” is not synonymous with “least restrictive environment.” Training must include the process and procedures for:

- a.* Making placement decisions based on individual student performance data and participation with peers without disabilities; and
- b.* Reviewing student performance data to determine whether changes need to be made to ensure the individual is being educated in the learner’s least restrictive environment.

14.15(3) AEA staff, classroom teachers and school administrators shall receive training prior to using a classroom clear to calm a student. Training shall be reviewed annually and cover the following topics:

- a.* The rules of this chapter;
- b.* The school’s specific policies and procedures regarding the rules of this chapter;
- c.* Training on recognizing and responding to incidents that are an imminent threat of bodily injury;
- d.* Student, parent/guardian, and staff notifications and parent follow-up requirements;
- e.* Reporting requirements for incidents of assault and violence resulting in injury or property damage;
- f.* Reporting requirements for referral and transfer to therapeutic classroom(s);
- g.* The school’s specific crisis response plan for incidents of imminent threat;
- h.* Staff supports following a crisis or significant event.

14.15(4) Within one year of accepting a teaching position in Iowa, a classroom teacher shall receive training on the prevention of behaviors that present an imminent threat. Training must include the following topics:

- a.* The school’s specific policies and procedures for creating learning environments that are safe and supportive.
- b.* Evidence-based culturally responsive approaches to student discipline.
- c.* Evidence-based classroom management strategies that include:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- d.* Universal instruction of social-emotional competencies.
- e.* Engaging families as partners in identifying appropriate supports for learner success.
- f.* Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279).

14.15(5) AEA and school district staff who engage in intervention planning to support supplemental and intensive social-emotional interventions shall receive training on evidence-based interventions for challenging classroom behaviors. Training must include the following topics:

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- a. FBAs;
- b. Using FBAs to design BIPs;
- c. Individual safety plans;
- d. Supports for student reentry to learning following a significant event;
- e. Supports for teacher implementation of BIPs;
- f. Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(256,280) that are culturally responsive and trauma responsive;
- g. Duties and responsibilities of school resource officers and other responders; the techniques, strategies and procedures used by responders; and knowledge of who in the building is trained and authorized in seclusion and restraint;
- h. Documentation and notification requirements for incidents of seclusion, restraint, classroom clear and transfer/referral to a therapeutic classroom.

281—14.16(256) Department responsibilities, evidence-based standards, guidelines and expectations. By June 30, 2022, the department shall develop, establish, and distribute to all school districts evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person to assist the districts in compliance with this rule. The standards, guidelines, and expectations will be consistent with 281—Chapter 103. The evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that presents an imminent threat of bodily injury will be based on the department’s continuous improvement framework to support student social-emotional-behavioral health (SEBH). The director shall consult with the area education agencies to create comprehensive and consistent standards and guidance for professional development relating to successfully educating individuals in the least restrictive environment, and for evidence-based interventions consistent with the standards established pursuant to this rule.

ITEM 6. Adopt the following new **281—Chapter 14** Division II implementation sentence:
This division is intended to implement Iowa Code chapters 256, 279 and 280.

ITEM 7. Reserve rules **281—14.17** to **281—14.19**.

ITEM 8. Adopt the following new **281—Chapter 14**, Division III heading:

DIVISION III
SCHOOL BEHAVIORAL HEALTH SCREENING AND TELEHEALTH

ITEM 9. Adopt the following new rules 281—14.20(280A) to 281—14.24(280A):

281—14.20(280A) Purpose and objectives: contracted behavioral health screening and telehealth. This division describes the responsibilities of Iowa AEAs, public school districts, and accredited nonpublic school districts and behavioral health service providers as required by Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

281—14.21(256B,280A) Definitions. For the purposes of this division, the following definitions apply:

“*Accredited nonpublic school*” means any school, other than a public school, that is accredited pursuant to Iowa Code section 256.11 for any and all levels for grades 1 through 12.

“*Area education agency*” or “*AEA*” means an area education agency established pursuant to Iowa Code chapter 273.

“*Behavioral health screening*” or “*screening*” means a screening and assessment performed using a universal behavioral health screening and assessment tool, approved for use by the department of education in consultation with the department of public health and the department of human services, to identify factors that place children at higher risk for behavioral health conditions, to determine appropriate treatment or intervention, and to identify the need for referral for appropriate services.

EDUCATION DEPARTMENT[281](cont'd)

“Behavioral health services” means services provided by a health care professional operating within the scope of the health care professional’s practice which address mental, emotional, medical, or behavioral conditions, illnesses, diseases, or problems.

“Educational service agency” means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

“Health care professional” means a physician or other health care practitioner licensed, accredited, registered, or certified to perform specified health care services consistent with state law.

“In-person encounter” means that the mental health professional and the student are in the physical presence of each other and are in the same physical location during the provision of behavioral health services.

“Mental health professional” means the same as defined in Iowa Code section 228.1.

“Patient” means a student receiving a behavioral health screening or other behavioral health services in accordance with this chapter.

“Primary care provider” means the personal provider trained to provide the first contact and continuous and comprehensive care to a patient and includes but is not limited to any of the following licensed or certified health care professionals who provide primary care: a physician who is a family or general practitioner or a pediatrician, an advanced registered nurse practitioner, or a physician assistant.

“Provider-patient relationship” means the relationship between the patient and the mental health professional that meets the requirements for commencement and establishment of a valid provider-patient relationship.

“Public school” means any school directly supported in whole or in part by taxation.

“School” means any of the following: an accredited nonpublic school, an area education agency, or a public school.

“School district” means a school district described in Iowa Code chapter 274.

“Student” means a person enrolled in and attending an accredited nonpublic school or a public school in grades 1 through 12.

“Telehealth” means the same as defined in Iowa Code section 514C.34: the delivery of health care services through the use of interactive audio and video. Telehealth does not include the delivery of health care services through an audio-only telephone, electronic mail message, or facsimile transmission.

281—14.22(280A) Behavioral health screenings in school settings.

14.22(1) A school district, an accredited nonpublic school, or an AEA may contract with a mental health professional or a nationally accredited behavioral health care organization in order to provide universal behavioral health screenings to students. If the school district, accredited nonpublic school, or area education agency contracts with mental health professionals to conduct behavioral health screenings, the following applies:

a. The screenings shall be administered with the contracted mental health professional present, using a screener approved by the department, in consultation with the department of public health and the department of human services.

b. The school district, accredited nonpublic school, or AEA that contracts for on-site student behavioral health screenings shall obtain written parent or guardian consent or, in the case of a student who has reached the age of majority, the student’s written consent prior to the student’s participating in each screening.

c. At any point before or during the screening, a student may opt out or discontinue participation in the screening without retribution.

14.22(2) The parental consent shall allow for the mental health professional to disclose the screening results to the school or AEA if there is a credible threat to the health and safety of the student or others and provide the appropriate emergency contact. The parental consent may allow for the mental health professional to disclose screening information to the school or AEA in order to support the student(s) who may need intervention that could be provided through the school.

EDUCATION DEPARTMENT[281](cont'd)

14.22(3) The school district or AEA shall ensure that the mental health professionals contracted to administer the screeners are qualified to administer the selected behavioral health screener.

14.22(4) The school district or AEA shall have procedures to secure and limit the access to health information to comply with the Health Insurance Portability and Accountability Act (HIPAA) in accordance with parental consent.

14.22(5) If a mental health professional conducts the screening and determines that a student needs additional behavioral health services, the mental health professional:

- a.* Shall notify the parent or guardian of the student of the results of the screening.
- b.* May notify the student's primary care provider, with parent or guardian consent, or the consent of the student who has reached the age of majority.
- c.* May provide a list of local primary care providers to the parent or guardian if the student does not have a primary care provider.

281—14.23(280A) Establishment of provider-patient relationship for telehealth in school setting.

14.23(1) A school district, accredited nonpublic school, or AEA may provide access to behavioral health services via telehealth on school/AEA premises.

14.23(2) If a mental health professional provides behavioral health services via telehealth on school/AEA premises, the mental health professional shall first establish a valid provider-patient relationship. The provider-patient relationship is established when:

- a.* The student, with the consent of the student's parent or guardian when the student has not yet reached the age of majority, seeks help from a mental health professional;
- b.* The mental health professional agrees to provide treatment of the student; and
- c.* The student's parent or guardian agrees to have the student treated by the mental health professional.

14.23(3) A valid provider-patient relationship may be established through any of the following means:

- a.* An in-person medical interview and physical examination conducted under the standard of care required for an in-person encounter;
- b.* Consultation with a primary care provider who has an established relationship with the patient and who agrees to participate in or supervise the patient's care; or
- c.* Use of interactive audio and video telehealth, if:
 - (1) The standard of care does not require an in-person encounter, in accordance with evidence-based standards of practice and telehealth practice guidelines that address the clinical and technological aspects of telehealth; or
 - (2) The student's parent or guardian is present.

14.23(4) If a provider-patient relationship is established and the student has not yet reached the age of majority, parent or guardian consent shall be obtained prior to the student receiving behavioral health services via telehealth in a school or AEA setting and shall be required each academic year that the student receives telehealth services.

14.23(5) The school district shall maintain any consent form completed by a parent or guardian.

281—14.24(280A) Behavioral health services provided via telehealth in a school setting.

14.24(1) On or after January 1, 2021, a school district, accredited nonpublic school or AEA may provide access to behavioral health services via telehealth on school/AEA premises.

14.24(2) If the school district, accredited nonpublic school or AEA provides access to behavioral health services via telehealth on school/AEA premises, it shall:

- a.* Provide a secure, confidential, and private room for services and the technology necessary to conduct telehealth services.
- b.* Maintain parent or guardian consent forms for each academic year the student receives services.
- c.* Maintain a schedule for student appointments and arrange for student access to the room by a school nurse or other appropriately trained school or AEA agency employee.
- d.* Ensure that no employee is present in the same room as the student during the session or service.

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e. Provide information to the student participating in telehealth services about how and to whom to report inappropriate behavior by a mental health professional.

f. Provide access to the student's parent or guardian to participate in any of the student's telehealth sessions.

14.24(3) The school district, accredited nonpublic school or AEA shall not access any of the student's medical records or be responsible for billing for the telehealth services.

14.24(4) A mental health professional with prescribing authority who provides telehealth services shall not alter the dosage of an existing medication or prescribe any new medication during a telehealth session without prior consultation with the student's parent or guardian.

14.24(5) The mental health professional shall notify the student's parent or guardian of the time and place for each scheduled telehealth session and specify the means available for the parent or guardian to participate in the session.

14.24(6) The mental health or primary care provider shall keep confidential all patient records and shall not share with the school or AEA unless:

a. Appropriate release of information is obtained, or

b. Shared to prevent a serious and imminent threat to the health and safety of a student or other person, and the mental health professional assesses that the student has intent and ability to carry out the threat.

14.24(7) A public school district, an accredited nonpublic school, an AEA, the boards of directors of a school district or AEA, authorities in charge of accredited nonpublic school, and employees of schools or agencies who act reasonably and in good faith shall not be liable for any injury resulting from the provision of voluntary behavioral health screening or behavioral health services.

This division is intended to implement Iowa Code chapter 280A.

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EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

The State Board of Education hereby proposes to rescind Chapter 15, "Use of Online Learning and Telecommunications for Instruction by Schools," and adopt a new Chapter 15, "Online and Virtual Learning," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 2310.

Purpose and Summary

This proposed revision of Chapter 15 implements the repeal of Iowa Learning Online, expands the use of virtual learning to meet offer-and-teach requirements, and streamlines and modernizes the process for becoming an approved provider for virtual instruction.

Fiscal Impact

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

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Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Thomas Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

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

May 11, 2021
10 to 11 a.m.

ICN Room, Second Floor
Grimes State Office Building
Des Moines, Iowa
Via videoconference:
[IDOE.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09](https://doe.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09)

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 by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind 281—Chapter 15 and adopt the following new chapter in lieu thereof:

CHAPTER 15
ONLINE AND VIRTUAL LEARNING

EDUCATION DEPARTMENT[281](cont'd)

281—15.1(256) Purpose. It is the purpose of this chapter to give guidance and direction for the use of telecommunications as an instructional tool and online learning in one or more courses as an instructional delivery method. This chapter is applicable in whole or in part to school districts, accredited nonpublic schools, and area education agencies for delivery of instruction and support for students enrolled in kindergarten through grade 12.

281—15.2(256) Definitions.

“Accredited nonpublic school” means a nonpublic school accredited pursuant to Iowa Code section 256.11.

“Appropriately licensed and endorsed” means possession of current and valid licensure by the Iowa board of educational examiners to practice at a prescribed educational level in a specified content area.

“Area education agency” or *“AEA”* refers to a political subdivision organized pursuant to Iowa Code chapter 273.

“Class size” refers to the total group taught during a time period by a teacher or teaching team with students at one or more sites.

“Delivered primarily over the Internet” means more than 50 percent of the course content or instruction or both is delivered using the Internet.

“Department” means the department of education.

“Director” means the director of the department of education.

“Exclusive instruction” means without the use of any other form of instructional delivery.

“Good faith effort” means the same as defined in Iowa Code section 279.19A(9).

“Online learning” and *“online coursework”* mean educational instruction and content which are delivered primarily over the Internet. *“Online learning”* and *“online coursework”* do not include print-based correspondence education, broadcast television or radio, videocassettes, or stand-alone educational software programs that do not have a significant Internet-based instructional component.

“Online school” refers to a district or nonpublic school providing educational instruction and course content delivered primarily over the Internet for a group of students for whom this method of delivery is the primary method of education. *“Online school”* also refers to a school for which a district accepts open enrollment for the express purpose of attendance at the online school and that has received permission from the department to operate.

“Participating school district or accredited nonpublic school” means a school district or accredited nonpublic school that is providing online learning or online coursework.

“School district” means a political subdivision organized pursuant to Iowa Code chapter 274.

“Telecommunications” means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications. *“Telecommunications”* does not include online learning.

281—15.3(256) Telecommunications for instruction.

15.3(1) Applicability. This rule applies to all AEAs, school districts, nonpublic schools, community colleges, and institutes of higher education using telecommunications to serve students in kindergarten through grade 12.

15.3(2) Course eligibility. Telecommunications may be employed as a means to deliver any course, including a course required for accreditation by the department, provided it is not the exclusive means of instructional delivery.

15.3(3) Appropriately licensed and endorsed teachers. Instruction provided by telecommunications must be taught by an appropriately licensed and endorsed teacher. When the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originate, the curriculum received at a remote site shall be under the supervision of a licensed teacher.

a. The licensed teacher at the originating site may provide supervision of students at a remote site, or the school district in which the remote site is located may provide for supervision at the remote site.

EDUCATION DEPARTMENT[281](cont'd)

b. For the purposes of this subrule, “supervision” means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

281—15.4 Reserved.**281—15.5(256) Online learning—private providers.**

15.5(1) *Online learning model established.* An online learning program model is established by the director, pursuant to Iowa Code section 256.9, that provides districts and nonpublic schools with a list of approved online providers. The online learning program model requires that approved providers meet criteria for approval and further provides for the following:

a. Use of funds available for online learning for program development, implementation, and innovation.

b. Creation and maintenance of a statewide infrastructure that supports online learning.

c. Online administration of online course assessments.

d. Criteria for school districts or schools to use when choosing providers of online learning.

15.5(2) *Use of approved private providers.* At the discretion of the school board or authorities in charge of an accredited nonpublic school, after consideration of circumstances created by necessity, convenience, and cost-effectiveness, courses developed by private providers may be utilized by the school district or school in implementing a high-quality online learning program.

15.5(3) *Approval criteria.* The department shall maintain a list of approved online providers that provide course content through an online learning platform whose content and delivery meets the following requirements:

a. Courses are taught by teachers licensed under Iowa Code chapter 272.

b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, or comparable coursework.

c. Courses provide access to rigorous, high-quality content and instructional materials aligned with Iowa core content standards and blended learning.

d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.

e. The provider supplies coursework customized to the needs of the student.

f. The provider offers a means for a student to demonstrate competency in completed online coursework.

g. Courses provide online content and instruction evaluated on the basis of student learning outcomes.

15.5(4) *Approval process.* Private providers of online course content or full-time online instruction shall apply for approval to offer such services to Iowa school districts and accredited nonpublic schools a minimum of once every three years on forms provided by the department. Applications to provide services may be received at any time; however, the department will give preference to applications received no later than May 1 during the year prior to the school year in which the provider intends to provide services. Applications received by the deadline of May 1 will be answered no later than June 1. An approved provider shall also apply in each year that any of the following apply:

a. The provider has substantially altered the courses or content offered by either adding or subtracting grade levels or subjects.

b. The provider has substantially altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.

c. The provider has substantially altered the evaluation of student learning used in the system.

d. The provider has substantially altered the online learning content or delivery in any other way that may reasonably be considered material to a school district considering the use of a private provider.

281—15.6(256) Online learning provided by area education agencies.

15.6(1) *Online learning program delivered by area education agencies.* Subject to an appropriation of funds by the general assembly for this purpose, AEAs may provide an online learning program to deliver distance education to Iowa's secondary students, including students receiving independent private instruction, competent private instruction, or private instruction by a nonlicensed person under Iowa Code chapter 299A. An AEA may provide an online learning program separately, in collaboration with other AEAs, or in partnership with school districts and accredited nonpublic schools.

15.6(2) *Student participation.* To participate in an online learning program offered by an AEA, a student must be enrolled in a participating school district or accredited nonpublic school or be receiving private instruction under Iowa Code chapter 299A.

15.6(3) *District responsibility.* The school district or accredited nonpublic school in which the student is enrolled is responsible for:

- a. Recording a student's program coursework grades in the student's permanent record.
- b. Awarding high school credit for program coursework.
- c. Issuing a high school diploma to a student enrolled in the district or school who participates and completes coursework under the program.
- d. Identifying a site coordinator to serve as a student advocate and as a liaison between the program staff and teachers and the school district or accredited nonpublic school.

15.6(4) *Cost.* School districts and accredited nonpublic schools shall pay to AEAs the actual cost of providing coursework under an online learning program offered in accordance with this rule.

15.6(5) *Course content and delivery.* Content and delivery provided by an online learning program established pursuant to this rule must meet the following requirements:

- a. Courses are taught by teachers licensed under Iowa Code chapter 272.
- b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, or comparable coursework.
- c. Courses provide access to rigorous, high-quality content and instructional materials aligned with Iowa core content standards and blended learning.
- d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.
- e. Grades in online courses are based, at a minimum, on whether a student mastered the subject, demonstrated competency, and met the standards established by the school district. Grades may be conferred only by teachers licensed under Iowa Code chapter 272.

15.6(6) *Private instruction.* This rule applies to students receiving independent private instruction as defined in Iowa Code section 299A.1(2) "b," competent private instruction under Iowa Code section 299A.2, or private instruction by a nonlicensed person under Iowa Code section 299A.3. To participate in an online learning program offered by an area education agency, a student receiving private instruction under Iowa Code chapter 299A shall take whatever steps are necessary to enroll with the student's district of residence. The coursework offered by AEAs pursuant to this subrule must be taught and supervised by a teacher licensed under Iowa Code chapter 272 who has online learning experience, and the course content must meet the requirements established by rule pursuant to Iowa Code section 256.7(32) "c."

281—15.7(256) Online learning program provided by a school district—online schools.

15.7(1) *Online learning program provided by a school district.* A school district may provide an online learning program delivered primarily over the Internet which operates as an online school. Such a program shall do all of the following with regard to instruction and content:

- a. Monitor and verify full-time student enrollment, timely completion of graduation requirements, course credit accrual, and course completion.
- b. Monitor and verify student progress and performance in each course through a school-based assessment plan that includes submission of coursework and security and validity of testing components.
- c. Conduct parent-teacher conferences.

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d. Administer assessments required by the state to all students in a proctored setting and pursuant to state law.

15.7(2) *Course content and delivery.* Content and delivery provided by an online learning program established pursuant to this rule must meet the following requirements:

- a. Courses are taught by teachers licensed under Iowa Code chapter 272.
- b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, or comparable coursework.
- c. Courses provide access to rigorous, high-quality content and instructional materials aligned with the Iowa core content standards and blended learning.
- d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.
- e. Grades in online courses are based, at a minimum, on whether a student mastered the subject, demonstrated competency, and met the standards established by the school district. Grades may be conferred only by teachers licensed under Iowa Code chapter 272.

15.7(3) *Approval criteria.* The department shall maintain a list of approved school districts that provide course content through an online learning platform whose content and delivery meets the requirements of subrule 15.7(2).

15.7(4) *Approval process.* School district providers of online course content or full-time online instruction shall apply for approval to offer such services to Iowa districts and accredited nonpublic schools a minimum of once every three years on forms provided by the department. Applications must be received by the department no later than January 1 during the year prior to the school year in which the provider intends to provide services. Applications received by the deadline of January 1 will be answered no later than February 1. An approved provider under this rule shall also apply in each year that any of the following apply:

- a. The provider has substantially altered the courses or content offered by either adding or subtracting grade levels or subjects.
- b. The provider has substantially altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c. The provider has substantially altered the evaluation of student learning used in the system.
- d. The provider has substantially altered the online learning content or delivery in any other way that may reasonably be considered material to a district considering the use of a private provider.

281—15.8(256) Online learning provided by a school district or nonpublic school—courses.

15.8(1) *Course content and delivery.* A school district or nonpublic school may provide an online learning program to deliver online learning and online coursework to students attending the district or school. Such a program must meet the following content and delivery requirements:

- a. Courses are taught by teachers licensed under Iowa Code chapter 272.
- b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, or comparable coursework.
- c. Courses provide access to rigorous, high-quality content and instructional materials aligned with Iowa core content standards and blended learning.
- d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.
- e. Grades in online courses are based, at a minimum, on whether a student mastered the subject, demonstrated competency, and met the standards established by the school district. Grades may be conferred only by teachers licensed under Iowa Code chapter 272.

15.8(2) *Use to meet general accreditation standards.* Any course that is not part of the offer-and-teach requirements for grades 9 through 12 may be provided by an area education agency,

EDUCATION DEPARTMENT[281](cont'd)

by the school district or accredited nonpublic school, or through an online learning platform or online exchange offered by the department in collaboration with area education agencies, school districts, or nonpublic schools. Online courses may be used to meet offer-and-teach requirements for grades 9 through 12 under the following circumstances:

a. Iowa Code sections 256.11(5) “a” through “e” and 256.11(5) “g” through “j” do not apply for up to two specified subjects for any district or accredited nonpublic school if any of the following apply:

(1) The school district or accredited nonpublic school makes every reasonable and good faith effort to employ a teacher licensed under Iowa Code chapter 272 for the specified subject and is unable to employ such a teacher.

(2) Fewer than ten students typically register for instruction in the specified subject at the school district or accredited nonpublic school.

b. In addition, a school district or nonpublic school may exceed the two-subject limitation for the purpose of providing world language, personal finance literacy, and computer science coursework online if either subparagraph 15.8(2) “a”(1) or 15.8(2) “a”(2) applies.

c. In addition to paragraphs 15.8(2) “a” and “b,” a school district or nonpublic school may apply for an annual waiver of the requirements of Iowa Code section 256.11(5) for up to two specified subjects. The school district or nonpublic school must prove to the satisfaction of the department that the school district or accredited nonpublic school has made every reasonable effort, but is unable to meet requirements to offer and teach the courses for which a waiver is sought. A school district or accredited nonpublic school may apply for a waiver each year. Waiver applications are due no later than January 15 the year prior to the school year during which the waiver is requested.

15.8(3) *Delivery options for general accreditation standards.*

a. If a district or accredited nonpublic school uses any of the options under subrule 15.8(2), the courses may be delivered by the following methods: by an area education agency under Iowa Code section 273.16, or by the school district or accredited nonpublic school.

b. If offered by the school district or accredited nonpublic school, the specified subject or course shall be offered through any of the following means:

(1) An online learning platform if the course is developed by the school district or accredited nonpublic school itself or is developed by a partnership or consortium of schools that have developed the course individually or cooperatively. A partnership or consortium of schools may include two or more school districts or accredited nonpublic schools, or any combination thereof.

(2) A private provider approved under subrule 15.5(4).

(3) An online learning platform or online exchange offered, subject to the initial availability of federal funds, by the department in collaboration with one or more area education agencies or in partnership with school districts and accredited nonpublic schools.

15.8(4) *Private instruction.* The online learning platform may deliver distance education to students, including students receiving independent private instruction as defined in Iowa Code section 299A.1(2) “b,” competent private instruction under Iowa Code section 299A.2, or private instruction by a nonlicensed person under Iowa Code section 299A.3, provided such students register with the school district of residence and the coursework offered by the online learning platform is taught and supervised by a teacher licensed under Iowa Code chapter 272 who has online learning experience, and the course content meets the requirements established by rule pursuant to Iowa Code section 256.7(32) “c.”

15.8(5) *Coordination and costs.* The department and the area education agencies operating online learning programs pursuant to Iowa Code section 273.16 shall coordinate to ensure the most effective use of resources and delivery of services. Federal funds, if available, may be used to offset what would otherwise be costs to school districts for participation in the program.

281—15.9(256) Open enrollment. Content and delivery provided online pursuant to rule 281—15.5(256), 281—15.6(256), 281—15.7(256) or 281—15.8(256) may be provided to pupils who are participating in open enrollment under Iowa Code section 282.18.

EDUCATION DEPARTMENT[281](cont'd)

15.9(1) Courses. A school district may provide courses developed by private providers and delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.9(2) Termination. If a student's participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district shall, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

281—15.10(256) Online learning—access by students receiving private instruction. Students enrolled in private instruction pursuant to Iowa Code chapter 299A may participate in online instruction pursuant to subrules 15.6(6) and 15.8(4). The individual providing instruction to a student under Iowa Code chapter 299A as described in Iowa Code section 299A.1(1) shall receive the student's score for completed program coursework.

281—15.11(256,256B) Online learning—students with disabilities.

15.11(1) Children with disabilities may not be categorically excluded from admission to online learning programs or from enrollment in online coursework.

15.11(2) Whether an online course or online learning is appropriate to a child with a disability must be determined by the child's needs, not by the child's assigned weighting under Iowa Code section 256B.9. If a child's individualized education program (IEP) goals cannot be met in online learning, with or without supplementary aids and services or modifications, online learning is not appropriate to the child.

15.11(3) If a child's IEP team determines that online learning is inappropriate to the child, the child's parents are entitled to prior written notice pursuant to rule 281—41.503(256B,34CFR300) and to have available to them the procedural safeguards provided under rule 281—41.504(256B,34CFR300).

15.11(4) When a child with an IEP seeks open enrollment into an online learning program, the child's IEP team shall determine whether the child meets the open enrollment requirements under 281—Chapter 17. In addition, the child's IEP team, together with representatives of the resident and receiving districts and the relevant area education agencies, shall determine whether the receiving district is able to provide an appropriate online education to the child, either with or without supplementary aids and services or modifications. Any dispute about whether the receiving district's program is appropriate shall be resolved pursuant to 281—Chapter 17. The child shall remain in the child's resident district while any dispute about the appropriateness of the receiving district's program is pending.

281—15.12(256) Department general supervision of telecommunications and online learning.

15.12(1) Nature of general supervision. The department shall exercise general supervision over compliance with this chapter and shall offer advice and technical assistance to foster compliance and improved outcomes. This shall be accomplished by department staff, the state board of education, and the educational telecommunications council.

15.12(2) Data collection and reporting.

a. Each school district and accredited nonpublic school shall include in its comprehensive school improvement plan a list and description of the online coursework offered by the school district or accredited nonpublic school to which the student is enrolled.

b. Online schools. A school district providing educational instruction and course content delivered primarily over the Internet shall annually submit to the department, in the manner prescribed by the department, data that includes but is not limited to the following:

- (1) Student achievement and demographic characteristics.
- (2) Retention rates.
- (3) The percentage of enrolled students' active participation in extracurricular activities.
- (4) Academic proficiency levels, consistent with requirements applicable to all school districts and accredited nonpublic schools in this state.
- (5) Academic growth measures, which shall include either of the following:

EDUCATION DEPARTMENT[281](cont'd)

1. Entry and exit assessments in, at a minimum, math and English for elementary and middle school students, and additional subjects, including science, for high school students.

2. State-required assessments that track year-over-year improvements in academic proficiency.

(6) Academic mobility. To facilitate the tracking of academic mobility, school districts shall request the following information from the parent or guardian of a student enrolled in educational instruction and course content that are delivered primarily over the Internet:

1. For a student newly enrolling, the reasons for choosing such enrollment.

2. For a student terminating enrollment, the reasons for terminating such enrollment.

(7) Student progress toward graduation. Measurement of such progress shall account for specific characteristics of each enrolled student, including but not limited to age and course credit accrued prior to enrollment in educational instruction and course content that are delivered primarily over the Internet, and shall be consistent with evidence-based best practices.

c. Department responsibilities. The department shall compile and review the data collected pursuant to this subrule and shall submit its findings and recommendations for the continued delivery by school districts of educational instruction and course content delivered primarily over the Internet in a report to the general assembly by January 15 annually.

15.12(3) Accreditation criteria. All online courses and programs shall meet existing accreditation standards.

15.12(4) Prohibited activities. A rebate for tuition or fees paid or any other dividend or bonus moneys for enrollment of a child shall not be offered or provided directly or indirectly by a school district, school, or private provider to the parent or guardian of a pupil who enrolls in a school district or school to receive educational instruction and course content delivered primarily over the Internet.

15.12(5) Rules of construction.

a. Nothing in this chapter shall be construed to require a school district, accredited nonpublic school, or AEA to use a particular textbook, assessment, provider, or curricular material.

b. Unless otherwise required by a state or federal law protecting students with disabilities, or in accordance with a proclamation of public health disaster emergency issued by the governor pursuant to Iowa Code section 29C.6, nothing in this chapter shall be construed to require a school district or accredited nonpublic school to offer continuous remote learning, to maintain a program of continuous remote learning, to deliver instruction primarily over the Internet, to continue delivering instruction primarily over the Internet, or to become or remain an approved provider of online learning.

c. Schools may use virtual learning or online learning for days of inclement weather to the extent permitted by the Iowa Code.

d. The Iowa learning online (ILO) initiative was repealed by 2020 Iowa Acts, chapter 1107, section 10. Any remaining references to ILO in any department policy, document, or procedure shall be construed to comply with this chapter until that policy, document, or procedure is amended, corrected, rescinded, or repealed.

These rules are intended to implement Iowa Code sections 256.7(32), 256.9(55), 256.11(17), 256.41, and 256.43.

ARC 5583C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to instructional course for drinking drivers and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 21, "Community Colleges," Iowa Administrative Code.

EDUCATION DEPARTMENT[281](cont'd)

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321J.22.

Purpose and Summary

The proposed rule making updates language to accommodate both in-person and online delivery of the instructional course for drinking drivers. During the past year, a significant portion of the courses were delivered online due to the pandemic. Additionally, online delivery of the course was permitted under certain circumstances (e.g., medical necessity). The proposed amendments ensure consistency between the two formats.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Thomas Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

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

May 11, 2021
8 to 8:30 a.m.

ICN Room, Second Floor
Grimes State Office Building
Des Moines, Iowa
Via videoconference:
IDOE.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09

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.

EDUCATION DEPARTMENT[281](cont'd)

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 by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 21.31(3) as follows:

21.31(3) Individuals who reside outside the state of Iowa and who are required by the state of Iowa to take a course for drinking drivers shall have the opportunity to take the course in another state, provided:

~~a. The the out-of-state course is comparable to those courses approved to be offered in the state of Iowa.~~

~~b. The course is delivered in a classroom setting and not online.~~

ITEM 2. Amend subrule 21.31(5), introductory paragraph, as follows:

21.31(5) An instructional course, including allowable delivery formats, shall be approved by the department of education in consultation with the community colleges, substance abuse treatment programs licensed under Iowa Code chapter 125, the Iowa department of public health, and the Iowa department of corrections. The course shall ~~be delivered in a classroom setting with~~ consist of at least 12 hours of instructional time. ~~In-person instruction shall be delivered over a minimum of a two-day period. The course may be offered in blocks not to exceed 4 hours with a minimum of a 30-minute break between blocks. Each student in the class shall receive an individual workbook, and workbooks attending a course shall be provided with the appropriate course materials necessary to complete the course, which shall not be reused.~~ The course shall be taught by an instructor certified by the curriculum provider to teach the course. Each course of instruction shall establish the following:

ITEM 3. Amend subrule 21.32(1) as follows:

21.32(1) Each person enrolled in an instructional course for drinking drivers shall pay to the community college or a substance abuse treatment program licensed under Iowa Code chapter 125 a tuition fee of \$140 for the approved 12-hour course, plus a reasonable ~~book~~ course materials fee. The court may allow an offender to combine the required course with a program that incorporates jail time. Reasonable fees may be assessed for costs associated with lodging, meals, and security.

