



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2016

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, May 6, 2016	May 25, 2016
25	Wednesday, May 18, 2016	June 8, 2016
26	Friday, June 3, 2016	June 22, 2016

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, May 10, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Women, infants, and children/farmers' market nutrition program and seniors farmers' market
 nutrition program, amendments to ch 50 Notice **ARC 2486C** 4/13/16
 Remediation of agrichemical sites, rescind ch 51 Notice **ARC 2495C** 4/13/16
 Method for disposal of deceased animals affected by glanders, 64.11 Notice **ARC 2517C** 4/27/16

ECONOMIC DEVELOPMENT AUTHORITY[261]

Entrepreneur investment awards program, 102.1 to 102.6, 102.7(1) Filed **ARC 2501C** 4/27/16

EDUCATION DEPARTMENT[281]

Standards for teacher intern preparation programs, amendments to ch 77 Notice **ARC 2509C** 4/27/16

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

NPDES and Iowa operation permits for wastewater, amendments to chs 60, 62 to 64, 67
Filed **ARC 2482C** 4/13/16
 Animal feeding operations, amendments to ch 65 Notice **ARC 2496C** 4/13/16

HUMAN SERVICES DEPARTMENT[441]

Increase in average statewide private-pay cost of nursing facility services and of charges for
 institutional care, 75.23(3), 75.24(3)"b" Notice **ARC 2505C** 4/27/16
 Record check evaluations for certain employers and educational training programs—deferred
 judgment, 119.1, 119.2(1) Notice **ARC 2504C** 4/27/16

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Pharmacy benefits managers, amendments to ch 59 Filed **ARC 2518C** 4/27/16

IOWA FINANCE AUTHORITY[265]

Title guaranty division, 9.1 to 9.22 Filed **ARC 2506C** 4/27/16

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Federal occupational safety and health standards—adoption by reference, 10.20, 26.1
Notice **ARC 2516C** 4/27/16
 Hazardous chemical inventory, amend 130.10(3), 140.8(3); rescind 130.11, 130.12, 140.9
Filed **ARC 2488C** 4/13/16
 Employer requirements relating to non-English speaking employees, 160.1, 160.3, 160.4,
 160.7(1), 160.8, 160.9, 160.10(1) Filed **ARC 2489C** 4/13/16

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EDUCATION DEPARTMENT[281]"umbrella"

Organization and operation—updates, 1.3 to 1.6, 1.7(5) Notice **ARC 2510C** 4/27/16
 Update of state library address, 2.3(1) Notice **ARC 2511C** 4/27/16
 ICN classroom policy, rescind ch 4 Notice **ARC 2515C** 4/27/16
 Internet use policy, 7.1 to 7.6 Notice **ARC 2514C** 4/27/16
 Iowa regional library system; library service area boards of trustees, rescind chs 8, 9
Notice **ARC 2513C** 4/27/16

MANAGEMENT DEPARTMENT[541]

Contract compliance, rescind ch 4 Filed **ARC 2500C** 4/27/16

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Prescribing epinephrine auto-injectors in the name of a facility, 7.1, 7.3 Filed **ARC 2502C** 4/27/16

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Electronic transmission of a prescription, 21.8(4) Notice **ARC 2498C** 4/13/16

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Massage therapists—licensure, continuing education, amendments to chs 131, 133
Notice **ARC 2503C** 4/27/16
- Physical therapists and physical therapy assistants—disability-related accommodation for
 licensure examination, 200.4(5) Filed **ARC 2481C** 4/13/16

PUBLIC SAFETY DEPARTMENT[661]

- Fire code provisions—adoption by reference, amendments to chs 200 to 202, 210 Filed **ARC 2494C** 4/13/16
- State building code—adoption by reference of certain provisions of 2015 International
 Building Code (IBC), amendments to chs 300 to 302, 315 Filed **ARC 2492C** 4/13/16
- State historic building code—adoption of International Existing Building Code by reference,
 350.1 Filed **ARC 2493C** 4/13/16

REVENUE DEPARTMENT[701]

- Dissolution of state board of tax review; appeals; duties of director and department, rescind
 chs 1, 2; amend chs 6, 7, 10, 11, 67, 71, 73, 76, 77, 81, 85, 103 Notice **ARC 2519C** 4/27/16
- Withholding of or exemption from taxation—bingo prizes, raffle tickets, 46.1(1)"e," 231.9
Filed **ARC 2512C** 4/27/16
- Property tax assessments and equalization—notice to taxpayers, updating of dates for filing a
 protest, 71.20(3)"c," 71.20(4)"a" Notice **ARC 2520C** 4/27/16
- Disabled veteran tax credit, 80.1(3) Filed **ARC 2507C** 4/27/16
- Business property tax credit, 80.30 Filed **ARC 2508C** 4/27/16

