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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor
Telephone: (515)281-3355
Fax: (515)281-5534

CITATION of Administrative Rules

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

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

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).
IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).
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<th>NOTICE SUBMISSION DEADLINE</th>
<th>NOTICE PUBLICATION DATE</th>
<th>HEARING OR COMMENTS DUE 20 DAYS</th>
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<th>ADOPTED FILING DEADLINE</th>
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**PLEASE NOTE:**

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, May 8, 2018, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
Broadband grants program, ch 22 Notice ARC 3728C................................................................. 4/11/18

CREDIT UNION DIVISION[189]
COMMERCEDepartment[181]“umbrella”
Board elections; charitable donation accounts, amendments to chs 12, 17 Filed ARC 3734C.............. 4/11/18

EDUCATION DEPARTMENT[281]
High-quality standards for computer science, 12.11 Filed ARC 3765C .............................................. 4/25/18
Special education—regular high school diploma, assessments, 41.102(1), 41.160 Filed ARC 3766C .... 4/25/18
Child development grants and coordinating council, amendments to ch 64 Filed ARC 3767C ................. 4/25/18

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[566]“umbrella”
Water supply, amendments to chs 40 to 44, 81, 83 Filed ARC 3735C .............................................. 4/11/18
Annual reports of solid waste environmental management systems, 111.4, 111.6 to 111.8
Filed ARC 3736C............................................................. 4/11/18

HUMAN SERVICES DEPARTMENT[441]
Provision of mental health services—documentation, 24.4 Notice ARC 3732C...................................... 4/11/18
Changes in statewide average private-pay cost of nursing facility services and average
charges and maximum rate for institutional care, 75.23(3), 75.24(3)*“b”(1), (2) and (4)
Notice ARC 3760C .......................................................... 4/25/18
Change in statewide average charge for care in mental health institute, 75.24(3)*“b”(3)
Notice ARC 3761C .......................................................... 4/25/18

INSPECTIONS AND APPEALS DEPARTMENT[481]
Iowa targeted small business certification program; administration division, amend 1.3, 30.1;
rescind ch 25 Filed ARC 3768C............................................................. 4/25/18
Investigations division, T.4 Filed ARC 3769C............................................................. 4/25/18
Residential care facilities for persons with an intellectual disability, 57.1, 57.6 Filed ARC 3737C .............. 4/11/18
Prohibition of mechanical restraints in residential care facilities, 57.1, 57.33 Filed ARC 3738C ............... 4/11/18
Residential care facilities for persons with mental illness, ch 62 Filed ARC 3739C .................. 4/11/18
Residential care facility—three- to five-bed specialized license, ch 63 Filed ARC 3740C .................. 4/11/18

INSURANCE DIVISION[191]
COMMERCEDepartment[181]“umbrella”
Investment adviser’s business and continuity succession plan; merger and acquisition
brokers; intrastate crowdfunding offerings; securities industry essentials exam; electronic
filing depository system, amendments to ch 50 Filed ARC 3741C.............................................. 4/11/18

LABOR SERVICES DIVISION[875]
WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”
Conveyances, amendments to chs 66 to 73 Notice ARC 3727C .............................................. 4/11/18
Wind tower lifts; wind turbine tower elevators; update of references to ASME code, 71.11,
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NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[566]“umbrella”
Deer hunting by residents and nonresidents, amendments to chs 94, 106 Notice ARC 3731C .............. 4/11/18
Wild turkey spring and fall hunting, amendments to chs 98, 99 Notice ARC 3729C .................. 4/11/18

PHARMACY BOARD[657]
PUBLIC HEALTH DEPARTMENT[641]“umbrella”
Cannabidiol investigational products; Iowa prescription monitoring program, 10.38(3),
37.3(3), 37.4(9) Filed ARC 3743C............................................................. 4/11/18
Temporary scheduling of fentanyl-related products as Schedule I controlled substances,
10.39(2) Notice ARC 3758C............................................................. 4/25/18
Substitution of interchangeable biological products; labeling requirements, 18.3(4), 22.1(3),
22.5(5) Notice ARC 3764C............................................................. 4/25/18
PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Chiropractic physicians—practice, discipline, 43.3, 43.4(2), 43.10, 45.2 Notice ARC 3754C 4/25/18
Physical therapists and physical therapist assistants, occupational therapists and occupational therapy assistants—licensure, continuing education, 200.6, 203.3(2), 206.8 Notice ARC 3762C 4/25/18
Social workers—licensure, continuing education, practice, discipline, 280.1, 280.3(1), 280.5(4), 280.6, 280.9(2), 281.2, 281.3, 282.2, 283.2 Filed ARC 3744C 4/11/18

PUBLIC HEALTH DEPARTMENT[641]
Newborn testing for cytomegalovirus, 3.1, 3.2, 3.11 to 3.13 Filed ARC 3745C 4/11/18
Radiation, amendments to chs 37 to 41, 45 Filed ARC 3746C 4/11/18
Local public health services—funding, amendments to ch 80 Filed ARC 3747C 4/11/18
Stroke care reporting, ch 146 Filed ARC 3748C 4/11/18

PUBLIC SAFETY DEPARTMENT[661]
Electricians and electrical contractors; electrical inspections, 502.1(3), 551.2, 552.1
Filed Emergency After Notice ARC 3733C 4/11/18

REVENUE DEPARTMENT[701]
Sales and use tax ineligible for refund; workforce housing tax incentives program, 12.19, 42.53, 52.46, 58.23 Notice ARC 3724C 4/11/18
First-time homebuyer savings accounts, 40.82 Filed ARC 3770C 4/25/18
Adoption—expense deduction, tax credit, 41.5(3), 42.32 Filed ARC 3749C 4/11/18
Grounds for protest of property tax assessment, 71.20(4), 71.21(8) Filed ARC 3771C 4/25/18
Assessor and deputy assessor examination—preliminary education requirements, 72.1(1), 72.3 Notice ARC 3725C 4/11/18
Hotel and motel tax imposed by a land use district, 103.1, 103.14, 103.15, 104.7, 105.1 Filed ARC 3750C 4/11/18

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]
AGRICULTURE AND LAND STewardship DEPARTMENT[27]"umbrella"
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
Authorized use and users—state communications, 7.1 Notice ARC 3723C 4/11/18

TRANSPORTATION DEPARTMENT[761]
Aeronautics and aviation vertical infrastructure—correction of citations, amendments to chs 700, 710, 715, 716, 717 Notice ARC 3755C 4/25/18
Railroad transportation and safety, amendments to chs 800, 810, 813 Notice ARC 3756C 4/25/18
Notification of railroad accidents/incidents, amendments to ch 802 Notice ARC 3757C 4/25/18
Railroad revolving loan and grant fund program, amendments to ch 822 Notice ARC 3759C 4/25/18

UTILITIES DIVISION[199]
COMMERCe DEPARTMENT[181]"umbrella"
Electric utility services, amendments to ch 20 Notice ARC 3726C 4/11/18
Generating certificate docket; request for power of eminent domain, 24.2 to 24.4, 24.5(2), 24.6(2), 24.8, 24.10(4), 24.11(1), 24.12(2), 24.15 Filed ARC 3751C 4/11/18
Local exchange competition, 38.1(2), 38.2, 38.4 to 38.7 Notice ARC 3752C 4/25/18
Universal service, 39.2, 39.3, 39.6, 39.7, 39.8(1) Notice ARC 3753C 4/25/18

WORKFORCE DEVELOPMENT DEPARTMENT[871]
Employer registration penalties, rescind 22.9(3) Filed ARC 3772C 4/25/18
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 Jim Carlin
43 Arlington Road
Sioux City, Iowa 51106

Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Representative Amy Nielsen
168 Lockmoor Circle
North Liberty, Iowa 52317

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

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

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

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

Jack Ewing
Legal Counsel
Capitol
Des Moines, Iowa 50319
Telephone (515)281-6048
Fax (515)281-8451

Colin Smith
Administrative Rules Coordinator
Governor’s Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211
<table>
<thead>
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<th>Division</th>
<th>Topic</th>
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<tr>
<td><strong>Chief Information Officer, Office of the</strong></td>
<td>Broadband grants program, ch 22</td>
<td>OCIO Innovation Lab, Hoover Building, Des Moines, Iowa</td>
<td>May 2, 2018</td>
<td>10 to 11 a.m.</td>
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<td><strong>Labor Services Division</strong></td>
<td>Elevators, amendments to chs 66 to 73</td>
<td>150 Des Moines St., Des Moines, Iowa</td>
<td>May 2, 2018</td>
<td>9 a.m.</td>
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<tr>
<td><strong>Natural Resource Commission</strong></td>
<td>Deer hunting by residents and nonresidents, amendments to chs 94, 106</td>
<td>Conference Room 4E, Wallace State Office Bldg., Des Moines, Iowa</td>
<td>May 1, 2018</td>
<td>12 noon</td>
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<td><strong>Professional Licensure Division</strong></td>
<td>Wild turkey spring and fall hunting, amendments to chs 98, 99</td>
<td>Conference Room 4E, Wallace State Office Bldg., Des Moines, Iowa</td>
<td>May 1, 2018</td>
<td>12 noon</td>
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<tr>
<td><strong>Transportation Department</strong></td>
<td>Aeronautics and aviation vertical infrastructure—correction of citations, amendments to chs 700, 710, 715, 716, 717</td>
<td>Administration Building, First Floor, South Conference Room, 800 Lincoln Way, Ames, Iowa</td>
<td>May 17, 2018</td>
<td>1 p.m.</td>
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<td>Railroad transportation and safety, amendments to chs 800, 810, 813</td>
<td>Administration Building, First Floor, South Conference Room, 800 Lincoln Way, Ames, Iowa</td>
<td>May 17, 2018</td>
<td>10 a.m.</td>
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<td>Notification of railroad accidents/incidents, amendments to ch 802</td>
<td>Administration Building, 1st Floor, South Conference Room, 800 Lincoln Way, Ames, Iowa</td>
<td>May 17, 2018</td>
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<td>Railroad revolving loan and grant fund program, amendments to ch 822</td>
<td>Administration Building, 1st Floor, South Conference Room, 800 Lincoln Way, Ames, Iowa</td>
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### UTILITIES DIVISION[199]

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<td>Electric utility services, amendments to ch 20</td>
<td>Board Hearing Room, 1375 E. Court Ave, Des Moines, Iowa</td>
<td>May 16, 2018</td>
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<tr>
<td>Universal service, 39.2, 39.3, 39.6, 39.7, 39.8(1)</td>
<td>Board Hearing Room, 1375 E. Court Ave, Des Moines, Iowa</td>
<td>June 20, 2018</td>
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*(IAB 4/25/18 ARC 3753C)*
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 3760C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to average cost of nursing facility services and average charges and maximum Medicaid rate for institutional care and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

This proposed rule making amends subrule 75.23(3) to increase the statewide average cost of nursing facility services to a private-pay person. The figure is being revised to reflect the increase in the cost of private-pay rates for nursing facility care in Iowa. The change is not related to rates paid by Medicaid for nursing facility care.

The figure is used to determine the period of ineligibility when an applicant or recipient transfers assets for less than fair market value. When assets are transferred to attain or maintain Medicaid eligibility, the individual may be ineligible for Medicaid payment of long-term care services for a period of time. The period of ineligibility is determined by dividing the amount transferred by the statewide average cost of nursing facility services to a private-pay person.

The Department conducted a survey of the freestanding nursing facilities, hospital-based skilled facilities, and special population facilities in Iowa to update the statewide average cost for nursing facilities. The average monthly private-pay cost of nursing facility services increased from $6,269.63 to $6,447.54.

This proposed rule making also amends subparagraphs 75.24(3)“b”(1), (2) and (4) to adjust the average charges for nursing facilities and psychiatric medical institutions for children (PMICs) and to update the maximum Medicaid rate for intermediate care facilities for persons with an intellectual disability (ICF/IDs). These figures are used to determine the disposition of the income of a medical assistance income trust (MAIT).

Nursing facility amounts are not related to the rates paid by Medicaid for nursing facility care. For this purpose, the Department’s survey for statewide average private-pay charges at the nursing facility level of care included only the freestanding nursing facilities in Iowa. Hospital-based skilled facilities and special populations units were not included in the survey since recipients are allowed to use the average cost of the specialized care.

The average charges for PMICs are based on the average statewide charge to a private-pay resident of a psychiatric medical institution for children.

The increases in these amounts will allow additional individuals to qualify for medical assistance by decreasing the period of ineligibility for a transfer of assets and allowing additional individuals to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is increased.

The average statewide charge to a resident of a mental health institute (MHI) is addressed in a separate rule making (see ARC 3761C, 4/25/18 IAB).
Fiscal Impact

An increase in the statewide average cost used to determine the period of ineligibility for long-term care services due to a transfer of assets may increase Medicaid expenditures because the period of ineligibility for transfers will be shorter. Given the marginal nature of this change, coupled with the level of income required in order to be impacted, any fiscal impact would be minimal.

The change in the average statewide charges and maximum Medicaid rate used for disposition of medical assistance income trusts may increase Medicaid expenditures by allowing more individuals to become eligible by establishing a MAIT. Given the marginal nature of this change, coupled with the level of income required in order to be impacted, any fiscal impact would be minimal.

Jobs Impact

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

Waivers

These amendments do not contain waiver provisions because they confer a benefit. Everyone should be subject to the same amounts set by this rule making. Individuals may request an exception pursuant to the Department’s general rule on exceptions to policy at 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 15, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@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 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 75.23(3) as follows:

75.23(3) Period of ineligibility. The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual’s spouse)
on or after the look-back date specified in subrule 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, 2017 to June 30, 2018 to June 30, 2019, this average statewide cost shall be $6,269.63 $6,447.54 per month or $206.24 $212.09 per day.

ITEM 2. Amend paragraph 75.24(3)“b,” introductory paragraph, as follows:

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual. For disposition of trust amounts pursuant to Iowa Code sections 63C.1 to 63C.5, the average statewide charges and Medicaid rates for the period from July 1, 2017 to June 30, 2019, shall be as follows:

ITEM 3. Amend subparagraphs 75.24(3)“b”(1), (2) and (4) as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is $5,829 $6,005 per month.

(2) The maximum statewide Medicaid rate for a resident of an intermediate care facility for persons with an intellectual disability is $29,240 $31,529 per month.

(4) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is $7,999 $9,088 per month.

ARC 3761C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to average charge for care in a mental health institute and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

This proposed rule making updates administrative rules to adjust the average charge for care in mental health institutes (MHIs). The average charge for care in MHIs is used to determine the disposition of the income of a medical assistance income trust (MAIT) and is based on Medicaid rates because Medicaid is the primary payer of the services.

The decrease in this amount may cause fewer individuals who reside in an MHI to be able to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is decreased.

The statewide average private-pay charge for nursing facility care and for psychiatric medical institutions for children (PMICs) and the maximum Medicaid rate for intermediate care facilities for persons with an intellectual disability (ICF/IDs) are addressed in a separate rule making (see ARC 3760C, 4/25/18 IAB).
Fiscal Impact

This rule making has a fiscal impact of less than $100,000 annually or $500,000 over five years to the State of Iowa. The decrease in this amount may cause fewer individuals who reside in an MHI to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is decreased. However, the change will have a minimal impact, as the decrease is small.

Jobs Impact

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

Waivers

These amendments do not contain waiver provisions because everyone should be subject to the same amounts set by this rule. Individuals may request an exception pursuant to the Department’s general rule on exceptions to policy at 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 15, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@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 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 subparagraph 75.24(3)“b”(3) as follows:

(3) The average statewide charge to a resident of a mental health institute is $29,312 $27,667 per month.
PHARMACY BOARD[657]

Proposing rule making related to fentanyl-related substances and providing an opportunity for public comment

The Board of Pharmacy hereby proposes to amend Chapter 10, “Controlled Substances,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 124.201 and 124.301.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 124.201 and 124.301.

Purpose and Summary

The proposed amendment temporarily schedules fentanyl-related products that are not already listed in another schedule as Schedule I controlled substances in response to action taken by the federal Drug Enforcement Administration.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

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 15, 2018. Comments should be directed to:

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309-4688
Email: sue.mears@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 action is proposed:

Adopt the following new paragraph 10.39(2)“an”:

an. Any fentanyl-related substance that is not currently listed in any schedule of the Controlled Substances Act (CSA) and its isomers, esters, ethers, salts and salts of isomers, esters, and ethers.

ARC 3764C

PHARMACY BOARD[657]

Notice of Intended Action

Proposing rule making related to interchangeable biological products and labeling requirements and providing an opportunity for public comment


Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2017 Iowa Acts, House File 305.

Purpose and Summary

The proposed amendments incorporate language from 2017 Iowa Acts, House File 305, signed into law during the 2017 Legislative Session of the 87th General Assembly, which allows the substitution of interchangeable biological products and includes labeling requirements.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.
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 15, 2018. Comments should be directed to:

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309-4688
Email: sue.mears@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 18.3(4) as follows:

18.3(4) Central fill label requirements. The label affixed to the prescription container filled by a central fill pharmacy on behalf of an originating pharmacy shall include the following:

a. to c. No change.

d. The Except as provided in 657—subrule 8.19(7) for epinephrine auto-injectors or 657—subrule 8.19(8) for opioid antagonists, the name of the patient or, if such drug is prescribed for an animal, the species of the animal and the name of its owner;

e. to g. No change.

h. Unless otherwise directed by the prescriber, the name, strength, and quantity of the drug dispensed.