ARC 5582C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to educator preparation programs and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 79, "Standards for Practitioner and Administrator Preparation Programs," Iowa Administrative Code.

Legal Authority for Rule Making

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

EDUCATION DEPARTMENT[281](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 2356.

Purpose and Summary

Chapter 79 outlines the standards and program requirements that all traditional educator preparation programs must meet to be approved to prepare educators in Iowa. Compliance with these standards is required and is evaluated during each educator preparation program's approval review. The standards are also applied in an annual reporting system. This proposed rule making updates the standards to remain current with United States Department of Education regulations and align with Board of Educational Examiners rules for licensure, and incorporates requirements in 2020 Iowa Acts, Senate File 2356, section 1.

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

No waiver of these standards is permitted.

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 May 11, 2021. Comments should be directed to:

Thomas Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

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

May 11, 2021
8:30 to 9 a.m.

ICN Room, Second Floor
Grimes State Office Building
Des Moines, Iowa
Via videoconference:
IDOE.zoom.us/j/94718226002?pwd=MENTN0xcKjJZL25HN2hGZkRRVjZndz09

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 by calling 515.281.5295.

EDUCATION DEPARTMENT[281](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).

The following rule-making actions are proposed:

ITEM 1. Rescind the definitions of "ISSL" and "Regional accreditation" in rule **281—79.2(256)**.

ITEM 2. Adopt the following new definition of "Institutional accrediting agency" in rule **281—79.2(256)**:

"*Institutional accrediting agency*" means an institutional accrediting agency recognized by the U.S. Department of Education. Agencies include regional and national accreditors. The department will maintain a web link to a list of currently approved accreditors on the department's practitioner preparation web page.

ITEM 3. Amend rule 281—79.4(256) as follows:

281—79.4(256) Criteria for practitioner preparation programs. Each institution seeking approval by the state board of its programs of practitioner preparation, including those programs offered by distance delivery models or at off-campus locations, must be ~~regionally~~ accredited by an institutional accrediting agency recognized by the U.S. Department of Education and shall file evidence of the extent to which each program meets the standards contained in this chapter by means of a written self-evaluation report and an evaluation conducted by the department. The institution shall demonstrate such evidence by means of a template developed by the department and through a site visit conducted by the department. After the state board has approved the practitioner preparation programs of an institution, students who complete the programs and are recommended by the authorized official of that institution will be issued the appropriate license and endorsement(s).

ITEM 4. Amend rule 281—79.9(256) as follows:

281—79.9(256) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the curricula of an institution's approved practitioner preparation program. When an institution proposes a revision which exceeds the primary scope of its programs, including revisions which significantly change the delivery model(s), the revisions shall become operative only after having been approved by the state board. Approval of any institution's application for adding the dyslexia specialist endorsement must include approval by the Iowa reading research center.

ARC 5585C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

The Human Services Department hereby proposes to amend Chapter 151, "Juvenile Court Services Directed Programs," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 232.

HUMAN SERVICES DEPARTMENT[441](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 270.4.

Purpose and Summary

2020 Iowa Acts, Senate File 2284, was enacted by the 88th Session of the Iowa General Assembly and signed by Governor Reynolds on June 17, 2020. This Act relates to matters involving the State Board of Regents and the institutions it governs. Iowa Code section 270.4 was amended to eliminate obligations to counties and institutions for transportation costs of students enrolled in the School for the Deaf and the Braille and Sight Saving School. Chapter 151 is proposed to be amended to remove an exclusion for transportation, effectively allowing payment for transportation. Clothing and medical expenses remain the responsibility of counties and institutions, so those will remain in the rule as an exclusion. For reference, the excluded costs in subparagraph 151.22(2)“b”(6) are as follows:

- Payment by counties: Iowa Code section 263.12,
- Braille and Sight Saving School expenses: Iowa Code section 269.2, and
- Clothing and prescriptions for the School for the Deaf: Iowa Code section 270.4.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 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 May 11, 2021. Comments should be directed to:

Nancy Freudenberg
Iowa 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

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend paragraph **151.22(2)“b”** as follows:

b. All charges for which the county is obligated by statute to pay including:

(1) to (5) No change.

(6) Clothing, ~~transportation~~, and medical or other service provided to persons attending the Iowa Braille and Sight-Saving Sight Saving School, the Iowa School for the Deaf, or the ~~state hospital school for severely handicapped children at Iowa City~~ University of Iowa Stead Family Children’s Hospital for which the county becomes obligated to pay pursuant to Iowa Code sections 263.12, 269.2, and 270.4 to 270.7.

(7) and (8) No change.

ARC 5560C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

The Inspections and Appeals Department hereby proposes to amend Chapter 6, “Uniform Waiver and Variance Rules,” Chapter 41, “Psychiatric Medical Institutions for Children (PMIC),” Chapter 50, “Health Care Facilities Administration,” Chapter 51, “Hospitals,” Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 60, “Minimum Physical Standards for Residential Care Facilities,” Chapter 61, “Minimum Physical Standards for Nursing Facilities,” Chapter 63, “Residential Care Facility—Three- to Five-Bed Specialized License,” Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” and Chapter 71, “Subacute Mental Health Care Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 10A.104(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendments update rules in accordance with changes included in 2020 Iowa Acts, House File 2389. The legislation called for removal of the word “variance” when the word is used in relation to “waiver.” This rule making also removes a reference to granting a waiver upon the Department’s own motion, updates an outdated term for administrative rules, and updates references to the Department’s attached units.

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.

INSPECTIONS AND APPEALS DEPARTMENT[481](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 481—Chapter 6.

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 May 11, 2021. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.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 **481—Chapter 6**, title, as follows:

UNIFORM WAIVER AND VARIANCE RULES

ITEM 2. Amend rule 481—6.1(10A,17A,ExecOrd11) as follows:

481—6.1(10A,17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

ITEM 3. Amend rule **481—6.2(10A,17A,ExecOrd11)**, definition of “Attached units,” as follows:

“*Attached units*” means units attached to the department and includes the employment appeal board, ~~hospital licensing board, state citizen foster care review board~~ child advocacy board, racing and gaming commission, and state public defender’s office.

ITEM 4. Amend rules 481—6.4(10A,17A,ExecOrd11) to 481—6.8(10A,17A,ExecOrd11) as follows:

481—6.4(10A,17A,ExecOrd11) Compliance with statute. The department shall not grant a petition for waiver ~~or a variance~~ from a rule unless a statute or other provision of law has delegated authority to the department sufficient to justify that action and the waiver ~~or variance~~ is consistent with the statute or other provision of law. No waiver ~~or variance~~ may be granted from a requirement that is imposed

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

by statute, unless the statute itself specifically authorizes that action. Any waiver ~~or variance~~ must be consistent with statute.

481—6.5(10A,17A,ExecOrd11) Criteria for waiver ~~or variance~~. At the sole discretion of the director/board, the director/board may issue an order, in response to a completed petition ~~or on the department's own motion~~, granting a waiver ~~or variance~~ from a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons if the director/board finds based on clear and convincing evidence that:

1. The application of the rule to the petitioner would pose an undue hardship on the person or class of persons for whom the waiver ~~or variance~~ is requested;
2. The waiver ~~or variance~~ from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of a rule subject to a petition for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

481—6.6(10A,17A,ExecOrd11) Filing of petition. A petition for a waiver ~~or variance~~ must be submitted in writing to the Department of Inspections and Appeals, Office of the Director, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.

481—6.7(10A,17A,ExecOrd11) Content of petition. A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver ~~or variance~~ is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.
3. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.
4. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.
5. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department that would be affected by the proposed waiver ~~or variance~~, including a description of each regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.
6. Any information known to the requester regarding the department's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver ~~or variance~~.

481—6.8(10A,17A,ExecOrd11) Additional information. Prior to issuing an order granting or denying a waiver ~~or variance~~, the department may request additional information from the petitioner relative to the

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

petition and surrounding circumstances. If the petition was not filed in a contested case, the department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department or department's designee.

ITEM 5. Amend rules 481—6.10(10A,17A,ExecOrd11) to 481—6.17(10A,17A,ExecOrd11) as follows:

481—6.10(10A,17A,ExecOrd11) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver ~~or variance~~ of rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver ~~or variance~~ only when the department so provides by rule or order or is required to do so by statute.

481—6.11(10A,17A,ExecOrd11) Ruling. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

6.11(1) Director/board discretion. The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the applicable board, commission or state public defender shall make the decision, upon consideration of all relevant factors:

- a. Employment appeal board, 486—Chapter 1.
- b. ~~Hospital licensing board, 481—Chapter 51.~~
- c. ~~b. State citizen foster care review~~ Child advocacy board, 489—Chapter 1.
- d. ~~c. Racing and gaming commission, 491—Chapter 1.~~
- e. ~~d. State public defender's office, 493—Chapter 1.~~

6.11(2) Burden of persuasion. The petitioner has the burden of persuasion when a petition is filed for a waiver ~~or variance~~ from a department rule. The standard of proof is clear and convincing evidence.

6.11(3) Special waiver ~~or variance~~ rules not precluded. This chapter shall not preclude the department from granting waivers ~~or variances~~ in other contexts or on the basis of other standards if a statute authorizes the department to do so and the department deems it appropriate to do so.

6.11(4) Administrative deadlines. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

6.11(5) Conditions. The director/board may condition the granting of the waiver ~~or variance~~ on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

- a. Each petition for a waiver ~~or variance~~ shall be evaluated by the department based on the unique, individual circumstances set out in the petition;
- b. A waiver ~~or variance~~, if granted, shall be drafted by the department so as to provide the narrowest exception possible to the provisions of the rule;
- c. The department may place on a waiver ~~or variance~~ a condition that the department finds desirable to protect the public health, safety, and welfare;
- d. A waiver ~~or variance~~ shall not be permanent, unless the petitioner can show that a temporary waiver ~~or variance~~ would be impracticable; and
- e. If a temporary waiver ~~or variance~~ is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver ~~or variance~~ may be renewed if the department finds that all of the factors set out in rule 481—6.5(10A,17A,ExecOrd11) remain valid.

6.11(6) Time for ruling. The director/board shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director/board has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver ~~or variance~~.

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6.11(7) *When deemed denied.* Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

6.11(8) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

481—6.12(10A,17A,ExecOrd11) Public availability.

6.12(1) Subject to the provisions of Iowa Code section 17A.3(1) “e,” the department shall maintain a record of all orders granting or denying waivers ~~and variances~~ under this chapter. All final rulings in response to requests for waivers ~~or variances~~ shall be indexed and available to members of the public at the director’s office.

6.12(2) ~~Twice each year~~ Within 60 days of granting or denying a waiver, the department must ~~prepare a report that~~ make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information.

a. The submission shall:

- ~~1. (1)~~ Identify the rules for which a waiver ~~or variance~~ has been granted or denied;
- ~~2. (2)~~ Identify the number of times a waiver ~~or variance~~ was granted or denied for each rule;
- ~~3. (3)~~ Include a citation to the statutory provisions implemented by these rules; and
- ~~4. (4)~~ Include a general summary of the reasons justifying the department’s actions.

b. To the extent practicable, the department shall include information detailing the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

481—6.13(10A,17A,ExecOrd11) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver ~~or variance~~ upon appropriate notice and hearing if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

481—6.14(10A,17A,ExecOrd11) Violations. Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

481—6.15(10A,17A,ExecOrd11) Defense. After the director/board issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

481—6.16(10A,17A,ExecOrd11) Appeals. Any request for an appeal from a decision granting or denying a waiver ~~or variance~~ shall be in accordance with the procedures provided in Iowa Code chapter 17A and ~~departmental rules~~ rules adopted by the department. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

481—6.17(10A,17A,ExecOrd11) Sample petition for waiver ~~or variance~~.

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by (insert the name of petitioner)
for the waiver of (insert rule citation)
relating to (insert the subject matter).

}

PETITION FOR WAIVER

Include the following information in the petition for waiver where applicable and known:

1. Provide the petitioner’s (the person that is asking for the waiver ~~or variance~~) name, address and telephone number.

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2. Describe and cite the specific rule from which a waiver ~~or variance~~ is requested.
3. Describe the specific waiver ~~or variance~~ requested. Include the exact scope and time period that the waiver ~~or variance~~ will extend.
4. Explain the important facts that the petitioner believes justify the waiver ~~or variance~~. Include in your explanation (a) why application of the rule would pose an ~~undue~~ undue hardship to the petitioner; (b) why granting the waiver ~~or variance~~ would not prejudice the substantial legal rights of any person; (c) state whether the provisions of a rule subject to this petition are specifically mandated by statute or another provision of law; and (d) state whether public health, safety and welfare will be affected if the requested waiver ~~or variance~~ is granted.
5. Provide history of prior contacts between the department and the petitioner relating to the regulated activity, license, audit, investigation, inspection or representation that would be affected by the waiver ~~or variance~~. In that history, include a description of each affected regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.
6. Provide information known to the petitioner regarding the department's treatment of similar cases.
7. Provide the name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.
8. Provide the name, address and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver ~~or variance~~.
9. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver ~~or variance~~.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

ITEM 6. Amend rule 481—41.5(135H) as follows:

481—41.5(135H) Variances Waivers. ~~Variances~~ Waivers from these rules may be granted by the director of the department:

1. When the need for a ~~variance~~ waiver has been established; and
 2. When there is no danger to the health, safety, welfare or rights of any child.
- The ~~variance~~ waiver will apply only to a specific PMIC.

~~Variances~~ Waivers shall be reviewed at the time of each licensure survey by the department to determine continuing need.

41.5(1) To request a ~~variance~~ waiver, the licensee must:

- a. Apply in writing on a form provided by the department;
- b. Cite the rule or rules from which a ~~variance~~ waiver is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain how the ~~variance~~ waiver is consistent with the individual program plans; and
- e. Demonstrate that the requested ~~variance~~ waiver will not endanger the health, safety, welfare or rights of any child.

41.5(2) Upon receipt of a request for ~~variance~~ waiver, the director shall:

- a. Examine the rule from which the ~~variance~~ waiver is requested;
- b. Evaluate the requested ~~variance~~ waiver against the requirement of the rule to determine whether the request is necessary to meet the needs of the children; and

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

c. Examine the effect of the requested ~~variance~~ waiver on the health, safety or welfare of the children.

ITEM 7. Amend paragraph **41.16(1)“b”** as follows:

b. ~~Variance Waiver~~ requests and responses;

ITEM 8. Amend subparagraph **50.8(1)“a”(2)** as follows:

(2) ~~Variance Waiver~~ requests and responses,

ITEM 9. Amend subrule 51.38(2) as follows:

51.38(2) Long-term care service general requirements. The general requirements for the hospital's long-term care service shall be the same as required by Iowa Code chapter 135C and the rules promulgated under its authority for the category of health care facility involved. Exceptions to those rules requiring distinct parts to be established may be waived where it is found to be in the best interest of the long-term care resident and of no detriment to the patients in the hospital.

Requests for ~~variances~~ waivers to other rules for which equivalent health, safety and welfare provisions are provided may be made in accordance with the appropriate health care facility rules. In any case where a distinct part has been established for long-term residents or where the department has given approval for the intermingling of such residents with acute care patients, the same provisions and rules promulgated under Iowa Code chapter 135C shall be applicable. These rules include, but are not limited to, the same restrictions, obligations, programs of care, personal and rehabilitative services and all of the conveniences and considerations which the residents would normally have received in a licensed health care facility.

ITEM 10. Amend subrules 51.50(2) and 51.50(3) as follows:

51.50(2) Submission of construction documents.

a. Submissions of architectural technical documents, engineering documents, and plans and specifications to the building code commissioner are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

b. Submissions shall comply with the provisions of rule 661—300.4(103A).

c. The responsible design professional shall certify that the building plans meet the requirements specified in subrule 51.50(1), unless a ~~variance~~ waiver has been granted pursuant to subrule 51.50(3).

51.50(3) Variances Waivers. The director of the department may grant ~~variances~~ waivers to building and construction guidelines as contained in the Guidelines for Design and Construction of Hospitals, 2018 edition. The hospital or off-site premises must submit a ~~variance~~ waiver request in writing to the director. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the ~~variance~~ waiver. The facility must demonstrate its ability to completely fulfill all other requirements of the service. The director shall make a written determination of the request. In determining whether a ~~variance~~ waiver request shall be granted, the director shall give consideration to the following conditions and to any other conditions the director deems relevant:

a. to c. No change.

d. The ~~variance~~ waiver shall be limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;

e. and f. No change.

ITEM 11. Amend rule 481—57.2(135C,17A) as follows:

481—57.2(135C,17A) Waiver ~~or variance~~. A waiver ~~or variance~~ from these rules may be granted by the director of the department in accordance with 481—Chapter 6. A request for waiver ~~or variance~~ will be granted or denied by the director within 120 calendar days of receipt.

ITEM 12. Amend rule 481—58.2(135C) as follows:

481—58.2(135C) Variances Waivers. ~~Variances~~ Waivers from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need

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

for variance a waiver has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance waiver will apply only to an individual nursing facility. Variances Waivers will be reviewed at the discretion of the director of the department of inspections and appeals.

58.2(1) To request a variance waiver, the licensee must:

- a. Apply for variance a waiver in writing on a form provided by the department;
- b. Cite the rule or rules from which a variance waiver is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain alternate arrangements or compensating circumstances which justify the variance waiver;
- e. Demonstrate that the requested variance waiver will not endanger the health, safety, or welfare of any resident.

58.2(2) Upon receipt of a request for variance a waiver, the director of inspections and appeals will:

- a. Examine the rule from which variance a waiver is requested to determine that the request is necessary and reasonable;
- b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;
- c. Examine the effect of the requested variance waiver on the health, safety, or welfare of the residents;
- d. Consult with the applicant if additional information is required.

58.2(3) Based upon these studies, approval of the variance waiver will be either granted or denied within 120 days of receipt.

ITEM 13. Amend rule 481—60.2(135C) as follows:

481—60.2(135C) Variances Waivers. Procedures for variances waivers in rule 481—57.2(135C) or 481—63.2(135C) of the rules of this department are hereby incorporated by reference as part of this chapter. Certain occupancies, conditions in the area, or the site may make compliance with the rules impractical or impossible. Certain conditions may justify minor modification of the rules. In specific cases, variances waivers to the rules may be permitted by the reviewing authority.

ITEM 14. Amend subrule 61.3(4) as follows:

61.3(4) The responsible design professional shall certify that the building plans meet the requirements specified in this chapter, unless a variance waiver has been granted pursuant to rule 481—61.4(135C).

ITEM 15. Amend rule 481—61.4(135C) as follows:

481—61.4(135C) Variances Waivers.

61.4(1) Procedures in rule 481—58.2(135C) for requesting a variance waiver are incorporated by reference as part of this chapter.

61.4(2) Certain resident populations, conditions in the area, or the site may justify variances waivers. In specific cases, variances waivers to the rules may be granted by the director after the following conditions are met:

- a. to f. No change.

ITEM 16. Amend rule 481—63.2(135C,17A) as follows:

481—63.2(135C,17A) Waiver or variance. A waiver or variance from these rules may be granted by the director of the department in accordance with 481—Chapter 6. A request for waiver or variance will be granted or denied by the director within 120 calendar days of receipt.

ITEM 17. Amend rule 481—64.2(135C) as follows:

481—64.2(135C) Variances Waivers. Variances Waivers from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need

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for variance a waiver has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance waiver will apply only to an individual intermediate care facility for the intellectually disabled. Variances Waivers will be reviewed at the discretion of the director of the department of inspections and appeals.

64.2(1) To request a variance waiver, the licensee must:

- a. Apply for variance a waiver in writing on a form provided by the department;
- b. Cite the rule or rules from which a variance waiver is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain alternate arrangements or compensating circumstances which justify the variance waiver;
- e. Demonstrate that the requested variance waiver will not endanger the health, safety, or welfare of any resident.

64.2(2) Upon receipt of a request for variance a waiver, the director of the department of inspections and appeals will:

- a. Examine the rule from which variance a waiver is requested to determine that the request is necessary and reasonable;
- b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;
- c. Examine the effect of the requested variance waiver on the health, safety, or welfare of the residents;
- d. Consult with the applicant if additional information is required.

64.2(3) Based upon these studies, approval of the variance waiver will be either granted or denied within 120 days of receipt.

ITEM 18. Amend rule 481—65.2(135C), introductory paragraph, as follows:

481—65.2(135C) Application for license. In order to obtain an initial license for an ICF/PMI, the applicant must comply with the rules and standards contained in Iowa Code chapter 135C and the standards in 481—Chapter 61. Variances Waivers from 481—Chapter 61 regulations are allowed under rule 481—61.2(135C). An application must be submitted to the department which states the type and category of license for which the facility is applying.

ITEM 19. Amend rule 481—65.4(135C) as follows:

481—65.4(135C) Variances Waivers. Variances Waivers from these rules may be granted by the director of the department when:

1. The need for a variance waiver has been established consistent with the résumé of care or the resident's individual program plan.
2. There is no danger to the health, safety, welfare or rights of any resident.
3. The variance waiver will apply only to a specific intermediate care facility for the mentally ill. Variances Waivers shall be reviewed at least at the time of each licensure survey and any other time by the department to see if the need for the variance waiver is still acceptable.

65.4(1) To request a variance waiver, the licensee must:

- a. Apply in writing on a form provided by the department;
- b. Cite the rule or rules from which a variance waiver is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain how the variance waiver is consistent with the résumé of care or the individual program plan; and
- e. Demonstrate that the requested variance waiver will not endanger the health, safety, welfare or rights of any resident.

65.4(2) Upon receipt of a request for variance waiver, the director will:

- a. Examine the rule from which the variance waiver is requested;

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

- b.* Evaluate the requested ~~variance~~ waiver against the requirement of the rule to determine whether the request is necessary to meet the needs of the residents;
 - c.* Examine the effect of the requested ~~variance~~ waiver on the health, safety or welfare of the residents;
 - d.* Consult with the applicant to obtain additional written information if required; and
 - e.* Obtain approval of the Iowa mental health and disability services commission, when the request is for a ~~variance~~ waiver from the requirement for qualification of a mental health professional.
- 65.4(3)** Based upon this information, approval of the ~~variance~~ waiver will be either granted or denied within 120 days of receipt.

ITEM 20. Amend rule 481—71.5(135G) as follows:

481—71.5(135G) ~~Variances~~ Waivers.

71.5(1) ~~Variances~~ Waivers from these rules may be granted by the director of the department if, in addition to the requirements of 481—Chapter 6:

- a.* The need for a ~~variance~~ waiver has been established consistent with the résumé of care or the resident's individual program plan; and
- b.* There is no danger to the health, safety, welfare, or rights of any resident.

71.5(2) The ~~variance~~ waiver will apply only to a subacute care facility.

71.5(3) ~~Variances~~ Waivers shall be reviewed by the department at the time of each licensure survey to verify whether the facility is still eligible for the ~~variance~~ waiver.

ARC 5567C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

The Inspections and Appeals Department hereby proposes to amend Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 63, “Residential Care Facility—Three- to Five-Bed Specialized License,” Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” and Chapter 71, “Subacute Mental Health Care Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 10A.104(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2585.

Purpose and Summary

The proposed amendments update rules in accordance with changes included in 2020 Iowa Acts, House File 2585. The legislation requires changes to the terminology used in relation to deaf and hard-of-hearing persons.

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.

INSPECTIONS AND APPEALS DEPARTMENT[481](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 481—Chapter 6.

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 May 11, 2021. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.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 paragraph **57.24(4)“b”** as follows:

b. Residents’ rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English-speaking or deaf or hard of hearing, steps shall be taken to translate the information into a foreign or sign language. In the case of blind residents, either Braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities and these questions shall be answered. (II, III)

ITEM 2. Amend paragraph **57.24(4)“e”** as follows:

e. All residents shall be advised within 30 days following changes made in the statement of residents’ rights and responsibilities. Appropriate means shall be utilized to inform non-English-speaking, deaf or hard-of-hearing, or blind residents of changes. (II, III)

ITEM 3. Amend paragraph **58.39(7)“b”** as follows:

b. Residents’ rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English speaking or deaf or hard of hearing, steps shall be taken to translate the information into a foreign or sign language. In the case of blind residents, either Braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities and these questions shall be answered. (II)

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

ITEM 4. Amend paragraph **58.39(7)“e”** as follows:

e. All residents shall be advised within 30 days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English speaking, deaf or hard-of-hearing, or blind residents of such changes. (II)

ITEM 5. Amend paragraph **63.21(4)“b”** as follows:

b. Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English-speaking or deaf or hard of hearing, steps shall be taken to translate the information into a foreign or sign language. In the case of blind residents, either Braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities, and these questions shall be answered. (II, III)

ITEM 6. Amend paragraph **63.21(4)“e”** as follows:

e. All residents shall be advised within 30 days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English-speaking, deaf or hard-of-hearing, or blind residents of changes. (II, III)

ITEM 7. Amend paragraph **65.25(2)“b”** as follows:

b. Residents' rights and responsibilities shall be presented in language understandable to residents. If the facility serves residents who ~~do not speak English~~ are non-English-speaking or ~~are~~ deaf or hard of hearing, steps shall be taken to translate the information into a foreign or sign language. Blind residents shall be provided either Braille or a recording. Residents shall be encouraged to ask questions about their rights and responsibilities. Their questions shall be answered. (II)

ITEM 8. Amend paragraph **65.25(2)“d”** as follows:

d. All residents, next of kin, or legal guardian shall be advised within 30 days of changes made in the statement of residents' rights and responsibilities. Appropriate means shall be used to inform non-English-speaking, deaf or hard-of-hearing, or blind residents of changes. (II)

ITEM 9. Amend paragraph **71.21(3)“b”** as follows:

b. Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are ~~not English-speaking~~ non-English-speaking or ~~are~~ deaf or hard of hearing ~~impaired~~, steps shall be taken to translate the information into the person's native language or sign language. In the case of visually impaired residents, either Braille or a recording shall be provided.

ARC 5578C

IOWA PUBLIC INFORMATION BOARD[497]

Notice of Intended Action

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

The Iowa Public Information Board (IPIB) hereby proposes to amend Chapter 9, “Waivers or Variances from Administrative Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 23.6(2).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

The purpose of this proposed rule making is to update IPIB's administrative rules in accordance with changes included in 2020 Iowa Acts, House File 2389, section 10. The changes call for removal of the

IOWA PUBLIC INFORMATION BOARD[497](cont'd)

word “variance” when the word is used in relation to “waiver.” Amendments are also proposed regarding the submission of information regarding waivers on the Legislative Services Agency’s Internet site.

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 IPIB for a waiver of the discretionary provisions, if any, pursuant to 497—Chapter 9.

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 IPIB no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Zach Goodrich
Iowa Public Information Board
Wallace State Office Building
502 East 9th Street, Third Floor
Des Moines, Iowa 50319
Phone: 515.725.1782
Email: zach.goodrich@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 **497—Chapter 9**, title, as follows:

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

ITEM 2. Amend rule 497—9.1(17A) as follows:

497—9.1(17A) Definition. For purposes of this chapter, a “waiver” or “variance” means action by the board that suspends, in whole or in part, the requirements or provisions of a rule as applied to any identified person on the basis of the particular circumstances of that person. The term “waiver” shall include both a waiver and a variance, and the term “person” shall include any individual or entity subject to the board’s jurisdiction.

IOWA PUBLIC INFORMATION BOARD[497](cont'd)

ITEM 3. Amend rule 497—9.12(17A) as follows:

497—9.12(17A) Summary reports Submission of waiver information. The board shall ~~semiannually prepare a summary report identifying~~ submit information about granted and denied waivers to the Internet site pursuant to Iowa Code section 17A.9A within 60 days. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule and a citation to the statutory provisions implemented by the rules. The ~~report~~ submission shall include a general summary of the reasons justifying the board's actions on waiver requests and, if practicable, shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself and the extent to which the granting of the waiver has established a precedent for additional waivers. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ARC 5584C

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

Notice of Intended Action

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

The Commission of Libraries hereby proposes to amend Chapter 10, "Waivers or Variances from Administrative Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.52(4).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendments update Chapter 10 in accordance with changes to Iowa Code section 17A.9A as required by 2020 Iowa Acts, House File 2389, section 10. This legislation called for deletion of the word "variance" when the word is used in relation to "waiver." Amendments are also proposed relating to submission of information regarding waivers on the Legislative Services Agency's website.

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 286—Chapter 10.

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 Commission no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

LIBRARIES AND INFORMATION SERVICES DIVISION[286](cont'd)

Michael Scott, State Librarian
State Library of Iowa
Ola Babcock Miller State Office Building
1112 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.242.5062
Email: michael.scott@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 **286—Chapter 10**, title, as follows:

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

ITEM 2. Amend rule 286—10.1(17A) as follows:

286—10.1(17A) Scope of chapter. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the commission in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

ITEM 3. Amend rule 286—10.2(17A) as follows:

286—10.2(17A) Definitions.

“*Commission*” means the commission of libraries established by Iowa Code section 256.52.

“*Division*” means the division of libraries and information services of the department of education.

“*Person*” means an individual, library, government or governmental subdivision or agency, partnership or association, or any legal entity.

“*Waiver or variance*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

ITEM 4. Amend rule 286—10.3(17A) as follows:

286—10.3(17A) Applicability.

10.3(1) The commission may grant a waiver ~~or variance~~ from a rule adopted by the commission only if (1) the commission has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver ~~or variance~~ from the rule from which waiver ~~or variance~~ is requested; and (3) the requested waiver ~~or variance~~ is consistent with applicable statutes, constitutional provisions, or other provisions of law.

10.3(2) No waiver ~~or variance~~ may be granted from a requirement which is imposed by statute.

LIBRARIES AND INFORMATION SERVICES DIVISION[286](cont'd)

ITEM 5. Amend rule 286—10.4(17A) as follows:

286—10.4(17A) Commission discretion. The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the commission upon consideration of all relevant factors. Each petition for a waiver ~~or variance~~ shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

10.4(1) Criteria for waiver ~~or variance~~. In determining whether a waiver ~~or variance~~ should be granted, the commission shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons. The commission may, in response to a completed petition, grant a waiver ~~or variance~~ from a rule, in whole or in part, as applied to the circumstances of a specified situation if the commission finds all of the following:

- a. The application of the rule would result in an undue hardship on the person for whom the waiver ~~or variance~~ is requested;
- b. The waiver ~~or variance~~ from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

10.4(2) Special waiver ~~or variance~~ rules not precluded. These uniform waiver ~~and variance~~ rules shall not preclude the commission from granting waivers ~~or variances~~ in other contexts if a statute or other rule authorizes the commission to do so and the commission deems it appropriate to do so.

ITEM 6. Amend rule 286—10.5(17A) as follows:

286—10.5(17A) Requester's responsibilities in filing a petition for waiver ~~or variance~~.

10.5(1) Application. All petitions for waiver ~~or variance~~ must be submitted in writing to the State Library, Ola Babcock Miller Building, 1112 E. East Grand Avenue, Des Moines, Iowa 50319. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

10.5(2) Content of petition. A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester:

- a. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.
- b. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.
- c. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~ under each of the four criteria specified in paragraphs ~~“a” through “d” of subrule 10.4(1).~~ 10.4(1) “a” through “d.”
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.
- e. A history of any prior contacts between the commission and the petitioner or between the division and the petitioner within the past five years.
- f. Any information known to the requester regarding the treatment of similar cases by the commission.
- g. The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of a waiver ~~or variance~~.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver ~~or variance~~.

LIBRARIES AND INFORMATION SERVICES DIVISION[286](cont'd)

10.5(3) *Burden of persuasion.* When a petition is filed for a waiver ~~or variance~~ from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the commission should exercise the commission's discretion to grant the petitioner a waiver ~~or variance~~.

ITEM 7. Amend rule 286—10.7(17A) as follows:

286—10.7(17A) Commission's responsibilities regarding petition for waiver ~~or variance~~.

10.7(1) *Additional information.* Prior to issuing an order granting or denying a waiver ~~or variance~~, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on the commission's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the commission.

10.7(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver ~~or variance~~ of a rule filed within a contested case; (2) when the commission so provides by rule or order; or (3) when a statute so requires.

10.7(3) *Ruling.* An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

10.7(4) *Conditions.* The commission may place any condition on a waiver ~~or variance~~ that the commission finds desirable to protect the public health, safety, and welfare.

10.7(5) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

10.7(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for a waiver continue to exist.

10.7(7) *Time for ruling.* The commission shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

10.7(8) *When deemed denied.* Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission.

10.7(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

ITEM 8. Amend rule 286—10.8(17A) as follows:

286—10.8(17A) Public availability. All orders granting or denying waivers ~~and variances~~ under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver ~~or variance~~ and orders granting or denying a waiver ~~or variance~~ petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information that the commission is authorized or required to keep confidential. The commission may accordingly redact confidential information from petitions or orders prior to public inspection.

ITEM 9. Amend rule 286—10.9(17A) as follows:

286—10.9(17A) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver ~~or variance~~ issued by the commission pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the commission issues an order finding any of the following:

LIBRARIES AND INFORMATION SERVICES DIVISION[286](cont'd)

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with any conditions contained in the order.

ITEM 10. Amend rule 286—10.10(17A) as follows:

286—10.10(17A) Violations. Violation of conditions in the waiver ~~or variance~~ order is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

ITEM 11. Amend rule 286—10.11(17A) as follows:

286—10.11(17A) Defense. After the commission issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

ITEM 12. Amend rule 286—10.12(17A) as follows:

286—10.12(17A) Judicial review. Granting or denying a request for waiver ~~or variance~~ is final agency action under Iowa Code chapter 17A. Judicial review of the decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

ITEM 13. Amend rule 286—10.13(17A) as follows:

286—10.13(17A) ~~Summary reports. Submission of waiver information.~~ ~~Semiannually, the division shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the commission shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied by the commission, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the ~~report~~ submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ARC 5586C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Proposing rule making related to sex offender registry and providing an opportunity for public comment

The Public Safety Department hereby proposes to amend Chapter 83, "Iowa Sex Offender Registry," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 692A.130.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 692A.101(1)"a"(9), 692A.101(2)"a"(4), 692A.102(1)"c"(13), and 709.4.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Purpose and Summary

The proposed amendments to Chapter 83 reflect the new offense (continuous sexual abuse of a child) added by 2020 Iowa Acts, House File 2554, which was signed by the Governor on June 29, 2020. These proposed amendments update the definitions of the Sex Offender Registry (SOR) to reflect the addition of the new registrable offense. These amendments also remove outmoded references to 2009 Iowa Acts, Senate File 340, which made changes to the SOR language in the Iowa Code in 2009; to Iowa Code section 709C.1, which formerly made criminal transmission of HIV a registrable offense; to Iowa Code section 709.4, the since-revised statute relating to sexual abuse in the third degree; to risk assessments, which are no longer referenced in Iowa Code chapter 692A as of July 1, 2009; and to the DCI-150 form, which is now a tier notification form, not a request for registry information form. The outdated ten-day requirement is removed from rule 661—83.3(692A) pursuant to Iowa Code section 692A.109; verification is only required in the county of principal residence, and there is no ten-day requirement in the Iowa Code. Registrants have a month to verify their information; the rules will now reflect that.

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

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Sarah Jennings
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: jennings@dps.state.ia.us

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

PUBLIC SAFETY DEPARTMENT[661](cont'd)

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 ~~661—83.2(692A)~~, definitions of “Aggravated offense,” “Aggravated offense against a minor,” “Sex offender,” “Sex offense,” “Tier I offender,” “Tier II offender” and “Tier III offender,” as follows:

“*Aggravated offense*” means a conviction for any of the following offenses:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
3. Sexual abuse in the third degree in violation of Iowa Code section ~~709.4, subsection 1.~~ 709.4(1) “a.”
4. Lascivious acts with a child in violation of Iowa Code section ~~709.8, subsection 1 or 2.~~ 709.8(1) “a” or “b.”
5. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
6. Burglary in the first degree in violation of Iowa Code section ~~713.3, subsection 1, paragraph “d.”~~ 713.3(1) “d.”
7. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the commission of the offense.
8. Murder in violation of Iowa Code section 707.2 or 707.3, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
9. ~~Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph “a.”~~ Continuous sexual abuse of a child in violation of Iowa Code section 709.23.
10. Any conviction for an offense specified in the laws of another jurisdiction or any conviction for an offense prosecuted in a federal, military, or foreign court that is comparable to an offense listed in paragraphs “1” through “9” shall be considered an aggravated offense for purposes of registering under this chapter.

“*Aggravated offense against a minor*” means a conviction for any of the following offenses, if such offense was committed against a minor or otherwise involves a minor:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
3. Sexual abuse in the third degree in violation of Iowa Code section 709.4, except for a violation of Iowa Code section ~~709.4, subsection 2, paragraph “c,” subparagraph (4)~~ 709.4(1) “b”(3)(d).
4. Continuous sexual abuse of a child in violation of Iowa Code section 709.23.
5. Any offense specified in the laws of another jurisdiction or prosecuted in a federal, military, or foreign court that is comparable to an offense listed in paragraphs “1” through “4” shall be considered an aggravated offense against a minor if such an offense was committed against a minor or otherwise involves a minor.

“*Sex offender*” means a person who is required to be registered under Iowa Code chapter 692A as ~~amended by 2009 Iowa Acts, Senate File 340.~~

“*Sex offense*” means an indictable offense for which a conviction has been entered that ~~has an element involving a sexual act, sexual contact, or sexual conduct, and which is enumerated in 2009 Iowa Acts, Senate File 340, section 2,~~ is enumerated in Iowa Code section 692A.102 and means any comparable offense for which a conviction has been entered under prior law, or any comparable offense for which a conviction has been entered in a federal, military, or foreign court, or another jurisdiction.

“*Tier I offender*” means a registrant who has been convicted of one or more of the offenses enumerated in ~~2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “a.”~~ Iowa Code section 692A.102(1) “a.”

“*Tier II offender*” means a registrant who has been convicted of one or more of the offenses identified in ~~2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “b,”~~ Iowa Code section 692A.102(1) “b” and is not a “tier I offender.”

PUBLIC SAFETY DEPARTMENT[661](cont'd)

“Tier III offender” means a registrant who has been convicted of one or more of the offenses enumerated in ~~2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “c,”~~ Iowa Code section 692A.102(1) “c” and is not a “tier I offender” or a “tier II offender.”

ITEM 2. Amend subrules 83.3(2) and 83.3(3) as follows:

83.3(2) Registration.

a. Form DCI-145 or Form DCI-144R, Sex Offender Registration, shall be completed, as required by ~~2009 Iowa Acts, Senate File 340, section 4, subsection 8~~ Iowa Code section 692A.104, on behalf of each offender and submitted, in printed or electronic form, to the sheriff of each county in which the offender will be residing, employed, or attending classes and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry. This form shall also be completed on behalf of each offender and submitted to the sheriff of any county in which the offender will be a student, be employed, or be engaged in a vocation on a full-time or part-time basis, in order to satisfy the registration requirements.

b. Form DCI-145, or information stored by the division of criminal investigation, shall be used to report changes of residence, telephone number, name of registrant, or change in status as a student, employee, or practicing a vocation at an institution of higher education. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of any county of residence each time the registrant’s relevant information changes. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county in which the registrant is a student, an employee, or practicing a vocation on a full-time or part-time basis at an institution of higher education within five days of the registrant’s becoming a student, an employee, or engaged in a vocation at the institution of higher education. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

(1) If any place of residence of a registrant changes from one county to another, the registrant shall submit copies, in printed or electronic form, of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

(2) When the department receives notification that a registrant has changed residence to a location outside of Iowa, the department shall notify the registering state agency in the registrant’s new state of residence of the registrant’s name, new address, and telephone number. Upon notification of the appropriate out-of-state agency, the department shall remove the registrant from the active registry, unless the registrant continues to maintain a residence or place of employment in Iowa or attends school in Iowa. The registrant shall not be required to submit periodic verifications of address while not on the active registry. The department shall maintain the registrant’s file in the event the registrant establishes a residence in Iowa or becomes a student, an employee, or practices a vocation at an institution of higher education in Iowa in the future. The department may also maintain the file for any other purpose.

c. Upon any submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender.

d. A list of all registrants within a county may be provided by the division of criminal investigation to the county sheriff.

83.3(3) Periodic verification. A registrant shall appear personally in the office of the sheriff of the county or counties of principal residence periodically as required by ~~2009 Iowa Acts, Senate File 340, section 8,~~ Iowa Code section 692A.108 to verify relevant information. A tier I offender shall appear annually, or more frequently if required by the sheriff; a tier II offender shall appear every six months, or more frequently if required by the sheriff; and a tier III offender shall appear every three months, or more frequently if required by the sheriff. Form ~~DCI-146~~ DCI-146R, Periodic Verification Notification Form, shall be mailed by the division of criminal investigation to each registrant at the last address known to the registry at least 30 days prior to each required appearance. The registrant shall appear between the first and last day of the verification month. Form ~~DCI-146~~ DCI-146R shall clearly state that it is

PUBLIC SAFETY DEPARTMENT[661](cont'd)

to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

a. Each registrant shall report to the sheriff of a the county of principal residence of the registrant ~~within ten days of receipt of the periodic verification notification form~~. The sheriff shall take a current photograph of the registrant and shall submit the photograph to the registry.

b. The sheriff of any county of residence of a registrant may, at any time, instruct the registrant to report to the sheriff's office for the purpose of the taking of a current photograph. Such instructions shall be mailed to the registrant at the registrant's current address of registration. The registrant shall report to the sheriff's office within ten days of receiving such instructions. The sheriff shall submit the current photograph of the registrant to the registry.

ITEM 3. Amend subrule 83.3(5) as follows:

83.3(5) *Application for determination.* Form DCI-148, Application for Determination, shall be completed by a person to initiate a request that the department review whether one or more offenses of which the person has been convicted require registration with the Iowa sex offender registry, whether the time period during which the person is required to register has expired, whether the person is exempt from the placement of information on the sex offender registry ~~Web site~~ website, and the tier placement of the offender. A person who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts or law which the person intends to present to the department in support of the application. Failure to submit any of the required information shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, relevant statutory provisions, and other records provided, and is material to the determination, the commissioner may refer the matter to an administrative law judge or presiding officer for a contested case hearing.

NOTE: Filing an application for determination does not excuse a person from having to comply with any of the applicable provisions of Iowa Code chapter 692A ~~as amended by 2009 Iowa Acts, Senate File 340~~, during the period prior to the issuance of the decision of determination.

ITEM 4. Amend subrule 83.3(7) as follows:

83.3(7) *Request for information.* Requests for information about whether a specific individual is registered shall be made to a county sheriff or local police department and may be made in person, by telephone, or in writing. ~~Form DCI-150, Request for Registry Information, may be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry may submit a completed copy of Form DCI-150 to a sheriff or police department. If a request for information is submitted using Form DCI-150, a separate form shall be submitted for each person about whom information is being requested.~~

ITEM 5. Amend subrule 83.4(2) as follows:

83.4(2) *Sex offender registry Web site website.* The department shall place information regarding each registrant on the registry ~~Web site (www.iowasexoffenders.com)~~ website (www.iowasexoffender.gov), except that information regarding any registrant for whom the sole basis of registration is a conviction or convictions for a violation or violations of Iowa Code section 709.4, ~~subsection 2, paragraph "c," subparagraph (4)~~ 709.4(1) "b"(3)(d), and whose offense was committed when the offender was under 20 years of age, shall not be placed on the ~~Web site~~ website. Information regarding a registrant placed on the sex offender registry ~~Web site~~ website may include any relevant information allowed under Iowa Code section 692A.121.

ITEM 6. Amend paragraph **83.4(3)"b"** as follows:

b. The general public, including public and private agencies, organizations, public places, child care facilities, religious and youth organizations, neighbors, neighborhood associations, community

PUBLIC SAFETY DEPARTMENT[661](cont'd)

meetings, and employers. Registry information may be distributed to the public through printed materials, visual or audio press releases, radio communications, or a criminal or juvenile justice agency's ~~Web-site~~ website.

ITEM 7. Amend subrule 83.4(5) as follows:

83.4(5) *Release of information in response to individual request.* A sheriff or police department that receives a request for information about whether a specific individual is registered or not shall inquire of the division of criminal investigation via the Iowa on-line warrants and articles (IOWA) system or the sex offender registry application (SORA) as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the person about whom the inquiry was made is a registrant and may provide the requester with the relevant information allowed under Iowa Code section 692A.121 regarding the registrant.

ITEM 8. Rescind subrule **83.4(9)**.

ITEM 9. Amend **661—Chapter 83**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 692A ~~as amended by 2009 Iowa Acts, Senate File 340.~~

ARC 5558C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

The Department of Public Safety hereby proposes to amend Chapter 159, "Statewide Sobriety and Drug Monitoring Program," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 901D and 2020 Iowa Acts, House File 2411.

Purpose and Summary

The proposed amendments update Chapter 159 to reflect the revisions made to the Statewide Sobriety and Drug Monitoring Program by 2020 Iowa Acts, House File 2411. This legislation eliminated the provision that a person who has been ordered to participate in the Statewide Sobriety and Drug Monitoring Program by a court, and whose driver's license has been suspended or revoked, be eligible for a temporary restricted license before beginning participation in the program or being subject to the testing required by the program. The legislation also eliminated the requirement that a person install an approved ignition interlock device on each of the vehicles owned or operated by that person in order to participate in the program.

Fiscal Impact

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

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Sarah Jennings
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: jennings@dps.state.ia.us

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 subrule 159.12(1) as follows:

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

- a. and b. No change.
- c. Participate in the 24/7 program when ordered as a condition of bond, pretrial release, sentence, probation, or parole, ~~or a temporary restricted license.~~
- d. and e. No change.
- f. ~~Install~~ Unless otherwise ordered by the court, install an approved ignition interlock device on all motor vehicles owned or operated by the person if the person’s driver’s license is suspended or revoked or as is otherwise required by Iowa Code section 321J.17, and in any circumstance in which Iowa Code chapter 321J requires the installation of an ignition interlock device, ~~or as ordered by the court pursuant to Iowa Code section 901D.3(2)“b.”.~~
- g. and h. No change.

ARC 5559C**PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action****Proposing rule making related to carbon monoxide alarms
and providing an opportunity for public comment**

The State Fire Marshal Division hereby proposes to amend Chapter 211, “Carbon Monoxide Alarms,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 100.18(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 100.18.

Purpose and Summary

The proposed amendments to Chapter 211 reflect the changes in nomenclature made by 2020 Iowa Acts, House File 2585, regarding persons who are deaf or hard of hearing. Section 4 of this legislation requires owners of rental units to install light-emitting carbon monoxide alarms upon the request of tenants who are deaf or hard of hearing.

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

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Sarah Jennings
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: jennings@dps.state.ia.us

PUBLIC SAFETY DEPARTMENT[661](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 action is proposed:

Amend rule 661—211.20(86GA,SF2219) as follows:

661—211.20(86GA,SF2219) Responsibility for installation and maintenance of carbon monoxide alarms.

211.20(1) and **211.20(2)** No change.

211.20(3) ~~*Hearing-impaired Deaf or hard-of-hearing tenant.*~~ An owner of a multiple-unit residential building or a single-family rental unit ~~in which a carbon monoxide alarm is required~~ that has a fuel-fired heater or appliance, a fireplace, or an attached garage, or the owner’s agent, shall, upon request of a tenant who ~~has a~~ is deaf or hard of hearing impairment, install light-emitting carbon monoxide alarms.

ARC 5587C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Proposing rule making related to standards for electrician and electrical contractor licensing and providing an opportunity for public comment

The Electrical Examining Board hereby proposes to amend Chapter 500, “Electrician and Electrical Contractor Licensing Program—Organization and Administration,” Chapter 502, “Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures, and Fees,” and Chapter 506, “Military Service, Veteran Reciprocity, and Spouses of Active Duty Service Members for Electricians and Electrical Contractors,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 272C and section 103.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 272C and section 103.6.

Purpose and Summary

These proposed amendments update the standards for electrician and electrical contractor licensing in keeping with 2020 Iowa Acts, House File 2627, signed into law by the Governor on June 25, 2020. This law relaxed the licensing requirements for several professions, including those of electrical contractor and electrician. These amendments relax the standards for reciprocity, disqualifying convictions, fee structure, and military spouses as they relate to electrician and electrical contractor licensing.

PUBLIC SAFETY DEPARTMENT[661](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

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Brian Young
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Email: byoung@dps.state.ia.us

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 rule 661—500.2(103) as follows:

661—500.2(103) Definitions. The following definitions apply to all rules adopted by the electrical examining board.

“*Approved by the board*” means the approval of any item, test or procedure by the electrical examining board by adoption of a resolution at a meeting of the board, provided that the approval has not been withdrawn by a later resolution of the board. A list of any such items, tests, or procedures that have been approved by the board is available from the board office or from the board ~~Web site~~ [website](#).

“*Board*” means the electrical examining board created under ~~2007 Iowa Acts, chapter 197, section 42~~ [Iowa Code section 103.2](#).

PUBLIC SAFETY DEPARTMENT[661](cont'd)

“Complete criminal record” means the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“Conviction” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“Department” means the department of public safety.

“Directly relates” or “directly related” means either that the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession; or that the circumstances under which an offense was committed are customary to the profession.

“Disqualifying conviction” or “disqualifying offense” means a conviction directly related to the practice of the profession.

“Division” means the fire marshal division of the department of public safety.

“Documented experience” means experience which an applicant for licensing has completed and which has been documented by the applicant’s completion and submission of a sworn affidavit or other evidence required by the board.

“Eligibility determination” means the process by which a person who has not yet submitted a completed license application may request that the board determine whether one or more of the person’s convictions are disqualifying offenses that would prevent the individual from receiving a license or certification.

“Emergency installation” means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or man-made disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work, and may be performed prior to submission of a request for permit or request for inspection. A request for permit and request for inspection, if required by rule 661—552.1(103), shall be made as soon as practicable and, in any event, no more than 72 hours after the installation is completed.

“Executive secretary” means the executive secretary appointed by the board.

“Farm” means land, buildings and structures used for agricultural purposes including but not limited to the storage, handling, and drying of grain and the care, feeding, and housing of livestock.

“Final agency action” means the issuance, denial, suspension, or revocation of a license. If an action is subject to appeal, “final agency action” has occurred when the administrative appeal process provided for in 661—Chapter 503 has been exhausted or when the deadline for filing an appeal has expired.

“Full-time” means a minimum of 1,700 hours of work in a one-year period.

“Issuing jurisdiction” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

“Registered apprenticeship program” means an electrical apprenticeship program registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or an electrical apprenticeship program registered with a state agency whose registration program is accepted by the Bureau of Apprenticeship and Training in lieu of direct registration with the Bureau of Apprenticeship and Training.

“Residential electrical work” means electrical work in a residence in which there are no more than four living units within the same building and includes work to connect and work within accessory structures, which are structures no greater than 3,000 square feet in floor area, not more than two stories in height, the use of which is incidental to the use of the dwelling unit or units, and located on the same lot as the dwelling unit or units.

“Routine maintenance” means the repair or replacement of existing electrical apparatus or equipment of the same size and type for which no changes in wiring are made. The performance of routine maintenance in itself does not require a person to obtain or hold a license as an electrician or electrical contractor.

“Special residential electrician” means a person who holds a current special electrician license with a residential endorsement.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

“Transferring jurisdiction” means the specific issuing jurisdiction on which an applicant relies to seek licensure in Iowa by verification under this chapter.

ITEM 2. Amend **661—Chapter 500**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 197~~ Iowa Code chapters 103 and 272C.

ITEM 3. Amend rule 661—502.2(103) as follows:

661—502.2(103) License requirements.

502.2(1) and 502.2(2) No change.

502.2(3) A class A master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. Has completed one year of experience as a licensed journeyman electrician, and has passed a supervised written examination for master electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application; or

b. As of December 31, 2007, held a current valid license as a master electrician issued by a political subdivision in Iowa, the issuance of which required passing a supervised written examination approved by the board, and one year of experience as a journeyman electrician; or

c. Holds a current class B master electrician license and has passed a supervised written examination for master electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application.

502.2(4) No change.

502.2(5) A residential master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who ~~meets one of the following requirements:~~ holds

~~*a.* Holds a current residential electrician or journeyman electrician license, has 2,000 hours of verified experience as a residential electrician or a journeyman electrician, and has passed a residential master electrician examination approved by the board; or with a score of 70 or higher within 24 months of submission of a new application.~~

~~*b.* Holds a current special electrician license with a residential endorsement, has 4,000 hours of verified experience, and has passed a residential master electrician examination approved by the board.~~

502.2(6) A class A journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. Has successfully completed a registered apprenticeship program, has passed a supervised written examination for journeyman electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application, and has completed four years of experience as an apprentice electrician.

b. Holds a current class B journeyman electrician license and has passed a supervised written examination for journeyman electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application.

c. Holds a current electrician license in another state, has passed a supervised written examination for journeyman electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application, and has satisfied the sponsorship requirements for testing for a journeyman class A license by providing evidence of all of the following:

(1) Current licensure as a journeyman or master electrician from another state which required passing a test sponsored by that state.

(2) Completion of 18 hours of continuing education units approved by the board.

(3) Completion of 1,000 hours of work in Iowa as an unclassified person.

d. Holds a current license issued by the board, excluding a special electrician license other than special residential electrician license; has passed a supervised written examination for journeyman

PUBLIC SAFETY DEPARTMENT[661](cont'd)

electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application; has completed 54 hours of continuing education approved by the board; and has completed 16,000 hours of electrical work while licensed by the board, except as a special electrician other than a special residential electrician, as verified by a master electrician licensed by the board. The 16,000 hours must include at least the following minimum number of hours of work on commercial or industrial installations in the categories indicated: 500 hours of preliminary work, 2,000 hours of rough-in work, 2,000 hours of finish work, 2,000 hours of lighting and service work, 500 hours of troubleshooting, and 500 hours of motor control work. At least 4,000 hours of the 16,000 hours must have been completed by the applicant within the five years immediately preceding the submission date of the application.

EXCEPTION: On or before December 31, 2019, a maximum of 10,000 of the required 16,000 hours of verified work experience may have been completed between January 1, 2000, and December 31, 2007, without licensure from the board or from any political subdivision.

e. Holds a current license issued by the board as a residential electrician or residential master electrician, has passed a supervised written examination for journeyman electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application, and has completed 4,000 hours of work on commercial or industrial electrical installations while licensed by the board, as verified by a master electrician licensed by the board. The 4,000 hours must include at least the following minimum numbers of hours in the categories indicated: 100 hours of preliminary work, 500 hours of rough-in work, 500 hours of finish work, 500 hours of lighting and service work, 100 hours of troubleshooting, and 100 hours of motor control work.

f. Holds a current license issued by the board, has satisfactorily completed an approved postsecondary electrical education program, has passed a supervised written examination for journeyman electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application, and, subsequent to beginning the postsecondary electrical education program, has completed at least 6,000 hours of electrical work while licensed by the board, as verified by a master electrician licensed by the board.

502.2(7) No change.

502.2(8) A residential electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. to *d.* No change.

e. Has successfully completed a registered residential electrician apprenticeship program and passed a supervised written residential electrician examination approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application.

502.2(9) A special electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets the qualifications for any endorsement entered on the license. Each special electrician license shall carry one or more endorsements as specified in paragraphs “*a*” through “~~*d*~~” “*c*.”

a. Endorsement 1, “Irrigation System Wiring,” shall be included on a special electrician license if the licensee requests it and has passed a supervised examination approved by the board or has completed two years, or 4,000 hours, of documented experience in the wiring of irrigation systems.

b. Endorsement 2, “Disconnecting and Reconnecting Existing Air Conditioning and Refrigeration Systems,” shall be included on a special electrician license if the licensee requests it and has passed a supervised examination approved by the board or has completed two years of documented experience in the disconnecting and reconnecting of existing air conditioning and refrigeration systems.

NOTE: An individual who holds any of the following licenses issued by the plumbing and mechanical systems board established pursuant to Iowa Code section 105.3 is not required to hold a license issued by the electrical examining board in order to perform disconnection and reconnection of existing air conditioning and refrigeration systems:

1. Master HVAC refrigeration.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

2. Journeyperson HVAC refrigeration.
3. Master mechanical.
4. Journeyperson mechanical.

c. Endorsement 3, "Sign Installation," shall be included on a special electrician license if the licensee requests that it be included. This endorsement does not authorize a licensee to connect power to a sign that has a voltage greater than 220V and an ampere rating greater than 20 amps. Initial installation or upgrading of the branch circuits supplying power to the sign shall be completed by a licensed master electrician or by a licensed journeyman electrician under the supervision of a master electrician.

~~d. Endorsement 4, "Residential Electrician," shall be included on a special electrician license if the licensee requests it and has passed a supervised written examination approved by the board or has completed four years of documented experience performing residential electrical work. A political subdivision may, by enactment of an ordinance filed with the board prior to its effective date, require that a special electrician performing work authorized by this endorsement be supervised by a master electrician. Special electrician licenses with "residential electrician" endorsements shall not be issued after December 31, 2010. Renewals of special electrician licenses with "residential electrician" endorsements shall not be issued after December 31, 2013.~~

502.2(10) to 502.2(13) No change.

502.2(14) Reciprocal journeyman licensing. A journeyman class A license may be issued, without examination, to a person who holds a license from another state provided that:

a. The board has entered into an agreement with the other state providing for reciprocal issuance of licenses and that the agreement recognizes the equivalency of the examination required for the license issued by the other state and the examination required for the Iowa license to be issued; and

b. The applicant has successfully completed a supervised written examination approved by the other state with a score of ~~75~~ 70 or higher in order to obtain the license from the other state; and

c. to e. No change.

502.2(15) Reciprocal master licensing. A master class A license may be issued, without examination, to a person who holds an equivalent license from another state provided that:

a. The board has entered into an agreement with the other state providing for reciprocal issuance of licenses and that the agreement recognizes the equivalency of the examination required for the license issued by the other state and the examination required for the Iowa license to be issued; and

b. The applicant has successfully completed a supervised written examination approved by the other state, with a score of ~~75~~ 70 or higher, in order to obtain the license from the other state; and

c. to e. No change.

ITEM 4. Adopt the following new subrules 502.3(7) and 502.3(8):

502.3(7) The fee for submitting a petition for eligibility determination as defined in subrule 502.8(2) is \$25.

502.3(8) The board shall waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

ITEM 5. Amend subrule 502.4(5) as follows:

502.4(5) ~~The applicant may be denied a license if the applicant has previously been convicted of a criminal offense involving, but not limited to, fraud, misrepresentation, arson or theft, or if the applicant is currently delinquent in paying employment taxes to the state of Iowa or the United States. If the denial is based upon conviction of a criminal offense, the board shall examine the specific circumstances of the offense and may grant the license if, in the judgment of the board, sufficient time has passed since the conviction and there is no further evidence of criminal conduct on the part of the applicant has been convicted of a disqualifying offense in the courts of this state or another state, territory, or country. A file-stamped copy of the final order or judgment of conviction or plea of guilty in this state or another state constitutes conclusive evidence of the conviction.~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 6. Amend rule 661—502.5(103) as follows:

661—502.5(103) License application.

502.5(1) Any person seeking a license from the board shall submit a completed application to the board accompanied by the applicable fee payable by check, money order, or warrant to the Iowa Department of Public Safety. The memo area of the check should read “Electrician Licensing Fees.” The application shall be submitted on the form prescribed by the board, which may be obtained from the board office.

502.5(2) Upon receipt of a completed application, the board executive secretary or designee has discretion to:

a. Authorize the issuance of a license, certification, or examination application.
b. Refer the application to a committee of the board for review and consideration when the board executive secretary determines that matters raised in or revealed by the application, including but not limited to prior criminal history, chemical dependence, competency, physical or psychological illness, professional liability claims or settlements, professional disciplinary history, education or experience, are relevant in determining the applicant’s qualifications for a license, certification, or examination. Matters that may justify referral to a committee of the board include, but are not limited to:

(1) Prior criminal history, which is reviewed and considered in accordance with Iowa Code chapter 272C and rule 661—502.8(272C).

(2) Chemical dependence.

(3) Competency.

(4) Physical or psychological illness or disability.

(5) Judgments entered on, or settlements of, claims, lawsuits, or other legal actions related to the profession.

(6) Professional disciplinary history.

(7) Education or experience.

502.5(3) Following review and consideration of an application referred by the board executive secretary, the committee may at its discretion:

a. Authorize the issuance of the license, certification, or examination application.

b. Recommend to the board denial of the license, certification, or examination application.

c. Recommend to the board issuance of the license or certification under certain terms and conditions or with certain restrictions.

d. Refer the license, certification, or examination application to the board for review and consideration without recommendation.

502.5(4) Following review and consideration of a license, certification, or examination application referred by the committee, the board shall:

a. Authorize the issuance of the license, certification, or examination application;

b. Deny the issuance of the license, certification, or examination application; or

c. Authorize the issuance of the license or certification under certain terms and conditions or with certain restrictions.

502.5(5) The committee or board may require an applicant to appear for an interview before the committee or the full board as part of the application process.

ITEM 7. Adopt the following **new** rules 661—502.8(272C) to 661—502.10(272C):

661—502.8(272C) Use of criminal convictions in eligibility determinations and initial licensing decisions.

502.8(1) License application. Unless an applicant for licensure petitions the board for an eligibility determination, the applicant’s convictions will be reviewed when the board receives a completed license application.

a. Full disclosure required. An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

b. Documentation and personal statement. An applicant with one or more convictions must submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

c. Rehabilitation. An applicant must, as part of the license application, submit all evidence of rehabilitation that the applicant wishes to be considered by the board. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated.

d. Nonrefundable fees. Any application fees will not be refunded if the license is denied.

502.8(2) Eligibility determination. An individual who has not yet submitted a completed license application may petition the board for an eligibility determination. An individual with criminal convictions is not required to petition the board for an eligibility determination before applying for a license. To petition the board for an eligibility determination, a petitioner must submit all of the following:

- a.* A completed eligibility determination form, which is available on the board's website;
- b.* The complete criminal record for each of the petitioner's convictions;
- c.* A personal statement regarding whether each conviction directly relates to the practice of the profession and why the board should find the petitioner is rehabilitated;
- d.* All evidence of rehabilitation that the petitioner wants the board to consider; and
- e.* Payment of a nonrefundable fee in the amount of \$25.

502.8(3) Appeal. A petitioner found ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The department's rules governing contested case proceedings apply unless otherwise specified in this rule. If the petitioner or applicant fails to file a timely appeal, the board's written decision will become a final order.

a. Presiding officer. The presiding officer will be the board. However, any party to an appeal of a license denial or ineligibility determination may file a written request, in accordance with rule 661—10.306(17A), requesting that the presiding officer be an administrative law judge. Additionally, the board may, on its own motion, request that an administrative law judge be assigned to act as presiding officer. An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case proceeding under this rule must possess a Juris Doctor degree. When an administrative law judge serves as the presiding officer, the decision rendered will be a proposed decision.

b. Burden. The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense. If the office of the attorney general satisfies this burden by a preponderance of the evidence, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

c. Judicial review. A petitioner or applicant must appeal an ineligibility determination or a license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

502.8(4) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

661—502.9(272C) Licensure by verification. Licensure by verification is available under the following circumstances.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

502.9(1) Eligibility. A person may seek licensure by verification if all of the following criteria are satisfied:

- a. The person is licensed, certified, or registered in at least one other issuing jurisdiction;
- b. The person has been licensed, certified, or registered by another issuing jurisdiction for at least one year;
- c. The scope of practice in the transferring jurisdiction is substantially similar to the scope of practice in Iowa;
- d. The person's license, certification, or registration is in good standing in all issuing jurisdictions in which the person holds a license, certificate, or registration; and
- e. The person either:
 - (1) Establishes residency in the state of Iowa pursuant to rule 701—38.17(422); or
 - (2) Is married to an active duty member of the military forces of the United States and is accompanying the member on an official permanent change of station.

502.9(2) Board application. The applicant must submit all of the following:

- a. A completed application for licensure by verification.
- b. Payment of the appropriate fee or fees.
- c. A verification form completed by the transferring jurisdiction, verifying that the applicant's license, certificate, or registration in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the transferring jurisdiction to the board.
- d. Proof of current Iowa residency, or proof of the military member's official permanent change of station. To demonstrate Iowa residency, the applicant shall submit proof that:
 - (1) The applicant currently maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the calendar year; and
 - (2) One or more of the following:
 1. The applicant claims a homestead credit or military tax exemption on a home in Iowa, or
 2. The applicant is registered to vote in Iowa, or
 3. The applicant maintains an Iowa driver's license, or
 4. The applicant does not reside in an abode in any other state for more days of the calendar year than the individual resides in Iowa.
- e. Documentation of the applicant's complete criminal record including the applicant's personal statement regarding whether each offense directly relates to the practice of the profession.
- f. A copy of any relevant disciplinary documents, if another issuing jurisdiction has taken disciplinary action against the applicant.