(1) If a pharmacist selects an equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label shall identify the generic drug and may identify the brand name drug for which the selection is made, such as “(generic name) Generic for (brand name product)”;

(2) If a pharmacist selects a brand name drug product for a generic drug product prescribed by a practitioner, the prescription container label shall identify the brand name drug product dispensed and may identify the generic drug product ordered by the prescriber, such as “(brand name product) for (generic name)”;

(3) If a pharmacist selects an interchangeable biological product for the biological product prescribed by a practitioner, the prescription container label shall identify the interchangeable biological product dispensed and may identify the biological product prescribed by the practitioner, such as “(interchangeable biological product) for (biological product)”;

The initials or other unique identification of the pharmacist who performed drug use review and transmitted the prescription drug order to the central fill pharmacy.
IAB PHARMACY BOARD[657](cont’d)

ITEM 2. Amend subrule 22.1(3) as follows:

**22.1(3) Labeling requirements.**

a. and b. No change.

c. If a pharmacist selects a generically equivalent drug product for a brand name drug product prescribed by a practitioner, the label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the label: “(generic name) Generic for (brand name product)”. If a pharmacist selects an interchangeable biological product for the biological product prescribed by a practitioner, the label shall identify the interchangeable biological product dispensed and may identify the biological product prescribed by the practitioner, such as “(interchangeable biological product) for (biological product)”.

d. and e. No change.

ITEM 3. Amend subrule 22.5(5) as follows:

**22.5(5) Labeling requirements.**

a. to c. No change.

d. If a pharmacist selects a generically equivalent drug product for a **brand-name** drug product prescribed by a practitioner, the label must identify the generic drug and may identify the **brand-name** drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the label: “(generic name) Generic for **brand-name** product”. If a pharmacist selects an interchangeable biological product for the biological product prescribed by a practitioner, the label shall identify the interchangeable biological product dispensed and may identify the biological product prescribed by the practitioner, such as “(interchangeable biological product) for (biological product)”.

ARC 3754C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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


**Legal Authority for Rule Making**

This rule making is proposed under the authority provided in Iowa Code sections 147.76, 151.11 and 272C.3.

**State or Federal Law Implemented**

This rule making implements, in whole or in part, Iowa Code chapters 147, 151 and 272C.

**Purpose and Summary**

The proposed amendments establish rules related to sexual misconduct, failure to maintain a patient record(s), and improper direct solicitation as new grounds for imposing Board discipline. The proposed amendments also define electronic records and set forth reporting requirements for a chiropractic insurance consultant. All other changes are technical in nature.

**Fiscal Impact**

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

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

Waivers

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

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 no later than 4:30 p.m. on May 15, 2018. Comments should be directed to:

Susan Reynolds
Professional Licensure Division
Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075
Email: susan.reynolds@idph.state.ia.us

Public Hearing

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

May 15, 2018
7:30 to 8 a.m.
Fifth Floor Conference Room 526
Lucas State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 645—43.3(514F) as follows:

645—43.3(151,514F) Utilization and cost control review.

43.3(1) Pursuant to Iowa Code section 514F.1, the board shall establish utilization and cost control review (UCCR) committee(s). A UCCR committee shall be established by approval of the board upon a showing that the committee meets the requirements of this rule. The name of each committee and a list of committee members shall be on file with the board and available to the public. As a condition
of board approval, each committee shall agree to submit to the board an annual report which meets the requirements of this rule.

43.3(2) to 43.3(8) No change.

ITEM 2. Amend subrule 43.4(2) as follows:
43.4(2) All licensees who review chiropractic records for the purposes of determining the adequacy or sufficiency of chiropractic treatments, or the clinical indication for those treatments, shall notify the board annually that they are engaged in those activities and of the location where those activities are performed.

ITEM 3. Amend subrules 43.10(4) and 43.10(8) as follows:
43.10(4) Electronic record keeping. When electronic records, which include both electronically created records and scanned paper records, are utilized, a chiropractic physician shall maintain either a duplicate hard-copy record or a backup electronic record.

43.10(8) Confidentiality and transfer of records. Chiropractic physicians shall preserve the confidentiality of patient records. Upon signed request of the patient, the chiropractic physician shall furnish such records or copies of the records as directed by the patient within 30 days. A notation indicating the items transferred, date of transfer and method of transfer shall be maintained in the patient record. The chiropractic physician may charge a reasonable fee for duplication of records, but may not refuse to transfer records for nonpayment of any fees. A written request may be required before the transfer of the record(s), including, for example, compliance with HIPAA regulations. In certain instances, a summary of the record may be more beneficial for the future treatment of the patient; however, if a third party requests copies of the original documentation, that request must be honored.

ITEM 4. Amend 645—Chapter 43, implementation sentence, as follows:
These rules are intended to implement Iowa Code chapters 147, 151, 272C and 514F.

ITEM 5. Amend rule 645—45.2(151,272C) as follows:

645—45.2(151,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—45.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

45.2(1) No change.

45.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average chiropractic physician acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a chiropractic physician in this state.

e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

g. Failure to maintain a patient's record(s) for a minimum of six years after the date of last examination or treatment. Records for minors shall be maintained for one year after the patient reaches the age of majority (18) or six years after the date of last examination or treatment, whichever is longer. Proper safeguards shall be maintained to ensure the safety of records from destructive elements. This provision includes both clinical and fiscal records.

45.2(3) to 45.2(27) No change.

45.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or coworker.
b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker, regardless of the patient’s, client’s, or coworker’s consent.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

e. Engaging in a sexual or emotional relationship with a former patient when there is a risk of exploitation or harm to the patient, regardless of patient consent.

f. Failing to terminate the doctor-patient relationship before dating or having a sexual relationship with a patient. Such termination shall be done in writing and signed by both the patient and the chiropractic physician and placed in the patient’s record. This paragraph shall not apply to a chiropractic physician who is treating the chiropractic physician’s spouse. Further, a chiropractic physician shall not have consensual sexual relations with a former patient until three months after the termination of the doctor-patient relationship.

45.2(29) to 45.2(31) No change.

45.2(32) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

45.2(33) Failure to maintain a patient’s record(s) for a minimum of six years after the date of last examination or treatment. Records for minors shall be maintained for one year after the patient reaches the age of majority (18) or six years after the date of last examination or treatment, whichever is longer. Proper safeguards shall be maintained to ensure the safety of records from destructive elements. This provision includes both clinical and fiscal records.

45.2(34) Engaging in direct solicitation of potential clients for pecuniary gain in a manner or in circumstances which constitute overreaching, undue influence, misrepresentation or invasion of privacy.

ARC 3762C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Proposing rule making related to physical therapist and occupational therapist supervision and providing an opportunity for public comment


Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapters 148A and 148B and Iowa Code sections 147.76 and 272C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 148A and 148B.

Purpose and Summary

The proposed amendments revise the supervision requirements for physical therapy and occupational therapy, add requirements for physical therapy and occupational therapy supervision by telehealth, revise the limit on the number of physical therapist assistants who can be supervised by a physical therapist, remove the maximum of physical therapist delegation based on the patient’s health care residency or admission status, add new requirements for the minimum frequency of a physical therapist’s interaction with a client and revise the continuing education requirements for supervising physical therapy students for clinical education.
Fiscal Impact

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

Jobs Impact

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

Waivers

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

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 no later than 4:30 p.m. on May 15, 2018. Comments should be directed to:

Judy Manning
Professional Licensure Division
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.4413
Email: judith.manning@idph.iowa.gov

Public Hearing

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

May 15, 2018
8 to 8:30 a.m.
Fifth Floor Board Conference Room 526
Lucas State Office Building
Des Moines, Iowa

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

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Professional Licensure Division, Department of Public Health, 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. Rescind rule 645—200.6(272C) and adopt the following new rule in lieu thereof:

645—200.6(147) Delegation by a supervising physical therapist. A supervising physical therapist may delegate the performance of physical therapy services to a physical therapist assistant only if done in accordance with the statutes and rules governing the practice of physical therapy. A physical therapist assistant may assist in the practice of physical therapy only to the extent allowed by the supervising physical therapist. The supervisory requirements stated in this rule are minimal. It is the professional responsibility and duty of the supervising physical therapist to provide the physical therapist assistant with more supervision if deemed necessary in the supervising physical therapist’s professional judgment.

200.6(1) Supervision requirements. A supervising physical therapist who delegates the performance of physical therapy services to a physical therapist assistant shall provide supervision to the physical therapist assistant at all times when the physical therapist assistant is providing delegated physical therapy services. Supervision means that the physical therapist shall be readily available on site or telephonically anytime the physical therapist assistant is providing physical therapy services so that the physical therapist assistant may contact the physical therapist for advice, assistance, or instruction.

200.6(2) Functions that cannot be delegated. The following are functions that only a physical therapist may provide and that cannot be delegated to a physical therapist assistant:

a. Interpretation of referrals;
b. Initial physical therapy evaluation and reevaluations;
c. Identification, determination, or modification of patient problems, goals, and plans of care;
d. Final discharge evaluation and establishment of a discharge plan;
e. Delegation of and instruction in the physical therapy services to be rendered by a physical therapist assistant or unlicensed assistive personnel including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures; and
f. Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated.

200.6(3) Physical therapist responsibilities. At all times, the supervising physical therapist shall be responsible for the physical therapy plan of care and for all physical therapy services provided, including all physical therapy services delegated to a physical therapist assistant. In addition, the supervising physical therapist shall:

a. Be responsible for the evaluation and development of a plan of care for use by the physical therapist assistant; and
b. Not delegate a physical therapy service that exceeds the competency or skill set of the physical therapist assistant; and
c. Ensure that a physical therapist assistant holds an active physical therapist assistant license issued by the board; and
d. Ensure that a physical therapist assistant is aware of how the supervising physical therapist can be contacted telephonically when the physical therapist is not providing on-site supervision; and
e. Arrange for an alternate physical therapist to provide supervision when the physical therapist has scheduled or unscheduled absences during time periods in which a physical therapist assistant will be providing delegated physical therapy services; and
f. Ensure that a physical therapist assistant is informed when a patient’s plan of care is transferred to a different supervising physical therapist; and
g. Directly participate in physical therapy services upon the physical therapist assistant’s request for a reexamination, when a change in the plan of care is needed, prior to any planned discharge, and in response to a change in the patient’s medical status; and
h. Hold regularly scheduled meetings with the physical therapist assistant to evaluate the physical therapist assistant’s performance, assess the progress of a patient, and make changes to the plan of care as needed. The frequency of meetings should be determined by the supervising physical therapist based on the needs of the patient, the supervisory needs of the physical therapist assistant, and any planned discharge. The supervising physical therapist shall provide direction and instruction to the physical therapist assistant that are adequate to ensure the safety and welfare of the patient.
200.6(4) Physical therapist assistant responsibilities. A physical therapist assistant shall only provide physical therapy services under the supervision of a physical therapist. In addition, the physical therapist assistant shall:

a. Only provide physical therapy services that have been delegated by the supervising physical therapist; and

b. Only provide physical therapy services that are within the competency and skill set of the physical therapist assistant; and

c. Consult the supervising physical therapist if the physical therapist assistant believes that any procedure is not in the best interest of the patient; and

d. Contact the supervising physical therapist regarding any change or lack of change in a patient’s condition that may require assessment by the supervising physical therapist; and

e. Refer inquiries that require interpretation to the supervising physical therapist; and

f. Ensure that the identification of the supervising physical therapist is included in the documentation for any visit when physical therapy services were provided by the physical therapist assistant; and

g. Only sign a treatment record if the provision of physical therapy services was done in accordance with the statutes and rules governing the practice of a physical therapist assistant.

200.6(5) Ratio. A physical therapist shall determine the number of physical therapist assistants who can be supervised safely and competently and shall not exceed that number; but in no case shall a physical therapist supervise more than four physical therapist assistants per calendar day. A physical therapist assistant who performs any delegated physical therapy services on behalf of the supervising physical therapist on a particular day shall be counted in determining the maximum ratio, regardless of the location of the physical therapist assistant or the number of patients treated.

200.6(6) Minimum frequency of direct participation by a supervising physical therapist. A supervising physical therapist shall use professional judgment to determine how frequently the physical therapist needs to directly participate in physical therapy services when delegating to a physical therapist assistant, the frequency of which shall be based on the needs of the patient. Direct participation can occur through an in-person or telehealth visit. The supervising physical therapist shall ensure that the patient record clearly indicates which visits included direct participation by the supervising physical therapist. The following are the minimum standards, which are expected to be exceeded when dictated by the supervising physical therapist’s professional judgment, for the required frequency of direct participation by the supervising physical therapist when physical therapy services involve delegation to a physical therapist assistant:

a. Hospital inpatient and skilled nursing. For hospital inpatients and skilled nursing patients, a supervising physical therapist must directly participate in physical therapy services a minimum of once per calendar week. A calendar week is defined as Sunday through Saturday.

b. All other settings. In all other settings, a supervising physical therapist must directly participate in the provision of physical therapy services at least every eighth visit or every 30 calendar days, whichever comes first.

200.6(7) Unlicensed assistive personnel. A physical therapist is responsible for patient care provided by unlicensed assistive personnel under the physical therapist’s supervision. A physical therapist is responsible for ensuring the qualifications of any unlicensed assistive personnel and shall maintain written documentation of their education or training. Unlicensed assistive personnel may assist a physical therapist assistant in the delivery of physical therapy services only if the physical therapist assistant maintains in-sight supervision of the unlicensed assistive personnel and the physical therapist assistant is primarily and significantly involved in the patient’s care. Unlicensed assistive personnel shall not provide independent patient care unless each of the following standards is satisfied:

a. The physical therapist has direct participation in the patient’s treatment or evaluation, or both, each treatment day;

b. Unlicensed assistive personnel may provide independent patient care only while under the on-site supervision of the physical therapist;
c. Documentation made in a physical therapy record by unlicensed assistive personnel shall be
   consigned by the physical therapist; and

   d. The physical therapist provides periodic reevaluation of any unlicensed assistive personnel’s
      performance in relation to the patient.

   ITEM 2. Amend subparagraph 203.3(2)“a”(4) as follows:

   (4) Directly supervising students for clinical education if the physical therapist or physical
   therapist assistant who is supervising is an American Physical Therapy Association Advanced
   Credentialed Clinical Instructor and if the student students being supervised is are from an accredited
   physical therapist or physical therapist assistant program and is are participating in a full-time clinical
   experience (defined as approximately 40 hours per week, ranging from 1 to 18 weeks). One hour will
   be awarded for every 160 contact hours of supervision. A maximum of 8 hours for a physical therapist
   and 4 hours for a physical therapist assistant may be awarded per biennium. The physical therapist
   or physical therapist assistant must have documentation from the accredited educational program
   indicating the number of hours spent supervising a student.

   ITEM 3. Amend paragraphs 206.8(2)“a” and “b” as follows:

   a. Provide supervision to a licensed OTA, OT limited permit holder and OTA limited permit holder
   anytime occupational therapy services are rendered. Supervision may be provided on site or through the
   use of telecommunication or other technology.

   b. Provide on site supervision or supervision by telecommunication as long as the occupational
   therapy services are rendered in accordance with the provisions of subrule 206.8(5). Ensure that every
   licensed OTA, OT limited permit holder and OTA limited permit holder being supervised is aware of
   who the supervisor is and how the supervisor can be contacted anytime occupational therapy services
   are rendered.

   ITEM 4. Amend subrule 206.8(5) as follows:

   206.8(5) Minimum frequency of OT interaction. At a minimum, an OT must directly participate
   in treatment including direct face to face patient contact, either in person or through a telehealth visit,
   every twelfth visit or 60 calendar days, whichever comes first, for all patients regardless of setting and
   must document each visit. The occupational therapist shall participate at a higher frequency when the
   standard of care dictates.

   ITEM 5. Amend paragraph 206.8(6)“a” as follows:

   a. The occupational therapy assistant:

   (1) to (6) No change.

   (7) Shall have on site or immediate telecommunicative supervision as long as the occupational
   therapy services are rendered in accordance with the provisions of subrule 206.8(5) Shall be supervised
   by an occupational therapist, either on site or through the use of telecommunication or other technology,
   at all times when occupational therapy services are being rendered;

   (8) May receive supervision from any number of occupational therapists; and

   (9) Shall maintain documentation of supervision on a daily basis that shall be available for review
   upon request of the board Shall record on every patient chart the name of the OTA’s supervisor for each
   treatment session.

ARC 3755C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to aviation vertical infrastructure and providing an
opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 700, “Aeronautics
Administration,” Chapter 710, “Airport Improvement Program,” Chapter 715, “Air Service

**Legal Authority for Rule Making**

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 328.12.

**State or Federal Law Implemented**

This rule making implements, in whole or in part, Iowa Code sections 8.57(5), 17A.3 and 328.12.

**Purpose and Summary**

The Department is proposing to correct the spelling of “website” and the link to the Department’s website address in Chapters 700, 710, 715, 716, and 717. The Department is also proposing to amend Chapters 716 and 717 to correct citations to Iowa Code section 8.57(5) since this section was amended and renumbered. These corrections are included within the definition of “vertical infrastructure” in rules 761—716.2(328) and 761—717.2(328) and within both chapters’ implementation sentences.