502.9(3) Applicants with prior discipline. If another issuing jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person whose license was revoked, or a person who voluntarily surrendered a license, in another issuing jurisdiction is ineligible for licensure by verification.

502.9(4) Applicants with pending licensing complaints or investigations. If an Iowa applicant is concurrently subject to a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another issuing jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

661—502.10(272C) Licensure by work experience in jurisdictions without licensure requirements.

502.10(1) Work experience.

- a. An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a license to practice the profession may be considered to have met the applicable educational and training requirements if the person has at least three years of full-time work experience within the four years preceding the date of application for initial licensure. For each application submitted under

PUBLIC SAFETY DEPARTMENT[661](cont'd)

this rule, the board will determine whether the applicant's prior work experience was substantially similar in nature and scope to a training or education program typically applicable for the license sought.

b. The applicant must satisfy all other license requirements, including passing any required examinations, to receive a license.

502.10(2) Required documentation. An applicant seeking to substitute work experience in lieu of satisfying applicable education or training requirements bears the burden of providing all of the following by submitting relevant documents as part of a completed license application:

a. Proof of current residency in the state of Iowa pursuant to rule 701—38.17(17A), or proof of the military member's official permanent change of station. To demonstrate Iowa residency, the applicant shall submit proof that:

(1) The applicant currently maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the calendar year; and

(2) One or more of the following:

1. The applicant claims a homestead credit or military tax exemption on a home in Iowa, or

2. The applicant is registered to vote in Iowa, or

3. The applicant maintains an Iowa driver's license, or

4. The applicant does not reside in an abode in any other state for more days of the calendar year than the individual resides in Iowa.

b. Proof of three or more years of full-time work experience within the four years preceding the application for Iowa licensure, which demonstrates that the work experience was substantially similar in nature and scope to a training or education program typically applicable for the license sought. Proof of work experience may include, but is not limited to:

(1) A letter from the applicant's prior employer or employers documenting the applicant's dates of employment and scope of practice;

(2) Paychecks or pay stubs; or

(3) If the applicant was self-employed, business documents filed with the secretary of state or other applicable business registry or regulatory agency in the other jurisdiction.

c. Proof that the applicant's work experience involved a substantially similar scope of practice to the practice in Iowa, which must include:

(1) A written statement by the applicant detailing the scope of practice and stating how the work experience correlates to an applicable apprenticeship program approved by the United States Department of Labor; and

(2) Business or marketing materials detailing the services provided.

d. Proof that the other jurisdiction did not require a license to practice the profession, which may include:

(1) Copies of applicable laws;

(2) Materials from a website operated by a governmental entity in that jurisdiction; or

(3) Materials from a nationally recognized professional association applicable to the profession.

ITEM 8. Amend **661—Chapter 502**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 197~~ Iowa Code chapters 103 and 272C.

ITEM 9. Amend **661—Chapter 506**, title, as follows:

~~MILITARY SERVICE; AND VETERAN RECIPROCITY; AND SPOUSES OF ACTIVE DUTY
SERVICE MEMBERS FOR ELECTRICIANS AND ELECTRICAL CONTRACTORS~~

ITEM 10. Rescind the definition of "Spouse" in rule **661—506.1(272C)**.

ITEM 11. Amend subrules 506.3(1) and 506.3(2) as follows:

506.3(1) A veteran ~~or a spouse~~ with an electrical license in another jurisdiction may apply for licensure in Iowa through reciprocity, based on the reciprocity procedures for licensed electricians as set out in the administrative rules in effect at the time that the application is made, and in compliance with any agreements with other jurisdictions regarding reciprocity. A veteran ~~or a spouse~~ must pass any

PUBLIC SAFETY DEPARTMENT[661](cont'd)

examinations required for licensure to be eligible for licensure through reciprocity. A fully completed application for licensure submitted by a veteran ~~or a spouse~~ under this subrule shall be given priority and shall be expedited.

506.3(2) An application 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 histories 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 spouse of an active duty service member of the military forces of the United States.~~

ITEM 12. Adopt the following new rule 661—506.4(272C):

661—506.4(272C) Spouses of military members. A person who is married to an active duty member of the military forces of the United States, and who is accompanying the member on an official permanent change of station, may seek licensure by verification in accordance with rule 661—502.9(272C).

ARC 5579C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to remittances payable to the department and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest," Chapter 70, "Replacement Tax and Statewide Property Tax," Chapter 78, "Replacement Tax and Statewide Property Tax on Rate-Regulated Water Utilities," and Chapter 82, "Cigarette Tax and Regulation of Delivery Sales of Alternative Nicotine Products or Vapor Products," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 421.14, 422.68, 422.69, 437A.21(5), 437B.17(4) and 453A.8(2).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 422.69, 437A.21(5), 437B.17(4) and 453A.8(2).

Purpose and Summary

This proposed rule making is intended to implement statutory changes to how fees, taxes, interest, and penalties are paid and deposited with the Department. In particular, this rule making addresses a change to Iowa Code section 422.69. That section formerly required payment of fees, taxes, interest, and penalties to the Department to be paid in the form of remittances payable to the Treasurer of State. The statute now requires that remittances be made payable to the Department. The Department is still required to transmit payments to the Treasurer of State. This rule making reflects that statutory change in the Department's rules.

Fiscal Impact

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

REVENUE DEPARTMENT[701](cont'd)

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.336.9025
Email: nick.behlke@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 rule 701—12.2(422,423) as follows:

701—12.2(422,423) Remittances.

12.2(1) The correct amount of tax collected and due shall accompany the forms prescribed by the department unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. The name, address, and permit number of the sender and amount of tax for the quarterly remittance or a semimonthly or monthly deposit shall be stated unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the taxpayer unless electronic transmission requirements apply; and, when feasible, the taxpayer shall use them when completing and mailing a return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa Department of Revenue.

12.2(2) ~~For tax periods starting on or after April 1, 1990, semimonthly~~ Semimonthly deposits and quarterly remittances of taxpayers required to make semimonthly deposits shall be made electronically in a format and by means specified ~~in~~ by the department. Deposit forms are not required to be filed

REVENUE DEPARTMENT[701](cont'd)

when electronic transmission of deposits is done in the prescribed format by specified means. Quarterly returns shall be filed separately from the electronic transfer of remittances for taxpayers required to make semimonthly deposits. Deposits and remittances transmitted electronically are considered to have been made on the date that the deposit or remittance is added to the bank account designated by the treasurer of the state of Iowa. The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

This rule is intended to implement Iowa Code sections 422.16, 422.51, 422.52, 423.6, 423.13 and 423.14.

ITEM 2. Amend rule 701—70.17(437A) as follows:

701—70.17(437A) Payment of tax. Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to ~~Treasurer, State of~~ the Iowa Department of Revenue. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.

ITEM 3. Amend rule 701—78.16(437B) as follows:

701—78.16(437B) Payment of tax. Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to ~~Treasurer, State of~~ the Iowa Department of Revenue. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.

ITEM 4. Amend subrule 82.5(2) as follows:

82.5(2) Purchase of stamps from the department. Stamps may be purchased from the department and from authorized banks in unbroken rolls of 30,000 stamps, or other quantities authorized by the director. The stamps may be purchased only by persons holding an unrevoked distributor's permit or an unrevoked manufacturer's permit.

When cigarette stamps are purchased from the department, orders shall be sent directly to the department on a form prescribed by and available upon request from the department. The order must be accompanied by a remittance payable to ~~"Treasurer of State of Iowa"~~ the Iowa Department of Revenue in the amount of the face value of the stamps less any discount as provided in rule 701—82.7(453A). The stamps shall be sent to the purchaser through the United States Postal Service by registered mail or similar delivery service at the department's expense. The purchaser may request alternate methods of transmission, but such methods shall be at the expense of the purchaser. Regardless of the method used to send the stamps, title transfers to the purchaser at the time the department delivers the stamps to the carrier.

ARC 5576C

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

Notice of Intended Action

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

The Soil Conservation and Water Quality Division hereby proposes to amend Chapter 8, "Waiver or Variance of Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 159.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

SOIL CONSERVATION AND WATER QUALITY DIVISION[27](cont'd)

Purpose and Summary

This proposed rule making implements 2020 Iowa Acts, House File 2389, by removing references to “variances” within Chapter 8 and updating the process by which the Division publishes rule waivers.

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 Division for a waiver of the discretionary provisions, if any, pursuant to 27—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 Division no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.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 **27—Chapter 8**, title, as follows:

WAIVER OR VARIANCE OF RULES

ITEM 2. Amend rule 27—8.1(17A,161A) as follows:

27—8.1(17A,161A) Definition. For purposes of this chapter, a “waiver ~~or variance~~” means action by the division which suspends in whole or in part the requirements or provisions of a rule as applied to

SOIL CONSERVATION AND WATER QUALITY DIVISION[27](cont'd)

an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 27—8.4(17A,161A) as follows:

27—8.4(17A,161A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 27—8.6(17A,161A), the division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend rule 27—8.12(17A,161A) as follows:

27—8.12(17A,161A) Summary reports Submission of waiver information. ~~Semiannually, the division shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the division shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the division's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for April is 3.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

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

New official state interest rates, effective April 9, 2021, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TREASURER OF STATE(cont'd)

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .05%
More than 397 days	Minimum .05%

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

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

USURY

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

May 1, 2020 — May 31, 2020	2.75%
June 1, 2020 — June 30, 2020	2.75%
July 1, 2020 — July 31, 2020	2.75%
August 1, 2020 — August 31, 2020	2.75%
September 1, 2020 — September 30, 2020	2.50%
October 1, 2020 — October 31, 2020	2.75%
November 1, 2020 — November 30, 2020	2.75%
December 1, 2020 — December 31, 2020	2.75%
January 1, 2021 — January 31, 2021	2.75%
February 1, 2021 — February 28, 2021	3.00%
March 1, 2021 — March 31, 2021	3.00%
April 1, 2021 — April 30, 2021	3.25%
May 1, 2021 — May 31, 2021	3.50%

ARC 5561C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

**Proposing rule making related to contested case proceedings
and providing an opportunity for public comment**

The Director of the Workforce Development Department hereby proposes to amend Chapter 26, "Contested Case Proceedings," Iowa Administrative Code.

Legal Authority for Rule Making

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

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

State or Federal Law Implemented

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

Purpose and Summary

The proposed amendments remove language allowing the presiding officer to vacate a decision, reopen the record, and schedule a new hearing once a decision has been issued. The existing language can result in situations where a party simultaneously appeals the decision of the presiding officer to the Employment Appeal Board (EAB) and requests a reopening of the record to the Appeals Bureau.

The current language is problematic for three main reasons. First, the existing rule can cause duplication of work or delay in final case resolution, or both, if a party simultaneously files a request to reopen the record and appeals to the EAB. Second, the existing rule causes unnecessary confusion for a party who disagrees with a decision from the Administrative Law Judge. These amendments will make it clear that the proper course of action for such a party before a decision is issued is to request that the record be reopened, while the proper course of action after a decision has been issued is to appeal the decision to the EAB. Finally, these amendments will alleviate confusion for parties who mistakenly believe a request to reopen the record has the same legal effect as filing an appeal and therefore fail to file an appeal after a request to reopen the record is denied.

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 May 11, 2021. Comments should be directed to:

Nicole Merrill, Chief Administrative Law Judge
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: Nicole.Merrill@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

WORKFORCE DEVELOPMENT DEPARTMENT[871](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).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 26.8(3) as follows:

26.8(3) If, for good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. ~~If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.~~

"Good cause" for purposes of this rule is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include, but are not limited to, death, sudden illness, or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling) or other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable. Examples of circumstances that do not constitute good cause include, but are not limited to, a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

ITEM 2. Amend subrule 26.8(5) as follows:

26.8(5) If good cause for postponement or reopening has not been shown, the presiding officer ~~shall~~ may make a decision based upon whatever evidence is properly in the record or in appropriate cases may enter default as set forth in rule 871—26.14(17A,96).

ITEM 3. Amend subrule 26.14(6), introductory paragraph, as follows:

26.14(6) If one or more parties which received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if no decision has been issued and if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

ITEM 4. Amend subrule 26.14(7), introductory paragraph, as follows:

26.14(7) If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if no decision has been issued and if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

ARC 5562C**ACCOUNTANCY EXAMINING BOARD[193A]****Adopted and Filed****Rule making related to denial of licensure**

The Accountancy Examining Board hereby amends Chapter 3, “Certification of CPAs,” Chapter 4, “Licensure of LPAs,” Chapter 5, “Licensure Status and Renewal of Certificates and Licenses,” Chapter 6, “Attest and Compilation Services,” Chapter 7, “Certified Public Accounting Firms,” Chapter 8, “Licensed Public Accounting Firms,” Chapter 12, “Fees,” Chapter 13, “Rules of Professional Ethics and Conduct,” and Chapter 14, “Disciplinary Authority and Grounds for Discipline,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 542.4 and 546.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House Files 2389 and 2627.

Purpose and Summary

These amendments update the circumstances under which a license may be denied. They also provide for a predetermination process, prior to an application submittal, as to whether a criminal conviction may prevent licensure.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 30, 2020, as **ARC 5357C**. A virtual public hearing was held on January 21, 2021, at 10 a.m. 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 March 8, 2021.

Fiscal Impact

This rule making has minimal fiscal impact to the State of Iowa. It is unknown how many individuals would seek an eligibility determination due to a criminal conviction prior to applying, which would result in collection by the Professional Licensing and Regulation Bureau of a \$25 fee to recover the associated costs as set forth in 2020 Iowa Acts, House File 2627.

Jobs Impact

After analysis and review of this rule making, there is a potential positive impact on jobs as individuals who may have been ineligible for licensure may become eligible for licensure as a result of this rule making.

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 193—Chapter 5.

ACCOUNTANCY EXAMINING BOARD[193A](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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 3.1(2) as follows:

3.1(2) An application may be denied if the applicant:

a. Has Subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, has been convicted of a crime described in Iowa Code section 542.5(2);

b. to e. No change.

f. Demonstrates a lack of moral character in a manner which the board reasonably believes will impair the applicant's ability to practice public accountancy in full compliance with the public interest and state policies described in Iowa Code section 542.2. While it is not possible to itemize all actions or behaviors which may demonstrate a lack of moral character, the following nonexclusive list of factors will guide the board in making its determination. However, the board shall not deny an application on the basis of an arrest that was not followed by a conviction based on a finding that because of that arrest the applicant lacks moral character.

(1) A pattern and practice of making false or deceptive representations, or of omitting material facts, while providing the public any of the services described in Iowa Code section 542.3(20);

(2) Fraud or dishonesty while advertising or selling goods or services to the public;

(3) Willful or repeated failure to timely file tax returns or other mandatory submittals due a governmental body;

(4) Fiscally irresponsible behavior in the absence of mitigating circumstances;

g. Is subject to discipline on any ground that would form the basis for discipline against a licensee; or

h. Has had a practice privilege revoked in this or another jurisdiction.

ITEM 2. Amend subrule 3.4(3) as follows:

3.4(3) A Subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, a candidate for the examination who has been convicted in a court of competent jurisdiction in this state, or another state, territory, or a district of the United States, or in a foreign jurisdiction of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral character or dishonesty may be denied admittance to the examination by the board on the grounds of the conviction. For purposes of this subrule, "conviction" means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

ITEM 3. Amend subrule 4.1(2) as follows:

4.1(2) An application may be denied if the applicant:

a. Has Subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, has been convicted of a crime;

b. to e. No change.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

f. Demonstrates a lack of moral character in a manner that the board reasonably believes will impair the applicant's ability to practice public accountancy in full compliance with the public interest and state policies described in Iowa Code section 542.2. While it is not possible to itemize all actions or behaviors which may demonstrate a lack of moral character, the following nonexclusive list of factors will guide the board in making its determination: However, the board shall not deny an application on the basis of an arrest that was not followed by a conviction based on a finding that because of that arrest the applicant lacks moral character.

(1) A pattern and practice of making false or deceptive representations, or of omitting material facts, while providing any accounting services to the public;

(2) Fraud or dishonesty while advertising or selling goods or services to the public;

(3) Willful or repeated failure to timely file tax returns or other mandatory submittals due a governmental body;

(4) Fiscally irresponsible behavior in the absence of mitigating circumstances; or

g. Is subject to discipline on any ground that would form the basis for discipline against a licensee.

ITEM 4. Amend subrule 4.2(3) as follows:

4.2(3) A Subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, a candidate for the examination who has been convicted in a court of competent jurisdiction in this state, or another state, territory, or a district of the United States, or in a foreign jurisdiction of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral character or dishonesty may be denied admittance to the examination by the board on the grounds of the conviction. For purposes of this subrule, “conviction” means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

ITEM 5. Amend subrule 5.1(1), introductory paragraph, as follows:

5.1(1) Licenses issued by the board pursuant to Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule, may be in active, inactive, or lapsed status, as follows:

ITEM 6. Amend rule 193A—5.3(542) as follows:

193A—5.3(542) License renewal. Licenses issued by the board pursuant to Iowa Code section 542.6 (CPA certificates), 542.8 (LPA licenses), or 542.19 (CPA certificates by substantial equivalency), or any other applicable law or rule, shall be renewed on an annual basis and shall expire on June 30 of each year. Licenses shall be renewed through the online renewal process. An annual renewal fee will be charged.

ITEM 7. Amend paragraph **6.3(3)“a”** as follows:

a. Applicants may apply for attest qualification when initially applying for a certificate as an Iowa CPA under Iowa Code section 542.6 or when applying for reciprocal Iowa certification under Iowa Code section 542.19 or any other applicable law or rule.

ITEM 8. Amend subrule 6.4(1) as follows:

6.4(1) Only a CPA licensed by the board under Iowa Code section 542.6 or 542.19, or any other applicable law or rule; an LPA licensed by the board under Iowa Code section 542.8, or any other applicable law or rule; or a person exercising a practice privilege under Iowa Code section 542.20 shall issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa.

ITEM 9. Amend paragraph **7.2(3)“c”** as follows:

c. Based on a regulatory or disciplinary action or to the extent applicable, subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, criminal conviction described in subrules 7.3(14) and 7.3(15) against any of the firm's licensed or unlicensed owners.

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

ITEM 10. Amend rule 193A—8.1(542) as follows:

193A—8.1(542) Initial permit to practice.

8.1(1) No change.

8.1(2) The application shall be completed and submitted through the online application process and shall provide sufficient information from which the board can determine that a simple majority of owners hold licenses issued by the board under Iowa Code section 542.8 or certificates issued by the board under Iowa Code section 542.6 or 542.19, or any other applicable law or rule, or are eligible to practice under practice privilege pursuant to Iowa Code section 542.20, or otherwise hold a license or certificate to practice public accounting in another state. At least one owner must be licensed under Iowa Code section 542.8.

8.1(3) The application shall list the name, licensure, and contact information for each licensee or practice privilege practitioner who is responsible for supervising compilation services and who signs or authorizes someone to sign the accountant's report on financial statements on behalf of the firm. The application shall affirm that any licensee listed meets the competency requirements set forth in SSARS and holds a valid license or certificate issued by the board under Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule, or is eligible to exercise a practice privilege under Iowa Code section 542.20.

8.1(4) No change.

8.1(5) Persons in charge of an office located in Iowa shall be licensed in Iowa under Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule.

8.1(6) The application shall designate an individual who holds a valid license or certificate issued by the board under Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule, or who is eligible to exercise a practice privilege under Iowa Code section 542.20 as the person responsible for ensuring that the firm has complied with all of the requirements for a permit to practice, and shall provide contact and licensure information for such individual.

8.1(7) to 8.1(11) No change.

8.1(12) An initial or renewal application for a firm permit to practice may be denied:

a. Upon any ground that would form a basis for discipline against the firm pursuant to Iowa Code section 542.10 or rule 193A—14.3(17A,272C,542) including, but not limited to, the regulatory and disciplinary actions and, to the extent applicable, subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, criminal convictions described in subrules 8.1(9) and 8.1(10);

b. Based on the firm's failure to comply with the requirements of Iowa Code section 542.8 including, but not limited to, a failure to make the designations described in subrules 8.1(3), 8.1(4), and 8.1(6), or a failure to sustain the simple majority of ownership required by Iowa Code section 542.8(12) "a"; or

c. Based on a regulatory or disciplinary action or, to the extent applicable, subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, criminal conviction described in subrules 8.1(9) and 8.1(10) against any of the firm's owners (e.g., partners, shareholders, or members).

ITEM 11. Amend rule 193A—12.1(542) as follows:

193A—12.1(542) Required fees. The following is a schedule of the fees for examinations, certificates, licenses, permits and renewals adopted by the board:

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

Initial CPA examination application:

Paid directly to CPA examination services	not to exceed \$1500
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Reexamination:

Paid directly to CPA examination services	not to exceed \$1500
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Original issuance of CPA certificate or LPA license by examination (fee includes wall certificate)	\$100
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Original issuance of CPA certificate by reciprocity or substantial equivalency	\$100
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CPA wall certificate or LPA license issued by reciprocity or substantial equivalency	\$50
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Replacement of lost or destroyed wall CPA certificate or LPA license	\$50
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Original issuance of attest qualification	\$100
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Annual renewal of CPA certificate or LPA license—active status	\$100
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Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—active status	\$25
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Annual renewal of CPA certificate or LPA license—inactive status	\$50
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Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—inactive status	\$10
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Penalty for failure to comply with continuing education requirements	\$50 to \$250
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Original issuance of firm permit to practice	\$100
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Annual renewal of firm permit to practice	\$100
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Reinstatement of lapsed CPA certificate or LPA license	\$100 + renewal fee + \$25 per month of expired registration
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Reinstatement of lapsed firm permit to practice	\$100 + renewal fee + \$25 per month of expired registration
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Interstate Transfer Form	\$25
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<u>License predetermination fee</u>	<u>\$25</u>
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ITEM 12. Amend subrule 13.5(1) as follows:

13.5(1) *Who can perform.* Only a CPA licensed under Iowa Code section 542.6 or 542.19, or any other applicable law or rule; an LPA licensed under Iowa Code section 542.8, or any other applicable law or rule; or a CPA exercising a practice privilege under Iowa Code section 542.20 shall issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa. (Refer to rule 193A—6.4(542).)

ITEM 13. Amend subrule 14.3(11) as follows:

14.3(11) *Conviction of a crime.* Conviction, in this state or any other jurisdiction, of any felony, or of any crime described in Iowa Code section 542.5(2). A certified copy of the record final order or judgment of conviction or plea of guilty in this state or in another jurisdiction shall be conclusive evidence of the conviction. “Conviction” shall include any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred, withheld, not entered, or suspended, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction shall be vacated. A conviction qualifies as a felony offense if the offense is designated as a felony in the jurisdiction in which the conviction occurred; or had the offense been committed in this state the offense would be a felony, without regard to its designation elsewhere. Notwithstanding the foregoing, a conviction may be grounds for revocation or suspension only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession. An offense directly relates to the profession if either (1) the

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession, or (2) the circumstances under which an offense was committed are circumstances customary to the profession.

[Filed 3/29/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5563C

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Rule making related to board administration and license renewal

The Architectural Examining Board hereby amends Chapter 1, "Description of Organization," Chapter 2, "Licensure," Chapter 3, "Continuing Education," Chapter 4, "Rules of Conduct," Chapter 6, "Disciplinary Action Against Licensees," and Chapter 7, "Disciplinary Action—Unlicensed Practice," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 544A.29.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 544A and 2020 Iowa Acts, House File 2627.

Purpose and Summary

These amendments implement changes recommended and required by 2020 Iowa Acts, House File 2627, and the five-year rolling administrative rules review outlined in Iowa Code section 17A.7(2).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 30, 2020, as **ARC 5355C**. A virtual public hearing was held on January 19, 2021, at 11 a.m. No one attended the public hearing. Five people contacted the Board regarding the amendments. Two were supportive, two had questions, and one had concerns with removing the rules regarding the five-year rolling Architect Registration Examination (ARE) clock.

Several nonsubstantive corrections have been made to the Notice for the sake of grammar and phrasing consistency. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on March 18, 2021.

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.

ARCHITECTURAL EXAMINING BOARD[193B](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 193—Chapter 5.

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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **193B—Chapter 1** as follows:

CHAPTER 1
DESCRIPTION OF ORGANIZATION

193B—1.1(544A,17A) Duties. ~~The board shall enforce the provisions of Iowa Code chapter 544A and shall maintain a roster of all licensed architects authorized to practice architecture in the state.~~

1.1(1) The purpose of the architectural examining board is to administer and enforce the provisions of Iowa Code chapter 544A with regard to the practice of architecture in the state of Iowa, including the examining of candidates; issuing licenses to practice architecture; assuring continuing competency through continued education; investigating violations and infractions of the architecture law; disciplining licensees; and imposing civil penalties against nonlicensees. To this end, the board has promulgated these rules to clarify the board's intent and procedures.

1.1(2) The primary mission of the board is to protect the public interest. All board rules shall be construed as fostering the guiding policies and principles described in Iowa Code section 544A.5. The board and its licensees shall strive at all times to protect the public interest by promoting the highest standards of architecture.

1.1(3) The board shall maintain a roster of all architects authorized to practice architecture in the state.

~~1.1(1)~~ 1.1(4) President Chairperson. The ~~president~~ chairperson shall preside at all meetings, shall appoint all committees, ~~shall sign all certificates~~, and shall otherwise perform all duties pertaining to the office of the ~~president~~ chairperson.

~~1.1(2)~~ 1.1(5) Vice president chairperson. The vice ~~president~~ chairperson shall, in the absence or incapacity of the ~~president~~ chairperson, exercise the duties and possess the powers of the ~~president~~ chairperson. ~~The vice president shall sign all certificates.~~

~~1.1(3) Secretary.~~ The secretary ~~shall sign all certificates.~~

1.1(4) 1.1(6) Board administrator. The professional licensing and regulation bureau may employ a board administrator, who will maintain all necessary records of the board and perform all duties in connection with the operation of the board office. The board administrator is the lawful custodian of board records. The board administrator shall determine when the legal requirements for licensure have been satisfied with regard to issuance of certificates, licenses or registrations, and the board administrator shall submit to the board any questionable application. The bureau chief or designee shall sign vouchers for payment of board obligations.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

193B—1.2(544A,17A) No change.

193B—1.3(544A,17A) Meetings. Calls for meetings shall be issued in accordance with Iowa Code section 21.4. The annual meeting of the board shall be the first meeting scheduled after April 30. At this meeting, the ~~president, vice president~~ chairperson and ~~secretary~~ vice chairperson shall be elected to serve until their successors are elected. The newly elected officers shall assume the duties of their respective offices at the conclusion of the meeting at which they are elected. Officers shall serve no more than three consecutive one-year terms in each office to which they are elected. Special meetings may be called by the ~~president~~ chairperson or board administrator, who shall set the time and place of the meeting.

193B—1.4(544A,17A) Certificates. Certificates issued to successful applicants shall contain the licensee's name, and state license number ~~and the signatures of the board president, vice president and secretary.~~ All licenses are renewable biennially on July 1, with licensees whose last names begin with the letters A-K ~~A through K~~ renewing in even-numbered years and licensees whose last names begin with the letters L-Z ~~L through Z~~ renewing in odd-numbered years as provided in rule 193B—2.5(17A,272C,544A).

The board shall maintain an electronic roster of those holders of certificates of licensure who have failed to renew. The certificate of licensure may be reinstated in ~~accord~~ accordance with rule 193B—2.4(544A,17A) 193B—2.6(544A,17A).

193B—1.5(544A,17A) Definitions. ~~Rescinded IAB 10/3/01, effective 11/7/01.~~

These rules are intended to implement Iowa Code sections 544A.5, 544A.8 to 544A.10, and 272C.4.

ITEM 2. Amend rule **193B—2.1(544A,17A)**, definitions of “Architectural intern,” “NCARB Architect Registration Examination (ARE) Guidelines,” “NCARB Architectural Experience Program Guidelines,” and “NCARB Certification Guidelines,” as follows:

“*Architectural intern*” means an individual who holds a professional degree from a NAAB-accredited program, has completed or is currently enrolled in the NCARB Architectural Experience Program (AXP), ~~formerly known as the Intern Development Program (IDP),~~ and intends to actively pursue licensure by completing the Architect Registration Examination.

“*NCARB Architect Registration Examination (ARE) Guidelines*” means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for examination and is available through the National Council of Architectural Registration Boards, ~~1801 K Street NW, Suite 1100, Washington, D.C. 20006~~ 1401 H Street NW, Suite 500, Washington, DC 20005; NCARB’s ~~Web site~~ website, www.ncarb.org; or the architectural examining board.

“*NCARB Architectural Experience Program Guidelines*,” ~~formerly known as the IDP Guidelines,~~ means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for training and is available through the National Council of Architectural Registration Boards, ~~1801 K Street NW, Suite 1100, Washington, D.C. 20006~~ 1401 H Street NW, Suite 500, Washington, DC 20005; NCARB’s ~~Web site~~ website, www.ncarb.org; or the architectural examining board.

“*NCARB Certification Guidelines*” means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for licensure as an architect and is available through the National Council of Architectural Registration Boards, ~~1801 K Street NW, Suite 1100, Washington, D.C. 20006~~ 1401 H Street NW, Suite 500, Washington, DC 20005; NCARB’s ~~Web site~~ website, www.ncarb.org; or the architectural examining board.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 3. Rescind subrule **2.3(4)**.

ITEM 4. Renumber subrules **2.3(5)** and **2.3(6)** as **2.3(4)** and **2.3(5)**.

ITEM 5. Amend subrule 2.5(1) as follows:

2.5(1) Active status. Certificates of licensure expire biennially on June 30. In order to maintain authorization to practice in Iowa, a licensee is required to renew the certificate of licensure prior to ~~the expiration date June 1 of the year of expiration.~~ However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days prior to the date of expiration. A licensee who fails to renew by the expiration date is not authorized to practice architecture in Iowa until the certificate is reinstated as provided in rule 193B—2.6(544A,17A).

a. A licensee whose last name begins with the letter A through K shall renew in even-numbered years, and a licensee whose last name begins with the letter L through Z shall renew in odd-numbered years. However, a license issued on or after May 1 but before June 30 will not expire until June 30 of the next renewal. For example, a license issued on May 17, 2020, would not expire until June 30, 2022.

b. No change.

c. Upon the board's receipt of a timely and sufficient renewal application as provided in 193—subrule 7.40(3), the board's administrator shall issue a new certificate of licensure reflecting the next expiration date, unless grounds exist for denial of the application. ~~However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.~~

d. If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant ~~by restricted certified mail, return receipt requested.~~ Grounds may exist to deny an application to renew if, for instance, the licensee failed to satisfy the continuing education as required as a condition for licensure. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

e. When a licensee appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), and after or in lieu of giving the licensee an opportunity to come into compliance under 193B—subrule 3.3(3), offer a licensee the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish deadlines for compliance; and require that the licensee complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the licensee. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed certificate of licensure and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.40(1).

f. and g. No change.

ITEM 6. Amend paragraph **2.5(2)“b”** as follows:

b. *Renewal.* A person licensed as inactive may renew the person's certificate of licensure on the biennial schedule described in 193B—2.5(17A,272C,544A) this rule. This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in 193B—2.9(544A,17A) 193B—2.10(544A,17A). An inactive certificate of licensure shall lapse if not timely renewed. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of prior to expiration.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 7. Amend subrule 2.6(4) as follows:

2.6(4) Submit documented evidence of completion of 24 continuing education hours, which should have been reported on the June 30 renewal date on which the applicant failed to renew, and 12 continuing education hours for each year or portion of a year of expired licensure up to a maximum of 48 continuing education hours. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities and be in compliance with requirements in 193B—Chapter 3. The hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status. The continuing education hours used for reinstatement may not be used again at the next renewal. ~~Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period in which the individual was unlicensed. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.~~

ITEM 8. Amend rule 193B—2.7(544A) as follows:

193B—2.7(544A) Reinstatement from inactive status or retired status to active status.

2.7(1) An individual may reinstate an inactive license to an active license as follows:

- a. No change.
- b. Submit documented evidence of completion of 24 continuing education hours in compliance with requirements in 193B—Chapter 3. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of licensure to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is ~~more than~~ 12 months or more, but less than 24 months, from the date of the filing of the application to restore the certificate of licensure to active status, the person shall report 12 hours of previously unreported continuing education hours.

c. No change.

2.7(2) An individual may reinstate a retired license to an active license as follows:

- a. No change.
- b. Submit documented evidence of completion of 24 continuing education hours in compliance with requirements in 193B—Chapter 3. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of licensure to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is ~~more than~~ 12 months or more, but less than 24 months, from the date of the filing of the application to restore the certificate of licensure to active status, the person shall report 12 hours of previously unreported continuing education hours.

c. No change.

2.7(3) No change.

ITEM 9. Renumber rule **193B—2.9(544A,17A)** as **193B—2.10(544A,17A)**.

ITEM 10. Adopt the following new rule 193B—2.9(544A,272C):

193B—2.9(544A,272C) Responsibility for accuracy of applications. The architect is responsible for verifying the accuracy of the information submitted on an application regardless of how the application is submitted or by whom it is submitted. For instance, if the office manager of an architect's firm submits an application for renewal on behalf of the architect and that information is incorrect, the architect will be held responsible for the information and may be subject to disciplinary action.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 11. Amend renumbered rule 193B—2.10(544A,17A) as follows:

193B—2.10(544A,17A) Fee schedule. Under the authority provided in Iowa Code chapter 544A, the following fees are hereby adopted:

Examination fees:

Fees for examination subjects shall be paid directly to the testing service selected by NCARB.

Initial license fee	\$ 50
(plus \$5 per month until renewal)	
Reciprocal application and license fee	\$200
Biennial renewal fee	\$200
Biennial renewal fee (inactive)	\$100
Retired status	None
Reinstatement of lapsed individual license	\$100 + renewal fee + \$25 per month or partial month of expired license
Reinstatement of inactive individual license	\$100
Reinstatement of retired individual license	\$200
Duplicate wall certificate fee	\$ 50
Late renewal fee	\$ 25

(for renewals postmarked on or after ~~July~~ June 1 and before ~~July~~ June 30)

<u>License predetermination fee</u>	<u>\$ 25</u>
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All fees are nonrefundable.

ITEM 12. Amend rule 193B—3.3(544A,272C) as follows:

193B—3.3(544A,272C) Basic requirements.

3.3(1) and 3.3(2) No change.

3.3(3) An architect shall complete and submit forms as required by the board certifying that the architect has completed the required CEHs. Forms may be audited by the board for verification of compliance with these requirements. Documentation of reported CEHs shall be maintained by the architect for two years after the period for which the form was submitted. Any discrepancy between the number of CEHs reported and the number of CEHs actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any CEHs, or the licensee has failed to complete the required CEHs, the architect shall have 60 days from notice of such disallowance notification of the board to either provide further evidence of having completed the CEHs disallowed or remedy the disallowance by completing the required number of CEHs (provided that such CEHs shall not again be used for the next renewal). An extension of time may be granted on an individual basis and must be requested by the licensee within 30 days of notification by the board. If the licensee fails to comply with the requirements of this subrule, the licensee may be subject to disciplinary action. If the board finds, after proper notice and hearing, that the architect willfully disregarded these requirements or falsified documentation of required CEHs, the architect may be subject to disciplinary action.

3.3(4) An architect who holds licensure in Iowa for less than 12 months from the date of initial licensure or who is reinstating to active status shall not be required to report CEHs at the first license renewal. An architect who holds licensure in Iowa for ~~more than~~ 12 months or more, but less than 23 months from the date of initial licensure or who is reinstating to active status, shall be required to report 12 CEHs earned in the preceding 12 months at the first license renewal.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

ITEM 13. Amend subrule 4.1(6) as follows:

4.1(6) Professional conduct.

a. Each office engaged in the practice of architecture shall have an architect resident regularly employed in that office having responsible charge of such work or, in the situation of work performed remotely, immediately available to furnish assistance or direction throughout the performance of the work.

b. to d. No change.

e. Architects shall adhere to the appropriate standards of conduct as outlined in the NCARB Model Rules of Conduct, dated July 2018, incorporated herein by reference.

ITEM 14. Amend rule 193B—6.2(544A,272C) as follows:

193B—6.2(544A,272C) Investigation of complaints. The board shall, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the ~~president~~ chairperson shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.

ITEM 15. Amend rule 193B—6.3(544A,272C) as follows:

193B—6.3(544A,272C) Peer investigative committee. A peer investigative committee may be appointed by the ~~president~~ chairperson to investigate a complaint. The committee members will consist of one or more architects, serve at the discretion of the ~~president~~ chairperson, and shall have been licensed to practice in Iowa for at least five years. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

ITEM 16. Amend rule 193B—7.2(544A,272C) as follows:

193B—7.2(544A,272C) Investigation of complaints. The board shall, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the ~~president~~ chairperson shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.

[Filed 3/26/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5564C

**ENGINEERING AND LAND SURVEYING EXAMINING
BOARD[193C]**

Adopted and Filed

Rule making related to application and renewal process

The Engineering and Land Surveying Examining Board hereby amends Chapter 3, "Application and Renewal Process," and Chapter 5, "Land Surveying Licensure," Iowa Administrative Code.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 542.10 and 542B.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House Files 2389 and 2627.

Purpose and Summary

This rule making creates a provision where an out-of-state-licensed land surveyor may be granted a temporary Iowa land surveyor's license. Item 2 contains a cross-reference to rule 193—14.4(272C), regarding licensure by verification, which will be proposed in a future rule making.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 30, 2020, as **ARC 5356C**. The proposed amendments were approved by the Board on November 12, 2020. A public hearing was held on January 21, 2021. No one attended the public hearing. One written comment in opposition was received. The individual opposed the provision for a temporary license for land surveyors who have not passed the Iowa State Specific Land Surveying Examination. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on March 11, 2021.

Fiscal Impact

This rule making has minimal fiscal impact to the State of Iowa. It is unknown how many individuals would seek an eligibility determination due to a criminal conviction prior to applying, which determination would result in the collection by the Professional Licensing Bureau of a \$25 fee to recover the associated costs as set forth in 2020 Iowa Acts, House File 2627.

Jobs Impact

After analysis and review of this rule making, there is a potential positive impact on jobs as individuals who may have been ineligible for licensure may be eligible for licensure.

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 193—Chapter 5.

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 May 26, 2021.

The following rule-making actions are adopted:

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

ITEM 1. Amend subrule 3.3(4) as follows:

3.3(4) Temporary permits. The board does not issue temporary permits except as provided for in rule 193C—5.3(542B,272C). Based upon review by a board member, temporary permits were previously issued to applicants whose applications met all requirements and who were expected to qualify for approval by the full board at the next regularly scheduled board meeting. Since applications that meet these criteria are now routinely processed as they are completed and reviewed, temporary permits are no longer necessary.

ITEM 2. Adopt the following new rule 193C—5.3(542B,272C):

193C—5.3(542B,272C) Licensure by verification. In addition to the requirements of rule 193—14.4(272C), professional land surveying candidates applying for an Iowa license by verification must pass the Iowa State Specific Land Surveying examination prior to being issued a license. The board will issue a temporary license that is valid for a period of three months to professional land surveying candidates who have not yet passed the Iowa State Specific Land Surveying examination prior to their application. The professional land surveying candidate may request one renewal of the temporary license for an additional period of three months.

This rule is intended to implement Iowa Code section 272C.12.

[Filed 3/29/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5568C

INTERIOR DESIGN EXAMINING BOARD[193G]

Adopted and Filed

Rule making related to waivers and licensure

The Interior Design Examining Board hereby amends Chapter 1, "Description of Organization," Chapter 2, "Registration," and Chapter 3, "Continuing Education," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 544C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 544C.

Purpose and Summary

These amendments implement changes recommended and required by 2020 Iowa Acts, House File 2627, and the five-year rolling administrative rules review outlined in Iowa Code section 17A.7(2).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 30, 2020, as **ARC 5360C**. A virtual public hearing was held on January 19, 2021, at 12 noon. There was one public comment received, supporting the proposed retired status.

A comment was also received from the Administrative Rules Review Committee that was not in support of the proposed retired status. Based on that comment, Items 1, 4, and 6, related to retired status, were not adopted. The remaining items were renumbered accordingly.

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

Adoption of Rule Making

This rule making was adopted by the Board on February 15, 2021.

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 193—Chapter 5.

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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 193G—1.3(544C,17A), introductory paragraph, as follows:

193G—1.3(544C,17A) Organization and duties. The board shall consist of seven members: five members who are interior designers registered under Iowa Code chapter 544C and two members who are not interior designers and who represent the general public. The board shall elect annually from its members a chairperson and a vice-chairperson. A quorum of the board shall be four members, and all final motions and actions must receive a quorum majority vote. The board shall enforce the provisions of Iowa Code chapter 544C and shall maintain a roster of all registered interior designers in the state.

ITEM 2. Amend rule 193G—1.8(544C,17A) as follows:

193G—1.8(544C,17A) Waivers ~~and variances~~.

1.8(1) Persons who wish to seek waivers ~~or variances~~ from board rules should consult the uniform rules for the bureau at 193—Chapter 5.

1.8(2) In addition to the provisions of 193—Chapter 5, the following shall apply for interim rulings:

a. The board chairperson, or the vice-chairperson if the chairperson is not available, may rule on a petition for waiver ~~or variance~~ when it would not be timely to wait for the next regularly scheduled board meeting for a ruling from the board.

b. to d. No change.

e. Subrule 1.8(2) on interim rulings does not apply if the waiver ~~or variance~~ was filed in a contested case.

ITEM 3. Amend rule 193G—2.2(17A,272C,544C) as follows:

193G—2.2(17A,272C,544C) Renewal of certificates of registration. Certificates of registration expire biennially on June 30. Certificates issued to registrants with last names beginning with A through K shall

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

expire on June 30 of even-numbered years and certificates issued to registrants with last names beginning with L through Z shall expire on June 30 of odd-numbered years. However, a registration issued on or after May 1 but before June 30 will not expire until June 30 of the next renewal. For example, a license issued on May 17, 2020, would not expire until June 30, 2022. In order to maintain authorization to practice in Iowa, a registrant is required to renew the certificate of registration prior to ~~the expiration date~~ June 1 of the year of expiration. However, the board will accept an otherwise sufficient renewal application which is untimely if the board receives the application and late fee of \$25 within 30 days ~~of prior~~ prior to the date of expiration. A registrant who fails to renew by the expiration date is not authorized to use the title of registered interior designer in Iowa until the certificate is reinstated as provided in rule 193G—2.3(544C,17A).

2.2(1) It is the policy of the board to send to each registrant at the registrant's last-known address a notice of the pending expiration date ~~approximately one month prior to the date the certificate of registration is scheduled to expire.~~ Failure to receive this notice does not relieve the registrant of the responsibility to timely renew the certificate and pay the renewal fee.

2.2(2) No change.

2.2(3) When a registrant appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), and after or in lieu of giving the licensee an opportunity to come into compliance under rule 193G—3.4(17A,544C), offer a registrant the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish deadlines for compliance; and require that the registrant complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the registrant. Any additional hours of continuing education completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A registrant is free to accept or reject the offer. If the offer of settlement is accepted, the registrant will be issued a renewed certificate of registration and will be subject to disciplinary action if the terms of the consent order are not fulfilled. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the registrant pursuant to 193—subrule 7.40(1).

2.2(4) and 2.2(5) No change.

ITEM 4. Amend rule 193G—2.4(544C) as follows:

193G—2.4(544C) Applications.

2.4(1) The interior designer is responsible for verifying the accuracy of the information submitted on applications regardless of how the application is submitted or by whom it is submitted. For instance, if the office manager of an interior designer's firm submits an application for renewal on behalf of the interior designer and that information is incorrect, the interior designer will be held responsible for the information and may be subject to disciplinary action.

2.4(2) Persons applying for initial, renewal, or reciprocal registration shall submit an application on a form provided by the board and shall pay a registration fee of \$275. Certificates issued to registrants with last names beginning with A through K shall expire on June 30 of even-numbered years, and certificates issued to registrants with last names beginning with L through Z shall expire on June 30 of odd-numbered years. An applicant applying for initial, reciprocal, or reinstatement registration within 12 months from the applicant's required renewal date shall pay half of the required fee. An applicant applying for initial, reciprocal, or reinstatement registration more than 12 months from the applicant's required renewal date shall pay the full registration fee.

2.4(3) Fee schedule.

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

Type of fee	Amount
Initial registration fee	\$275
Reciprocal registration fee	\$275
Formal wall certificate	\$50
Renewal	\$275
Late renewal fee	\$25
Reinstatement of lapsed registration	\$100
<u>License predetermination fee</u>	<u>\$25</u>

All fees are nonrefundable.

ITEM 5. Amend subrule 3.2(3) as follows:

3.2(3) A registered interior designer who holds a registration in Iowa for less than 12 months from the date of initial registration shall not be required to report continuing education at the first registration renewal. A registered interior designer who holds a registration in Iowa for ~~more than~~ 12 months or more, but less than 24 months from the date of initial registration, shall be required to report 5 contact hours of HSW subjects in a structured activity, earned in the preceding 12 months, at the first registration renewal.

ITEM 6. Amend subrule 3.3(2) as follows:

3.3(2) The board ~~will~~ may verify, ~~on a random basis,~~ information submitted by registrants. If an application for renewal is not approved, the applicant will be so notified and may be granted a period of time by the board in which to correct the deficiencies noted. Any discrepancy between the number of CEUs reported and the number of CEUs actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any CEUs, or the registrant has failed to complete the required CEUs, the interior designer shall have 60 days from notification by the board to either provide further evidence of having completed the CEUs disallowed or remedy the discrepancy by completing the required number of CEUs (provided that such CEUs shall not again be used for the next renewal). An extension of time may be granted on an individual basis and must be requested by the registrant within 30 days of notification by the board. If the registrant fails to comply with the requirements of this subrule, the registrant may be subject to disciplinary action. If the board finds, after proper notice and hearing, that the interior designer willfully disregarded these requirements or falsified documentation of required CEUs, the interior designer may be subject to disciplinary action.

[Filed 3/26/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5569C

IOWA PUBLIC INFORMATION BOARD[497]

Adopted and Filed

Rule making related to delegation of advisory opinions

The Iowa Public Information Board (IPIB) hereby amends Chapter 1, "Organization and General Administration," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 23.6(2).

IOWA PUBLIC INFORMATION BOARD[497](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 23.6(3).

Purpose and Summary

The purpose of this rule making is to allow the IPIB Executive Director to delegate preparation of an advisory opinion. Currently, only the IPIB Executive Director is allowed to prepare an advisory opinion.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 13, 2021, as **ARC 5377C**. No comments were received from the public. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by IPIB on March 18, 2021.

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 IPIB for a waiver of the discretionary provisions, if any, pursuant to 497—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 May 26, 2021.

The following rule-making action is adopted:

Amend subrule 1.3(2) as follows:

1.3(2) After receiving an opinion request, the board's executive director shall ~~prepare~~ cause to be prepared a draft opinion for board review. If the same or similar issue has been addressed in an opinion of a court, or in an attorney general's opinion, or in another prior advisory opinion, the executive director may respond to the requester by sending a copy of the prior opinion. Upon an affirmative vote of at least five members, the executive director shall issue a board advisory opinion on behalf of the board. Advice contained in a board opinion rendered to a government official or a lawful custodian of a public record, if followed, constitutes a defense for the government official or lawful custodian before the board to a

IOWA PUBLIC INFORMATION BOARD[497](cont'd)

subsequent complaint that is based on the same facts and circumstances. Board staff may also provide written advice on routine matters. However, such advice is not an advisory opinion of the board.

[Filed 3/22/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5570C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rule making related to elevator safety

The Elevator Safety Board hereby amends Chapter 65, "Elevator Safety Board Administrative and Regulatory Authority," Chapter 66, "Waivers or Variances from Administrative Rules by the Elevator Safety Board," Chapter 67, "Elevator Safety Board Petitions for Rule Making," Chapter 69, "Contested Cases Before the Elevator Safety Board," Chapter 70, "Public Records and Fair Information Practices of the Elevator Safety Board," Chapter 71, "Administration of the Conveyance Safety Program," and Chapter 72, "Conveyances Installed on or After January 1, 1975," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 89A.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A and 89A and 2020 Iowa Acts, House File 2389.

Purpose and Summary

The Board is required by Iowa Code section 89A.13(7) to review all elevator rules every three years. Many of these amendments are the result of that systematic review. Additional amendments were prompted by the passage of 2020 Iowa Acts, House File 2389, which amended the Administrative Procedure Act.

These amendments update the office address, remove obsolete language, update editions of elevator codes adopted by reference, set forth the requirement to submit petitions for rule making and their disposition to the Administrative Rules Review Committee, set forth the requirement to enter information about waiver petitions and their disposition in the Legislative Services Agency's website, clarify that the Board has jurisdiction over alterations of elevators, set forth procedures and conditions for controlling or preventing access to conveyances and dormant conveyances, and require "scope of work" to be included with an application for an alteration permit.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 10, 2021, as **ARC 5436C**. A representative of an elevator industry association commented in favor of adopting by reference the national consensus codes. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on March 23, 2021.

LABOR SERVICES DIVISION[875](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 Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 66.

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 June 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 65.2(2) as follows:

65.2(2) Hearing and deciding appeals concerning inspection reports that relate to the installation, alteration, operation, and maintenance of conveyances in the state.

ITEM 2. Amend subrule 65.2(5) as follows:

65.2(5) Establishing committees of the board, ~~the members and chairpersons of which shall be appointed by the board chairperson.~~

ITEM 3. Amend subrule 65.3(3) as follows:

65.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the commissioner nor the commissioner's designee may serve as chairperson. The chairperson shall, when present, preside at meetings, appoint members and chairpersons of committees, and perform all duties and exercise all powers of the chairperson. The vice chairperson shall, in the absence or incapacity of the chairperson, perform all duties and exercise all powers of the chairperson.

ITEM 4. Amend subrule 65.4(5) as follows:

65.4(5) Members of the public may be present during board meetings unless the board votes to hold a closed session in accordance with Iowa Code chapter 21. The dates and locations of board meetings may be obtained from the division of ~~labor's Web site~~ labor services' website or the board office.

ITEM 5. Amend rule 875—65.5(89A) as follows:

875—65.5(89A) Official communications. All official communications, including submissions and requests, shall be addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, ~~4000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309.

ITEM 6. Amend **875—Chapter 66**, title, as follows:

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES
BY THE ELEVATOR SAFETY BOARD

LABOR SERVICES DIVISION[875](cont'd)

ITEM 7. Adopt the following **new** subrules 66.1(1) and 66.1(2):

66.1(1) Authority. Authority for the board to grant waivers is set forth in Iowa Code sections 17A.9A and 89A.11.

66.1(2) Definition. “Waiver” means a waiver pursuant to Iowa Code section 17A.9A or an exception or variance pursuant to Iowa Code section 89A.11.

ITEM 8. Amend rule 875—66.3(17A,89A), introductory paragraph, as follows:

875—66.3(17A,89A) Criteria for waiver or variance. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

ITEM 9. Amend subrule 66.3(5) as follows:

66.3(5) There is a reasonable relationship between the age of the conveyance and the ~~variance~~ waiver requested.

ITEM 10. Amend subrule 66.4(3) as follows:

66.4(3) Filing petition. A petition is deemed filed when it is received in the board’s office. A petition should be sent to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. The petitioner shall submit the petition and all related materials for consideration at least three weeks prior to a scheduled board meeting for board review of the petition at the meeting.

ITEM 11. Amend rule 875—66.5(17A,89A), introductory paragraph, as follows:

875—66.5(17A,89A) Content of petition. The required form for a petition for waiver ~~or variance~~ is available on the board’s website at www.iowaelevators.gov. A petition for waiver shall include the following information where applicable and known to the petitioner:

ITEM 12. Rescind rule 875—66.12(17A,89A) and adopt the following **new** rule in lieu thereof:

875—66.12(17A,89A) Summary reports. Information about all orders granting or denying a waiver petition shall be submitted by the board staff to the legislative services agency through the designated Internet site within 60 days of granting or denying the petition. The information submitted is available to the public via the website.

ITEM 13. Amend subrule 67.1(7) as follows:

67.1(7) The board may deny a petition because it does not provide the required information. ~~The petitioner may file a new petition on the same subject that seeks to eliminate the grounds for the board’s rejection.~~

ITEM 14. Amend rule 875—67.3(17A,89A) as follows:

875—67.3(17A,89A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Elevator Safety Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309.

ITEM 15. Amend subrule 67.4(3) as follows:

67.4(3) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date the board office mails the required notification to the petitioner. Copies of the petition and the document granting or denying the petition shall be sent to the administrative rules review committee.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 16. Amend subrule 69.1(5) as follows:

69.1(5) The commissioner shall not consider any request for waiver ~~or variance~~ of an administrative rule made as part of a petition for reconsideration. Requests for waivers ~~or variances~~ of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 66.

ITEM 17. Amend paragraph **69.10(5)“d”** as follows:

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(Date)

(Signature)

ITEM 18. Amend subrule 70.3(1) as follows:

70.3(1) Address. The board's mailing address is Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue, Des Moines, Iowa 50319.~~ The board's staff is located at 150 Des Moines Street, Des Moines, Iowa 50309.

ITEM 19. Amend subrule 70.15(4) as follows:

70.15(4) Waivers ~~and variances~~. Requests for waivers ~~and variances~~, board proceedings and rulings on such requests, ~~and reports prepared for the administrative rules review committee and others~~ are stored on paper and electronically.

ITEM 20. Adopt the following new definitions of “Imminent danger,” “Seal off,” “Serious danger” and “Waiver” in rule ~~875—71.1(89A)~~:

“*Imminent danger*” means one or more conditions or practices exist which are reasonably expected to cause death or serious physical harm immediately or before the danger can be eliminated through the procedures described in subrules 71.11(6) and 71.11(7).

“*Seal off*” means to place a conveyance controller in the off position and attach a wire seal with a tag warning that the conveyance must be rendered dormant or shall not be used pending repairs.

“*Serious danger*” means one or more conditions or practices exist which create a substantial probability that death or serious physical harm could result.

“*Waiver*” means a waiver pursuant to Iowa Code section 17A.9A or an exception or variance pursuant to Iowa Code section 89A.11.

ITEM 21. Amend subrule 71.5(4) as follows:

71.5(4) Issuance of an installation permit shall not be construed as a waiver ~~or variance~~ of any requirement of law.

ITEM 22. Amend subrule 71.9(2) as follows:

71.9(2) Application for an alteration permit shall be in the format required by the labor commissioner and shall include scope of work, drawings and specifications of all planned changes and the fee specified by rule 875—71.16(89A).

ITEM 23. Amend subrule 71.9(3) as follows:

71.9(3) Issuance of an alteration permit shall not be construed as a waiver ~~or variance~~ of any requirement of law.

ITEM 24. Amend paragraph **71.11(7)“b”** as follows:

b. After the period specified on the inspection report has passed, the labor commissioner may cause a state inspector to verify correction of all unsafe conditions. If reinspection reveals no significant progress toward correcting the unsafe conditions, or the remaining unsafe conditions create significant safety concerns, the labor commissioner may serve a notice of intent to suspend, deny or revoke the operating permit.

LABOR SERVICES DIVISION[875](cont'd)

If there is a serious danger, the labor commissioner may seal off the conveyance and shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance prior to completion of the required repairs may result in additional legal proceedings. The conveyance may be returned to service only after the serious danger has been corrected and the conveyance has passed a comprehensive inspection.

ITEM 25. Rescind paragraph 71.11(7)“e” and adopt the following new paragraph in lieu thereof:

e. If a special inspector conducted the inspection, more than 45 days have passed since the deadline for correction of hazards, and an inspection report indicating the hazards are corrected has not been filed, the labor commissioner may:

- (1) Contact the special inspector,
- (2) Send a second abatement order to the owner with copies of the inspection report and first abatement order, or
- (3) Send a state inspector to inspect the conveyance. If there is a serious danger, the labor commissioner may seal off the conveyance and shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance prior to completion of the required repairs may result in additional legal proceedings. The conveyance may be returned to service only after the serious danger has been corrected and the conveyance has passed a comprehensive inspection.

ITEM 26. Adopt the following new paragraph 71.11(7)“h”:

h. If notice pursuant to paragraph 71.11(7)“a” was provided and a conveyance is not in use and the owner does not intend to use the conveyance, repair the conveyance, or make the conveyance dormant, the commissioner may seal off the conveyance.

ITEM 27. Amend subrule 71.11(8) as follows:

71.11(8) *Imminent danger.* If the labor commissioner determines that continued operation of a conveyance pending correction of unsafe conditions creates an imminent danger, the labor commissioner may seal off the conveyance and shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance contrary to posted notice by the labor commissioner may result in additional legal proceedings pursuant to Iowa Code section 89A.10(3) or 89A.18. The conveyance may be returned to service only after the imminent danger has been corrected and the conveyance has passed a comprehensive inspection.

ITEM 28. Amend rule 875—71.18(89A) as follows:

875—71.18(89A) Other regulations affecting elevators. Regulations concerning accessibility of buildings and conveyances available to the public are found at 661—Chapter 302. Regulations governing the safety and health of employees who work in and around elevators are found at 875—Chapters 2 to 26. Iowa Code chapter 91C and 875—Chapter 150 apply to companies that alter and install conveyances. No rule in 875—Chapters 71 to 73 shall be interpreted as creating an exemption, a waiver, or variance from any otherwise applicable regulation or statute.

ITEM 29. Amend subrule 72.1(10), introductory paragraph, as follows:

72.1(10) For installations between January 14 15, 2015, and May 16, 2018:

ITEM 30. Amend subrule 72.1(11), introductory paragraph, as follows:

72.1(11) For installations ~~on or after~~ between May 16 17, 2018, and May 31, 2021:

ITEM 31. Adopt the following new subrule 72.1(12):

72.1(12) For installations on or after June 1, 2021:

- a. ASME A17.1 shall mean ASME A17.1-2019/CSA B44-19, except that,
 - (1) Approaching object detection as described in 2.13.5 shall be optional; and
 - (2) ASME A17.1-2016/CSA B44-16, requirement 2.13.5, shall apply if approaching object detection is not installed;
- b. ASME A17.7 shall mean ASME A17.7-2012/CSA B44.7-12;
- c. ASME A17.8 shall mean ASME A17.8-2016/CSA B44.8-16;
- d. ASME A18.1 shall mean ASME A18.1 (2014), except Chapters 4, 5, 6, and 7;

LABOR SERVICES DIVISION[875](cont'd)

- e.* ANSI A117.1 shall mean ANSI A117.1 (2017), except for requirement 407.4.7.1.2; and
- f.* ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2017).

[Filed 3/24/21, effective 6/1/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5571C

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Adopted and Filed

**Rule making related to administrative rules review,
continuing education, and criminal convictions**

The Landscape Architectural Examining Board hereby amends Chapter 1, "Description of Organization," Chapter 2, "Examinations and Licensing," Chapter 3, "Continuing Education," and Chapter 4, "Rules of Professional Conduct and Discipline Procedures," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 544B.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 544B.5 and 2020 Iowa Acts, House File 2627.

Purpose and Summary

These amendments implement changes to improve readability of the rules and implement the five-year rolling review of administrative rules as outlined in Iowa Code section 17A.7(2). This rule making is adding the criminal conviction eligibility determination available prior to submittal of an application for licensure, with a \$25 fee to cover the associated costs as set forth in 2020 Iowa Acts, House File 2627.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 10, 2021, as **ARC 5430C**. A public hearing was held on March 2, 2021, at 2:30 p.m. at the Board office, 200 East Grand Avenue, Suite 350, Des Moines, Iowa. No one attended the public hearing. No public comments were received.

There was one change made from the Notice. The Board corrected a mistake in rule 193D—2.8(17A,272C,544B) to say the late renewal period is 30 days after the expiration date rather than 30 days prior to the expiration date.

Adoption of Rule Making

This rule making was adopted by the Board on March 17, 2021.

Fiscal Impact

This rule making has minimal fiscal impact to the State of Iowa. It is unknown how many individuals will seek an eligibility determination due to their criminal conviction prior to applying, which would result in a \$25 fee to cover the associated costs as set forth in 2020 Iowa Acts, House File 2627.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

Jobs Impact

After analysis and review of this rule making, there is a potential positive impact on jobs as individuals who may have been ineligible for licensure may be eligible for licensure as a result of this rule making.

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 193—Chapter 5.

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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Inactive” and “Retired” in rule **193D—1.1(544B,17A)**:

“*Inactive*” means that a landscape architect is not engaged in Iowa in any practice for which a certificate of licensure is required.

“*Retired*” means that a landscape architect is not engaged in the practice of landscape architecture or earning monetary compensation by providing professional landscape architectural services in any licensing jurisdiction of the United States or a foreign country.

ITEM 2. Amend rule 193D—1.2(544B,17A) as follows:

193D—1.2(544B,17A) Organization and duties. The board consists of five members who are licensed professional landscape architects and two members who are not licensed professional landscape architects and who represent the general public.

1.2(1) *Qualifications of professional landscape architect board members.* Four of the five professional members shall be actively engaged in the practice of landscape architecture or the teaching of landscape architecture in an accredited college or university, and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. One of the five professional members shall be actively engaged in the practice of landscape architecture or the teaching of landscape architecture in an accredited college or university, and may have been so engaged for fewer than five years preceding.

1.2(2) *Election of chairperson and vice chairperson.* The board elects annually from its members a chairperson and a vice chairperson. A quorum of the board shall be four members, and all final motions and actions must receive a vote by a majority of the members of the board.

1.2(3) *Duties of board.* The board enforces the provisions of Iowa Code chapter 544B and makes rules for the examination of applications for licensure. The board keeps records of its proceedings. The board adopts an official seal which is affixed to all certificates of licensure granted. The board makes other rules, not inconsistent with law, as necessary for the proper performance of its duties. The board maintains a roster of all licensed professional landscape architects showing the name, place of business, residence, and date and number of the certificate of licensure of every professional landscape architect in the state.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

~~1.2(1)~~ **1.2(4)** *Chairperson Duties of chairperson.* The chairperson shall, when present, preside at meetings, appoint committees, and perform all duties and powers of the chairperson.

~~1.2(2)~~ **1.2(5)** *Vice Duties of vice chairperson.* The vice chairperson shall, in the absence or incapacity of the chairperson, exercise the duties and powers of the chairperson.

ITEM 3. Amend subrule 1.10(2) as follows:

1.10(2) The ~~executive officer~~ board administrator shall, upon receipt of a petition that meets all applicable criteria established in 193—Chapter 5, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

ITEM 4. Rescind rule 193D—2.2(544B,17A) and adopt the following new rule in lieu thereof:

193D—2.2(544B,17A) Application for licensure by examination.

2.2(1) Candidates shall contact CLARB to start the examination licensure process by creating a council record. A candidate's council record will include verified history of the candidate's education, experience, examination and licensure history, and professional references and is used to apply for examination, licensure and certification.

2.2(2) The candidate who successfully completes the LARE may make application for certificate of licensure to the board after meeting one of the requirements listed below and requesting that the candidate's council record be transmitted to the board.

a. Graduation from a course in landscape architecture in a school, college, or university offering an accredited minimum four-year curriculum in landscape architecture, and a minimum of three years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a professional landscape architect or a person who becomes a professional landscape architect within one year after July 1, 2002.

b. Graduation from a nonaccredited course of landscape architecture of a minimum of four years in a school, college, or university and a minimum of four years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a professional landscape architect.

c. A minimum of ten years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character to properly prepare the applicant for the examination.

2.2(3) A satisfactorily completed year of study in an accredited course of landscape architecture in an accredited school, college, or university may be accepted in lieu of one year of practical experience.

2.2(4) A master's degree from an accredited school, college, or university may be accepted in lieu of one year of practical experience.

2.2(5) Any four-year college or university degree may be accepted in lieu of two years of practical experience.

ITEM 5. Amend rule 193D—2.3(544B,17A) as follows:

193D—2.3(544B,17A) Procedure for processing applications. ~~Each application shall be considered individually by the board. The board authorizes the chairperson to review applications between board meetings. The chairperson will determine if the applications meet the requirements for approval or will need full board review. A~~ The board administrator shall determine when the legal requirements for licensure have been satisfied with regard to issuance of certificates, licenses or registrations, and the board administrator shall submit to the board any questionable application. An applicant's personal appearance before the board, if required, shall be at the time and place designated by the board. Failure to supply additional evidence or information within 30 days from the date of the written request from the board, or failure to appear before the board when an appearance is requested, may be considered cause for disapproval of the application. Unless otherwise provided by law, a request for a rehearing before the board shall be filed with the board in accordance with rule 193—7.39(543,272C). A judicial review can be filed in accordance with Iowa Code section 17A.19.

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

ITEM 6. Amend rule 193D—2.4(544B,17A) as follows:

193D—2.4(544B,17A) Examination Registration of applicants. ~~Examinations shall be conducted by the board at least once annually. Applicants need not meet preconditions to take the professional landscape architectural licensure examination, but applicants~~ Applicants must meet requirements of Iowa Code section 544B.9 for registration.