**Fiscal Impact**

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

**Jobs Impact**

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

**Waivers**

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

**Public Comment**

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 15, 2018. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: tracy.george@iowadot.us

**Public Hearing**

A public hearing to hear requested oral presentations will be held as follows:

May 17, 2018  
1 p.m.
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 Tracy George, the Department’s rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

**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 761—700.2(17A) as follows:

**761—700.2(17A) Information and forms.** Program information, forms and application instructions are available on the department’s website at [www.iowadot.gov/aviation](http://www.iowadot.gov/aviation). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

This rule is intended to implement Iowa Code section 17A.3.

**ITEM 2.** Amend rule 761—710.3(17A) as follows:

**761—710.3(17A) Information and forms.** Program information, forms and application instructions are available on the department’s website at [www.iowadot.gov/aviation](http://www.iowadot.gov/aviation). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

This rule is intended to implement Iowa Code section 17A.3.

**ITEM 3.** Amend subrule 715.3(3) as follows:

**715.3(3) Program information, instructions and application forms may be obtained from the department’s website at [www.iowadot.gov/aviation](http://www.iowadot.gov/aviation). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1689. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

**ITEM 4.** Amend rule 761—716.2(328), definition of “Vertical infrastructure,” as follows: “Vertical infrastructure” means the same as defined in Iowa Code section 8.57B 8.57(5).

**ITEM 5.** Amend rule 761—716.3(328) as follows:

**761—716.3(328) Information and forms.** Program information, instructions, and forms are available on the department’s website at [www.iowadot.gov/aviation](http://www.iowadot.gov/aviation). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.
TRANSPORTATION DEPARTMENT[761](cont’d)

ITEM 6. Amend 761—Chapter 716, implementation sentence, as follows:
These rules are intended to implement Iowa Code sections 8.57B 8.57(5) and 328.12.

ITEM 7. Amend rule 761—717.2(328), definition of “Vertical infrastructure,” as follows:
“Vertical infrastructure” means the same as defined in Iowa Code section 8.57B 8.57(5).

ITEM 8. Amend rule 761—717.3(328) as follows:

761—717.3(328) Information and forms. Program information, instructions, and application forms may be obtained from the department’s Web site at www.iowadot.gov/aviation. Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 9. Amend 761—Chapter 717, implementation sentence, as follows:
These rules are intended to implement Iowa Code sections 8.57B 8.57(5) and 328.12.

ARC 3756C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to railroad transportation and safety and providing an opportunity for public comment


Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 327F.13, 327F.39 and 327G.24.

State or Federal Law Implemented


Purpose and Summary

The proposed amendments to Chapter 800 correct a due date for annual reports, update the adoption date of a federal regulation, and provide a source for federal citations. The following list further explains the amendments to the chapter:

- Item 1 changes the due date for railroad annual reports from “no later than March 31” to “on or before April 1,” which makes the deadline in subrules 800.4(1) and 800.4(2) consistent with the reporting deadline railroads must meet under 49 Code of Federal Regulations (CFR) Part 1241. This item also corrects the implementation sentence for rule 761—800.4(327C) by striking Iowa Code sections 327C.28 and 327C.43 because they are unnecessary.
- Item 2 adopts the current CFR dated October 1, 2017, for 49 CFR Part 1152. Iowa Code section 327G.24 requires the Department to adopt rules consistent with the Surface Transportation Board’s Abandonment and Discontinuance of Rail Lines and Rail Transportation promulgated under United States Code, Title 49, and found in 49 CFR Part 1152.
- Item 3 adds new rule 761—800.21(327G) that provides sources where the federal citations may be found.
The proposed amendments to Chapter 810 update the adoption date of a federal regulation, provide a source for the federal citation, add a new rule which concerns worker transportation rest periods and make changes for clarity and consistency. The following list further explains the amendments to the chapter:

- Item 4 adopts the current CFR dated October 1, 2017, for 49 CFR Part 213. Iowa Code section 327C.4 requires the Department to inspect railroads’ track for safe operations. To accomplish this, the Department is a member of the Federal Railroad Administration’s (FRA) State Rail Safety Participation Program, which provides some benefits to states in training and technical proficiency in understanding and applying federal standards. The FRA’s track safety standards set out standards for track safety applicable to all railroads nationwide and are found in 49 CFR Part 213.
- Item 4 also adds new subrule 810.1(2) to provide sources where the federal regulations may be found and updates the rule’s implementation sentence by striking Iowa Code section 327C.2 because it is unnecessary.
- Item 5 amends rule 761—810.5(327F), which concerns heating systems within motor vehicles used to transport railroad workers. The amendments make the reporting procedure for a violation more consistent with new rule 761—810.6(327F) and revise the rule for clarity.
- Item 6 adopts new rule 761—810.6(327F). This new rule implements Iowa Code section 327F.39, which sets out the enforcement for a violation of railroad worker transportation company drivers’ allowable hours of service. Certain railroads contract with railroad worker transportation companies to transport rail crews to and from work locations on a railroad, often to remote locations and at all hours. The railroad worker transportation companies normally use motor vehicles of a size smaller than those that fall under federal regulations for motor carriers. To cover this gap and ensure the safety of railroad workers being transported, Iowa Code section 321.449A establishes requirements for the allowable time that a railroad worker transportation company driver can be on duty and the driver’s required rest periods, similar to federal regulations for motor carriers, and Iowa Code section 327F.39 prohibits both railroad transportation companies and railroad companies from requiring a driver to violate Iowa Code section 321.449A, and requires the Department to make, enter, and serve upon the owner of the motor vehicle an order as necessary to protect the safety of workers transported in the motor vehicle. To implement Iowa Code sections 321.449A and 327F.39, this new rule states that violations of Iowa Code section 321.449A are to be reported to the Department and describes how the Department will handle that report and any possible violation, including issuance of a decision and any necessary orders.
- Items 5 and 6 both provide that potential violations of motor vehicle requirements for the transportation of railroad workers may be investigated by the director of the Office of Rail Transportation or the director’s designee, which may include peace officers in the Office of Motor Vehicle Enforcement. These provisions are intended to ensure the prompt and effective investigation of potential violations by recognizing that the Office of Rail Transportation has limited staff to conduct investigations and that peace officers serving as motor vehicle enforcement officers are well-positioned and trained to conduct inspections regarding motor vehicle equipment requirements and driver hours of service requirements.

The proposed amendment to Chapter 813 in Item 7 updates the Department’s website reference to be consistent with changes made in other Department chapters. The Department’s main website address is used instead of a more specific link that may change.

Proposed federal regulations are published in the Federal Register (FR) to allow a period for public comment, and after adoption, the final regulations are published in the FR. To ensure the consistency required by statute, the Department adopts the specified parts of 49 CFR as adopted by the Surface Transportation Board and the FRA.

The following list provides a specific description of the amendments to the federal regulations that have become final and effective from September 30, 2016, to October 1, 2017, and that affect 761—Chapters 800 and 813:

Amendment to the Surface Transportation Board Abandonment Regulations

Part 1152 (FR Vol. 82, No. 127, Pages 30997-31008, 07-05-2017)
TRANSPORTATION DEPARTMENT[761](cont’d)

This final rule amends the Surface Transportation Board’s regulations to change its rules pertaining to offers of financial assistance to improve the process and protect it against abuse. The rule amendment requires a party making an offer of financial assistance (purchase or subsidy) during a railroad abandonment proceeding to formally express intent of an offer and prove itself preliminarily financially responsible. Effective date: July 29, 2017.

Amendment to the FRA’s Track Safety Standards


Fiscal Impact

The fiscal impact cannot be determined. The federal regulations proposed to be adopted by this rule-making action were subject to fiscal impact review by either the FRA or the Surface Transportation Board when enacted and were determined not to be cost-prohibitive.

Jobs Impact

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

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 15, 2018. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

May 17, 2018
10 a.m.
Department of Transportation
Administration Building
First Floor, South Conference Room
800 Lincoln Way
Ames, 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 Tracy George, the Department’s rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

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 761—800.4(327C) as follows:

761—800.4(327C) Annual reports.

800.4(1) A railroad company submitting an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit a copy of this report to the department no later than March 31 on or before April 1 following the close of the calendar year. Included with this report shall be a “State Statistics” report which shall include the following: annual data on additions and deletions of mileage within the state; mileage operated within the state at the end of the year; railway operating revenues earned within the state; statistics on rail line operations within the state including locomotive unit-miles, car-miles and ton-miles; revenue freight carried within the state by commodity class; and a freight density map showing gross ton-miles for the railroad company’s system within the state.

800.4(2) A railroad company not required to submit an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit an annual report to the department on Form 010030 no later than March 31 on or before April 1 following the close of the calendar year.

This rule is intended to implement Iowa Code sections 327C.28, 327C.38, and 327C.41 and 327C.43.

ITEM 2. Amend subrule 800.20(1) as follows:

800.20(1) 49 CFR Part 1152 contains the regulations governing the abandonment and discontinuance of railroad lines and rail transportation under 49 U.S.C. 10903 et seq. This part also contains the regulations and procedures for the acquisition or use of railroad rights-of-way proposed for abandonment for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d).

For the purpose of this rule, this part is adopted as of October 1, 2002 2017.

ITEM 3. Adopt the following new rule 761—800.21(327G):

761—800.21(327G) Federal citations. Copies of the federal code or regulations cited in this chapter are available from the state law library or online at www.gpo.gov.

This rule is intended to implement Iowa Code section 327G.24.

ITEM 4. Amend rule 761—810.1(327C) as follows:

761—810.1(327C) Track safety standards.


810.1(2) Obtaining copies of regulations. Copies of the federal regulations are available from the state law library or online at www.gpo.gov.

This rule is intended to implement Iowa Code sections 307.26, 327C.2, and 327C.4.
IAB corporate 761—810.

within enforce peace company the request 321.449A Of company provisions decision. as peace transportation, the set h. g. f. e. d. b. e.

This the name TEM report transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

c. d. The report shall be written and shall include the date, time, weather conditions and all facts pertinent to the alleged violation. The report shall also include a copy of the railroad’s response or, if the railroad failed to respond, proof of the date the report was submitted to the railroad.

e. The department director of the office of rail transportation or the director’s designee may request additional information from the person submitting the report, the railroad worker transportation company or the railroad.

f. The director of the office of rail transportation or the director’s designee, which may include peace officers in the office of motor vehicle enforcement, may investigate the alleged violation.

g. The department shall notify the person and the railroad of the decision, which is the final decision of the department.

h. The decision is final agency action.

This rule is intended to implement Iowa Code section 327F.39.

ITEM 6. Adopt the following new rule 761—810.6(327F):

761—810.6(327F) Worker transportation rest periods.

810.6(1) Requirements. A railroad worker transportation company and railroad worker transportation company driver shall comply with the rest period requirements of Iowa Code sections 321.449A and 327F.39(5).

810.6(2) Report procedure.

a. A person shall report an alleged violation in writing to the department at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. The report shall include the date, time, circumstances and any evidence of an alleged violation, and the name and contact information of the driver employed by the railroad worker transportation company or the railroad worker transportation company alleged to require a driver to violate the provisions of Iowa Code section 321.449A or 327F.39(5).

c. The director of the office of rail transportation or the director’s designee may request additional information from the driver, railroad worker transportation company or railroad.

d. The director of the office of rail transportation or the director’s designee, which may include peace officers in the office of motor vehicle enforcement, may investigate the alleged violation.

e. The director of the office of rail transportation or the director’s designee shall issue a decision within 60 days of receipt of the report or 60 days after receipt of the requested additional information. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

f. The department shall notify the driver and the railroad worker transportation company of the decision.

g. The decision is final agency action.

This rule is intended to implement Iowa Code sections 321.449A and 327F.39.
TRANSPORTATION DEPARTMENT[761] (cont’d)

Item 7. Amend subrule 813.10(4) as follows:

813.10(4) Form 291303 is available on the department’s Internet Web site at http://www.iowadot.gov/forms/index.htm or www.iowadot.gov or from the office of rail transportation.

ARC 3757C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to notification of railroad accidents and incidents and providing an opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 802, “Reporting of Railroad Accidents/Incidents,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 327C.37 and 327C.41.

Purpose and Summary

This rule making clarifies and expands the notification to the Department for certain railroad accidents and incidents. Timely notification of certain railroad accidents and incidents allows the Department’s Office of Rail Transportation to respond to immediate public safety risks as well as to identify emerging safety issues or trends that may need attention.

The following list further explains the proposed amendments:

- The title of Chapter 802, “Reporting of Railroad Accidents/Incidents” is changed to “Notification of Railroad Accidents/Incidents.” The word “reporting” is replaced with “notification” and the word “report” is replaced with “notice” within rule 761—802.2(327C). These changes were made within this chapter to be more consistent with language in Iowa Code section 327C.37 and to clarify that the Department needs to be notified of an accident or incident.

- Iowa Code section 327C.37 requires corporations operating railroads to immediately notify the Department of an injury or death. For clarity on what is meant by “immediately,” rule 761—802.2(327C) is amended to state that a railroad accident or incident must be reported to the Department within four hours of the accident or incident. Iowa Code section 327C.41 requires all common carriers subject to Iowa Code chapter 327D to notify the Department when the Department determines the notification is necessary and reasonable. The following are the notification changes that the Department determined are necessary and reasonable:
  - Written reports no longer need to be submitted for railroad employee injuries because employee safety is outside the realm of the Department’s responsibility. A Federal Railroad Administration form (FRA F 6180.55 — Railroad Injury and Illness Summary) that was used for this notification is stricken from subrule 802.1(2).
  - The criteria for notification of railroad accidents and incidents to the Department are expanded to include information beyond just injuries and fatalities. The added criteria include:
    - Information on derailments of ten or more cars or a derailment in which any number of cars or locomotives are not upright. This information may prompt the Department’s track inspectors to take a closer look at the safety of the track structure where these incidents occur, often before cleanup is completed.
    - Notification of derailment or other incident involving railroad passenger trains. This information may also trigger an investigation and is included due to the added risk to passengers in the event of an accident or incident and the associated media attention.
TRANSPORTATION DEPARTMENT[761](cont’d)

◊ Any release or potential release of hazardous materials will trigger a railroad or local response to the hazard, and the Department should be made aware of this incident and response as a part of the Department’s safety oversight.
◊ Damage to any public or private transportation infrastructure not owned by the railroad. This criterion was added as the result of a past rail incident that damaged a highway bridge. The railroad had difficulty knowing who and how to notify the appropriate highway officials about the damage after normal business hours. Notifications are now made to the Department’s Traffic Management Center which is staffed year-round, 24 hours a day, including legal holidays. The Traffic Management Center has extensive contacts with highway officials and can facilitate any notifications of nonrailroad infrastructure damage as a result of a rail accident or incident.

The specific information included in the notification has also been clarified to provide a clearer picture of the accident or incident to Department personnel. This rule making will provide the Department with more complete and useful information to meet the Department’s objective of protecting public safety and ensuring a safe rail infrastructure. The Office of Rail Transportation will have timely information on the nature and severity of an accident or incident and be able to act or prepare accordingly. Reporting rail accidents and incidents to the Department’s Traffic Management Center allows personnel to determine whether there are primary highway impacts that should be included on www.511ia.org, the Department’s notification to the public of highway incidents or delays, or if local highway officials should be notified. The notification also allows Department personnel to prepare for possible media inquiries that may occur as a result of an accident or incident. Depending upon the type or severity of an accident or incident, the notification will also allow Department personnel to notify other agencies or officials that may need to be aware of or respond to the accident or incident.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 15, 2018. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:
May 17, 2018
11 a.m.
Department of Transportation
Administration Building
First Floor, South Conference Room
800 Lincoln Way
Ames, 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 Tracy George, the Department’s rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

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 761—Chapter 802, title, as follows:

<table>
<thead>
<tr>
<th>RULES AMENDMENT</th>
<th>AMEND 761—Chapter 802</th>
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</thead>
<tbody>
<tr>
<td><strong>REPORTING NOTIFICATION OF RAILROAD ACCIDENTS/INCIDENTS</strong></td>
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ITEM 2. Amend subrule 802.1(2) as follows:

802.1(2) Forms. This rule applies to the following Federal Railroad Administration forms:
FRA F 6180.54 — Rail Equipment Accident/Incident Report
FRA F 6180.55 — Railroad Injury and Illness Summary
FRA F 6180.57 — Rail-Highway Grade Crossing Accident/Incident Report

ITEM 3. Amend rule 761—802.2(327C) as follows:

761—802.2(327C) Immediate reporting Notification of personal injury or death railroad accidents/incidents.

802.2(1) Accidents or incidents requiring notification. Any accident/incident involving train movement which results in personal injury requiring hospitalization or in death any of the following shall be reported immediately within four hours of the accident/incident to the department:

a. Fatality.
b. Personal injury requiring hospitalization.
c. Derailment of ten or more rail cars and locomotives.
d. Derailment of any number of cars or locomotives when one or more are not upright.
e. Derailment or other incident involving a railroad passenger train.
f. Release or potential release of hazardous materials that presents a risk or potential risk to public safety including injury, fatality, evacuation or shelter-in-place of persons.
g. Damage to public or private transportation infrastructure not owned by the involved railroad.