ITEM 7. Amend rule 193D—2.5(544B,17A) as follows:

193D—2.5(544B,17A) Written examination. The written examination shall consist of the professional landscape architectural licensure examination published by CLARB and may include supplementary questions developed by the board.

~~**2.5(1) Instructions.** A copy of examination instructions and notice of the date and location of the examination will be furnished to each applicant at least 30 days in advance of the examination. The examination is divided into several sections. An applicant may sit for any or all of the sections at a single sitting. Sections which are passed are not required to be repeated. An applicant who intends to sit for any sections not previously passed must file an application for reexamination with the proper fee(s) on a form provided by the board which must be received in the board office no later than the last day of March for the June examination and the last day of September for the December examination.~~

~~**2.5(2) Grades.** The board shall notify the examinee of the examination grade.~~

~~**2.5(3) Examinations review process.** Candidates may review their own graded examinations using the following procedures:~~

~~a. Within a maximum of 30 days from the date of the notification of failure, a written request by the candidate may be filed with the Iowa landscape architectural examining board to include:~~

~~(1) Candidate number or name.~~

~~(2) Date of examination.~~

~~(3) Examination section requested to be reviewed.~~

~~b. The review time for each failed section may be limited by the board.~~

~~c. A board member or staff person must be present to observe and to provide assistance to the candidate.~~

~~d. There shall be no copying or tracing allowed; however, a candidate may take notes.~~

~~e. A candidate shall be allowed to review all of the candidate's examination, including evaluation guides and evaluators' score sheets.~~

~~f. The candidate shall sign a statement stating the terms of the review procedure.~~

ITEM 8. Amend rule 193D—2.7(544B,17A), introductory paragraph, as follows:

193D—2.7(544B,17A) Certificate of licensure. When an applicant has qualified for licensure under this chapter and has paid the required license fee, the secretary shall enroll the applicant's name in the roster of professional landscape architects and issue to the applicant a certificate of licensure ~~signed by the chairperson and vice chairperson of the board.~~

ITEM 9. Amend rule 193D—2.8(17A,272C,544B) as follows:

193D—2.8(17A,272C,544B) Renewal of certificates of licensure. Certificates of licensure expire biennially on June 30. In order to maintain authorization to practice in Iowa, a licensee is required to renew the certificate of licensure prior to ~~the expiration date~~ June 30 of the year of expiration. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days after the date of expiration. A licensee who fails to renew by the expiration date is not authorized to practice landscape architecture in Iowa until the certificate is reinstated as provided in rule 193D—2.9(544B,17A).

2.8(1) It is the policy of the board to ~~e-mail~~ email to each licensee a notice of the pending expiration date at the licensee's last-known address approximately one month prior to the date the certificate of licensure is scheduled to expire. Failure to receive this notice does not relieve the licensee of the

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

responsibility to timely renew the certificate and pay the renewal fee. A licensee should contact the board office if the licensee does not receive a renewal notice prior to the date of expiration.

2.8(2) If grounds exist to deny a timely and sufficient application to renew, the board shall send ~~written~~ notification to the applicant ~~by restricted certified mail, return receipt requested~~. Grounds may exist to deny an application to renew if, for instance, the licensee failed to satisfy the continuing education as required as a condition for licensure. If the basis for denial is pending disciplinary action or disciplinary investigation that is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

2.8(3) When a licensee appears to be in violation of mandatory continuing education requirements, and after or in lieu of giving the licensee an opportunity to come into compliance under 193D—subrule 3.3(3), the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), offer the licensee the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish deadlines for compliance; and require that the licensee complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the licensee. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed certificate of licensure and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the licensee pursuant to 193—subrule 7.40(1).

2.8(4) to 2.8(7) No change.

2.8(8) Inactive status. This subrule establishes a procedure under which a person issued a certificate of licensure as a landscape architect may apply to the board to register as inactive. Licensure under this subrule is available to a licensee residing within or outside the state of Iowa who is not using the title “landscape architect” while offering services as a landscape architect. A person eligible to register as inactive may, as an alternative to licensure, allow the certificate of licensure to lapse. During any period of inactive status, a person shall not engage in the practice of landscape architecture while using the title “landscape architect” or any other title that might imply that the person is offering services as a landscape architect in violation of Iowa Code section 544B.18. The board will continue to maintain a database of persons ~~registered~~ licensed as inactive, including information which is not routinely maintained after a certificate of licensure has lapsed through the person's failure to renew. A person who registers as inactive will accordingly receive a renewal notice if the notice is sent by the board, board newsletters, and other mass communications from the board.

a. Affirmation. The renewal application shall contain a statement in which the applicant affirms that the applicant will not engage in the practice of landscape architecture while using the title “landscape architect” in violation of Iowa Code section 544B.18, without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to rule 193D—2.9(544B,17A).

b. Renewal. A person ~~registered~~ licensed as inactive may renew the person's certificate of licensure on the biennial schedule described in ~~193D—2.8(544B,272C,17A)~~ this rule. This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in ~~193D—2.10(544B,17A)~~ rule 193D—2.11(544B,17A). An inactive certificate of licensure shall lapse if not timely renewed.

c. Permitted practices. A person may, while ~~registered~~ licensed as inactive or retired, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of licensure has never been issued. For an “inactive” licensee, such services may be performed as long as the person does not in connection with such services use the title “landscape architect” or any other title restricted for use only by landscape architects pursuant to Iowa Code section 544B.18 (with or without additional designations such as “inactive”). Restricted titles

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

may be used only by active landscape architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education. A “professional landscape architect, retired” may use the “professional landscape architect, retired” title; however, the person shall inform anyone to whom the person is providing services that the person once held an active landscape architect license but is no longer actively licensed or permitted to practice landscape architecture.

d. Prohibited practices. A person who, while ~~registered~~ licensed as inactive, engages in any of the practices described in Iowa Code section 544B.18 is subject to disciplinary action.

ITEM 10. Renumber rule **193D—2.10(544B,17A)** as **193D—2.11(544B,17A)**.

ITEM 11. Adopt the following new rule 193D—2.10(544B,17A):

193D—2.10(544B,17A) Responsibility for accuracy of applications. The landscape architect is responsible for verifying the accuracy of the information submitted on applications regardless of how the application is submitted or by whom it is submitted. For instance, if the office manager of a landscape architect’s firm submits an application for renewal on behalf of the landscape architect and that information is incorrect, the landscape architect will be held responsible for the information and may be subject to disciplinary action.

ITEM 12. Amend renumbered rule 193D—2.11(544B,17A) as follows:

193D—2.11(544B,17A) Fee schedule. The appropriate fee shall accompany the application.

Fees for examination subjects shall be paid directly to the testing service selected by CLARB.

Exemption fee	\$300
(This certificate of licensure is to be effective to the June 30 which is at least 12 months beyond the date of the application.)	
Wall certificate replacement fee	\$25
Certificate of licensure fee	\$15/month
(This certificate of licensure is to be effective the day of board action until June 30.)	
Biennial licensure fee (active)	\$350
Biennial licensure fee (inactive)	\$100
Late renewal fee	\$25
(for renewals postmarked <u>submitted</u> on or after July 1 and before July 30)	
“Professional landscape architect, retired” status	\$0 (No fee)
Reinstatement of lapsed licensure to active status	\$100 + renewal fee + \$25 per month or partial month of lapsed licensure; not to exceed \$750
Reinstatement of inactive or retired status to active status	\$350
(If less than 12 months from the next biennial renewal, one-half of the current active licensure fee shall be paid.)	
<u>Prelicensure determination fee</u>	<u>\$25</u>

ITEM 13. Amend paragraph **3.3(1)“g”** as follows:

g. In instances of service on a professional or community board, or other undocumented hours of continuing education (non-HSW documentation such as LU, PDH), the licensee shall provide a narrative

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

description of the materials the licensee reviewed, the nature of the licensee's service, and a description as to how the licensee's claimed hours of continuing education have contributed to the health, safety and welfare of the public.

ITEM 14. Amend subrule 3.3(2) as follows:

3.3(2) A professional landscape architect's continuing education report forms or online renewal may be selected for review by the board for verification of compliance with these requirements. Evidence of compliance shall be maintained by the professional landscape architect for two years after the period for which the form was submitted and shall include written verification of attendance by someone other than the licensee. Examples of evidence may include, but are not limited to, a certificate of completion presented by the program sponsor, a letter from an employer verifying attendance at an in-firm training session, or copies of minutes from public service meetings. Canceled checks, slideshow presentations, email confirmation or receipts for payments of fees to attend a program are not evidence of actual attendance and are not acceptable.

ITEM 15. Rescind subrule 3.3(3) and adopt the following new subrule in lieu thereof:

3.3(3) Any discrepancy between the number of continuing education hours reported and the number of continuing education hours actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any continuing education hours, or the licensee has failed to complete the required continuing education hours, the landscape architect shall have 60 days from board notice to either provide further evidence of having completed the continuing education hours disallowed or remedy the discrepancy by completing the required number of continuing education hours (provided that such continuing education hours shall not again be used for the next renewal). Extension of time may be granted on an individual basis and must be requested by the licensee within 30 days of notification by the board. If the licensee fails to comply with the requirements of this subrule, the licensee may be subject to disciplinary action.

ITEM 16. Amend paragraph **4.1(7)“b”** as follows:

b. Description of seal. The diameter of the outside circle shall be approximately 1¾ inches. The seal shall include the name of the professional landscape architect and the words “Professional Landscape Architect, State of Iowa.” The professional landscape architect's Iowa license number ~~and the word “Iowa”~~ shall be included. The seal shall substantially conform to the sample shown below:



[Filed 3/22/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5572C**LAW ENFORCEMENT ACADEMY[501]****Adopted and Filed****Rule making related to officer training**

The Law Enforcement Academy hereby amends Chapter 1, “Organization and Administration,” Chapter 2, “Minimum Standards for Iowa Law Enforcement Officers,” Chapter 3, “Certification of Law Enforcement Officers,” Chapter 6, “Decertification,” Chapter 8, “Mandatory In-Service Training Requirements,” and Chapter 10, “Reserve Peace Officers,” and adopts a new Chapter 14, “Iowa Law Enforcement Emergency Care Provider,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 80B.11 and 80D.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2647.

Purpose and Summary

The Iowa Law Enforcement Academy has completed a review of 2020 Iowa Acts, House File 2647. The adopted changes, recommended by the legislation, include adherence to the new law and changes, corrections and additions which reflect the current state of the Academy’s practice and represent a more accurate reflection of its current curriculum. The newly adopted Chapter 14 contains language substantially similar to the language that was previously adopted by the Public Health Department in 641—Chapter 139.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 27, 2021, as **ARC 5402C**. No public comments were received.

Two changes from the Notice have been made in Item 10. Paragraph 14.2(1)“h” was removed and the subsequent paragraphs were relettered, and the second paragraph of paragraph 14.2(2)“c” was also removed. Both of the removed paragraphs referred to fees that the Law Enforcement Academy does not charge and were included in the Notice by mistake.

Adoption of Rule Making

This rule making was adopted by the Director of the Academy, with the approval of the Law Enforcement Academy Council, on March 9, 2021.

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 Iowa Law Enforcement Academy Council for a waiver of the discretionary provisions, if any, pursuant to 501—Chapter 16.

LAW ENFORCEMENT ACADEMY[501](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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Change in status,” “Continuing education,” “Iowa law enforcement training program,” “Reserve peace officer,” “Respondent,” “Serious misconduct” and “Student” in rule **501—1.1(80B)**:

“*Change in status*” means leaving an agency for any reason, including termination, voluntary resignation, demotion, promotion, suspension, or any other change in position or title.

“*Continuing education*” means training approved by the Iowa law enforcement academy which is obtained by a certified Iowa law enforcement emergency care provider to maintain, improve, or expand relevant skills and knowledge and to satisfy renewal of certification requirements.

“*Iowa law enforcement training program*” means the law enforcement academy or a law enforcement training program approved by the council to conduct ILEECF emergency medical care training.

“*Reserve peace officer*” means a volunteer, nonregular, sworn member of a law enforcement agency who serves with or without compensation, has regular police powers while functioning as a law enforcement agency's representative, and participates on a regular basis in the law enforcement agency's activities including crime prevention and control, preservation of the peace, and enforcement of law.

“*Respondent*” means any individual who is charged in a complaint with violating the criteria of professional practices or the criteria of competent performance.

“*Serious misconduct*” means improper or illegal actions taken by a law enforcement officer in connection with the officer's official duties including but not limited to a conviction for a felony, fabrication of evidence, repeated use of excessive force, acceptance of a bribe, or the commission of fraud.

“*Student*” means any individual enrolled in a training program and participating in the didactic or psychomotor portions.

ITEM 2. Adopt the following **new** subrule 2.1(12):

2.1(12) Has not been previously decertified in another jurisdiction.

ITEM 3. Adopt the following **new** subrule 2.1(13):

2.1(13) Has not committed any act that could result in decertification under 501—Chapter 6.

ITEM 4. Amend rule 501—3.2(80B) as follows:

501—3.2(80B) Law enforcement status forms furnished to academy. Within ten days of any of the following occurrences, the academy will be so advised by use of prescribed forms:

1. Any hiring ~~or termination~~ of personnel.

2. to 4. No change.

5. Any termination of employment of a law enforcement officer or appointment as a reserve peace officer. The notification must state whether the law enforcement officer or reserve peace officer was discharged or removed for serious misconduct or whether the officer left, voluntarily quit, or was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the officer being discharged or removed for serious misconduct. Upon request by the council, the employing

LAW ENFORCEMENT ACADEMY[501](cont'd)

agency shall provide any additional information or documentation about the officer including confidential records or information under Iowa Code section 22.7 or other applicable law to the council.

ITEM 5. Adopt the following **new** paragraph **3.8(4)“d”**:

d. Submission of a preliminary application for certification through examination to the council. A preliminary application for certification shall adhere to the requirements set out in Iowa Code section 80B.11F, as well as any additional requirements set out by the Iowa law enforcement academy.

ITEM 6. Amend subrule 6.2(1) as follows:

6.2(1) Mandatory revocation. The council shall revoke a law enforcement officer's certification or a reserve peace officer's certification ~~if~~ upon a finding that the law enforcement officer or reserve peace officer has done any of the following:

a. The law enforcement officer or reserve peace officer ~~pleads~~ pled guilty to or ~~is~~ was convicted of a felony;

b. The law enforcement officer or reserve peace officer ~~manufactures, sells, or conspires~~ manufactured, sold, or conspired to manufacture or sell an illegal drug other than an authorized act in connection with official duties;

c. The law enforcement officer or reserve peace officer ~~pleads~~ pled guilty to or ~~is~~ was convicted of a crime constituting a misdemeanor crime of domestic violence or other domestic abuse including other offenses or lesser included offenses stemming from domestic abuse;

d. The law enforcement officer or reserve peace officer ~~pleads~~ pled guilty to or ~~is~~ was convicted of any offense classified as a tier I, tier II, or tier III sex offense in Iowa Code chapter 692A;

e. The law enforcement officer or reserve peace officer was discharged for serious misconduct, as defined by Iowa Code section 80B.13A(1) "*b*," from employment as a law enforcement officer;

f. The law enforcement officer or reserve peace officer left, voluntarily quit, or was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the law enforcement officer being discharged or the reserve officer being removed for serious misconduct, if the council determined that the officer engaged in serious misconduct;

g. The law enforcement officer or reserve peace officer was convicted or pled guilty to any offense under prior laws of this state or another jurisdiction, or any offense under prior law that was prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in paragraphs 6.2(1) "*a*" to "*d*."

ITEM 7. Amend subrule 6.2(2) as follows:

6.2(2) Discretionary revocation. The director or the director's designee shall have the authority to conduct a preliminary inquiry and shall have the authority to determine which matters shall be referred to the council for consideration. The council, at its discretion, may revoke or suspend a law enforcement officer's or a reserve peace officer's certification under any of the following circumstances:

a. The law enforcement officer or reserve peace officer has been discharged for "good cause" from employment as a law enforcement officer or from appointment as a reserve peace officer.

b. The law enforcement officer or reserve peace officer leaves, voluntarily quits, or the officer's position is eliminated when disciplinary action was imminent or pending which could have resulted in the law enforcement officer being discharged or the reserve peace officer being removed for "good cause."

c. The law enforcement officer's or reserve peace officer's current or former employing agency recommends to the council that revocation or suspension would be appropriate with regard to a current or former employee. A recommendation by the law enforcement officer's or reserve peace officer's current or former employing agency must be in writing and set forth the reasons why the action is being recommended, the findings of the employing agency concerning the matter, the action taken by the employing agency, and that the action by the agency is final. Upon such a recommendation, the law enforcement officer's or reserve peace officer's current or former employing agency shall provide the Iowa law enforcement academy the following materials within ten days of the recommendation:

(1) The law enforcement officer's or reserve peace officer's personnel file;

(2) The employing agency's internal investigative file;

LAW ENFORCEMENT ACADEMY[501](cont'd)

(3) Any other materials the employing agency used in the determination to make its recommendation.

d. The law enforcement officer or reserve peace officer is recommended for revocation or suspension by the attorney general to the council pursuant to Iowa Code section 13.12.

~~e. e.~~ The law enforcement officer or reserve peace officer:

(1) Makes, tenders, or certifies to a material false statement in a document prescribed by the academy or otherwise provided for or authorized by these rules, or in any other document intended to induce the academy or the council to take or withhold action.

(2) Falsifies or makes misrepresentations on an employment application submitted to any Iowa law enforcement agency or any other public document required to be completed by the officer.

(3) Testifies falsely in any court of law or administrative hearing about a material issue with the intent to deceive.

(4) Commits any act of moral turpitude as defined in 501—subrule 2.1(5). A copy of the record of conviction of or plea of guilty to a crime of moral turpitude shall be conclusive evidence; however, a conviction or plea of guilty is not required.

(5) Uses or possesses an illegal substance other than in connection with official duties.

(6) Fails to comply with the requirements of 501—Chapters 8 and 10 relative to in-service training.

(7) Is decertified in any other state where the law enforcement officer or reserve peace officer may be certified.

~~d. f.~~ The law enforcement officer has failed to reimburse the employing agency for costs incurred by that agency, including fees paid to the academy, clothing vendor costs, meal costs, uniform/equipment costs, and the officer's salary paid during the academy if the officer leaves that agency and is employed by another law enforcement agency within a period of four years following completion of the certification training, under the following conditions:

(1) No change.

(2) A recommendation for decertification must be verified under oath by the administrator of the employing agency with which the officer contracted under this rule. The recommendation for decertification must contain the following information:

1. Have attached a copy of the agreement referred to in subparagraph ~~6.2(2)“d”(1)~~ 6.2(2)“f”(1) above;

2. to 7. No change.

(3) No change.

ITEM 8. Adopt the following **new** subrule 8.1(6):

8.1(6) De-escalation training. In addition to the requirements of subrules 8.1(1) to 8.1(5), a regular law enforcement officer must receive a minimum of 4 hours per year of training that includes all of the following topics:

a. An emphasis on law enforcement officer understanding and respect for diverse communities and the importance of effective, noncombative methods of carrying out law enforcement activities in a diverse community.

b. Instruction on diverse communities in order to foster mutual respect and cooperation between law enforcement and members of all diverse communities.

c. An examination of the patterns, practices, and protocols that cause biased law enforcement actions, and the tools to prevent such actions.

d. An examination and identification of key indices and perspectives that make up differences among residents in a local community.

e. Instruction on implicit bias and consideration of the negative impact of bias, whether intentional or implicit, on effective law enforcement, including examination of how historical perceptions of profiling have harmed community relations.

f. Instruction on the perspectives of diverse local constituency groups from experts on particular cultural and law enforcement-community relations issues in a local area.

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g. A presentation of the history and the role of the civil rights movement and the impact on law enforcement.

h. Instruction on de-escalation techniques, including verbal and physical tactics to minimize the need for the use of force and nonlethal methods of applying force.

ITEM 9. Adopt the following new subrule 10.206(5):

10.206(5) *De-escalation training.* In addition to the requirements of subrules 10.206(1), 10.206(2) and 10.206(4), a certified reserve peace officer must receive a minimum of 4 hours per year of training that includes all of the following topics:

a. An emphasis on law enforcement officer understanding and respect for diverse communities and the importance of effective, noncombative methods of carrying out law enforcement activities in a diverse community.

b. Instruction on diverse communities in order to foster mutual respect and cooperation between law enforcement and members of all diverse communities.

c. An examination of the patterns, practices, and protocols that cause biased law enforcement actions, and the tools to prevent such actions.

d. An examination and identification of key indices and perspectives that make up differences among residents in a local community.

e. Instruction on implicit bias and consideration of the negative impact of bias, whether intentional or implicit, on effective law enforcement, including examination of how historical perceptions of profiling have harmed community relations.

f. Instruction on the perspectives of diverse local constituency groups from experts on particular cultural and law enforcement-community relations issues in a local area.

g. A presentation of the history and the role of the civil rights movement and the impact on law enforcement.

h. Instruction on de-escalation techniques, including verbal and physical tactics to minimize the need for the use of force and nonlethal methods of applying force.

ITEM 10. Adopt the following new 501—Chapter 14:

CHAPTER 14

IOWA LAW ENFORCEMENT EMERGENCY CARE PROVIDER

501—14.1(80B) Authority of Iowa law enforcement emergency care provider. An Iowa law enforcement emergency care provider may perform skills identified in the Iowa law enforcement emergency care provider curriculum approved by the council.

501—14.2(80B) Iowa law enforcement emergency care providers—certification, renewal standards and procedures, and fees.

14.2(1) *Application and examination.*

a. Applicants shall complete an ILEECF student registration form at the beginning of the course. ILEECF student registration forms are provided by the academy.

b. Upon satisfactory completion of the course and all training program requirements, including successful completion of the state certifying practical examination, the student shall be recommended by the training program to take the state certification written examinations. State certification must be obtained to perform appropriate skills.

c. The practical examination shall be administered by the training program using the standards and forms provided by the academy.

d. To be eligible to take the practical examination, the student shall first pass the written examination.

e. When a student's ILEECF registration is referred to the academy for investigation, the student shall not be certified until approved by the council.

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f. The certifying written examinations shall be administered at times and places determined by the academy.

g. No oral certification examinations shall be permitted; however, candidates may be eligible for appropriate accommodations.

h. A student who fails the practical certification examination shall have two additional opportunities to attain a passing score. The student may repeat the failed examination on the same day as determined by the training program. A student who fails a practical station for the third time shall be required to repeat the entire course in order to be eligible for certification.

i. A student who fails to attain the appropriate overall score on the written certification examination shall have two additional opportunities to complete the entire examination and attain a passing score. Required overall passing score is 70 percent.

j. All examination attempts shall be completed within one year of the initial course completion date. If a student is unable to complete the testing within one year due to medical reasons, an extension may be granted upon submission of a signed statement from a physician and approval by the council.

k. Examination scores shall be confidential except that they may be released to the training program that provided the training or released in a manner that does not permit the identification of a student.

14.2(2) *Renewal of certification.*

a. A certificate shall be valid for two years from issuance unless specified otherwise on the certificate or unless sooner suspended or revoked.

b. All continuing education requirements shall be completed during the certification period prior to the certificate's expiration date. Failure to complete the continuing education requirements prior to the expiration date shall result in an expired certification.

c. The application for renewal of certification shall be submitted to the academy within the 90 days prior to the expiration date. Failure to submit a renewal application to the academy within the 90 days prior to the expiration date (based upon the postmark date) shall cause the current certification to expire. Iowa law enforcement emergency care providers shall not function on an expired certification.

d. An individual who has not completed the required continuing education during the certification period and is seeking to reinstate an expired certificate shall complete a refresher course approved by the academy and pass the practical and written certification examinations.

e. If an individual is unable to complete the required continuing education during the certification period due to an illness or injury, an extension of certification may be issued upon submission of a signed statement from a physician and approval by the council.

14.2(3) *Renewal standards.* To be eligible for renewal, the certificate holder shall:

a. Have signed and submitted an application for renewal of certification, provided by the academy, within the 90 days prior to the certificate's expiration date.

b. Have a current CPR course completion card or a signed and dated statement from a recognized CPR instructor that documents current course completion in CPR and AED.

c. Have completed four continuing education hours during the certification period including a minimum of one hour in each of the following topics:

- (1) Infectious diseases;
- (2) Trauma emergencies;
- (3) Medical emergencies.

d. Maintain a file containing documentation of continuing education hours accrued during each certification period and retain this file for four years from the end of each certification period.

501—14.3(80B) Iowa law enforcement training programs.

14.3(1) The training program shall use the course curricula approved by the council for an Iowa law enforcement emergency care provider and shall include, as a minimum, the following course components:

- a.* Twenty-four hours of classroom instruction;
- b.* Practical and written examinations.

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14.3(2) An individual currently certified by the department of public health or the national registry as a first responder, emergency medical care provider, emergency medical responder, emergency medical technician, emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, critical care paramedic, or other similar credential may request Iowa law enforcement emergency care provider certification. Such a request must be made in writing to the academy with documentation of credentials as an Iowa peace officer.

These rules are intended to implement Iowa Code chapter 80B.

[Filed 3/22/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5573C

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

Adopted and Filed

Rule making related to waivers and licensure

The Professional Licensing and Regulation Bureau hereby amends Chapter 5, "Waivers and Variances from Rules," Chapter 13, "Public Records and Fair Information Practices," and Chapter 14, "Military Service, Veteran Reciprocity, and Spouses of Active Duty Service Members," and adopts a new Chapter 15, "Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 546.3 and 546.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 304; 2020 Iowa Acts, House File 2389; and 2020 Iowa Acts, House File 2627.

Purpose and Summary

These amendments implement changes required by 2019 Iowa Acts, Senate File 304; 2020 Iowa Acts, House File 2389; and 2020 Iowa Acts, House File 2627. These amendments include:

- Removal of the term "variance" when it is used to mean a waiver, as required by 2020 Iowa Acts, House File 2389, section 10, which amended Iowa Code section 17A.9A;
- Removal of references in Chapter 14 to the College Student Aid Commission and Iowa Code chapter 261, pursuant to 2020 Iowa Acts, Senate File 304, and to the term "spouse" as a result of 2020 Iowa Acts, House File 2627, section 24, which struck Iowa Code section 272C.4(13);
- Addition of a new rule 193—14.4(272C) to set forth the procedures for licensure by verification for applicants who are licensed in other jurisdictions, as set forth in 2020 Iowa Acts, House File 2627;
- Addition of a new rule 193—14.7(272C) to set forth the procedures for licensure by verification for applicants who have relevant work experience in jurisdictions that do not have license requirements, as set forth in 2020 Iowa Acts, House File 2627; and
- Addition of a new Chapter 15 regarding the use of criminal convictions in eligibility determinations and initial licensure decisions, as set forth in 2020 Iowa Acts, House File 2627.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 27, 2021, as **ARC 5400C**. A public hearing was held on February 18, 2021, at 10 a.m. at 200

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East Grand Avenue, Suite 350, Des Moines, Iowa. Two people attended, but gave no formal comments. Four people contacted the Bureau regarding the rules. One proposed a change to add a definition for the term “issuing jurisdiction,” which has been incorporated as Item 11 as a change from the Notice. A second change from the Notice removes the term “variance” in Chapter 13 in Item 7.

Adoption of Rule Making

This rule making was adopted by the Accountancy Examining Board on March 8, 2021; the Architectural Examining Board on March 18, 2021; the Engineering and Land Surveying Examining Board on March 11, 2021; the Interior Design Examining Board on March 8, 2021; the Landscape Architectural Examining Board on March 17, 2021; and the Real Estate Commission on March 4, 2021.

Fiscal Impact

This rule making has minimal fiscal impact to the State of Iowa. It is unknown how many individuals would seek an eligibility determination because of a criminal conviction prior to applying. For each eligibility determination, the Bureau will collect a \$25 fee to recover the associated costs, as set forth in 2020 Iowa Acts, House File 2627.

Jobs Impact

After analysis and review of this rule making, there is a potential positive impact on jobs as individuals who may have been ineligible for licensure may be eligible for licensure.

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 Bureau for a waiver of the discretionary provisions, if any, pursuant to 193—Chapter 5.

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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **193—Chapter 5**, title, as follows:

WAIVERS AND VARIANCES FROM RULES

ITEM 2. Amend rule 193—5.1(17A,546) as follows:

193—5.1(17A,546) Definitions. For purposes of this chapter, “a waiver ~~or variance~~” means action by a board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~ “Board” includes every board and commission in the professional licensing and regulation bureau of the banking division of the department of commerce.

PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

ITEM 3. Amend rule 193—5.4(17A,546) as follows:

193—5.4(17A,546) Criteria for waiver or variance. In response to a petition completed pursuant to rule 193—5.6(17A,546), a board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend subrule 5.11(1) as follows:

5.11(1) The board chair, or vice chair, if the chair is unavailable, may rule on a petition for waiver or variance if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

ITEM 5. Amend rule 193—5.13(17A,546) as follows:

193—5.13(17A,546) Summary reports Submission of waiver information. Semiannually Within 60 days of granting or denying a waiver, each board shall ~~prepare a summary report identifying~~ make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report submission shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 6. Amend subrule 13.8(4) as follows:

13.8(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services; and the centralized collection unit of the department of revenue for state debt, and college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code ~~chapter~~ chapters 252J, ~~sections 261.126 and 261.127 and chapter 272D.~~

ITEM 7. Amend subrule 13.14(7) as follows:

13.14(7) Waivers ~~and variances~~. Requests for waivers ~~and variances~~, board proceedings and rulings on such requests, and reports prepared for the administrative rules committee and others.

ITEM 8. Amend **193—Chapter 13**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 22, and 252J ~~and 261.~~

ITEM 9. Amend **193—Chapter 14**, title, as follows:

~~MILITARY SERVICE, VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY SERVICE MEMBERS~~ ALTERNATIVE PATHS TO LICENSURE

ITEM 10. Rescind the definition of “Spouse” in rule **193—14.1(272C)**.

ITEM 11. Adopt the following **new** definition of “Issuing jurisdiction” in rule **193—14.1(272C)**:

“*Issuing jurisdiction*” means any state, commonwealth, the District of Columbia, or other insular territory of the United States.

ITEM 12. Amend rule 193—14.3(272C) as follows:

193—14.3(272C) Veteran and spouse of active-duty service member reciprocity.

14.3(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 and will be given credit for examinations previously passed when consistent with board laws and rules on examination requirements. A fully

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completed application for licensure submitted by a veteran ~~or spouse~~ under this subrule shall be given priority and shall be expedited.

14.3(2) Such an application 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. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2) ~~or spouse of an active duty service member of the military forces of the United States.~~

14.3(3) to 14.3(7) No change.

ITEM 13. Adopt the following new rule 193—14.4(272C):

193—14.4(272C) Licensure by verification. Licensure by verification is available in accordance with the following:

14.4(1) Eligibility. A person may seek licensure by verification if the person is licensed in at least one other jurisdiction that has a scope of practice substantially similar to that of Iowa, and either:

- a. The person establishes residency in the state of Iowa; or
- b. The person is married to an active duty member of the military forces of the United States and is accompanying the member on an official permanent change of station to a military installation located in the state of Iowa.

14.4(2) Board application. The applicant must submit the following:

- a. A completed application for licensure by verification.
- b. Payment of the application fee.
- c. Completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check, if required for initial licensure by the board.
- d. A verification form completed by the licensing authority in the jurisdiction that issued the applicant's license, verifying that the applicant's license in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the licensing authority to the board.
- e. Proof of residency in the state of Iowa or proof of military member's official permanent change of station. Proof of residency includes:
 - (1) Residential mortgage, lease, or rental agreement;
 - (2) Utility bill;
 - (3) Bank statement;
 - (4) Paycheck or pay stub;
 - (5) Property tax statement;
 - (6) A federal or state government document; or
 - (7) Any other board-approved document that reliably confirms Iowa residency.
- f. A copy of the complete criminal record, if the applicant has a criminal history.
- g. A copy of relevant disciplinary documents, if another jurisdiction has taken disciplinary action against the applicant.
- h. Copies of relevant laws setting forth the scope of practice in the other state.

14.4(3) Applicants with prior discipline. If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person who has had a license revoked, or who has voluntarily surrendered a license, in another jurisdiction is ineligible for licensure by verification.

14.4(4) Applicants with pending licensing complaints or investigations. If an applicant is currently the subject of a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

14.4(5) Compact privileges. A person who has a privilege to practice in Iowa by virtue of an interstate licensure compact is ineligible for licensure by verification. Licenses issued pursuant to this rule do not grant privileges to practice in any other jurisdiction pursuant to any interstate licensure compact.

14.4(6) Determination by board. The board shall make the determination of whether to issue a license under this rule based on information supplied by the applicant in the application and on such additional information as the board may acquire, including information or verification from other jurisdictions.