802.2(2) Content of immediate report notice. The immediate report notice of an accident/incident shall provide the date and time it occurred, the nearest city, the location as accurately as possible, the number of fatalities or injuries, the train(s) involved, the nature and cause insofar as known, the name of the individual filing the report, and the name of the railroad involved. At a minimum, the following information:

a. Name of the railroad involved.
b. Name and contact information of the individual calling to file the notice.
TRANSPORTATION DEPARTMENT[761](cont’d)

c. Date and time the accident/incident occurred.
d. Location of the accident/incident, described as accurately as possible, including the nearest city and the U.S. DOT crossing identification number or railroad milepost.
e. Description of the accident/incident.
f. Impact on motor vehicle travel, if known.
g. Number of injuries and fatalities.
h. Hazardous materials involved in the incident and actions taken in the event of a release.
i. Number of rail cars derailed.

802.2(2) 802.2(3) Method of immediate reporting notification. During normal business hours the immediate report shall be filed with the department’s traffic management center by telephone at (515)237-1140, (515)237-3300, and (515)237-2478. At other times, the report shall be filed with the office of motor carrier services of the motor vehicle division of the department by telephone at (515)237-3300.

This rule is intended to implement Iowa Code sections 327C.37 and 327C.41.

ARC 3759C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to railroad revolving loan and grant fund program and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 822, “Railroad Revolving Loan and Grant Fund Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 327H.20A.

Purpose and Summary

Chapter 822 provides the guidelines under which the Railroad Revolving Loan and Grant Funds are awarded and administered. This rule making reflects changes that have been identified to improve the process to provide fiscally sound financial assistance for rail projects, speed project completion and increase accountability. Some of the specific drivers of the changes include:

- In 2011, a portion of the appropriation for the Railroad Revolving Loan and Grant Fund Program was made available for rail port planning studies. The Department found that feasibility and planning studies increased the quality of projects that were later submitted by ensuring that there were demand and cost justification for the projects to move forward and, in some cases, not to move forward. Planning grants, especially for more speculative rail port projects, help future potential applicants have a more realistic understanding of the potential benefits and risks of an infrastructure project and result in better quality projects for applicants and a better use of limited state funding if or when an applicant is awarded a grant or loan for an infrastructure project.

- The Federal Railroad Administration approached the Department about developing an agreement to assist railroads in accessing available federal loans, which require certain out-of-pocket expenses. States are encouraged to participate in these expenses. Eligibility of loan development costs, whether through a private or federal source for otherwise qualifying projects, will be another way to leverage limited state funds while meeting the objective of encouraging rail development and improvements.
TRANSPORTATION DEPARTMENT[761](cont’d)

- Adding an allowance for an advance eligibility exemption to maintain the eligibility of costs if funding is later awarded allows applicants, with approval, to complete certain preliminary project activities (such as clearing and grading). Allowing these preparatory activities before an agreement is reached prevents the possible loss of a construction season in project completion. Faster project completion benefits the awardee and the Department and the terms of the exemption protect the Department from risk.

- The Department has had a number of projects which have been stalled or delayed, leaving funds obligated but unused. Adding time frames for each step of the process following an award is expected to mitigate delays in utilizing funding. This change will result in more timely completion of projects and, particularly in the case of loans, establish a repayment schedule more rapidly, making better use of limited state funds to support rail development.

- Some applications pledge that the project will create or retain a certain number of jobs and are scored on that criteria. This rule making formalizes the process for verification of those claims and defines acceptable performance. If an applicant fails to meet acceptable performance in the creation of jobs, a repayment of the funds will be requested. This requirement builds in accountability for the recipients of awards and protects the state’s investment by ensuring that development associated with the award occurs.

The following list explains each proposed amendment:

Item 1 amends rule 761—822.1(327H) to include the purpose of the program so that the introduction and purpose are included in the same rule. Item 4 rescinds rule 761—822.4(327H), the current rule which describes the purpose of the program. Item 1 also updates the citation to Iowa Code section 327H.20A to remove an unnecessary reference to 2009 Iowa Acts.

Item 2 amends rule 761—822.2(327H) regarding definitions. The definition of “rail facilities” is amended to include transload yards, railroad bridges, railroad scales and other railroad infrastructure to address common questions received from potential applicants on what is included as a “rail facility.” A new definition of “rail port” is added. In 2011, a special appropriation was made to assist in the development of rail ports. Grants under this appropriation were administered by the program manager under revised guidelines. The amendment formalizes the definition of a rail port for later inclusion as an eligible project for this program (Item 7).

Item 3 amends rule 761—822.3(327H) to state that program information and application forms are available on the Department’s website and that completed applications shall be submitted as directed in the application materials. The telephone number for the Office of Rail Transportation is also corrected. The applications on the Department’s website are designed to be computer fillable and include an email link for submitting applications to the program manager. This process benefits both the applicant and the program manager in storing, retrieving, and archiving digital files.

Items 4 and 5 rescind and reserve rules 761—822.4(327H) and 761—822.6(327H). As stated above, part of rule 761—822.4(327H) is revised and incorporated into rule 761—822.1(327H) to include both the introduction and the purpose of the rule. Rule 761—822.6(327H) concerning project criteria is rescinded, and the information is clarified and incorporated into rule 761—822.8(327H) in order to make program cost eligibility clearer to applicants.

Item 6 amends rule 761—822.7(327H) to clarify the responsibility of eligible applicants. A sole applicant or one of the applicants in a joint application must be fiscally responsible for any awarded grants or loans. Joint applications are encouraged. However, if a joint application is the recipient of an award, the designated party shall be the fiscal agent working with the Department. This would include fiscal responsibility throughout the project: agreements, project administration, and loan or default payments. Other arrangements for cost sharing or financial responsibility would need to be worked out between the joint applicants and not the Department. Similarly, the Department cannot transfer or assign fiscal responsibility to a party other than the applicant. Some past applicants have not clearly understood the financial responsibilities associated with an award. The amendment clarifies that complex multiparty agreements or the transfer of fiscal responsibility to a third party is not acceptable under this program.
Item 7 amends rule 761—822.8(327H) which explains eligible and ineligible project costs. The list of activities or items that are eligible for funding is expanded to include feasibility or planning studies. Studies have been found to be particularly beneficial for proposed developments of complex, speculative or rail port projects and are now an eligible cost. A legislative “set aside” in 2011 allocated a portion of the Railroad Revolving Loan and Grant Fund Program appropriation for studies. Since that time, it has proven valuable to fund certain studies which can verify or refute the potential success and benefits of a proposed project, which can ultimately lead to better developments or discourage investments that are less likely to succeed. In addition, loan development costs that a Class II or III railroad may have in obtaining a loan for a project that would have otherwise qualified under this chapter are added to the list as a way to further leverage federal or private funding, as explained previously. The list of ineligible costs is amended to address questions frequently received from applicants about which costs are or are not eligible. Item 7 strikes feasibility studies from the list since they are now added as an eligible cost. Since the program is focused on economic development and improvement of the freight transportation system, other rail costs are clearly stated as ineligible, including facilities solely used for historical or tourist railroad activities; capital or operating costs associated with passenger rail, commuter rail or public transit; and acquisition or capital costs associated with recreational trails, which are often built upon abandoned railroad rights-of-way. Environmental studies and design and engineering costs are ineligible as stand-alone projects but are eligible as a part of a construction award under this program so that investments are targeted to completed infrastructure and not preparatory-only activities. Surface repair or replacement and crossing protection are ineligible as stand-alone projects because there are independent funding sources for those stand-alone improvements but are eligible if the improvement is a necessary part of a larger construction project. Item 7 also adds new subrule 822.8(3) pertaining to an advance eligibility exemption. An applicant may request a written advance eligibility exemption from the Department for specified costs incurred prior to an award or agreement, such as land acquisition, advance design costs, clearing and grubbing, i.e., activities preparatory to the installation of the rail infrastructure. If granted, the exemption will permit the specified eligible expenditure(s) by the applicant without jeopardizing the project’s eligibility for future funding approval. Granting an exemption shall not imply or guarantee that the Department will fund a subsequent application. An advance eligibility exemption must be requested and approved prior to the expenditure; any cost incurred before a written exemption is granted will be ineligible for reimbursement. Allowing these preparatory activities prevents the possible loss of a construction season in project completion. Faster project completion benefits both the awardee, who can derive the benefit from the improvement, and the Department in managing the fund balances and making the best use of limited funding.

Item 8 amends rule 761—822.10(327H) concerning project applications. Item 8 provides that applications may be submitted at any time and the Office of Rail Transportation will hold the applications until the next evaluation cycle, and that when sufficient funds are available, a notice of funding availability is published on the Department’s website. An email is sent to past applicants, railroads in Iowa, economic development professionals, cities, counties, municipal planning organizations, regional planning affiliations and others who have inquired about the program. The email announces the notice of funding availability and directs recipients to the website for complete information. The notice will include a deadline for applications and the approximate amount of funding available. Applications may be electronically submitted to the Department or sent to the Office of Rail Transportation. This item also requires a location map and a project plan or drawing to be submitted with the application. Item 8 also amends the justification needed for the project to require specific information which demonstrates the benefits the project will provide and a cost estimate for project construction or feasibility planning studies. If a loan is requested, the proposed loan term and interest rate are not needed on the application because loan terms are now determined by the Department and included in the program guidelines for an evaluation cycle. If the project is for a new or expanded development, a letter from the serving railroad(s) indicating the railroad(s) that will serve the planned development is required as part of the application to ensure that coordination with the railroad about the design and extent of the development has occurred and that the railroad’s standards have been met in order to serve the facility.
TRANSPORTATION DEPARTMENT[761](cont’d)

Item 9 amends rule 761—822.11(327H) to clarify that the Department will request additional application information if necessary to understand the project. This item also states that projects involving job creation which do not meet 100 percent of the annual laborshed wage rate for their area will not be considered in order to ensure that any jobs created are “high quality jobs” for the area of the project. Item 9 also changes the word “preserved” to “retained” to clarify that the Transportation Commission may review the number of new and retained jobs when deciding which projects will receive funding awards.

Item 10 renumbers rule 761—822.12(327H) as 761—822.13(327H).

Item 11 adopts new rule 761—822.12(327H) concerning award acceptance to formalize a recent addition to the process. In some cases, the Transportation Commission approves an award for less than the requested amount, and the 45-day award acceptance process allows an awardee the time to arrange additional funding or opt out of the award if additional funding to complete the project is unavailable. In other cases, hurdles to the project which threaten completion may have developed since the application process began. The addition of the award acceptance process within a specified period of time helps ensure that projects are ready to move forward without unnecessary delay.

Item 12 amends renumbered rule 761—822.13(327H) to provide additional information that must be included in the agreement. The agreement will specify the approved process for any consultant selection related to the project to ensure the selection meets the Department’s standards. Loan repayment terms have always been a part of an agreement, but were not previously stipulated in the rule. A requirement that the agreement be executed within 180 days following acceptance of the award was recently added to the agreements in order to move the project forward toward construction. Similarly, a project completion date has been added to minimize delays. Both the agreement and completion timelines can be extended for good cause. Since the program functions as a revolving fund, these timelines minimize the obligated but unused funds in the account and ensure that any loan repayments begin in a timely manner, making the best use of limited funding. Extended delays in agreement negotiations and delayed construction have been relatively common in the past, and the added timelines provide a tool to minimize these delays. This item also amends renumbered subrule 822.13(4), which spells out the remedies that can be taken for an unfulfilled project agreement. This amendment clarifies that the Commission (and not the Department) may revoke a funding commitment, require repayment or do both when an award recipient has not fulfilled the terms of the agreement. This amendment also provides the Commission recourse if a project does not meet requirements and increases accountability.

Item 13 amends the chapter’s implementation sentence to remove an unnecessary reference to 2009 Iowa Acts.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 15, 2018. Comments should be directed to:
Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

May 17, 2018  
9 a.m.  
Department of Transportation  
Administration Building  
First Floor, South Conference Room  
800 Lincoln Way  
Ames, 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 Tracy George, the Department’s rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

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 761—822.1(327H) as follows:

761—822.1(327H) **Introduction and purpose.** The railroad revolving loan and grant fund program provides funding in the form of loans and grants for railroad-related improvement projects that. The purpose of the program is to spur economic development and job growth and provide benefits to Iowa through economic benefits derived from railroad transportation system or service improvements. The railroad revolving loan and grant fund is established in Iowa Code section 327H.20A as amended by 2009 Iowa Acts, Senate File 151, section 11, and is under the control of the department.

**ITEM 2.** Amend rule 761—822.2(327H) as follows:

761—822.2(327H) **Definitions.**

“Rail facilities” includes railroad main lines, branch lines, switching yards, sidings, rail connections, transload yards, intermodal yards, and highway grade separations, railroad bridges, railroad scales and other railroad infrastructure.

“Rail port” means a commercial or industrial development that has the potential to provide rail service to multiple users through shared rail infrastructure, including transload or intermodal yards.
TRANSPORTATION DEPARTMENT[761](cont’d)

ITEM 3. Amend rule 761—822.3(327H) as follows:

761—822.3(327H) Information. Information Program information and application forms are available on the department’s website at www.iowadot.gov. Completed applications shall be submitted as directed in the application materials. Assistance may be obtained at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1140 (515)239-1066. Completed applications shall be submitted to this address.

ITEM 4. Rescind and reserve rule 761—822.4(327H).

ITEM 5. Rescind and reserve rule 761—822.6(327H).

ITEM 6. Amend rule 761—822.7(327H) as follows:

761—822.7(327H) Applicant eligibility. A railroad company, railroad user, city, county, metropolitan planning organization, regional planning affiliation, or any other entity with an interest in a rail transportation improvement is eligible to apply for funding. The applicant shall be fiscally responsible for any awarded loans or grants. Joint applications are allowed and encouraged, but the applicants shall designate one contact person. Joint applications shall designate one entity that shall be fiscally responsible for any awarded loans or grants.

ITEM 7. Amend rule 761—822.8(327H) as follows:

761—822.8(327H) Eligible and ineligible project costs.

822.8(1) Eligible costs. Activities or items eligible for funding include, but are not limited to, the following:

a. Modernization, upgrading or reconstruction of existing rail facilities or rail ports.

b. Construction of new rail facilities or rail ports.

c. and d. No change.

c. Feasibility studies or planning studies for proposed projects that are otherwise eligible.

d. Loan development costs that a Class II or III railroad may have in obtaining a loan for a project that would have otherwise qualified under this chapter.

822.8(2) Ineligible costs.

a. The following activities or items are ineligible for funding:

b. (1) Contract administration.

b. (2) Freight car or locomotive lease, purchase or repair.

c. Feasibility studies, environmental studies or major investment studies related to a railroad improvement project.

d. (3) Refinancing of a completed project that would have otherwise qualified under this chapter.

(4) Facilities solely used for historical or tourist railroad activities.

(5) Capital or operating costs associated with passenger rail, commuter rail or public transit.

(6) Acquisition or capital costs associated with recreational trails.

b. The following costs are ineligible unless the costs are part of a larger construction award under this program:

(1) Design and engineering.

(2) Environmental studies.

(3) At-grade crossing surface repair or replacement.

(4) Signals, gates or other crossing protection.

822.8(3) Advance eligibility exemption. No part of a project may be under construction prior to a signed and executed agreement. Certain preliminary costs may be eligible for an advance eligibility exemption, if the exemption is requested in writing and granted by the department in writing. If granted, an exemption will permit a specified expenditure by the applicant without jeopardizing the project’s eligibility for future funding approval. Granting an exemption shall not imply or guarantee that the department will fund a subsequent application. An advance eligibility exemption must be requested.
and approved prior to the expenditure; any cost incurred before a written exemption is granted will be ineligible for reimbursement.

ITEM 8. Amend rule 761—822.10(327H) as follows:

761—822.10(327H) Project application.

822.10(1) Submission. Applications may be submitted at any time and will be held until the next evaluation cycle.

a. The applicant shall submit an original and two copies of a project application to the address in rule 761—822.3(327H). A notice of funding availability will be published on the department’s website when funding is available. The notice will include the approximate amount of funding available and a deadline for consideration of applications.

b. An applicant shall submit the appropriate application on the prescribed forms either electronically to the email address included in the application or to the address in rule 761—822.3(327H).

c. If an application is incomplete, department staff shall return the application to the applicant to be resubmitted when it is complete.

d. An application may be withdrawn at any time after submission.

822.10(2) Contents of application. Each application shall contain the following:

a. No change.

b. A detailed description of the project proposed for funding, including a map or sketch and a project plan or drawing.

c. The justification for the project, including the following information:

(1) No change.

(2) How the project will impact the local and state economies, including the number of new jobs to be created, the number of potential jobs that may be created and the number of jobs to be retained as a result of the project. Specific information demonstrating that the proposed project will provide benefits to Iowa in terms of direct economic development and job growth or retention or through economic transportation or other benefits derived from railroad transportation system or service improvements. Benefits are to be quantified whenever possible.

(3) The long-term growth and development potential of the area or industry to be supported and the direct and indirect economic, transportation, and environmental impacts of the project.

d. An itemized estimate of all project or planning study costs and the proposed match or cost sharing based on the requested funding. A detailed financial plan to explain the funding for the entire project should be included, along with any associated development costs.

e. and f. No change.

g. If loan funds are requested, the proposed loan term and interest rate and a detailed description of the applicant’s ability to repay the loan. Department staff may require the applicant to provide audited financial statements for the past two years plus a current balance sheet and profit/loss statement for the entity that is to repay the loan. If the entity that is to repay the loan is a new entity, the applicant shall, instead, provide a pro forma balance sheet and pro forma profit/loss statement.

h. No change.

i. If the project is a new or expanded development, a letter from the serving railroad(s) indicating that the railroad(s) will serve the planned development.