ITEM 14. Reserve rules **193—14.5** and **193—14.6**.

ITEM 15. Adopt the following new rule 193—14.7(272C):

193—14.7(272C) Applicants with work experience in jurisdictions without licensure requirements.

14.7(1) Work experience. An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a professional license to practice in the profession may be considered to have met any educational and training requirements if the person has at least three years of work experience with a scope of practice substantially similar to that of the profession for which a license in Iowa is sought. The three years of work experience must be within the four years preceding the date of application for initial licensure. The applicant must satisfy all other requirements, including passing any required examinations, to receive a license.

14.7(2) Required documentation. An applicant who wishes to substitute work experience in lieu of satisfying applicable education or training requirements shall carry the burden of providing all of the following by submitting relevant documents as part of a completed license application:

a. Proof of Iowa residency, which may include:

- (1) Residential mortgage, lease, or rental agreement;
- (2) Utility bill;
- (3) Bank statement;
- (4) Paycheck or pay stub;
- (5) Property tax statement;
- (6) A document issued by the federal or state government; or
- (7) Any other board-approved document that reliably confirms Iowa residency.

b. Proof of three or more years of work experience within the four years preceding the application for licensure, which may include:

- (1) A letter from the applicant's prior employer documenting the dates of employment;
- (2) Paychecks or pay stubs;
- (3) If self-employed, business documents filed with the secretary of state; or
- (4) Any other board-approved evidence of sufficient work experience.

c. Proof that the work experience was in a practice with a scope of practice substantially similar to that for the license sought in Iowa, which must include:

- (1) A written statement by the applicant detailing the scope of practice; and
- (2) Business or marketing materials detailing the services provided.

ITEM 16. Adopt the following new 193—Chapter 15:

CHAPTER 15

USE OF CRIMINAL CONVICTIONS IN ELIGIBILITY DETERMINATIONS AND INITIAL
LICENSING DECISIONS

193—15.1(272C) Definitions. For the purposes of these rules, the following definitions shall apply:

“*Complete criminal record*” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

“Conviction” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. *“Conviction”* includes Alford pleas and pleas of nolo contendere.

“Disqualifying offense” means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

“License” means any license or registration issued by a board.

193—15.2(272C) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to rule 193—15.3(272C), the applicant’s convictions will be reviewed when the board receives a completed license application.

15.2(1) An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

15.2(2) An applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

15.2(3) An applicant must submit as a part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

15.2(4) The board may deny a license if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

15.2(5) An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

15.2(6) Any application fees paid will not be refunded if the license is denied.

193—15.3(272C) Eligibility determination.

15.3(1) An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

15.3(2) To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner shall submit all of the following:

- a. A completed petition for eligibility determination form;
- b. The complete criminal record for each of the petitioner’s convictions;
- c. A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should find the petitioner rehabilitated;
- d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- e. Payment of a nonrefundable fee of \$25.

193—15.4(272C) Appeal. A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board’s written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board’s rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board’s written decision will become a final order.

15.4(1) An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

15.4(2) The contested case hearing shall be closed to the public and the board’s review of a proposed decision shall occur in closed session.

PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

15.4(3) The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

15.4(4) A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

193—15.5(272C) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

These rules are intended to implement Iowa Code chapter 272C.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5591C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to blue alert program

The Public Safety Department hereby amends Chapter 89, "Missing Persons," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 80H.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 80H.

Purpose and Summary

These amendments to Chapter 89 implement the Blue Alert Program created by the Legislature in the 2019 Legislative Session to aid in the search for a suspect involved in the death or a serious injury of a peace officer or a peace officer who goes missing while in the line of duty.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5440C**. A public hearing was held on February 26, 2021. No one attended the public hearing. No public comments were received. One technical change from the Notice has been made to add an item to reserve a range of rule numbers that will precede new Division III.

Adoption of Rule Making

This rule making was adopted by the Department on April 1, 2021.

PUBLIC SAFETY DEPARTMENT[661](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

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

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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Reserve rules **661—89.204** to **661—89.299**.

ITEM 2. Adopt the following **new 661—Chapter 89**, Division III heading:

DIVISION III
BLUE ALERT PROGRAM

ITEM 3. Adopt the following **new** rules 661—89.300(80H) to 661—89.307(80H):

661—89.300(80H) Blue alert program. This chapter implements the Iowa blue alert program as a cooperative effort between the department and local law enforcement agencies to aid in the search for a suspect of a crime involving the death or serious injury of a peace officer in the line of duty or a peace officer who is missing while in the line of duty under circumstances warranting concern for the peace officer's safety.

661—89.301(80H) Definitions. The definitions in Iowa Code section 80H.1 are adopted and incorporated herein. In addition:

“*In the line of duty*” or “*on duty*” means the peace officer is working within the scope of a peace officer, or there is evidence the death or serious injury of the peace officer or the fact the peace officer is missing is related to the peace officer's actions within the scope of a law enforcement officer.

“*Serious injury*” means any of the following:

1. Disabling mental illness;
2. Bodily injury which does any of the following:
 - Creates a substantial risk of death;
 - Causes serious permanent disfigurement; or
 - Causes protracted loss or impairment of the function of any bodily member or organ.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—89.302(80H) Criteria for alert for officer injury or death. A blue alert shall be issued by Iowa state patrol communications upon receipt of a request from a law enforcement agency, provided that the following criteria for issuance of a blue alert are met:

1. A peace officer has suffered death or serious injury in the line of duty;
2. A law enforcement agency believes that the suspect has not been apprehended;
3. A law enforcement agency believes that the suspect may be a serious threat to the public;
4. Sufficient descriptive information is available to disseminate to the public that could assist in locating the suspect.

661—89.303(80H) Criteria for alert for missing officer. A blue alert shall be issued by department communications upon receipt of a request from a law enforcement agency, provided that the following criteria for issuance of a blue alert are met:

1. A peace officer is missing while in the line of duty under circumstances warranting concern for the peace officer's safety;
2. Sufficient descriptive information is available to disseminate to the public that could assist in locating the missing peace officer.

661—89.304(80H) Alternative alert if criteria are not satisfied. If a blue alert has been requested and the criteria established in rules 661—89.302(80H) and 661—89.303(80H) are not satisfied, the department may broadcast identifying information of the suspect, issue a missing person alert, or both.

661—89.305(80H) Activation procedures.

89.305(1) An Iowa blue alert shall be issued by department communications upon receipt of a request from a participating law enforcement agency, provided the criteria established in rules 661—89.302(80H) and 661—89.303(80H) are met.

89.305(2) In order to initiate an Iowa blue alert, a law enforcement agency shall submit by facsimile transmission a completed copy of the "State of Iowa Blue Alert Notification Plan Facsimile Transmission Packet" to the Des Moines station of department communications. If transmission to the Des Moines station is not feasible, transmission may be made to the Cedar Rapids department communications.

89.305(3) Upon establishment of the blue alert criteria established in Iowa Code section 80H.3 and rules 661—89.302(80H) and 661—89.303(80H), the department shall transmit a blue alert through the emergency alert system to Iowa broadcasters.

89.305(4) Upon the transmission of a blue alert, the department shall post the alert on its website, accessible by the public.

NOTE: The website of the department is dps.iowa.gov.

89.305(5) After an initial blue alert transmission, additional information may be submitted by the participating law enforcement agency by facsimile transmission, electronic mail, or telephonic means.

89.305(6) The bureau chief of the department communications bureau may direct the transmission of an Iowa blue alert upon request from another state, provided that there is evidence the suspect may be present in Iowa.

89.305(7) The blue alert transmission may be directed to a specific geographic location within the state if the department communications bureau determines that the nature of the event makes it probable that the suspect or peace officer did not leave a certain geographic location of the state.

661—89.306(80H) Information made public. The department communications bureau shall not release any information about the identity of a peace officer in a case involving the death or serious injury of the peace officer who is the subject of a blue alert.

If a blue alert is issued because a peace officer is missing while on duty, the department communications bureau shall defer to the investigating law enforcement agency about the nature and limits of the officer information to be made public.

661—89.307(80H) Termination procedures.

89.307(1) A blue alert shall terminate if any of the following occur:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

- a. The suspect or peace officer is located;
- b. The department determines that the blue alert is no longer an effective tool for locating the suspect or peace officer;
- c. Five hours have elapsed since the transmission of the blue alert unless otherwise renewed.

89.307(2) Law enforcement agencies shall notify the department immediately upon taking a suspect into custody or upon locating the missing peace officer.

These rules are intended to implement Iowa Code chapter 80H.

[Filed 4/1/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5589C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to geothermal heat pump income tax credit

The Revenue Department hereby amends Chapter 42, "Adjustments to Computed Tax and Tax Credits," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 422.12N and 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 422.12N.

Purpose and Summary

This rule making implements the Iowa geothermal heat pump income tax credit enacted in 2019 Iowa Acts, House File 779, for geothermal heat pumps installed on residential property 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 February 24, 2021, as **ARC 5469C**. 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 March 31, 2021.

Fiscal Impact

This rule making has no fiscal impact beyond that of the legislation it is intended to implement.

Jobs Impact

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

Waivers

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

REVENUE DEPARTMENT[701](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 May 26, 2021.

The following rule-making action is adopted:

Rescind rule 701—42.47(422) and adopt the following **new** rule in lieu thereof:

701—42.47(422) Geothermal heat pump tax credit. For tax years beginning on or after January 1, 2019, a geothermal heat pump tax credit is available for residential property located in Iowa as provided in Iowa Code section 422.12N and this rule. Information relating to Iowa geothermal tax credits available for tax years prior to January 1, 2019, can be found in prior versions of this rule. Prior versions of the Iowa Administrative Code are located here: www.legis.iowa.gov/law/administrativeRules/agencies.

42.47(1) Eligibility for the credit. To be eligible for the credit described in this rule, all of the following requirements must be met:

a. The geothermal heat pump must be eligible for the federal residential energy efficient property tax credit provided in Section 25D(a)(5) of the Internal Revenue Code.

b. The taxpayer must claim the federal residential energy efficient property tax credit provided in Section 25D(a)(5) of the Internal Revenue Code.

c. The geothermal heat pump must be installed on residential property located in Iowa and placed in service on or after January 1, 2019. In determining whether this requirement is met, the term “placed in service” has the same meaning as used in Section 25D of the Internal Revenue Code.

d. The taxpayer must submit a timely and complete application to the department in accordance with subrule 42.47(4).

42.47(2) Calculation of the credit.

a. The credit is equal to 20 percent of the federal residential energy efficient property tax credit allowed for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code. Thus, the Iowa credit rate equals the following percentage of the qualified geothermal heat pump property expenditures:

(1) For property placed in service during calendar year 2019, 6 percent.

(2) For property placed in service during calendar years 2020 through 2022, 5.2 percent.

(3) For property placed in service during calendar year 2023, 4.4 percent.

b. This credit is set to expire on January 1, 2024, in accordance with Public Law No. 116-260, Div. EE, Title I, Subtitle C, §148. If the federal residential energy efficient property tax credit for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code is extended by federal legislation into additional tax years, the Iowa credit will continue to be available for each year in which the corresponding federal credit is available, absent action by the Iowa general assembly.

42.47(3) Tax credit award program limitations. No more than \$1 million in geothermal heat pump tax credits will be issued per calendar year. If the annual tax credit allocation cap is not reached, the remaining amount below the cap shall be made available for the following tax year in addition to, and cumulated with, the cap for that year.

42.47(4) How to apply for the credit—waitlist.

a. In general. Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit shall be submitted through the tax credit submission system, which applicants may access through the department's website.

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b. Application deadline. The application must be filed by May 1 of the year following the year of the installation of the geothermal heat pump.

c. Contents of the application. The application must contain the following information:

- (1) Name, address, and federal identification number of the taxpayer.
- (2) Date of installation of the geothermal heat pump. This is the same as the date the installation was placed in service by the taxpayer.
- (3) Copies of invoices or other documents showing the cost of the geothermal heat pump.
- (4) Amount of federal income tax credit claimed for the geothermal heat pump.
- (5) Amount of Iowa tax credit requested.
- (6) Any other information requested by the department in order to verify eligibility for or amount of the Iowa tax credit requested.

d. Waitlist.

(1) If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. Valid and complete applications will be placed on the waitlist in the order they are received by the department. However, in the event the department denies an application or part of an application, and upon appeal by the taxpayer a previously denied tax credit amount is allowed, the date the appeal is closed will be used to determine the placement of the allowed tax credit amount on the waitlist. Waitlisted applications are reviewed and, if approved, funded in the order they are listed on the waitlist. Only valid applications filed by the taxpayer by May 1 of the year following the year the geothermal heat pump was installed shall be eligible for the waitlist.

(2) If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year. Therefore, any geothermal heat pump tax credit request related to an installation completed prior to January 1, 2024, that does not receive a tax credit award by the time the 2023 aggregate award limitation is met shall expire and shall not be carried over on the waitlist to any future year.

(3) Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of a tax credit application pursuant to this rule in a future year is contingent upon the availability of tax credits in that particular year.

42.47(5) Claiming the tax credit.

a. Certificate issuance. If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate.

b. Claiming the tax credit. The geothermal heat pump tax credit will be claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include with any Iowa tax return claiming the geothermal heat pump tax credit federal Form 5695, Residential Energy Credits.

c. Nonrefundable. Any credit in excess of the taxpayer's tax liability is nonrefundable.

d. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

e. Nontransferable. The tax credit may not be transferred to any other person.

This rule is intended to implement Iowa Code section 422.12N and 2019 Iowa Acts, House File 779.

[Filed 4/1/21, effective 5/26/21]

[Published 4/21/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5590C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rule making related to solar energy system tax credit**

The Revenue Department hereby amends Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 422.11L and 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 422.11L, 422.33 and 422.60.

Purpose and Summary

This rule making makes a number of changes to the Department’s rules on the Iowa solar energy system tax credit in rules 701—42.48(422), 701—52.44(422), and 701—58.22(422). These changes can generally be separated into two categories. The first category of changes includes updates that reflect current law, improve clarity and readability, and provide additional guidance on the administration of certain tax credit issues. The second category of changes revises the criteria used to determine whether a solar energy system constitutes a “separate and distinct solar installation” and therefore qualifies for the Iowa solar energy system tax credit. These amendments include:

- Updates to language describing the relationship between the Iowa solar energy system tax credit, the federal residential energy efficiency property credit, and the federal energy credit, including federal definitions and terms relevant to the Iowa tax credit.
- A table describing the relevant Iowa tax credit rates based on the applicable solar property involved, the calendar year in which construction begins, and the calendar year in which the property is placed in service.
- A description of the Department’s treatment of solar installations that are used for both residential and business purposes. In such instances, both tax credit award limitations apply and are calculated separately based on the proportion of the installation used for business purposes and for residential purposes.
- A description of the Department’s treatment of business property solar installations that receive an Iowa tax credit and are later subject to a federal tax credit recomputation. Because the Iowa tax credit is a percentage of the applicable federal tax credit, recomputation of the Iowa tax credit is also required.
- Updates to the information required with an Iowa tax credit application.
- Additional information relating to the effect of the Iowa tax credit expiration on the waitlist.

The Iowa Code calculates the Iowa tax credit in part as a percentage of applicable federal tax credits and provides that the approval of Iowa tax credit applications is contingent upon the availability of tax credits in that particular year. Likewise, the Department’s current rules provide that after the final year the federal tax credit is available, no applications remaining on the waitlist will be carried over to the next year. This rule making further describes this tax credit limitation for both residential and business solar tax credit applications. Because the federal residential solar tax credit expires and is unavailable for Iowa purposes for installations completed after December 31, 2021, any Iowa residential solar tax credit application that does not receive a tax credit award by the time the 2021 aggregate award limitation is met shall expire. Because the federal business solar tax credit does not expire for Iowa purposes, and is available in any future year if construction on the installation begins prior to January 1, 2022, any Iowa business solar tax credit application that does not receive a tax credit award by the time the annual

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aggregate award limitation is met shall be carried over on the waitlist to future years and will be eligible to receive a tax credit award in a future year.

- A revision to criteria used to determine whether an installation is considered a “separate and distinct installation” from other installations that have received an Iowa solar energy system tax credit, and thus is eligible for an additional Iowa tax credit. By law, the Department is responsible for establishing the criteria by rule for what constitutes a separate and distinct installation. The Department’s current rule and interpretation of that rule require only that the solar installation have a separate utility meter. Based on scenarios that have come up in the administration of the credit, the Department has concluded that the presence or absence of a separate utility meter is not, by itself, the best indicator for whether solar property is separate and distinct from another solar installation. Relying on that single criterion has the potential to produce inequitable results between similarly situated taxpayers, and taxpayers have various reasons for installing or not installing a utility meter with respect to solar property. This rule making creates a multifactor test in lieu of that single-factor test. Under revised rule 701—42.48(422), the Department will consider the following factors:

- First, the Department will evaluate whether the installation is categorized as a repair or maintenance of another installation. Repairs and maintenance do not qualify for the Iowa tax credit.

- Second, the Department will consider whether the solar property is a replacement installation. A replacement installation may qualify for the Iowa tax credit as described in the rule.

- Finally, if the solar property does not fall into either of those categories, the Department will evaluate whether the solar installation can be considered independent of other solar installations based primarily on a review of the buildings or structures being powered by the solar installation (referred to as “electrical generation purpose” in the revised rule). Solar installations that power similar buildings or structures will be evaluated differently than those that do not power similar buildings or structures. The rule contains an exception that allows solar installations that power similar buildings or structures to nonetheless qualify for the Iowa credit if the taxpayer can demonstrate a substantial increase in electricity demand as defined in the rule. If a determination cannot be made by the Department by only reviewing the electrical generation purpose of the solar installation, the rule includes a nonexhaustive list of other criteria that may be considered by the Department, including but not limited to location, billing, utility metering, payment terms, contract terms, and timing of the installation or application.

The revised rule contains a safe harbor for solar installations that begin construction prior to June 1, 2021, which allows a taxpayer to rely on the prior single-factor separate utility meter test in determining whether that solar installation is separate and distinct under Iowa law.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5470C**. The Department received one request for a public hearing. A public hearing was held via conference call on March 16, 2021, at 10 a.m. No one attended the public hearing.

The Department received two comments on the proposed amendments. The first comment expressed a general sentiment that the rules should not be amended because it would add complexity to the administration of the tax credit.

The second set of comments, received jointly from four organizations, proposed changes to the provisions for mixed-use solar installations in paragraph 42.48(2)“c” and the provisions for the waitlist in paragraph 42.48(4)“d.” First, the commenters suggested that a taxpayer who installs a mixed-use (residential and business) solar installation should be permitted to establish the proper residential use and business use proportions using any reasonable method, and suggested striking language stating that the taxpayer bears the burden to prove the proper proportions and that the residential credit cap is the default if the taxpayer fails to provide adequate evidence of business use to the Department. The Department finds it suitable for a taxpayer to establish the applicable proportions using any reasonable method, and has incorporated that standard into the adopted rules, but the Department did not adopt the other requested changes. Second, the commenters requested, but the Department did not adopt, language that would impose additional waitlist publication requirements on the Department.

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The provisions relating to mixed-use solar installations in paragraph 42.48(2)“c” have been revised to permit a taxpayer to establish the business and residential use proportions applying to the solar installation using any reasonable method, but the burden is on the taxpayer to prove the proper proportions. Example 1 and Example 2 have also been modified to reflect this change. The proposed language published in the Notice made no mention of the manner in which the proportions must be established, and provided only that the burden is on the taxpayer to prove the proper proportions.

Finally, nonsubstantive technical corrections have been made in these adopted rules. The adopted rules remove an unnecessary comma in paragraph 42.48(5)“b”(1), add the word “a” missing in Example 11, remove outdated Iowa Acts references in the implementation language at the end of rule 701—42.48(422), and restore the word “is” that was inadvertently stricken in rule 701—58.22(422).

Adoption of Rule Making

This rule making was adopted by the Department on March 31, 2021.

Fiscal Impact

These amendments have no fiscal impact beyond that of the legislation they are intended to implement.

Jobs Impact

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

Waivers

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

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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—42.48(422) as follows:

701—42.48(422) Solar energy system tax credit. ~~For tax years beginning on or after January 1, 2012, a~~
A solar energy system tax credit is available for both residential property and business property located in Iowa as provided in Iowa Code section 422.11L and this rule. ~~The solar energy system must be installed on or after January 1, 2012, to be eligible for the credit.~~

42.48(1) Property eligible for the tax credit. The following property located in Iowa is eligible for the tax credit:

~~a. Qualified solar water heating property described in Section 25D(d)(1) of the Internal Revenue Code.~~

~~b. Qualified solar energy electric property described in Section 25D(d)(2) of the Internal Revenue Code.~~

~~c. Equipment which uses solar energy to generate electricity, to heat or cool (or to provide hot water for use in) a structure, or to provide solar process heat (excepting property used to generate energy~~

REVENUE DEPARTMENT[701](cont'd)

for the purposes of heating a swimming pool) and which is eligible for the federal energy credit as described in Section 48(a)(3)(A)(i) of the Internal Revenue Code.

~~d. Equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight and which is eligible for the federal energy credit as described in Section 48(a)(3)(A)(ii) of the Internal Revenue Code.~~

42.48(2) 42.48(1) *Relationship between the Iowa and federal credits. As stated in subrules 42.48(3) to 42.48(5) below, the*

a. The Iowa credit is a percentage of the applicable federal credit. Taxpayers who apply for the Iowa credit must also qualify for and claim the corresponding federal credit. Availability of the Iowa credit for a specific type of installation in a given year is dependent upon availability of the federal credit for that type of installation.

b. The Iowa credit is ~~coupled~~ conforms with the Internal Revenue Code as amended to and including January 1, 2016. The term "Internal Revenue Code" as used in this rule refers to the Internal Revenue Code as it existed on January 1, 2016. See Iowa Code section 422.11L(6); see also Public Law No. 114-113, Div. P, Title III, §§ 302, 303, 304, and Div. Q, Title I, § 187.

42.48(3) *Calculation of credit for systems installed during tax years beginning on or after January 1, 2012, but before January 1, 2014. The credit is equal to the sum of the following federal tax credits:*

a. Fifty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code.

b. Fifty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code.

c. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

d. Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(3) "a" and "b" cannot exceed \$3,000 for a tax year. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(3) "c" and "d" cannot exceed \$15,000 for a tax year.

42.48(4) *Calculation of credit for systems installed during tax years beginning on or after January 1, 2014, and installed before January 1, 2016. The credit is equal to the sum of the following federal tax credits:*

a. Sixty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code.

b. Sixty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code.

c. Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code.

d. Sixty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code.

The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(4) "a" and "b" cannot exceed \$5,000 per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to paragraphs 42.48(4) "c" and "d" cannot exceed \$20,000 per separate and distinct installation. "Separate and distinct installation" is described in subrule 42.48(7).

42.48(5) 42.48(2) *Calculation of the credit for systems installed on or after January 1, 2016 —per installation award limitation.*

a. The credit is equal to the sum of the following federal tax credits for property located in Iowa:

a. (1) Fifty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code. This federal credit equals an applicable percentage of qualified solar energy electric property expenditures described in Section 25D(d)(2) of the Internal Revenue Code for residential use. This credit is set to expire not available for Iowa purposes for any qualified solar energy electric property placed in service after December 31, 2021, in accordance with Public Law No. 114-113 Div. P, Title III, § 304.

REVENUE DEPARTMENT[701](cont'd)

~~b.~~ (2) Fifty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code. This federal credit equals an applicable percentage of the qualified solar water heating property expenditures described in Section 25D(d)(1) of the Internal Revenue Code for residential use. This credit is ~~set to expire~~ not available for Iowa purposes for any qualified solar water heating property placed in service after December 31, 2021, in accordance with Public Law No. 114-113 Div. P, Title III, § 304.

~~e.~~ (3) Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code. This federal credit equals an applicable percentage of energy property equipment described in Section 48(a)(3)(A)(i) of the Internal Revenue Code that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat (excepting property used to generate energy for the purpose of heating a swimming pool), for business use. This credit ~~applies to~~ is not available for Iowa purposes for any qualified property the construction of which begins ~~before~~ on or after January 1, 2022, in accordance with Public Law No. 114-113 Div. P, Title III, § 303.

~~d.~~ (4) Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code. This federal credit equals an applicable percentage of energy property described in Section 48(a)(3)(A)(ii) of the Internal Revenue Code that uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight, for business use. This credit is ~~set to expire~~ not available for Iowa purposes for any qualified property placed in service after December 31, 2016, in accordance with Public Law No. 114-113 Div. Q, Title I, § 187.

Iowa Solar Energy System Tax Credit Rates for Installations On or After January 1, 2016,* Based on 50% of Applicable Federal Rate Under Sections 25D and 48 of the Internal Revenue Code in Effect on January 1, 2016			
Applicable Property	Calendar Year Construction Begins	Calendar Year Property Placed in Service	Iowa Tax Credit Rate
Qualified Residential Solar Electric Property Under Section 25D(a)(1) of the Internal Revenue Code	N/A	2016-2019	15%
	N/A	2020	13%
	N/A	2021	11%
	N/A	2022 or later	0%
Qualified Residential Solar Water Heating Property Under Section 25D(a)(2) of the Internal Revenue Code	N/A	2016-2019	15%
	N/A	2020	13%
	N/A	2021	11%
	N/A	2022 or later	0%
Qualified Business Energy Property (electric, heat/cool, solar process heat) Under Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code	2016-2019	2016-2023	15%
		2024 or later	5%
	2020	2020-2023	13%
		2024 or later	5%
	2021	2021-2023	11%
		2024 or later	5%
	2022 or later	2022 or later	0%
Qualified Business Energy Property (fiber-optic solar illumination) Under Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code	N/A	2016	15%
	N/A	2017 or later	0%
*For a description of Iowa tax credit rates for installations placed in service prior to January 1, 2016, consult the prior versions of this rule.			

b. A solar installation must be placed in service to be eligible for the tax credit. In determining whether this requirement is met, the term “placed in service” has the same meaning as used for purposes of Section 25D or 48 of the Internal Revenue Code, as applicable. The date a taxpayer begins construction

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of a solar installation for purposes of Section 48 of the Internal Revenue Code shall be the same date the taxpayer begins construction for Iowa purposes.

c. The amount of tax credit claimed by a taxpayer related to ~~paragraphs 42.48(5) “a” and “b”~~ subparagraphs 42.48(2) “a”(1) and 42.48(2) “a”(2) cannot exceed \$5,000 per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to ~~paragraphs 42.48(5) “c” and “d”~~ subparagraphs 42.48(2) “a”(3) and 42.48(2) “a”(4) cannot exceed \$20,000 per separate and distinct installation. When a separate and distinct installation is used for both residential and business purposes, both award limitations apply and are calculated separately based on the proportion of the installation used for business purposes and for residential purposes. The taxpayer may use any reasonable method to establish the business and residential proportions, but the burden is on the taxpayer to prove the proper proportions. If the taxpayer does not provide adequate evidence to prove that the amounts of the business and residential proportions and the method for determining those proportions are reasonable, and if the department is unable to determine reasonable proportions from the information provided by the taxpayer, the entire installation shall be deemed used for residential purposes. The term “separate and distinct installation” is described in subrule 42.48(7) 42.48(5).

EXAMPLE 1: Taxpayer A is a farmer who installs solar energy property during 2020 that provides power to two farm buildings and A’s residence. Taxpayer A submits one application for the Iowa solar energy system tax credit showing \$100,000 of total eligible expenditures. Taxpayer A provides evidence to the department that adequately explains A’s method of allocating the solar energy system’s total usage between business use and personal use, and shows that 40 percent of the solar energy property is used for residential purposes and 60 percent is used for farm business purposes. The department determines the amounts and the method for determining those proportions to be reasonable and therefore considers the taxpayer to have submitted a tax credit application requesting both a residential solar energy system tax credit and a business solar energy system tax credit. The residential tax credit request includes \$40,000 ($\$100,000 \times 40\%$) of eligible expenditures, subject to the \$5,000 tax credit cap. Therefore, A is eligible for a residential tax credit of \$5,000 ($\$40,000 \times 13\%$ Iowa credit rate = \$5,200, less \$200 in excess of cap). The business tax credit request includes \$60,000 ($\$100,000 \times 60\%$) of eligible expenditures, subject to the \$20,000 tax credit cap. Therefore, A is eligible for a business tax credit of \$7,800 ($\$60,000 \times 13\%$ Iowa credit rate). Taxpayer A receives a total Iowa tax credit of \$12,800 ($\$5,000 + \$7,800$). Although A submitted one tax credit application in this situation, the resulting tax credit amount would have been the same if A had instead submitted two separate tax credit applications: one residential application with \$40,000 of eligible expenditures and one business application with \$60,000 of eligible expenditures.

EXAMPLE 2: Same facts as Example 1, except that taxpayer A does not submit adequate evidence to the department supporting a reasonable method of determining the proportion of the solar energy property used for residential and business purposes, and the department is unable to determine reasonable proportions from the information provided by A. The department deems the entire installation used for residential purposes, subject to the \$5,000 tax credit cap. Therefore, A receives a total Iowa tax credit of \$5,000 ($\$100,000 \times 13\%$ Iowa credit rate = \$13,000, less \$8,000 in excess of cap).

d. Recomputation of federal credit.

(1) Because the Iowa credit is a percentage of the applicable federal credit, when the federal credit under Section 48 of the Internal Revenue Code is recomputed under 26 CFR §1.47-1, the Iowa credit amount must also be recomputed and reduced by the same percentage that the federal credit was reduced. The federal credit recomputation is required on the federal Form 4255, Recapture of Investment Credit.

(2) In the year of the recomputation, if the amount of the Iowa credit previously claimed is less than the recomputed Iowa credit amount, the taxpayer must reduce any remaining available carryforward amount to reflect the Iowa credit carryforward remaining after the recomputation.

(3) If the amount of the Iowa credit previously claimed is more than the recomputed Iowa credit amount, the taxpayer must include the amount that was overclaimed in prior tax years as a negative credit amount on the IA 148, Iowa Tax Credit Schedule, and any remaining unused credit carryforward amount expires immediately. The negative credit amount represents the overclaimed Iowa credit and will be netted against the taxpayer’s other nonrefundable tax credits on the IA 148, Iowa Tax Credit Schedule, if any. After applying the negative credit amount against other available nonrefundable credits, if the

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taxpayer's net total nonrefundable credits for the year is a negative amount, that negative amount must be entered on the appropriate line of the taxpayer's income tax return for reporting nonrefundable Iowa credits from the IA 148, Iowa Tax Credit Schedule, and will increase the taxpayer's tax liability.

42.48(6) 42.48(3) *Tax credit award program limitations.* The following program limitations apply:

a. Aggregate tax credit award limit. No more than \$5 million of tax credits per year will be issued for calendar years beginning on or after January 1, 2015. The annual tax credit allocation cap also includes the solar energy system tax credits provided in rule 701—52.44(422) for corporation income tax and in rule 701—58.22(422) for franchise tax.

b. Allocation for residential installations. Beginning with tax year 2014, at least \$1 million of the annual tax credit allocation cap for each tax year is reserved for residential installations qualifying under Section 25D of the Internal Revenue Code. If the total amount of credits for residential installations for a tax year is less than \$1 million, the remaining amount below \$1 million will be allowed for nonresidential installations qualifying under Section 48 of the Internal Revenue Code.

c. Rollover of unallocated credits. Beginning with calendar year 2014, if the annual tax credit allocation cap is not reached, the remaining amount below the cap ~~will be allowed to be carried forward to~~ shall be made available for the following tax year ~~and shall not count toward the~~ in addition to, and cumulated with, the cap for that year.

42.48(7) 42.48(4) *How to apply for the credit.* Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit ~~may~~ shall be submitted through the ~~Tax Credit Award, Claim, and Transfer Administration System (CACTAS) tax credit submission system~~, which applicants may access through the department's website.

~~*a. Separate and distinct installation requirement.* A taxpayer may apply for one tax credit for each separate and distinct solar installation. Each separate and distinct installation requires a separate application. In order for an installation to be considered a separate and distinct solar installation, both of the following factors must be met:~~

~~(1) Each installation must be eligible for the federal residential energy property credit or the federal energy credit as provided in subrule 42.48(1).~~

~~(2) Each installation must have separate metering.~~

~~*b. a. Application deadline.* For installations completed on or after January 1, 2014, the application must be filed by May 1 following the year of installation of the solar energy system. Notwithstanding the foregoing sentence, the following extensions are applicable to installations completed in 2014 and 2015:~~

~~(1) Solar energy systems installed during the 2014 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2015. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2016.~~

~~(2) Solar energy systems installed during the 2015 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2016. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2017.~~

~~*c. b. Contents of the application.* The application must contain the following information:~~

~~(1) Name, address, and federal identification number of the taxpayer.~~

~~(2) Date of installation of the solar energy system. This is the same as the date the installation was placed in service by the taxpayer.~~

~~(3) The kilowatt capacity of the solar energy system.~~

~~(4) Copies of invoices or other documents showing the cost of the solar energy system.~~

~~(5) Amount of federal income tax credit claimed for the solar energy system.~~

~~(6) Amount of Iowa tax credit requested.~~

~~(7) All applicants must provide a completion sheet from a local utility company or similar documentation verifying that installation of the system has been completed. For nonresidential~~

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installations, the completion sheet must indicate the date the installation was placed in service. If a completion sheet from the local utility company or similar documentation is not available, a statement shall be provided that is similar to the one required to be attached to federal Form 3468 when claiming the federal energy credit and that specifies the date the system was placed in service.