ITEM 9. Amend rule 761—822.11(327H) as follows:

761—822.11(327H) Project evaluation and approval.

822.11(1) Staff review. Department staff shall review the contents of each application for completeness and request any additional information necessary to understand the scope and benefits of a project. Projects involving job creation which do not meet 100 percent of the annual laborshed wage rate for their area will not be considered. Department staff may visit the project site and may require the applicant to verify the information in the application. After department staff determines that
the application is complete, the staff shall develop a funding recommendation and shall schedule the project for submission to the transportation commission for approval.

822.11(2) No change.

822.11(3) Commission approval. In making its decision to fund a project, the transportation commission may consider the railroad transportation service benefits of the project, the economic development benefits of the project, the applicant’s total capital investment, the number of direct and indirect jobs to be created or retained by the project, the financing requested, an analysis of public benefits versus public costs, and other potential impacts or benefits of the project.

ITEM 10. Renumber rule 761—822.12(327H) as 761—822.13(327H).

ITEM 11. Adopt the following new rule 761—822.12(327H):

761—822.12(327H) Award acceptance. After the transportation commission approves the project, department staff shall notify the applicant of the amount of the award. The applicant shall either accept or reject the award in writing within 45 days.

ITEM 12. Amend renumbered rule 761—822.13(327H) as follows:

761—822.13(327H) Project agreement and administration.

822.13(1) Agreement. After the transportation commission has approved funding, the applicant has accepted the award for a project, department staff shall negotiate and execute an agreement with the applicant. Department staff shall administer the agreement.

a. No change.

b. As applicable, the agreement shall address responsibilities for consultant selection, project design, right-of-way acquisition, contracting, construction and materials inspection; documentation required for reimbursement of project costs; loan repayment terms; audit requirements; and maintenance of the completed project.

c. The applicant shall execute the agreement within 180 days following the acceptance of the award. The applicant may request an extension, and department staff may approve an extension for good cause. Failure to execute an agreement within the specified time may result in forfeiture of the award.

822.13(2) and 822.13(3) No change.

822.13(4) Default. Remedies for noncompliance with project agreement. Department staff The commission may revoke a funding commitment, seek repayment of funds loaned or granted or take both actions if when the applicant fails to fulfill has not fulfilled the terms of the project agreement.

ITEM 13. Amend 761—Chapter 822, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 327H.20A as amended by 2009 Iowa Acts, Senate File 151, section 11.

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 Ronald L. Hansen, and Auditor of State Mary Mosiman has established today the following rates of interest for public obligations and special assessments. The usury rate for April is 4.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants ................................................................. Maximum 6.0%
74A.4 Special Assessments ......................................................... Maximum 9.0%
TREASURER OF STATE (cont’d)

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 10, 2018, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

<table>
<thead>
<tr>
<th>TIME DEPOSITS</th>
<th>Minimum %</th>
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<tr>
<td>7-31 days</td>
<td>.05%</td>
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<tr>
<td>32-89 days</td>
<td>.05%</td>
</tr>
<tr>
<td>90-179 days</td>
<td>.20%</td>
</tr>
<tr>
<td>180-364 days</td>
<td>.35%</td>
</tr>
<tr>
<td>One year to 397 days</td>
<td>.50%</td>
</tr>
<tr>
<td>More than 397 days</td>
<td>.75%</td>
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</tbody>
</table>

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, 2017 — May 31, 2017: 4.50%
- June 1, 2017 — June 30, 2017: 4.25%
- July 1, 2017 — July 31, 2017: 4.25%
- August 1, 2017 — August 31, 2017: 4.25%
- September 1, 2017 — September 30, 2017: 4.25%
- October 1, 2017 — October 31, 2017: 4.25%
- November 1, 2017 — November 30, 2017: 4.25%
- December 1, 2017 — December 31, 2017: 4.25%
- January 1, 2018 — January 31, 2018: 4.25%
- February 1, 2018 — February 28, 2018: 4.50%
- March 1, 2018 — March 31, 2018: 4.50%
- April 1, 2018 — April 30, 2018: 4.50%
- May 1, 2018 — May 31, 2018: 4.50%
Proposing rule making related to review of local exchange competition rules and providing an opportunity for public comment

The Utilities Board hereby proposes to amend Chapter 38, “Local Exchange Competition,” Iowa Administrative Code.

Legal Authority for Rule Making
This rule making is proposed under the authority provided in Iowa Code sections 476.2 and 476.15.

State or Federal Law Implemented
This rule making implements, in whole or in part, Iowa Code sections 476.2, 476.11, 476.15, 476.100 and 476.101.

Purpose and Summary
The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this review is to identify and update or eliminate rules that are outdated or inconsistent with statutes and other administrative rules. These proposed amendments are intended to eliminate obsolete provisions and update other provisions which continue to be necessary in relation to the Board’s exercise of federally delegated authority to review and mediate or arbitrate interconnection agreements and determine if rates for wholesale services are just and reasonable.

The Board issued an order commencing rule making on March 27, 2018. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0028.

Fiscal Impact
After analysis and review of this rule making, the Board tentatively concludes that the amendments will have no effect on the expenditure of public moneys within the State of Iowa.

Jobs Impact
After analysis and review of this rule making, the Board tentatively concludes that the amendments will not have a detrimental effect on employment in Iowa.

Waivers
Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of any Board rule under rule 199—1.3(17A,474,476).

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 15, 2018. Comments should be directed to:

Iowa Utilities Board
Electronic Filing System (EFS) at efs.iowa.gov
Phone: 515.725.7337
Email: efshelpdesk@iub.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. Rescind the definitions of “Interim number portability” and “Provider number portability” in subrule 38.1(2).

ITEM 2. Rescind and reserve rule 199—38.2(476).

ITEM 3. Amend rule 199—38.4(476) as follows:

199—38.4(476) Unbundled facilities, services, features, functions, and capabilities.

38.4(1) Initial tariff Tariff filings.

a. Filing schedule. Each local exchange carrier shall file initial tariffs implementing unbundling for the facilities enumerated in paragraph “b” within 90 days of the board’s final order adopting these rules, except for local exchange carriers with fewer than 75,000 access lines which must file initial unbundling tariffs on or before July 1, 1997. 38.4(1) “b.” The obligation to file a tariff shall not apply to a rural telephone company until the conditions specified in 47 U.S.C. Section 251(f)(1) have been met.

b. Initial list List of unbundled essential facilities. Each local exchange carrier’s initial tariff filing shall, at a minimum, unbundle the following essential facilities, services, features, functions, and capabilities: loops, ports, signaling links, signal transfer points, facilities to interconnect unbundled links at the central office, interoffice transmission facilities, directory listings in white pages, directory listings in yellow pages, listings in the directory assistance database, inbound operator services including busy line busy-line verification and call interrupt, interconnection to the 911 system, and interconnection to the tandem switch for routing to other carriers.

38.4(2) Subsequent requests Requests for unbundled facilities. Except as allowed in subrule 38.4(3), requests to unbundle facilities, services, features, functions, and capabilities shall be processed as follows:

a. Subsequent to the initial tariff filings provided for in subrule 38.4(1) above, a competitive local exchange service provider may make a bona fide request of a local exchange carrier to make additional unbundled essential facilities available. After receiving a request for additional unbundled essential facilities, the local exchange carrier shall respond within 30 days of the request by either by agreeing to the request or by denying the request. If the local exchange carrier agrees to fulfill the request, it shall file a tariff unbundling the essential facility within 60 days of the initial request.

b. If the local exchange carrier denies the request, a competitive local exchange service provider may petition the board to classify the requested facility as essential, as defined by Iowa Code section 476.100(2), and to require the local exchange carrier to make the requested facility available on an unbundled basis by filing a tariff. In such a petition, the competitive local exchange service provider shall provide information to the board showing how the requested facility meets the definition of essential facility found in Iowa Code section 476.100(2).

The petitioning party under this subrule may state a preference for proceeding by rule making or contested case, but the board will select the process to be used.
38.4(3) to 38.4(5) No change.

ITEM 4. Amend rule 199—38.5(476) as follows:

199—38.5(476) Cost standards.

38.5(1) Existing standards. In addition to the standards in this rule, the cost support requirements of rules 199—22.12(476) and 22.13(476) shall apply to all of a local exchange carrier’s rate proceedings prior to the implementation of price regulation.

38.5(2) Incremental cost standard. In general, each local exchange carrier shall price each of its services above the total service long-run incremental cost of providing each service. However, this incremental cost standard shall not be construed to require any increase in the rate for any service prior to the implementation of price regulation, nor to require any price increase that is greater than allowed under a price regulation plan or under Iowa Code section 476.97(11).

38.5(3) Imputation test. In general, prices for each retail service offered by a local exchange carrier should equal or exceed the sum of an allocation of the tariffed prices for all unbundled essential facilities used to provide the service and the incremental costs of all other facilities or services that are components of the retail service. However, this imputation test shall not be construed to require any increase in the rate for any service prior to the implementation of price regulation, nor to require any price increase that is greater than allowed under a price regulation plan or under Iowa Code section 476.97(11).

38.5(4) Reporting requirements. A local exchange carrier shall provide current information to the board showing that the conditions of the incremental cost standard described in subrule 38.5(2) and the imputation test described in subrule 38.5(3) continue to be met whenever it proposes to lower the price of a retail service, it proposes the initial price of an unbundled essential facility, it proposes to raise the price of an unbundled essential facility, or it offers a new service.

38.5(5) Competitive local exchange service providers. Cost support will generally not be required for the tariff filings from competitive local exchange service providers, with the exception of 38.2(1) “d.”

ITEM 5. Amend rule 199—38.6(476) as follows:

199—38.6(476) Compensation for termination of telecommunications services Terminating access charge complaints.

38.6(1) Mutual exchange of traffic. Until the board approves monetary compensation and until tariffs for the compensation are in effect, each local utility shall terminate local and extended area service calls on a mutual exchange of traffic basis, at no charge to the originating provider. As an alternative, a local utility may elect the negotiation, mediation, and arbitration procedures available under 47 U.S.C. Section 252, by notifying the other affected local utility and the board in writing.

38.6(2) Requests to end mutual exchange of traffic. A facilities-based local utility may file a cost-based tariff for monetary compensation for terminating local access service, provided its filing includes a showing that in six consecutive calendar months of mutual traffic exchange between it and another facilities-based local utility the total terminating to originating traffic for the entire six-month period was unbalanced by a ratio of at least 55 percent terminating to 45 percent originating. The tariff filing must include appropriate cost support information. The terms and conditions listed in the tariff shall be applicable to all local utilities operating within the local utility’s service territory or within a service territory with extended area service to the local utility’s service territory. On the date the tariff becomes effective, compensation on a mutual exchange basis will end.

38.6(3) Monetary compensation requirements for other utilities. Within 60 days of board approval of a tariff for monetary compensation for terminating local access service, each other local utility operating within the service territory of the local utility or within a service territory with extended area service to the local utility must file a tariff for monetary compensation for terminating local access service. The tariff filing must include sufficient evidentiary support to allow the board to determine that the compensation will be reciprocal. The terms and conditions listed in the tariff shall be applicable to all local utilities operating within the local utility’s service territory or within a service territory with extended area service
to the local utility’s service territory. Until a local utility has an approved tariff in effect, it must charge the rates for terminating local access service in the approved tariff of the local utility with which it exchanges traffic.

38.6(4) Terminating access charge complaints. No local utility shall deliver traffic to another local utility as local service or extended area service terminating traffic, to which mutual exchange or monetary compensation would apply under this rule, if the terminating traffic is long distance or some other type of traffic for which terminating switched access charges would otherwise have been payable. Any local utility may bring a complaint to the board if another local utility has violated this requirement or taken insufficient measures to determine whether switched access charges would otherwise have been payable. The board may order appropriate refunds with interest of compensation received by a local utility in violation of this rule payment or refund of compensation withheld from or received by a local utility in violation of this rule, with appropriate interest or tariffed late payment penalties.

ITEM 6. Amend rule 199—38.7(476) as follows:

199—38.7(476) Mediation and arbitration. This rule shall apply to all local utilities, except for rural telephone companies as defined in Section 3(47) of the Telecommunications Act of 1996. The board may make all or part of this rule applicable to a rural telephone company or companies in proceedings relating to Section 251(f) of the Act.

38.7(1) Voluntary negotiations.

a. Initiation of negotiations. A telecommunications carrier initiates the negotiation process by requesting interconnection, services, or network elements as defined in the Act from an incumbent local utility pursuant to Section 252(a)(1) of the Act. The day the request is received by the local utility is day one of the schedule set for resolution of all issues. Within five days of receipt of the request, the local utility shall file ten copies of the request with the board using the board’s electronic filing system a copy of the request and a statement of the date the request was received with the board.

b. No change.

38.7(2) Mediation.

a. Initiation of mediation. At any time during the negotiations, any party to the negotiations may request mediation. The request shall be made in writing to be filed with the board using the board’s electronic filing system and copies of the mediation request shall be simultaneously served on the other parties. Alternatively, parties may jointly submit their request in writing to file a joint request for mediation with the board. A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone and fax numbers of the parties or their representatives.

b. to c. No change.

38.7(3) No change.

38.7(4) Board review of agreements.

a. Filing of agreements. All interconnection agreements shall be filed with the board for approval within 15 days after the issuance of a final decision on the arbitrated issues, in the case of arbitrated agreements, or, in the case of negotiated agreements, after the execution of the agreement. An original and three copies shall be filed.

b. Notice of negotiated agreements, amendments, and adoption of agreements. Notice of the filing of a negotiated interconnection agreement, an amendment to an agreement, or adoption of an agreement will be posted within five working days after the filing date, on the board’s Web site, http://www.state.ia.us/iub.

c. Comments on arbitrated agreements. Within ten days following the filing of the arbitrated agreement with the board for review, the parties involved in the arbitration, and any other interested party, may submit written comments to the board supporting either approval or rejection of the agreement. If the board does not approve or reject the agreement within 30 days after submission by the parties of an agreement adopted by arbitration, the agreement shall be deemed approved.

d. Comments on negotiated agreements and amendments to agreements. Within 30 days of the filing date of the negotiated agreement or amendment, the parties involved in the negotiations and any other interested party may submit written comments with the board supporting either acceptance or
rejection of the agreement or amendment. If no comments are filed and no issues are generated by the internal board review, the agreement or amendment shall be deemed approved 41 days after the filing date. If comments opposing approval are filed or the internal board review recommends investigation, the agreement or amendment shall be docketed. The docketing order shall be issued within 40 days after the filing date. If the board does not issue a decision on a docketed filing within 90 days after the filing date, the agreement or amendment shall be deemed approved.

\( a. d. \) Comments on adoption of agreements. No board approval is necessary when there is an adoption of the terms, conditions, and rates from an approved interconnection agreement. The adoption is effective upon filing. If there are terms, conditions, or rates in the filing that are not from an adopted agreement, then the filing is subject to the provisions of paragraph 38.7(c) "d."

\( f. e. \) Indefinite terms, conditions, or rates. When the agreement or amendment contains terms, conditions, or rates that are not yet agreed to, the parties shall file an amendment to the agreement once they have reached agreement on the terms, conditions, or rates.

ARC 3753C

UTILITIES DIVISION[199]

Notice of Intended Action

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

The Utilities Board hereby proposes to amend Chapter 39, “Universal Service,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 474.5 and 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 17A.4, 474.5, 476.2, 476.15 and 476.102 and 47 U.S.C. Section 214(e).

Purpose and Summary

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this review is to identify and update or eliminate rules that are outdated or inconsistent with statutes and other administrative rules.

The Board issued an order commencing rule making on March 27, 2018. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0011.

Fiscal Impact

After analysis and review of this rule making, the Board tentatively concludes that the amendments will have no effect on the expenditure of public moneys within the state of Iowa.

Jobs Impact

After analysis and review of this rule making, the Board tentatively concludes that the amendments will not have a detrimental effect on employment in Iowa.

Waivers

Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of any Board rule under rule 199—1.3(17A,474,476).


**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 15, 2018. Comments should be directed to:

Iowa Utilities Board  
Electronic Filing System (EFS) at efs.iowa.gov  
Phone: 515.725.7337  
Email: efshelpdesk@iub.iowa.gov

**Public Hearing**

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

- **June 20, 2018**  
  - Utilities Board Hearing Room  
  - 1375 East Court Avenue  
  - Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board 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 199—39.2(476) as follows:

**199—39.2(476) Definition of terms.** For the purposes of the board’s implementation of federal universal service fund requirements, the following definitions apply. Whenever a reference in this chapter is made to provisions found in 47 CFR Part 36, 51 or 54, that reference includes any amendment through April 8, 2015 [effective date of these amendments].

“Broadband service” means the broadband Internet access service designated by the Federal Communications Commission at 47 CFR § 54.101 as eligible for support by the federal universal service support mechanisms. Eligible broadband Internet access services must provide the capability to transmit data and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

“Competitive eligible telecommunications carrier” means a carrier that meets the definition of an “eligible telecommunications carrier” below and does not meet the definition of an “incumbent local exchange carrier” in 47 CFR § 51.5.

“Connect America fund” or “CAF” means the federal universal service fund, as reformed by the Federal Communications Commission, to phase down and replace support previously provided through high-cost mechanisms, as referenced in 47 CFR §§ 54.304 and 54.312.
“Eligible telecommunications carrier” or “eligible carrier” means a carrier designated by the board as eligible to receive universal service support pursuant to 47 U.S.C. § 214(e).