(8) ~~For leased solar energy systems where the lessor is the applicant, the lessor should also provide a copy of the solar energy system lease that indicates the property that is the subject of the lease and the parties to the lease agreement. If the lessor~~ A copy of any signed agreement made regarding the solar energy system that verifies the applicant is a qualified applicant. This includes, but is not limited to, lease agreements. When an applicant is entitled to the Iowa solar energy system tax credit for a leased solar energy system, the lessee other party to the lease will not be entitled to such a credit for the same leased solar energy system.

(9) For nonresidential installations, the date on which construction began.

(10) Any other information requested by the department in order to verify eligibility for or amount of the Iowa tax credit requested.

c. *Previously claimed expenditures disallowed.* An applicant may not include on an application any expenditure for which the taxpayer previously received, or was denied, a tax credit award or any expenditure that was part of an approved separate and distinct installation but was disallowed due to exceeding the maximum Iowa tax credit amount.

d. *Waitlist.* If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. The applications will be prioritized based on the date the department received the applications and shall first be funded in the order listed on the waitlist. Valid and complete applications will be placed on the waitlist in the order they are received by the department. However, in the event the department denies an application or part of an application, and upon appeal by the taxpayer a previously denied tax credit amount is allowed, the date the appeal is closed will be used to determine the placement of the allowed tax credit amount on the waitlist. Waitlisted applications are reviewed and, if approved, funded in the order they are listed on the waitlist. With the exception of the extension described in subparagraphs 42.48(7) "b"(1) and (2) 42.48(4) "a"(1) and 42.48(4) "a"(2) above, only valid applications filed by the taxpayer by May 1 of the year following the year of the installation of the solar energy property shall be eligible for the waitlist. If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year. This tax credit limitation shall apply as follows:

(1) Residential property tax credit claims. The federal credits related to residential property under Sections 25D(a)(1) and 25D(a)(2) of the Internal Revenue Code expire and are unavailable for Iowa tax purposes for installations completed on or after January 1, 2022. Therefore, any residential tax credit request related to an installation completed prior to January 1, 2022, that does not receive a tax credit award by the time the 2021 aggregate award limitation is met shall expire and shall not be carried over on the waitlist to any future year.

(2) Business property tax credit claims. The federal credit related to business property under Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code does not expire for Iowa tax purposes. It is available for installations that begin construction prior to January 1, 2022, in any future tax year the installation is placed in service. Therefore, any business tax credit request related to an installation that begins construction prior to January 1, 2022, but that does not receive a tax credit award by the time the annual aggregate award limitation is met will not expire and will be eligible to be carried over on the waitlist to future years, and receive a tax credit award in a future year, provided the authorization to approve and issue tax credits under Iowa Code section 422.11L(4) "a" is not repealed.

Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of a tax credit application pursuant to ~~subrule 42.48(7)~~ this rule in a future year is contingent upon the availability of tax credits in that particular year.

e. *Certificate issuance.* If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate.

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f. Claiming the tax credit. The solar energy system tax credit will be claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include with any Iowa tax return claiming the solar energy system tax credit federal Form 5695, Residential Energy Credits, if claiming the residential energy credit or federal Form 3468, Investment Credit, if claiming the business energy credit.

g. ~~Refundability~~ Nonrefundable. Any credit in excess of the taxpayer's tax liability is nonrefundable.

h. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

i. ~~Transferability~~ Nontransferable. The credit may not be transferred to any other person.

42.48(5) *Separate and distinct installation requirement.* Only one tax credit may be awarded and claimed for each separate and distinct solar installation. Each separate and distinct installation requires a separate application. For purposes of this subrule, unless the context otherwise requires, use of the term "installation" or "solar installation" refers to the physical equipment that generates electricity using solar energy in a manner that qualifies that equipment for a tax credit. In order for an installation that otherwise meets the requirements of Iowa Code section 422.11L and this rule to be considered a separate and distinct solar installation, both of the factors in paragraphs 42.48(5) "a" and "b" must be met. This determination is made by the department and requires a review of the current application received by the department and all prior applications received by the department from any taxpayer. When determining whether a solar installation is separate and distinct from other solar installations, the department will consider the totality of the facts and circumstances surrounding the solar installations. The taxpayer bears the burden of showing that an installation qualifies as separate and distinct. For a safe harbor rule relating to solar installations that begin construction prior to June 1, 2021, see paragraph 42.48(5) "c."

a. A repair or maintenance shall not constitute a solar installation. If the installed equipment repairs or otherwise maintains the working order of another solar installation or part of another solar installation, it will not be considered separate and distinct from that other solar installation, even if the installed equipment results in increased production capacity because of its superior quality, performance, or efficiency, or other similar reason. Evidence that part of the other solar installation was removed or replaced at or around the time the equipment was installed is a strong indication that the equipment is a repair or maintenance, but it is not required for such a determination.

EXAMPLE 3: Taxpayer B applies for and is awarded an Iowa solar tax credit for a solar installation that powers taxpayer B's workshop. Two years after that solar installation is placed in service, the solar inverter malfunctions. Taxpayer B purchases and installs a new solar inverter, which keeps the solar installation in working order. At the same time, B also replaces several functioning solar panels on the solar installation with new, higher quality panels that increase the solar installation's production capacity. Taxpayer B submits a second application for the costs of the solar inverter and the solar panels. These costs are considered a repair or maintenance and do not qualify as separate and distinct from the prior installation. Therefore, they do not qualify for the Iowa solar tax credit. This is the result even if the costs qualify for the federal tax credit and even though the solar panels improve the productivity of the solar installation.

b. The solar installation must be a replacement installation or an independent installation.

(1) Replacement installation. When previous solar installations have been completely decommissioned, whether from disposal by the applicant or casualty loss or theft, the new solar installation may be considered a replacement installation of the decommissioned solar installation. A solar installation that ceases operation but that has not been physically removed and discarded by a person is not decommissioned unless it cannot operate and is incapable of being repaired to working order. A solar installation that merely changes location or ownership has not been decommissioned and thus may not qualify as a replacement installation. Expenditures that are subject to an insurance reimbursement do not qualify for the solar energy system tax credit.

EXAMPLE 4: Taxpayer C applies for and is awarded an Iowa solar tax credit for a solar installation that powers taxpayer C's business. One year after that solar installation is placed in service, it is destroyed beyond repair by a severe storm. Taxpayer C's insurance policy does not cover damage to a solar installation. Taxpayer C purchases and places in service another solar installation that

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powers taxpayer C's business and timely applies for the Iowa solar energy system tax credit. Taxpayer C's subsequent installation may be eligible for the Iowa solar energy system installation credit as a replacement installation.

(2) Independent installation. An independent installation is one that has a sufficiently remote association with other solar installations that received the Iowa solar energy system tax credit such that it can be considered independent from those other solar installations. When determining whether a particular solar installation qualifies as an independent installation, the department will first consider the electrical generation purpose of the relevant solar installations, as described in numbered paragraph 42.48(5) "b"(2)"1" below. Only if the department finds that it cannot make a determination from that criteria alone will the department consider other criteria. A nonexhaustive list of other criteria that may be considered by the department is provided in numbered paragraph 42.48(5) "b"(2)"2" below.

1. Electrical generation purpose. The department will review the electrical generation purpose of each solar installation. As described below, this involves a review of the building(s) or structure(s) being powered by each solar installation. When two or more solar installations have the same electrical generation purpose, they are not independent installations. When two or more solar installations have different electrical generation purposes, this is an indication that they may be independent installations. With respect only to a multiple housing cooperative under Iowa Code chapter 499A or a horizontal property regime under Iowa Code chapter 499B, each apartment shall constitute a building or structure, and each cooperative or regime owner's proportionate share of qualifying expenses incurred by the cooperative or regime shall constitute a solar installation paid by the cooperative or regime owner.

- Same building(s) or structure(s). If the applied-for solar installation will power buildings or structures that are also being powered by another solar installation, or that were being powered by another solar installation at some point during the 12-month period before the applied-for solar installation was placed in service, then the installations have the same electrical generation purpose. However, adequate proof from the taxpayer of a substantial increase in electricity demand is evidence tending to indicate that the solar installations do not have the same electrical generation purpose. A "substantial increase in electricity demand" exists when the sum of the average monthly electricity consumption of each building or structure powered by the applied-for solar installation for the 12-month period before the applied-for solar installation is placed in service is at least 50 percent greater than the sum of the average monthly electricity consumption of each building or structure powered by the other solar installation for the 12-month period before the other solar installation was placed in service. Average electricity consumption shall be measured in kilowatt hours. With respect to the other solar installation, if any applicable building or structure was not in service for a period of 12 months before the other solar installation was placed in service, the average monthly electricity consumption for that building or structure shall be the average electricity consumption for the first 12 months the building or structure was in service. With respect to the applied-for solar installation, the calculation of the average monthly electricity consumption for any building or structure that was not placed in service prior to the other solar installation shall be calculated using a denominator of 12 even if that building or structure was not in service for a period of 12 months before the applied-for solar installation was placed in service. The reason for the increased electricity consumption shall not be relevant in determining if a substantial increase in electricity demand exists.

EXAMPLE 5: Taxpayer D is awarded a solar energy system tax credit for a solar installation that provides power to D's home. Three years later, D installs a second solar installation that also provides power to D's home. Absent additional information from D that would show a substantial increase in electricity demand, the second solar installation has the same electrical generation purpose as the first installation because they both provide power to D's home. Therefore, the second solar installation would not be considered an independent installation.

EXAMPLE 6: Taxpayer E owns an apartment building with ten apartment units. In 2021, taxpayer E installs solar energy business property with a cost of \$300,000 that will power the apartment building. Taxpayer E submits solar tax credit applications for ten different solar installations, one for each unit within the apartment building. Each application claims \$30,000 in qualifying costs and requests an Iowa solar credit of \$3,300 ($\$30,000 \times 11\%$) for business property, for a sum total of \$33,000 in tax

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credits. Because the solar installations claimed on all ten applications provide power to the same apartment building, they all have the same electrical generation purpose. Therefore, only one of the solar installations could qualify for the tax credit as an independent installation, subject to the \$20,000 per-installation tax credit cap. The other nine installations would all fail to qualify as independent installations. The result is the same whether or not the apartment units have separate utility meters. See Example 10 for a different result if the building were organized as a multiple housing cooperative or horizontal property regime.

EXAMPLE 7: Taxpayer F, a machinist, is awarded a solar energy system tax credit for a solar installation that provides power to F's machine shop. Several years later, F installs a second solar installation that will provide power to F's machine shop but also to F's office building. Taxpayer F submits a complete and timely application for the solar energy system tax credit. Absent additional information from F that would show a substantial increase in electricity demand, the second solar installation has the same electrical generation purpose as the first solar installation because they both provide power to F's machine shop. Therefore, the second solar installation would not be considered an independent installation.

EXAMPLE 8: Assume the same facts as Example 7, except that taxpayer F provides additional information to the department regarding the electricity consumption of F's machine shop and office building. Taxpayer F provides utility bills which show that for the 12-month period before the first solar installation was placed in service, the average monthly electricity consumption for the machine shop was 1,000 kilowatt hours. For the 12-month period before the second solar installation was placed in service, the average monthly electricity consumption for the machine shop was 1,200 kilowatt hours. Additionally, the office building was constructed and placed in service three months before the second solar installation was placed in service. Taxpayer F provides utility bills which show that for the three months the office building was in service, the monthly electricity consumption for the office building was 1,400 kilowatt hours, 1,600 kilowatt hours, and 1,800 kilowatt hours, respectively. This means that the average monthly electricity consumption of the office building for purposes of the "substantial increase in energy demand" test is 400 kilowatt hours [i.e., $(1,400 + 1,600 + 1,800) \div 12 = 400$]. Therefore, for the 12-month period before the second solar installation was placed in service, the average monthly electricity consumption for the machine shop and office building was 1,600 kilowatt hours [i.e., $1,200 + 400 = 1,600$]. Because this 1,600 monthly kilowatt hour average applicable to the second solar installation exceeds by at least 50 percent the 1,000 monthly kilowatt hour average applicable to the first solar installation, taxpayer F has shown a substantial increase in electricity demand and the second solar installation may qualify as an independent installation.

- Different building(s) or structure(s). If the applied-for solar installation will not power any building or structure that is also being powered by another solar installation, or that was also being powered by another solar installation at some point during the 12-month period before the applied-for solar installation was placed in service, this is an indication that the solar installations may have a different electrical generation purpose.

EXAMPLE 9: Taxpayer G, a farmer, is awarded a solar energy system tax credit for a solar installation that provides power to G's equipment barn. Later, G installs a second solar installation that will only provide power to G's livestock building. Because the first solar installation only provides power to G's barn and the second solar installation only provides power to G's livestock building, this is an indication that each solar installation has a different electrical generation purpose. The second solar installation would be considered an independent installation, unless additional information shows the contrary to be true.

EXAMPLE 10: Taxpayer H, a multiple housing cooperative under Iowa Code chapter 499A, owns an apartment building with ten apartment units. In 2021, H installs solar energy property with a cost of \$300,000 that will power the apartment building. The owner of each apartment unit submits a solar tax credit application for a solar installation claiming a proportionate share of H's qualifying expenditures for the solar energy property, which in this case is \$30,000 per owner, and requesting an Iowa credit of \$3,300 ($\$30,000 \times 11\%$), for a sum total of \$33,000 in tax credits. Since this building is organized as a multiple housing cooperative under Iowa Code chapter 499A, each apartment constitutes a building

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or structure and each owner's proportionate share of qualifying expenses incurred by the cooperative constitutes a solar installation paid by the owner. This is the first solar installation with respect to each of these apartments, so they are not being powered by another solar installation that received an Iowa tax credit. Therefore, this is an indication that each solar installation has a different electrical generation purpose. Each of the ten solar installations would be considered an independent installation, unless additional information shows the contrary to be true. The result would be the same if the building were organized as a horizontal property regime under Iowa Code chapter 499B. However, see Example 7 regarding apartment buildings not organized as a multiple housing cooperative or horizontal property regime.

2. Other criteria.

- Location. The department will consider the physical location of each solar installation. When two or more solar installations are in close physical proximity, this is an indication that the installations may not be independent installations. The farther in physical proximity the installations are, the stronger the likelihood that they are independent installations. Locating an installation at the same address or on the same or adjacent parcel as another installation is a stronger indication that the two installations are not independent installations than if they were located at different addresses or on nonadjacent parcels. The expansion in physical size or production capacity of an existing solar installation is an indication that the installations are not independent installations. If two or more solar installations are physically attached or connected to the same building or structure, this is an indication that the installations are not independent installations.

EXAMPLE 11: Taxpayer Q submits a complete and timely solar energy system tax credit application for a solar installation located at an address that is adjacent to the address of a prior solar installation for which taxpayer Q received a solar energy system tax credit award. Based on the information provided by the taxpayer, the department is unable to determine the electrical generation purpose of the solar installations. Without additional information, the proximity of the two solar installations supports a determination by the department that the second solar installation is not an independent installation.

- Billing. The department will consider the manner in which a utility company issues bills associated with solar installations. Even when a solar installation does not actually provide electricity to any buildings or structures that are also being powered by another solar installation, if a utility company issues bills associated with a solar installation under a net metering agreement in a manner that allows credits from the net outflow of one solar installation to be applied against the utility costs of buildings or structures that are powered by another solar installation, the department will evaluate the solar installations subject to the net metering agreement as if they were powering the same buildings or structures for purposes of determining electrical generation purpose in numbered paragraph 42.48(5) "b"(2)"1" above.

- Utility metering. The department will consider whether each solar installation is connected to a separate utility meter and the business reason, if any, for using separate utility meters. For purposes of this subrule, "utility meter" means a device installed by a utility company used to monitor the amount of electricity consumed or produced by a consumer. When a metering agreement requires a person to install two unidirectional meters, the set will be considered a single utility meter for purposes of this subrule. The department will not consider a measuring device installed and used by a person for personal monitoring of electricity production or consumption to be a "utility meter" for purposes of this subrule. This should not be interpreted to require a person to connect the person's solar installation to a utility provider's grid in order to be eligible for the tax credit.

- Payment for installation or service. The department will consider how expenses incurred for construction or servicing of a solar installation are paid. When expenses incurred for two or more solar installations are paid by related parties, it may indicate that the installations are not independent installations. However, the department may request additional information to evaluate the relationship between the person who pays for such expenses and the person who claims the tax credit.

- Contract terms. The department will consider the terms of installation and service contracts related to the solar installation and may require a person to provide installation and service contracts related to any prior solar installation for which the department has received a tax credit application.

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When contract terms indicate that the solar installations have been installed as or are serviced as a single, functional unit or system, the department will consider that as evidence that the installations are not independent installations.

- Timing of installation or application. The department will consider when the applied-for solar installation was placed in service and when a person submits the tax credit application as compared to other solar installations.

c. Safe harbor for solar installations that begin construction prior to June 1, 2021. For any solar installation for which the taxpayer begins construction prior to June 1, 2021, the taxpayer may rely on the factors in the prior version of paragraph 42.48(7) “a” in determining whether the solar installation is a separate and distinct installation. Prior versions of the Iowa Administrative Code are located here: www.legis.iowa.gov/law/administrativeRules/agencies.

~~42.48(8)~~ **42.48(6)** *Unavailable to those eligible for renewable energy tax credit.* A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—42.28(422,476C) is not eligible for the solar energy system tax credit.

42.48(9) **42.48(7)** *Allocation of tax credit to owners of a business entity or beneficiaries of an estate or trust.* If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, limited liability company, S corporation, estate, or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate, or trust shall be limited to \$15,000 for installations placed in service in tax years 2012 and 2013 and \$20,000 for installations placed in service in tax years beginning on or after January 1, 2014.

This rule is intended to implement Iowa Code section 422.11L ~~as amended by 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.~~

ITEM 2. Rescind rule 701—52.44(422) and adopt the following **new** rule in lieu thereof:

701—52.44(422) Solar energy system tax credit. For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for business property described in Sections 48(a)(2)(A)(i)(II) and 48(a)(2)(A)(i)(III) of the Internal Revenue Code and located in Iowa. The credit is available according to the same requirements, conditions, and limitations as described in rule 701—42.48(422).

This rule is intended to implement Iowa Code section 422.33.

ITEM 3. Amend rule 701—58.22(422) as follows:

701—58.22(422) Solar energy system tax credit. Effective for installations placed in service during tax years beginning on or after January 1, 2014, a solar energy system tax credit ~~for financial institutions~~ is available for business property described in Sections 48(a)(2)(A)(i)(II) and 48(a)(2)(A)(i)(III) of the Internal Revenue Code and located in Iowa. ~~For information on property eligible for the credit, the calculation of the credit and applying for the credit, see rule 701—52.44(422).~~ The credit is available to financial institutions according to the same requirements, conditions, and limitations as described in rule 701—42.48(422).

This rule is intended to implement Iowa Code section 422.60 ~~as amended by 2014 Iowa Acts, House File 2438, section 27, and 2014 Iowa Acts, House File 2473, section 78.~~ 422.60(12) “a.”

[Filed 4/1/21, effective 5/26/21]

[Published 4/21/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

ARC 5574C**STATE PUBLIC DEFENDER[493]****Adopted and Filed****Rule making related to waivers and indigent defense attorney contracts**

The State Public Defender hereby amends Chapter 6, “Uniform Waiver and Variance Rules,” and Chapter 11, “Attorney Fee Contracts,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 13B.4(8).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 13B and 815.

Purpose and Summary

The purpose of the amendments to Chapter 6 is to remove references to the term “variances” in places where the existing rule makes references to “waivers or variances.” The intent of these amendments is to be consistent with current Iowa Code terminology, which uses the term “waivers” to encompass both waivers and variances.

The purpose of the amendments to the attorney minimum qualification requirements in rule 493—11.3(13B) is to expand the pool of qualified contract attorneys available to accept court appointments to represent indigent persons.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 30, 2020, as **ARC 5342C**. No public comments were received.

A minor change from the Notice was made to strike the phrase “or on the state public defender’s own motion” in rule 493—6.4(13B) because that option is no longer permitted under *AT&T of the Midwest, Inc. v. Iowa Utilities Bd.*, 687 N.W.2d 554, 559-60 (Iowa 2004).

Adoption of Rule Making

This rule making was adopted by the State Public Defender on February 3, 2021.

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 Office of the State Public Defender for a waiver of the discretionary provisions, if any, pursuant to 493—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

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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 May 26, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **493—Chapter 6**, title, as follows:

UNIFORM WAIVER AND VARIANCE RULES

ITEM 2. Amend rule 493—6.1(13B,17A) as follows:

493—6.1(13B,17A) Applicability. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the state public defender. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the state public defender.

ITEM 3. Amend rules 493—6.3(13B,17A) to 493—6.7(13B,17A) as follows:

493—6.3(13B,17A) Compliance with statute. The state public defender shall not grant a petition for waiver ~~or variance~~ from a rule unless a statute or other provision of law has delegated authority to the state public defender sufficient to justify that action and the waiver ~~or variance~~ is consistent with the statute or other provision of law. No waiver ~~or variance~~ may be granted from a requirement that is imposed by statute, unless the statute itself specifically authorizes that action. Any waiver ~~or variance~~ must be consistent with statute.

493—6.4(13B,17A) Criteria for waiver ~~or variance~~. At the sole discretion of the state public defender, the state public defender may issue an order, in response to a completed petition ~~or on the state public defender's own motion~~, granting a waiver ~~or variance~~ from a rule adopted by the state public defender, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons if the state public defender finds based on clear and convincing evidence that:

1. The application of the rule to the petitioner would pose an undue hardship on the person or class of persons for whom the waiver ~~or variance~~ is requested;
2. The waiver ~~or variance~~ from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of a rule subject to a petition for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

493—6.5(13B,17A) Filing of petition. A petition for a waiver ~~or variance~~ must be submitted in writing to the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.

493—6.6(13B,17A) Content of petition. A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver ~~or variance~~ is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.
3. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.
4. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.

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5. A history of any prior contacts between the state public defender and the petitioner relating to the regulated activity, representation or other assigned function of the state public defender that would be affected by the proposed waiver ~~or variance~~, including a description of each regulated activity, representation or other assigned function of the state public defender, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, representation or other assigned function of the state public defender within the last five years.

6. Any information known to the requester regarding the state public defender's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the state public defender with information relevant to the waiver ~~or variance~~.

493—6.7(13B,17A) Additional information. Prior to issuing an order granting or denying a waiver ~~or variance~~, the state public defender may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the state public defender may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the state public defender or state public defender's designee.

ITEM 4. Amend rules 493—6.9(13B,17A) to 493—6.16(13B,17A) as follows:

493—6.9(13B,17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver ~~or variance~~ of a rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver ~~or variance~~ only when the state public defender so provides by rule or order or is required to do so by statute.

493—6.10(13B,17A) Ruling. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

6.10(1) State public defender discretion. The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the state public defender upon consideration of all relevant factors.

6.10(2) Burden of persuasion. The petitioner has the burden of persuasion when a petition is filed for a waiver ~~or variance~~ from a state public defender rule. The standard of proof is clear and convincing evidence.

6.10(3) Special waiver ~~or variance~~ rules not precluded. This chapter shall not preclude the state public defender from granting waivers ~~or variances~~ in other contexts or on the basis of other standards if a statute authorizes the state public defender to do so and the state public defender deems it appropriate to do so.

6.10(4) Administrative deadlines. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the state public defender shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

6.10(5) Conditions. The state public defender may condition the granting of the waiver ~~or variance~~ on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

a. Each petition for a waiver ~~or variance~~ shall be evaluated by the state public defender based on the unique, individual circumstances set out in the petition;

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b. A waiver ~~or variance~~, if granted, shall be drafted by the state public defender so as to provide the narrowest exception possible to the provisions of the rule;

c. The state public defender may place on a waiver ~~or variance~~ a condition that the state public defender finds desirable to protect the public health, safety, and welfare;

d. A waiver ~~or variance~~ shall not be permanent, unless the petitioner can show that a temporary waiver ~~or variance~~ would be impracticable; and

e. If a temporary waiver ~~or variance~~ is granted, there is no automatic right to renewal. At the sole discretion of the state public defender, a waiver ~~or variance~~ may be renewed if the state public defender finds that all of the factors set out in rule 493—6.4(13B,17A) remain valid.

6.10(6) Time for ruling. The state public defender shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the state public defender has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver ~~or variance~~.

6.10(7) When deemed denied. Failure of the state public defender to grant or deny a petition within the required time period shall be deemed a denial of that petition by the state public defender.

6.10(8) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

493—6.11(13B,17A) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) “e,” the state public defender shall maintain a record of all orders granting or denying waivers ~~and variances~~ under this chapter. All final rulings in response to requests for waivers ~~or variances~~ shall be indexed and available to members of the public at the state public defender’s office.

~~Twice each year the state public defender must prepare a report that:~~

- ~~1. Identifies the rules for which a waiver or variance has been granted or denied;~~
- ~~2. Identifies the number of times a waiver or variance was granted or denied for each rule;~~
- ~~3. Includes a citation to the statutory provisions implemented by these rules; and~~
- ~~4. Includes a general summary of the reasons justifying the state public defender’s actions.~~

493—6.12(13B,17A) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request is based are not true or if material facts have been withheld. The state public defender may at any time cancel a waiver ~~or variance~~ upon appropriate notice and hearing if the state public defender finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

493—6.13(13B,17A) Violations. Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

493—6.14(13B,17A) Defense. After the state public defender issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

493—6.15(13B,17A) Appeals. Any request for an appeal from a decision granting or denying a waiver ~~or variance~~ shall be in accordance with the procedures provided in Iowa Code chapter 17A and state public defender rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

493—6.16(13B,17A) Sample petition for waiver ~~or variance~~.

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BEFORE THE STATE PUBLIC DEFENDER

Petition by (insert name of petitioner)
for the waiver of (insert rule citation)
relating to (insert the subject matter).

}

No. _____
PETITION FOR
WAIVER

Include the following information in the petition for waiver where applicable and known:

1. Provide the petitioner's (the person who is asking for the waiver ~~or variance~~) name, address and telephone number.
2. Describe and cite the specific rule from which a waiver ~~or variance~~ is requested.
3. Describe the specific waiver ~~or variance~~ requested; include the exact scope and time period that the waiver ~~or variance~~ will extend.
4. Explain the important facts that the petitioner believes justify the waiver ~~or variance~~. Include in your explanation (a) why application of the rule would pose an undue hardship to the petitioner; (b) why granting the waiver ~~or variance~~ would not prejudice the substantial legal rights of any person; (c) state whether the provisions of a rule subject to this petition are specifically mandated by statute or another provision of law; and (d) state whether public health, safety or welfare will be affected if the requested waiver ~~or variance~~ is granted.
5. Provide history of prior contacts between the state public defender and the petitioner relating to the regulated activity, license, audit, investigation, inspection or representation that would be affected by the waiver ~~or variance~~. In that history, include a description of each affected regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the state public defender, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the state public defender within the last five years.
6. Provide information known to the petitioner regarding the state public defender's treatment of similar cases.
7. Provide the name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.
8. Provide the name, address and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver ~~or variance~~.
9. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the state public defender with information relevant to the waiver ~~or variance~~.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

ITEM 5. Amend subrule 11.3(1) as follows:

11.3(1) Juvenile cases. To be eligible to contract to represent indigent persons in juvenile cases, including juvenile petitions on appeal, an attorney must be in compliance with Rule 8.36 of the Iowa Rules of Juvenile Procedure, regardless of whether the attorney seeks to represent parents or children or serve as guardian ad litem in juvenile court. An attorney contracting to represent indigent persons in juvenile cases must:

a. and *b.* No change.

The state public defender shall review juvenile contract renewals and may apply juvenile-related continuing legal education hours in the same manner as criminal-related continuing legal education hours.

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ITEM 6. Amend subrule 11.3(2), introductory paragraph, as follows:

11.3(2) Appellate cases. To be eligible to contract to represent indigent persons in appellate cases, including direct appeals of criminal cases, appeals from postconviction relief proceedings, and appeals from any other case for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level except in cases where the attorney is statutorily appointed for purposes of the appeal, an attorney must:

ITEM 7. Amend subrules 11.3(3) and 11.3(4) as follows:

11.3(3) Postconviction relief cases. To be eligible to contract to represent indigent persons in postconviction relief cases at the trial level, an attorney must:

- a. Have practiced criminal law or served as a judicial law clerk for two years or more in any state or federal court;
- b. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract;
- c. Participate in a postconviction relief basic training sponsored by the state public defender prior to entering into the contract, unless the attorney has previously handled at least three postconviction relief proceedings to completion; and
- d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in postconviction relief cases.

An attorney who has not met all the requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements, and may be approved for contracting by the state public defender at the state public defender's sole discretion.

11.3(4) Class A ~~and B~~ felonies. To be eligible to contract to represent indigent persons in Class A ~~and Class B~~ felony cases at the trial level, an attorney must:

- a. Have practiced criminal law for four years or more in any state or federal court;
- b. Have tried at least five criminal jury trials involving indictable offenses to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;
- c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and
- d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class A ~~and Class B~~ felony cases.

If an attorney satisfies the requirements for Class B felonies or Class C and Class D felonies, the attorney may contract to serve as the second attorney representing an indigent person in a Class A felony in a case where the first appointed attorney meets these requirements. An attorney who does not meet all the requirements ~~of this subrule~~ may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

ITEM 8. Renumber subrules **11.3(5)** to **11.3(7)** as **11.3(6)** to **11.3(8)**.

ITEM 9. Adopt the following **new** subrule 11.3(5):

11.3(5) Class B felonies. To be eligible to contract to represent indigent persons in Class B felony cases at the trial level, an attorney must:

- a. Have practiced criminal law for three years or more in any state or federal court;
- b. Have tried at least three criminal jury trials involving indictable offenses to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;

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c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and

d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class B felony cases.

An attorney who has not met all requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

ITEM 10. Amend renumbered subrules 11.3(6) and 11.3(7) as follows:

11.3(6) *Class C and D felonies.* To be eligible to contract to represent indigent persons in Class C and Class D felony cases at the trial level, an attorney must:

a. Have practiced criminal law for two years or more in any state or federal court;

b. Have tried at least one criminal jury trial to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;

c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and

d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class C and Class D felony cases.

An attorney who has not met all requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

11.3(7) *Misdemeanor and other cases.* To be eligible to contract to represent indigent persons in misdemeanor cases, probation and parole revocation cases, contempt proceedings, and any other adult criminal or civil cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, an attorney must:

a. Participate in the basic criminal defense training sponsored by the state public defender within one year of entering into the contract, unless the attorney already has an active indigent defense contract or has practiced criminal law for more than two years; and

b. Participate in three hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract.

However, an attorney who has a contract to handle any felony offense may accept appointments in misdemeanor cases, probation and parole revocation cases, and contempt cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, but the attorney with the contract to handle the felony offense will not be added to the list disseminated to the clerks of court to handle misdemeanor cases, probation and parole cases, or contempt cases unless the attorney has secured an amendment to the attorney's contract to handle those types of cases.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.

PUBLIC HEARINGS: POSSIBLE USE OF TELEPHONIC OR ELECTRONIC FORMAT DUE TO COVID-19

To protect public health and promote efficient government operations during the COVID-19 outbreak, the format of a public hearing on a Notice of Intended Action (NOIA) scheduled and published in the Iowa Administrative Bulletin (IAB) may be changed, without further publication in the IAB, from an in-person hearing at a physical location to a hearing conducted solely via telephonic or electronic means. For information on whether the format of a public hearing as published in the IAB has changed and how to participate telephonically or electronically in such a hearing, see the Internet site of the relevant agency or contact the agency directly using the contact information published in the NOIA. See also section 106 of the Governor's proclamation of disaster emergency issued April 2, 2021: governor.iowa.gov/sites/default/files/documents/PH%20Proclamation%20-%202021.04.02.pdf.