“Facilities” means any physical components of the telecommunications network that are used in the transmission or routing of the services designated for universal service fund support.


“High-cost program” means the component of the federal universal service fund that includes the following support mechanisms: high-cost loop support, safety net support, safety valve support, local switching support, interstate common line support, high-cost model support, interstate access support, and the connect America fund, which includes funding to support and advance networks that provide voice and broadband services, both fixed and mobile.

“High-cost support” means those support mechanisms in existence as of October 1, 2011, specifically, high-cost loop support, safety net additive support and safety valve support provided pursuant to 47 CFR Part 36, Subpart F; local switching support pursuant to 47 CFR § 54.301; forward-looking support pursuant to 47 CFR § 54.309; interstate access support pursuant to 47 CFR §§ 54.800 through 54.809; interstate common line support pursuant to 47 CFR §§ 54.901 through 54.904; support provided pursuant to 47 CFR §§ 51.915, 51.917, and 54.304; support provided to competitive eligible telecommunications carriers as set forth in 47 CFR § 54.307(e); connect America fund support provided pursuant to 47 CFR § 54.312; and mobility fund support provided pursuant to 47 CFR Part 54, Subpart L; and Rural Broadband Experiment support.

“Lifeline-only ETC” means a telecommunications carrier that seeks limited designation as an ETC only to participate in the Lifeline program.

“Lifeline program” means the federal universal service program providing support for low-income consumers that is defined in 47 CFR § 54.401 to mean a nontransferable retail service offering (1) for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in 47 CFR § 54.403, and (2) which provides qualifying low-income consumers with voice telephony service as defined in 47 CFR § 54.101(a) or broadband Internet access service as defined in 47 CFR § 54.400.

“Mobility fund” means the wireless component of the connect America fund which provides support for the extension of mobile broadband networks in otherwise unserved areas.

“National Lifeline accountability database” means the electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Federal Communications Commission and as defined in 47 CFR § 54.400.

“National Lifeline eligibility verifier,” as defined in 47 CFR § 54.400(o), means the electronic and manual system that facilitates the determination of consumer eligibility for the Lifeline program.

“Qualifying low-income consumer” means a consumer who meets the qualifications for Lifeline as specified in 47 CFR § 54.409.

“Services designated for support” means voice telephony services and broadband service.

“Tribal Link Up” means an assistance program for eligible residents of tribal lands seeking telecommunications service from a telecommunications carrier that is receiving high-cost support on tribal lands, that provides a reduction of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber’s principal place of residence and a deferred schedule of payments of the customary charge for commencing telecommunications service as defined in 47 CFR § 54.413(a).

“Voice telephony service” means the service designated by the Federal Communications Commission at 47 CFR § 54.101 as eligible for support by the federal universal service support mechanisms. “Voice telephony service” is service which provides:

1. Voice grade access to the public switched network or its functional equivalent;
2. Minutes of use for local service at no additional charge to end users;
3. Access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and
4. Toll limitation services to qualifying low-income consumers as provided in 47 CFR Part 54, Subpart E.

ITEM 2. Amend paragraph 39.3(2)“d” as follows:
   d. An explanation of how the carrier will provide voice telephony service and broadband service as defined in 199—39.2(476) and 47 CFR § 54.101.

ITEM 3. Amend paragraph 39.3(2)“i” as follows:
   i. A five year plan that describes with specificity proposed improvements or upgrades to the applicant’s network throughout its proposed service area. An affirmative statement that the applicant will use the support only for the provision, maintenance, and upgrading of facilities to deploy, improve, and support services to consumers in the applicant’s designated service area. Each applicant shall estimate the area and population that will be served as a result of the improvements. Applicants seeking designation only for purposes of receiving support from the Lifeline program are not required to submit a network improvement plan.

ITEM 4. Amend subparagraph 39.3(2)“l”(9) as follows:
   (9) Promptly respond to consumer inquiries and complaints received from government agencies. Inquiries for information or complaints to a wireless ETC shall be resolved promptly and courteously. If a wireless ETC cannot resolve a dispute with the applicant or customer, the wireless ETC shall inform the applicant or customer of the right to file a complaint with the board. The wireless ETC shall provide the following board address and toll-free telephone number: Iowa Utilities Board, Customer Service, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069; 1-877-565-4450. When the board receives a complaint, the procedures set out in 199—Chapter 6, “Complaint Procedures,” shall be followed to enforce the minimum consumer protection standards in paragraph 39.3(2)“l.” When the board receives a complaint alleging the addition or deletion of a product or service for which a separate charge is made to a customer account without the verified consent of the customer, the complaint shall be processed by the board pursuant to 199—Chapter 6. In any complaint proceeding pursuant to this subparagraph, if the wireless ETC asserts that the complainant is located in an area where the wireless ETC is not designated as an ETC, the wireless ETC must submit evidence in support of its assertion.

ITEM 5. Rescind subrule 39.3(3) and adopt the following new subrule in lieu thereof:

39.3(3) Amendments, assignments and transfers of control. Except as otherwise provided in this subrule, a carrier’s ETC designation may be amended or assigned, or control of such designation may be transferred by the transfer of control of the carrier, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the board.
   a. Assignment. For purposes of this subrule, an assignment of a designation is a transaction in which a board-issued ETC designation is assigned from one carrier to another carrier. Following an assignment, the designation is held by a carrier other than the carrier to which it was originally granted.
   b. Transfers of control. For purposes of this subrule, a transfer of control is a transaction in which a board-issued designation remains held by the same carrier, but there is a change in the individuals or entities that control the carrier. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to, the following:
      (1) Power to constitute or appoint more than 50 percent of the board of directors or partnership management committee;
      (2) Authority to appoint, promote, demote and fire senior executives who control the day-to-day activities of the carrier;
(3) Ability to play an integral role in major management decisions of the carrier;
(4) Authority to pay financial obligations, including expenses arising out of operations;
(5) Ability to receive moneys and profits from the carrier’s operations; and
(6) Unfettered use of all of the carrier’s facilities and equipment.

c. Pro forma assignments and transfers of control. Assignments or transfers of control that do not result in a change in the actual controlling party are considered nonsubstantial or pro forma. If a transaction is one of the types listed below, the transaction is presumptively pro forma and prior board approval need not be sought:
   (1) Assignment from an individual or individuals to an entity owned and controlled by such individuals without any substantial change in their relative interests;
   (2) Assignment from an entity to its individual equity holders without effecting any substantial change in the disposition of their interests;
   (3) Assignment or transfer by which certain equity holders retire and the interest transferred is not a controlling one;
   (4) Entity reorganization that involves no substantial change in the beneficial ownership of the carrier (including reincorporation or reorganization in a different jurisdiction or change in form of the business entity);
   (5) Assignment or transfer from a carrier to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a carrier to an entity owned or controlled by the same equity holders without substantial change in their interests; or
   (6) Assignment of less than a controlling interest in a carrier.

d. Applications for substantial transactions. In the case of an assignment or transfer of control of board-designated ETC that is not pro forma, the parties to such transaction must file a joint application with the board prior to consummation of the proposed assignment or transfer of control. The application shall include the following information:
   (1) A brief narrative of the means by which the proposed transfer or assignment will take place. This narrative should include a statement concerning how the transaction will be classified for the purposes of any filings required to be made by the parties with the Universal Service Administrative Company.
   (2) Identification of each applicant, including the legal name and state or other governmental authority under the laws of which each entity applicant is incorporated or organized.
   (3) The name, title, mailing address, telephone number and email contact information for each applicant.
   (4) The name, title, mailing address, telephone number and email contact information for an application contact point, such as an executive officer, legal counsel or regulatory consultant, to whom correspondence concerning the application should be addressed.
   (5) A statement identifying the date on which the applicants are asking for the transfer of the ETC designation to be effective. Where the timing of a transaction is dependent on facts objectively ascertainable outside of the filing (i.e., regulatory, lender or other third-party approval), the parties should include a statement concerning the manner in which such facts will operate on the effective date or other terms of the transaction.
   (6) A certification as to whether the assignee/transferee is a board-designated ETC. If the assignee/transferee is not a board-designated ETC, the assignee/transferee shall separately file with the board an application for designation as an ETC as provided in subrule 39.3(2). If the assignee/transferee is a board-designated ETC, the joint application shall include a certification from the assignee/transferee that (a) the assignee/transferee is a board-designated ETC in good standing and (b) the assignee/transferee will comply with the state and federal requirements for eligibility as an ETC, including the use of support to provide designated services within the assigned or transferred service area.
   (7) Whether as part of the transaction, the assignor/transferee is requesting to relinquish its ETC status in whole or in part. If the assignor/transferee is requesting to relinquish its ETC status, the joint application shall be deemed to be the assignor/transferee’s request for relinquishment of
ETC designation under 199—39.8(476); provided that such relinquishment shall be conditioned on consummation of the transaction described in the application. If the assignor/transferor is for any reason seeking the unconditional relinquishment of its ETC status, such request should be filed separately under 199—39.8(476).

e. Board approval. Where an assignment or transfer of control involves a transferee/assignee which is already a board-designated ETC, such application shall be granted by the board 30 days after the date the complete application seeking approval of the assignment or transfer of control is accepted for filing, unless the board, for good cause, docket the application for further investigation. Where an assignment or transfer of control involves a transferee/assignee which is not already a board-designated ETC, such application shall be granted by the board at the same time as the board grants the assignee/transferee’s application for ETC designation in accordance with the timelines and procedures set forth in subrule 39.3(2).

f. Notification of pro forma transactions. In the case of a pro forma assignment or transfer of control, the designated ETC is not required to seek prior board approval. Instead, a pro forma assignee or a carrier that is subject to a pro forma transfer of control must file a notification with the board no later than 30 days after the assignment or transfer is completed. The notification must contain the following:

1. The information requested in subparagraphs 39.3(3) “d”(1) to (4) for the transferee/assignee.

2. A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, the transfer of control or assignment does not result in a change in the actual control of the carrier.

3. A certification from the assignee/transferee that the assignee/transferee will comply with the state and federal requirements for eligibility as an ETC, including the use of support to provide designated services within the assigned or transferred service area.

g. Involuntary assignments or transfers of control. In the case of an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy; to an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

h. Notification of consummation. An assignee or transferee must notify the board no later than 30 days after either consummation of the proposed assignment or transfer of control or a decision not to consummate the proposed assignment or transfer of control. The notification shall identify the docket number(s) under which the authorization of the assignment or transfer of control was granted.

i. Amendments other than transactions. Where a carrier that has been designated by the board as an ETC intends to serve as an ETC in a new service area for the purpose of receiving support from the CAF Phase II auction or for other similar purposes, the carrier shall file a notice of expansion 30 days in advance of the expansion and shall certify that the carrier intends to amend its designation to serve as an ETC in the expanded service area.

ITEM 6. Amend rule 199—39.6(476) as follows:

199—39.6(476) Universal service support for low-income consumers (Lifeline program and Tribal Link Up program).

39.6(1) Carrier obligation to offer Lifeline. Pursuant to 47 CFR § 54.405, which specifies the Lifeline obligations of eligible telecommunications carriers, all eligible telecommunications carriers must make available Lifeline service, as defined in 47 CFR § 54.401, to qualifying low-income consumers, defined as consumers who meet the qualifications for Lifeline as specified in 47 CFR § 54.409. Eligible telecommunications carriers must comply with the minimum service standards specified in 47 CFR § 54.408.

39.6(2) No change.

39.6(3) Consumer qualification for Lifeline. To constitute a qualifying low-income consumer, a consumer’s household income as defined in 47 CFR § 54.400(f) and (h) must be at or below 135 percent of the federal poverty guidelines for a household of that size or such percentage as may be determined
by the FCC or the consumer, one or more of the consumer’s dependents, or the consumer’s household must participate in one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); Low-Income Home Energy Assistance Program; National School Lunch Program’s free lunch program; or Temporary Assistance for Needy Families. A consumer who lives on tribal lands is eligible for Lifeline service as a qualifying low-income consumer if the consumer meets the qualifications for Lifeline specified in 47 CFR § 54.409(a) or if the consumer, one or more of the consumer’s dependents, or the consumer’s household participates in one of the following tribal-specific federal assistance programs specified in 47 CFR § 54.409(b). Bureau of Indian Affairs general assistance; tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations. To qualify for Lifeline, a consumer must meet the qualifications for Lifeline as specified in 47 CFR § 54.409. A consumer may only receive one Lifeline service from one telephone provider per household.

39.6(4) Determination of subscriber eligibility. Until the national Lifeline eligibility verifier becomes responsible for the initial determination of Iowa consumers’ eligibility for Lifeline assistance, Iowa eligible telecommunications carriers are responsible for establishing consumer eligibility for Lifeline assistance. Iowa eligible telecommunications carriers shall ensure that their Lifeline subscribers are eligible to receive Lifeline services in accordance with 47 CFR § 54.410. Eligible telecommunications carriers shall:

a. Implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services;

b. Confirm a subscriber’s income-based or program-based eligibility according to 47 CFR § 54.410(b) or (c);

c. Provide prospective subscribers Lifeline certification forms that comply with 47 CFR § 54.410(d); and

d. Recertify all subscribers’ Lifeline eligibility annually and at 90-day intervals (where subscribers have provided a temporary address) in accordance with 47 CFR § 54.410(f) and (g).

39.6(5) to 39.6(7) No change.

ITEM 7. Amend rule 199—39.7(476) as follows:

199—39.7(476) Schedule of filings.

39.7(1) Annual Lifeline compliance certifications.

a. No change.

b. Filing instructions. FCC Form 555 shall be filed using the board’s electronic filing system in accordance with 199—Chapter 14, unless the board directs otherwise by order issued in advance of the filing deadline. The filing shall be titled “Annual Lifeline Eligible Telecommunications Carrier Certification,” with a reference to the year for which the certification is filed. The document title for the FCC form shall be “FCC Form 555 Filing.” The board’s records and information center will assign each filing an FLR docket number, signifying “Federal Lifeline Report.” The annual Lifeline compliance certifications are not subject to protection from public disclosure.

c. Filing instructions. The annual eligible recovery certifications shall be filed using the board’s electronic filing system in accordance with 199—Chapter 14, unless the board directs otherwise by order issued in advance of the filing deadline. The filing shall be titled “Connect America Fund – Intercarrier Compensation Recovery and Certification,” with a reference to the year for which the certification is filed. The document title for the FCC form shall be “Annual Reporting Requirements for Section 54.304.” The board’s records and information center will assign each filing an “ETR” docket number, signifying “Eligible Telecommunications Carrier Report.”
d. No change.

39.7(3) Annual reporting requirements.

a. and b. No change.

c. Annual certifications from carriers seeking to continue to receive high-cost support. Any carrier seeking to continue to receive federal high-cost universal service support shall file with the board no later than July 1 of each year an affidavit titled “Certification of [Company Name].” The company name shall be the name used on the carrier’s initial application for ETC designation and its current name, if its name has changed.

(1) Contents of affidavit. The affidavit shall include the study area code (SAC) number associated with the company. The affidavit shall be sworn and notarized and shall be executed by an authorized corporate officer. The affidavit shall certify that the carrier has used all federal high-cost support provided in the preceding calendar year and will use the all federal high-cost support provided to the carrier receives in the coming calendar year received pursuant to 47 CFR Subchapter B, Part 54, Subparts D and K, L, and M, as defined in 47 CFR § 54.5, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. In addition, the affidavit shall certify that the carrier has complied with and will continue to comply with applicable service quality standards and consumer protection rules, certify that the carrier has a reasonable amount of back-up power to ensure functionality without an external power source, certify that the carrier is offering a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas, and certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible carrier is providing equal access within the ETC’s designated service area. The affidavit shall also certify to the following: as an eligible telecommunications carrier, the carrier agrees to provide timely responses to board requests for information related to the status of local voice service markets or facilities.

(2) Certifications subject to complaint or investigation. Any certification filed by a carrier shall be subject to complaint or investigation by the board.

(3) State certification of eligibility. An ETC’s certification shall be the basis of the board’s certification to the FCC and USAC pursuant to 47 CFR § 54.314 that the ETC has used and will use the support for the purposes intended.

d. Progress reports and extensions on previously filed two-year network improvement and maintenance plans. In addition to any network improvement plans and associated progress reports required by 47 CFR § 54.313, competitive ETCs whose universal service support is being phased down must file with the board progress reports and extensions on previously filed two-year network improvement and maintenance plans during the phase-down period. Each competitive ETC subject to this requirement shall file a rolling one-year extension and a progress report on its network improvement and maintenance plan detailing the prior calendar year’s activities. The progress report shall include coverage area maps detailing progress toward plan targets, an explanation of how much universal service support was received, and how the support was used to improve signal quality, coverage, or capacity. If support was used for something other than improving signal quality, coverage, or capacity, the report shall include an explanation of how the support was used. The report shall identify any network improvement targets that have not been met and shall include an explanation of why targets were not met. The report shall indicate if there have not been any changes to the ETC’s coverage area and shall include an explanation of why no changes were made. Any reporting of expense and investment information shall include an explanation of how the expenses and investments benefited specific wire centers in the ETC’s designated service area. For purposes of this paragraph, “wire center” shall be defined as determined by the North American numbering plan administrator.

e. d. Filing instructions for annual report filings. FCC Form 481 (including rate floor data filed pursuant to 47 CFR § 54.313(h)), the affidavit certifying compliance, any required network improvement plan progress report and extension, and FCC Form 690 shall be filed using the board’s electronic filing system in accordance with 199—Chapter 14, unless the board directs otherwise by order issued in advance of the filing deadline. The filing shall be titled “Annual Eligible Telecommunications Carrier Reporting Requirements,” with a reference to the year for which the report is filed. The document title
for the FCC form shall be “FCC Form 481 Filing” or “FCC Form 690 Filing,” as appropriate. The document title for the affidavit certifying compliance shall be “Carrier Certification.” The document title for any required network improvement plan report shall be “Network Improvement Plan Report.” The board’s records and information center will assign each filing an FER docket number, signifying “Federal ETC Report,” and indicating the year of filing and the carrier’s company number.

Confidential information.

1 Requests to withhold from public inspection network improvement and maintenance plan extensions and progress reports, financial reports, and loop or line count data included in the rate floor data reports included in the annual report filings will be deemed granted as provided in 199—paragraph 1.9(5)“c.”

2 If a carrier considers other information filed on or with FCC Form 481 to be confidential, the carrier shall file both a public version and a confidential version of the material pursuant to 199—14.12(17A,476), and a separate request for confidential treatment pursuant to 199—1.9(22) and Iowa Code section 22.7. Where a request for confidential treatment of information filed on or with FCC Form 481 is based on a protective order issued by the FCC, the carrier’s request for confidential treatment shall include a reference to the relevant protective order.

No change.

8 Amend subrule 39.8(1) as follows:

39.8(1) The board may permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give 30 days’ advance notice to the board of such relinquishment, as provided in subrule 39.3(3). A carrier that is granted ETC status in connection with a Connect America Fund Phase II auction or other similar conditional support mechanism shall, within 30 days of the date of the auction, file a notice of relinquishment of its designation for any service areas where the carrier is not the successful bidder and does not plan to offer service.
EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to computer science education standards


*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

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

*Purpose and Summary*

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

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as ARC 3613C. A public hearing was held on March 27, 2018, at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the State Board on March 29, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

This rule making will become effective on May 30, 2018.

The following rule-making actions are adopted:

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

DIVISION XI
HIGH-QUALITY STANDARDS FOR COMPUTER SCIENCE

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

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

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

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

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

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

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

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/25/18.
ARC 3766C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to special education

The State Board of Education hereby amends Chapter 41, “Special Education,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, the Every Student Succeeds Act, Pub. L. No. 114-95, and federal regulations published at 82 Federal Register 29755 (June 30, 2017).

Purpose and Summary

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

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

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

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

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as ARC 3614C. No member of the public appeared at the public hearing held on March 27, 2018. Nineteen written public comments were received and considered. Commenters were parents of children with disabilities, area education agency personnel, school district personnel, and higher education personnel. Many commenters filled more than one of these roles. All comments related to the amendment to paragraph 41.102(1)“c” in Item 1 of the rule making.

The majority (ten) of public comments were, in essence, implementation questions about what the commenters understood was a mandatory rule. The comments requested guidance, tool kits and decision-making guides, and specific guidance on scaling and implementation. The Department, in conjunction with area education agencies, school districts, and other partners, will develop this guidance. The guidance will provide maximum flexibility to school districts and individualized education program (IEP) teams to make meaningful graduation decisions for children with disabilities. The guidance will recognize that the Iowa Code requires completion of a certain number of years in the four specified content areas, not particular courses or course descriptions or course codes. The guidance will also recognize that graduation policies and graduation decisions are made by local school boards and by IEP teams, who have wide latitude so long as they meet the mandatory minimum requirements of the Iowa Code. The Department will also provide monitoring of the amendment in a staged manner so that children with disabilities and their families are not caught off guard as they plan for life after high school.
Seven comments appeared to be largely against the proposed amendment. Some of these comments stated that children with disabilities are entitled to a high school diploma and that the rule is discriminatory. Other comments stated or implied that work toward meeting the requirements in Iowa Code section 256.7(26)“a” is either not meaningful or too difficult for some children with disabilities. The Department disagrees. First, federal special education law contemplates the possibility that not all children with disabilities graduate with a regular high school diploma. Second, evidence and experience teach that all children, including children with the most significant disabilities, benefit from challenging and meaningful instruction in how they relate to the world around them (“science”) and how they relate to the people around them (“social studies”). Not only is “exempting” children with disabilities from the requirements of Iowa Code section 256.7(26)“a” not legally permitted, it is not wise educational policy or instructional practice.

Two comments appeared to be largely favorable to the amendment. One commenter, who is a parent of a child with a disability and who is also a school district leader, stated that the rule “will raise the bar of excellence for all of our students.”

After considering the comments in light of the required language contained in the Every Student Succeeds Act, the Department and State Board made no changes to the rule making.

**Adoption of Rule Making**

This rule making was adopted by the State Board on March 29, 2018.

**Fiscal Impact**

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

**Jobs Impact**

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

**Waivers**

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

**Review by Administrative Rules Review Committee**

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

**Effective Date**

This rule making will become effective on May 30, 2018.

The following rule-making actions are adopted:

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

1. Graduates with a regular high school diploma.
   (1) General. Children with disabilities who have graduated from high school with a regular high school diploma.
   (2) Inapplicability of exception. The exception in 41.102(1)“c”(1) does not apply to children who have graduated from high school, but have not been awarded a regular high school diploma.
(3) Graduation is a change in placement. Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with rule 281—41.503(256B,34CFR300).

(4) Rule of construction. As used in 41.102(1)’c ‘1’(1) to (3), the term “regular high school diploma” does not include an alternative degree that is not fully aligned with the state’s academic standards, such as a certificate or a general educational development credential (GED). It also does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

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


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

41.160(2) Accommodation guidelines.

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

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

(1) Identify only those accommodations for each assessment that do not invalidate the score; and

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

41.160(3) Alternate assessments.

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

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

(1) Are aligned with the state’s challenging academic content standards and challenging student academic achievement standards;

(2) If the state has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards; and

(3) Except as provided in subparagraph 41.160(3)“b”(2), a state’s alternate assessments, if any, must measure the achievement of children with disabilities against the state’s grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

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

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

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

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

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

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

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

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

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

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

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

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

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/25/18.

ARC 3767C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to child development grants and coordinating council

The State Board of Education hereby amends Chapter 64, “Child Development Coordinating Council,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

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

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as ARC 3612C. A public hearing was held on March 27, 2018, at 1 p.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. The following change from the Notice has been made. In subrules 64.15(2) and 64.15(3), two references to “Iowa department of education” were changed to “department” because it is a defined term in Chapter 64.

Adoption of Rule Making

This rule making was adopted by the State Board on March 29, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 30, 2018.

The following rule-making actions are adopted:

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

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

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

“At-risk student Children who are at risk” means a student who meets one or more of the primary and secondary risk factors stated in rules 281—64.7(256A,279) and 281—64.8(256A,279).
ITEM 3.  Amend rule 281—64.3(256A,279) as follows:

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

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

281—64.4(256A,279) Procedures.

64.4(1) A quorum shall consist of two-thirds of the voting members.
64.4(2) and 64.4(3) No change.
64.4(4) The chairperson and vice-chair shall be elected by the council for a term of two years. After the initial two-year term as vice-chair, the vice-chair shall assume the role of chairperson for a term of two years.

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

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

ITEM 6.  Amend subrules 64.7(1) and 64.7(2) as follows:
64.7(1) Child development grants. At least 80 percent of the funded available enrollment slots for at-risk three- and four-year-old children who are at risk shall be directed to serve children in primary eligibility categories as follows:
   a.  Children reaching three or four years of age on or before September 15 of the contract year; and
   b.  Members of a low-income family.
64.7(2) Public school child development grants. At least 80 percent of the funded available enrollment for at-risk three-, four-, and five-year-old children who are at risk in public school child development programs shall be directed to serve children in primary eligibility categories as follows:
   a.  Children reaching three, four, or five years of age on or before September 15 of the contract year; and
   b.  Members of a low-income family.

ITEM 7.  Amend subrule 64.9(2) as follows:
64.9(2) Additional grant components. The following information shall be provided and points shall be awarded to applicants based on the following additional components.
   1.  Program summary.
   2.  Research documentation.
   3.  Identification and documentation of local at-risk population populations who are at risk.
   4.  Letters of community support.
   5.  Program budget (administrative costs not to exceed 10 percent of total award).

ITEM 8.  Amend subrules 64.15(2) to 64.15(5) as follows:
64.15(2) New/expansion programs. Programs in year one of award. Each program in year one of a grant awarded on or after July 1, 2015, shall participate in meet the program standards and accreditation process criteria of the National Association for the Education of Young Children, the Iowa quality preschool program standards, or other approved program standards as determined by the department during the programs’ program’s first year of funding. New/expansion programs shall be granted a waiver of accreditation during their first year of funding and must attain accreditation during their second year of funding. Programs not able to attain accreditation during their second year may apply
for a waiver of accreditation by March 15 of the current fiscal year. Waivers shall be granted at the discretion of the council. Programs that do not attain accreditation or that do not receive a waiver will not be funded.

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

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

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

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

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

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

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

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ARC 3768C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to targeted small business certification duties and technical changes


Legal Authority for Rule Making

This rule making is adopted 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, Iowa Code sections 10A.104(5) and 22.11 and 2017 Iowa Acts, chapter 160 (House File 621).

Purpose and Summary

This rule making implements changes made in 2017 Iowa Acts, chapter 160 (House File 621), which transfers responsibility for the certification of targeted small businesses from the Department of Inspections and Appeals to the Iowa Economic Development Authority. The Iowa Economic Development Authority’s administrative rules, which can be found in 261—Chapter 52, are related to the certification of targeted small businesses and became effective February 21, 2018. As a result, Chapter 25 of the Department’s rules is being rescinded. This rule making also eliminates other references to the targeted small business certification program found in Chapters 1 and 30.

Additionally, two other technical changes are contained in this rule making. A reference to home food establishments is changed to home bakeries, which is consistent with changes made by the Iowa General Assembly in 2016, and an outdated reference to the inspection of egg handlers is removed as this function was transferred to the Iowa Department of Agriculture and Land Stewardship by the Iowa General Assembly during the 2011 session.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as ARC 3650C. 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 April 4, 2018.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.
Editor’s Note: For replacement pages for IAC, see IAC Supplement 4/25/18.
ARC 3769C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to the investigation division

The Department of Inspections and Appeals hereby amends Chapter 1, “Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted 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, Iowa Code sections 10A.401 to 10A.403.

Purpose and Summary

In Chapter 1, the rule for the administration of the Department’s Investigations Division is being updated to reflect the current structure of the Division. The amendment is the result of a review of all administrative rules related to the Investigations Division.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as ARC 3649C. 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 April 4, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 30, 2018.
The following rule-making action is adopted:

Rescind rule 481—1.4(10A) and adopt the following new rule in lieu thereof:

481—1.4(10A) Investigations division. The investigations division of the department conducts criminal, civil, and administrative investigations of fraud and misconduct. The division also conducts audits of health care facilities. Staff within the division work closely with federal, state, and local partners in identifying fraud, waste, and abuse and, where appropriate, presenting cases for criminal prosecution.

1.4(1) Units of the division. The division is comprised of the following units.

a. Abuse coordinating unit. The abuse coordinating unit assists with the detection, investigation and prosecution of civil, administrative dependent adult abuse allegations in health care facilities.

b. Audit unit. The audit unit audits health care facilities to review and verify facility resident billing and personal allowance accounts and to determine whether state billings accurately reflect the health care facility census. The unit audits local department of human services offices to review and verify whether administrative expense claims and official receipts are in accordance with the criteria set forth in 2 CFR Part 200 and state law.

c. Economic fraud control bureau (EFCB). The economic fraud control bureau is comprised of two units.

1. Program integrity/electronic benefit transfer (EBT) unit. This unit investigates recipient public assistance fraud and food assistance trafficking. Division staff investigate suspected fraud and assist the department of human services to determine eligibility for public assistance. Division staff may conduct investigations relative to the administration of any other state or federal benefit assistance program. Division staff may also conduct investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.

2. Divestiture unit. This unit investigates the transfer or assignment of a legal or equitable interest in property from a Medicaid recipient transferor to a transferee for less than fair consideration. The department may establish a debt against the transferee, due and owing to the department of human services, in an amount equal to the medical assistance provided, but not in excess of the fair consideration value of the assets transferred.

d. Medicaid fraud control unit (MFCU). The Medicaid fraud control unit investigates allegations of fraud committed by providers against the Medicaid program as well as fraud in the administration of the Medicaid program. MFCU also investigates abuse, neglect or other crimes committed upon residents in care facilities or related programs that receive funding from the Medicaid program.

e. Professional standards unit. The professional standards unit investigates licensed professionals for the professional licensure division of the department of public health. Licensing boards may refer professional practice inquiries to the unit for investigation. This unit does not conduct investigations on behalf of the board of medicine, the board of pharmacy, the dental board, or the board of nursing.

f. Public assistance debt recovery unit (PADRU). The public assistance debt recovery unit investigates and initiates collections of overpayment debts owed to the department of human services.

1.4(2) Peace officer status. Pursuant to Iowa Code section 10A.403, investigators assigned to the division shall have the powers and authority of peace officers when acting within the scope of their responsibilities to conduct investigations as specified in Iowa Code section 10A.402(5). An investigator shall not carry a weapon to perform responsibilities as described in this subrule.

This rule is intended to implement Iowa Code sections 10A.401 to 10A.403.

[Filed 4/4/18, effective 5/30/18]
[Published 4/25/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/25/18.
REVENUE DEPARTMENT[701]
Adopted and Filed
Rule making related to first-time homebuyer savings account


Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 421.14 and 541B.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 541B and section 422.7.

Purpose and Summary

The new rule is necessary to implement and administer the Iowa First-Time Homebuyer Savings Account Act, as enacted in 2017 Iowa Acts, chapter 116 (Senate File 505). The rule sets forth details to provide clarity and guidance both to participants in the program and entities involved in its processes.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as ARC 3657C. The Department received 13 written comments from three stakeholder groups. The majority of the comments sought clarification regarding the statutory authority for or other origin of the rule. A few other comments suggested modifications to the proposed rule. The Department declined to revise the proposed rule in most circumstances. The Department provided written responses for each comment to each of the three stakeholder groups.

In response to one of the comments, the Department changed the time period for presuming a withdrawal is not a nonqualifying withdrawal when ownership of the qualifying home passes to the designated beneficiary (see 40.82(5)“a”(2)“2”). The proposed rule provided a 30-day window, which has been extended to 60 days.

The Department also added language to 40.82(3)“b”(2) to clarify that withdrawal reports should be submitted within 90 days of the date of the withdrawal or, for withdrawals made less than 90 days before an account holder files an income tax return with the Department, no later than the date the return is filed.

Lastly, the Department made four minor, nonsubstantive changes from the proposed rule.

Adoption of Rule Making

This rule making was adopted by the Department on April 4, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The fiscal note for the legislation enacting this program estimates revenue reductions for the General Fund of $0.2 million in fiscal year (FY) 2019, $0.7 million in FY 2020, $1.3 million in FY 2021, $1.9 million in FY 2022, and $2.0 million in FY 2023 and FY 2024.

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 30, 2018.

The following rule-making action is adopted:

Adopt the following new rule 701—40.82(422,541B):

701—40.82(422,541B) First-time homebuyer savings accounts.

40.82(1) Definitions. Definitions that apply to the first-time homebuyer savings account program may be found in Iowa Code section 541B.2.

40.82(2) Establishing an account.

a. Account holders.

(1) A first-time homebuyer savings account holder must be an individual or married couple.

(2) Any individual may establish a first-time homebuyer savings account by opening an account that meets the requirements provided in this rule.

(3) A married couple who files a joint Iowa income tax return may establish a joint first-time homebuyer savings account by opening a joint savings account that meets the requirements provided in this rule. Married couples who file separately or separately on a combined return for Iowa income tax purposes may not establish a joint first-time homebuyer savings account.

(4) There is no limit on the number of first-time homebuyer savings accounts that any account holder may open. However, account holders are subject to other restrictions under the Iowa Code and these rules, including but not limited to the annual contribution limits and aggregate lifetime limits in paragraph 40.82(4)”c.”

(5) No account holder may open or hold more than one account for the same designated beneficiary.

(6) The account holder may change the designated beneficiary of the account at any time.

b. Beneficiaries.

(1) In order to be a designated beneficiary of a first-time homebuyer savings account, an individual must:

1. Be a resident of Iowa, as defined in Iowa Code section 422.4,

2. Not own, either individually or jointly, any single-family or multifamily residence, and

3. Not have owned or purchased, individually or jointly, any single-family or multifamily residence at any time in the three years immediately prior to both:

   ● The date on which the individual is designated the beneficiary of a first-time homebuyer savings account, and
   ● The date of the qualified home purchase for which the eligible home costs are paid or reimbursed from the first-time homebuyer savings account.

(2) The designated beneficiary may also be the account holder.

(3) Each account shall have only one designated beneficiary.

(4) The account holder must designate a beneficiary, on forms provided by the department, by April 30 of the year immediately following the tax year in which the account holder opened the account.
c. **Account requirements.** To qualify as a first-time homebuyer savings account, the account must be:

(1) An interest-bearing savings account meeting the qualifications for a “savings deposit” under 12 CFR 204.2(d),

(2) At a state or federally chartered bank, savings and loan association, credit union, or trust company in Iowa, and

(3) Used exclusively as a first-time homebuyer savings account, in compliance with the requirements of this rule.

**40.82(3) Maintaining the account.**

a. **Contributing to the account.**

(1) Any person may make cash contributions to a first-time homebuyer savings account. Cash contributions may be made by people other than the account holder or the beneficiary. However, only the account holder may claim a deduction for contributing to a first-time homebuyer savings account, as described in subrule 40.82(4).

(2) There is no limit on the amount of contributions that may be made to or retained in a first-time homebuyer savings account. However, there are restrictions on the amounts that can be deducted for Iowa income tax purposes, as described in subrule 40.82(4).

b. **Documenting transactions.**

(1) Annual reports. For each tax year beginning with the tax year in which the first-time homebuyer savings account is established, the account holder must submit a report to the department showing all account activity during the tax year. The report shall be included with the taxpayer’s Iowa individual income tax return and must show the account number of, all deposits into, and withdrawals from, the first-time homebuyer savings account, along with any other information required by the forms provided by the department.

(2) Withdrawal reports. All withdrawals must be reported, on forms provided by the department, within 90 days of the date of the withdrawal or, for withdrawals made less than 90 days before an account holder files an income tax return with the department, no later than the date the return is filed. Account holders must report both withdrawals for eligible home costs and any nonqualifying withdrawals. Any withdrawal that appears on the annual report but that is not properly reported at the time it is made shall be deemed to be a nonqualifying withdrawal that must be added back on the account holder’s Iowa income tax return for the tax year in which the withdrawal was made.

(3) Account fees. Fees and charges for the maintenance of the account that are deducted from the account by the financial institution in which the first-time homebuyer savings account is held shall not be considered withdrawals for the purposes of the reporting requirements described in paragraph 40.82(3)”b.”

c. **Nonqualifying withdrawals.** Funds may be withdrawn from a first-time homebuyer savings account at any time. However, once any nonqualifying withdrawal, as defined in subparagraph 40.82(5)”a”(2), is made, the account holder may no longer claim the Iowa income tax benefits related to the first-time homebuyer savings account described in subrule 40.82(4). Furthermore, any nonqualifying withdrawal shall also result in an addition to income and penalty as described in subrule 40.82(5).

d. **Ten-year limitation.** An account shall not remain designated a first-time homebuyer savings account for more than ten years, beginning with the year in which the account was first opened. Any funds remaining in the account on January 1 of the tenth calendar year following the year in which the account holder first opened the account shall be deemed immediately withdrawn and may be subject to Iowa income taxes and penalties as described in subrule 40.82(5). The account holder has no obligation to close the account, but as of January 1 of the tenth calendar year after the year in which the account was opened, the account will no longer be a first-time homebuyer savings account entitled to the Iowa income tax benefits described in this rule. A change in the designated beneficiary of the account does not extend the ten-year period in which the account holder may maintain a first-time homebuyer savings account; the period still runs from the year the account was first opened.
e. Exclusively first-time homebuyer account. For an account to qualify as a first-time homebuyer savings account, the account holder shall use the account exclusively as a first-time homebuyer savings account consistent with these rules.

40.82(4) Deductions.

a. Deduction for contributions. Any funds contributed to the first-time homebuyer savings account by the account holder during the tax year may be deducted from the account holder’s net income on the account holder’s Iowa individual income tax return for that year, subject to the limitations described in paragraph 40.82(4)“c.” Although anyone may contribute funds to the first-time homebuyer savings account, only the account holder may claim the deduction, and the deduction may be claimed only for amounts the account holder personally contributed.

b. Deduction for interest. To the extent that any interest earned on the funds in a first-time homebuyer savings account is included in the account holder’s Iowa income for a tax year, the amount of that interest may be deducted from the account holder’s net income on the account holder’s Iowa individual income tax return for that tax year, subject to the lifetime limitation described in subparagraph 40.82(4)“c”(2).

c. Limitations.

(1) Annual limitation. The deduction described in paragraph 40.82(4)“a” is subject to the limitations described in paragraphs “1” and “2” below. These limitations apply to the total contributions that the account holder makes to all first-time homebuyer savings accounts owned by the account holder:

1. Joint first-time homebuyer savings account holders. For married couples who are joint first-time homebuyer savings account holders, the deduction is limited to $4,000 per year, adjusted annually for inflation.

2. For all other taxpayers who are first-time homebuyer savings account holders, the deduction is limited to $2,000 per year, adjusted annually for inflation.

(2) Lifetime limitation. Account holders are subject to an aggregate lifetime limit on the deductions described in paragraphs 40.82(4)“a” and “b.” No account holder may take total deductions under this program in excess of the lifetime limitation in place for the tax year in which the account holder first opens a first-time homebuyer savings account. The applicable lifetime limit imposed upon taxpayers opening an account in a given year is calculated annually by multiplying the annual limit in effect for that year by 10.

(3) Annual publication of limitations. Each year, the department shall publish the annual contribution limit as indexed for inflation and the lifetime limit applicable to account holders who open accounts during that year.

40.82(5) Additions to income.

a. Nonqualifying withdrawals.

(1) Addition to income. If there is any nonqualifying withdrawal, as defined in subparagraph 40.82(5)“a”(2), during the tax year, the account holder must add to the account holder’s Iowa net income for that year the full amount of the nonqualifying withdrawal, to the extent such income was previously deducted under paragraph 40.82(4)“a.” Any nonqualifying withdrawal also makes the account holder ineligible to claim any further deductions described in subrule 40.82(4) in any future tax year.

(2) Nonqualifying withdrawal defined.

1. Any withdrawal from a first-time homebuyer savings account for any purpose other than the payment or reimbursement of the designated beneficiary’s eligible home costs in connection with a qualified home purchase is a nonqualifying withdrawal. A nonqualifying withdrawal includes but is not limited to a withdrawal caused by the death of the account holder and withdrawal made pursuant to garnishment, levy, bankruptcy order, or any other order. If a nonqualifying withdrawal occurs, the account holder cannot cure the nonqualifying withdrawal by returning funds to the account.

2. A withdrawal shall be presumed to be a nonqualifying withdrawal unless:

- Ownership of the qualifying home which the funds from the account are used to purchase passes to the designated beneficiary within 60 days of the date the funds are withdrawn, and
- The designated beneficiary actually occupies the home as the designated beneficiary’s primary residence within 90 days of the date the funds are withdrawn.
3. Notwithstanding subparagraph 40.82(5)“a”(2), any amount transferred between different first-time homebuyer savings accounts of the same account holder by a person other than the account holder shall not be considered a nonqualifying withdrawal.

b. Unused funds. Any amount remaining in a first-time homebuyer savings account on January 1 of the tenth calendar year after the calendar year in which the account holder first opened any first-time homebuyer savings account shall be considered immediately withdrawn. This remaining amount shall be subject to the add-back described in paragraph 40.82(5)“a.”

c. Penalties. For any amount considered a withdrawal required to be added to net income pursuant to this subrule, the account holder shall be assessed a penalty equal to 10 percent of the amount of the withdrawal. The penalty shall not apply to withdrawals made by reason of the death of the account holder or to withdrawals made pursuant to a garnishment, levy, or other order, including but not limited to an order in bankruptcy following a filing for protection under the federal Bankruptcy Code, 11 U.S.C. §101 et seq.

d. Examples.

EXAMPLE 1: Taxpayer eligible for the deduction; no addition to income or penalty from nonqualifying withdrawal. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form to the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes $1,000 to the first-time homebuyer savings account. A contributes $1,000 per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. In 2021, after A contributed $1,000 to the first-time homebuyer savings account, Z made a qualified home purchase. A withdrew the entire balance of the first-time homebuyer savings account and applied the amount to eligible home costs. Within 90 days of withdrawing the funds, A submitted the required withdrawal report and the necessary supporting documentation to the department.

Result: A is allowed to deduct from net income the amount of the contributions generated from the first-time homebuyer account, since the yearly contributions are below the annual limits. A is allowed to deduct $1,000 each year from A’s 2018, 2019, 2020, and 2021 net income. Additionally, A is allowed to deduct income from interest generated from the account each year. A does not have any addition to net income or any penalties associated with the withdrawal or usage of the funds.

EXAMPLE 2: Nonqualifying withdrawal of entire account due to voluntary withdrawal by A. Assume the same facts as Example 1. However, rather than making a qualified withdrawal, in 2021, A withdraws the entire balance of the first-time homebuyer savings account and pays for Z’s college tuition.

Result: The withdrawal is a nonqualified withdrawal. Any withdrawal that is not for eligible home costs is a nonqualified withdrawal. A’s nonqualified withdrawal has three results. First, the amount of the nonqualified withdrawal is added back to the account holder’s net income for the tax year in which the nonqualified withdrawal occurred. In this example, A’s 2021 net income would increase by the amount of the contributions that A previously deducted. (See Iowa Code section 422.7(41)“c”(1).) Second, A will be assessed a penalty equal to 10 percent of the total contributions that A previously deducted. (See Iowa Code section 422.7(41)“d.”) Third, A will no longer be able to claim the first-time homebuyer deduction in any future tax years. (See Iowa Code section 422.7(41)“b”(2)(b).) A is barred from claiming the first-time homebuyer deduction in the future, even if A attempts to open a first-time homebuyer account for a different beneficiary in a different tax year.

EXAMPLE 3: Nonqualifying withdrawal of entire account by legal process. Assume the same facts as Example 1. However, rather than a qualifying withdrawal occurring, in 2021, a creditor levies the entire balance of the first-time homebuyer account in order to satisfy A’s debt to the creditor.

Result: The levy is a nonqualified withdrawal. Any withdrawal, including a withdrawal that is caused by a legal process not initiated by A, that is not for a qualified home purchase is a nonqualified withdrawal. Example 3 has the same result as Example 2, except in Example 3, A does not incur a 10 percent penalty because the withdrawal was due to a levy. (See Iowa Code section 422.7(41)“d.”)
EXAMPLE 4: Nonqualifying withdrawal of a partial balance of a first-time homebuyer savings account. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form with the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes $1,000 to the first-time homebuyer savings account. A contributes $1,000 per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. After making the $1,000 deposit for 2021, A has a total of $4,100 in the first-time homebuyer savings account. In 2022, A withdraws $1,000 from the account in order to pay for personal expenses.

Result: The $1,000 withdrawal is a nonqualifying withdrawal. A must file a withdrawal report with the department within 90 days of the withdrawal. A withdrawal report is required for both qualifying and nonqualifying withdrawals. The $1,000 withdrawal will result in the addition of $1,000 to A’s 2022 net income. A will also be assessed a $100 penalty. The balance of the first-time homebuyer account is $3,100. Subject to the ten-year limitation and the other requirements of the deduction, A may use the remaining $3,100 for Z’s eligible home costs prior to January 1, 2028. If A does so, A will not have the $3,000 added back to A’s net income or face any penalties associated with the $3,000 eligible home costs. Regardless of what occurs with the remaining $3,100, A will be prohibited from claiming the first-time homebuyer deduction for any period after the date of the nonqualified withdrawal. This is true even if A attempts to repay the $1,000 withdrawal or if A attempts to open any other first-time homebuyer accounts.

EXAMPLE 5: No withdrawals made within ten years of opening the account. A is an individual. In March of 2018, A creates a new interest-bearing savings account with a financial institution. A completes all of the necessary paperwork and designates Z as the beneficiary of the account. In 2018, and in each subsequent year, A contributes $1,000 to the first-time homebuyer savings account. On December 31, 2027, A has made a total of $10,000 dollars in contributions to the account, has taken a deduction for each contribution, and has made no withdrawals from the account. On January 1, 2028, Z still has not purchased a qualifying home.

Result: As of January 1, 2028, the account is no longer a first-time homebuyer savings account, and the entire account balance is deemed to have been withdrawn in a nonqualifying withdrawal. A is required to report the entire $10,000 previously deducted for contributions to the account as income in tax year 2028 and pay a $1,000 penalty for the nonqualifying withdrawal. A can no longer open a new first-time homebuyer savings account or take any deductions for contributions made to another account under the program.

EXAMPLE 6: Divorce between taxpayers with a joint account. A and B are a married couple who file a joint Iowa income tax return. In 2018, A and B open a joint savings account and take the necessary steps to designate it as a joint first-time homebuyer savings account. In 2018, A and B contribute $2,000 to the account and deduct the full amount on their joint Iowa income tax return for 2018. They contribute the same amount, file joint returns, and deduct the full amount in tax years 2019, 2020, and 2021. In 2022, A and B divorce. The divorce decree divides the funds in the account evenly between A and B.

Result: In this situation, when the funds from the account are distributed between A and B, the entire withdrawal is deemed to be a nonqualifying withdrawal, and A and B are jointly and severally liable for the payment of the tax and penalty due on the entire amount that they previously deducted for contributions to the first-time homebuyer savings account.

Alternative result: A and B can avoid this result by taking some steps before the divorce decree is entered. Prior to the divorce decree, A and B can each open a new first-time homebuyer savings account individually. As long as the divorce decree orders that funds from the original joint first-time homebuyer savings account be transferred to A’s and B’s new individual accounts, the funds may be transferred without triggering a nonqualifying withdrawal, A and B will not be subject to taxes or penalties on their previous contributions to the account, and each will still be eligible to take deductions for contributions to their new accounts, subject to the applicable limitations. In this scenario, the transfer must occur
as a direct result of a court order; if A or B transfers funds themselves, the transfer is deemed to be a nonqualifying withdrawal.

Even if the funds in A and B’s original joint account are successfully transferred without triggering a nonqualifying withdrawal as described above, both A and B will still be jointly and severally liable for any tax or penalty due on any nonqualifying withdrawal that either makes later, up to the amount they deducted on their joint returns prior to the divorce.

Example 7: Death of the account holder. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form to the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes $1,000 to the first-time homebuyer savings account. A makes $1,000 contributions per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. In 2022, A dies without having withdrawn any funds from the account either for a qualifying home purchase for Z or for any other reason.

Result: All of the funds in the account are deemed immediately withdrawn at the time of A’s death. Because this is a nonqualifying withdrawal, the $4,000 in contributions which A previously deducted must be included as income on A’s final return. However, because the reason for the deemed withdrawal was A’s death, the 10 percent penalty is not included on A’s final return.

This rule is intended to implement Iowa Code section 422.7 and chapter 541B.

[Filed 4/5/18, effective 5/30/18]

[Published 4/25/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/25/18.

ARC 3771C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to grounds for protest of property tax assessment


Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

This rule making updates the grounds for protests of property tax assessments to reflect the changes made in 2017 Iowa Acts, chapter 151 (House File 478). House File 478 removed requirements for the various grounds for protest, required that the Director of Revenue prescribe forms for the filing of a protest, and added misconduct as a ground for protest.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as ARC 3620C. 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 21, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, 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 30, 2018.

The following rule-making actions are adopted:

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

71.20(4) Appeals to boards of review:

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

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

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

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

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

b. Grounds for protest. Taxpayers may protest to a board of review on one or more of the grounds specified in Iowa Code section 441.37. The grounds for protest and procedures for considering protests are as follows:
(1) The assessment is not equitable when compared with those of similar properties in the same assessing taxing district. If this ground is a basis for the protest, the protest must contain the legal descriptions and assessments of the comparable properties. The comparable properties selected by the taxpayer must be located within the same assessing district as the property for which the protest has been filed (Maytag Co. v. Partridge, 210 N.W.2d 584 (Iowa 1973)). If this ground is a basis for the protest, the protestor must identify comparable properties to support the claim. In considering a protest based upon this ground, the board of review should examine carefully all information used to determine the assessment of the subject property and the, consider any comparable properties, and determine that those properties are indeed comparable to the subject property whether the evidence demonstrates the subject property is inequitably assessed. It is the responsibility of the taxpayer to establish that the other properties submitted are comparable to the subject property and that inequalities exist in the assessments. (Chicago & N. W. Ry. Co. v. Iowa State Tax Commission, 257 Iowa 1359, 137 N.W.2d 246 (1965)).

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

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

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

A board of review must determine:
1. If an error exists, and
2. How the error might be corrected.

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

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

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

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

Records when of shall be known, the assessment has been made pursuant to the provisions of Iowa Code section 441.37A and rule 701—126.1(421.441).

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

71.21(8) Scope of review. The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from.

a. For assessment years prior to January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.

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

[Filed 3/28/18, effective 5/30/18]

[Published 4/25/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/25/18.

ARC 3772C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rule making related to employer registration penalties

The Director of the Department of Workforce Development hereby amends Chapter 22, “Employer Records and Reports,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

This amendment rescinds subrule 22.9(3) to address a previous amendment that the Department has determined should be pursued through legislation rather than rule making. The previous amendment was adopted and filed in error, and at its January 5, 2018, meeting the Administrative Rules Review Committee imposed a session delay on the effective date of this amendment to allow this rescission to be made prior to the adjournment of the 2018 Legislative Session.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as ARC 3658C. ARC 3658C was reviewed by the Administrative Rules Review Committee at its meeting held on March 9, 2018. No questions or comments were received from Committee members. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Director of the Department of Workforce Development on April 5, 2018.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 30, 2018.

The following rule-making action is adopted:

Rescind and reserve subrule 22.9(3).

[Filed 4/5/18, effective 5/30/18]
[Published 4/25/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/25/18.
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<td>1.2(3)</td>
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