SECRETARY OF STATE[721]

- Voter registration in state agencies—national voter registration Act compliance, 23.3 to 23.6,
 23.10 Filed **ARC 2490C** 4/13/16

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

- Confidential records—exception relating to security procedures or emergency preparedness,
 2.13(2) Filed **Emergency After Notice** **ARC 2497C** 4/13/16

TRANSPORTATION DEPARTMENT[761]

- Adopt-a-highway program—sponsor compliance with nondiscrimination laws, 121.4(3)
Notice **ARC 2487C** 4/13/16

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Natural gas and electric safety standards—updates and corrections, amendments to chs 10,
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VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

- Honor guard services, 14.4(11) Filed **ARC 2491C** 4/13/16

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

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Representative Lisa Heddens
2401 Westwind Drive
Ames, Iowa 50010

Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

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

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

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

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

EDUCATION DEPARTMENT[281]

Standards for teacher intern preparation programs, amendments to ch 77 IAB 4/27/16 ARC 2509C	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa	May 17, 2016 9 a.m. to 10 a.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Animal feeding operations, amendments to ch 65 IAB 4/13/16 ARC 2496C	Roosevelt Room, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	May 23, 2016 10 a.m.
	Downstairs Meeting Room Carroll County Courthouse 114 E. 6th St. Carroll, Iowa	May 24, 2016 10 a.m.
	Boardroom Clay County Administration Bldg. 300 W. 4th St. Spencer, Iowa	May 25, 2016 10 a.m.
	Muse-Norris Conference Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	May 26, 2016 10 a.m.
	Education Center, Marr Park Washington County Conservation Board 2943 Highway 92 Ainsworth, Iowa	May 31, 2016 10 a.m.
	Room 115, Dairy Center Northeast Iowa Community College 1527 Highway 150 South Calmar, Iowa	June 3, 2016 10 a.m.

LABOR SERVICES DIVISION[875]

Federal occupational safety and health standards—adoption by reference, 10.20, 26.1 IAB 4/27/16 ARC 2516C	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	May 18, 2016 10 a.m. (If requested)
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PROFESSIONAL LICENSURE DIVISION[645]

Massage therapists—licensure, continuing education, amendments to chs 131, 133 IAB 4/27/16 ARC 2503C	Fifth Floor Conference Room 526 Lucas State Office Building Des Moines, Iowa	May 18, 2016 9 a.m. to 10 a.m.
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TRANSPORTATION DEPARTMENT[761]

Adopt-a-highway program—sponsor compliance with nondiscrimination laws, 121.4(3) IAB 4/13/16 ARC 2487C	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	May 6, 2016 10 a.m. (If requested)
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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 2517C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 163.1(1), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 64, “Infectious and Contagious Diseases,” Iowa Administrative Code.

The proposed amendment provides that the Department will determine the disposal method for an animal affected with glanders instead of requiring immediate burning.

Any interested persons may make written suggestions or comments on the proposed amendment on or before May 17, 2016. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

This proposed amendment is subject to the Department’s general waiver provisions.

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

This amendment is intended to implement Iowa Code section 163.1.

The following amendment is proposed.

Amend rule 21—64.11(163) as follows:

21—64.11(163) Disposal of diseased animal. Whenever any animal affected with glanders dies or is destroyed the carcass of such animal shall be ~~burned immediately~~ disposed of as determined by the department.

As glanders is transmissible to human beings great care must be exercised in handling diseased animals or carcasses.

This rule is intended to implement Iowa Code section 163.1.

ARC 2509C

EDUCATION DEPARTMENT[281]**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 77, “Standards for Teacher Intern Preparation Programs,” Iowa Administrative Code.

Chapter 77 outlines the standards and program requirements that all alternative licensure educator preparation programs must meet in order to be accredited to prepare educators in Iowa. Compliance with these standards is required and evaluated during each educator preparation program’s accreditation review. The standards are also applied in an annual reporting system. The current standards are in need of updating to remain current with research-based best practices in educator preparation, accountability and continuous program improvement. A team of 12 Iowa educators, Department of Education staff, and

EDUCATION DEPARTMENT[281](cont'd)

Board of Educational Examiners staff developed the changes proposed in this Notice. A second team of 12 Iowa educators reviewed the proposed changes and provided feedback, which was incorporated into the submission. The proposed changes were vetted by educators and policy experts in Iowa and across the United States.

By statute, no waiver of these rules is permitted (Iowa Code section 256.7(3)).

Interested individuals may make written comments on the proposed amendments until 4:30 p.m. on May 17, 2015. Comments on the proposed amendments should be directed to Nicole Proesch, Administrative Rules Co-Coordinator, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; e-mail nicole.proesch@iowa.gov; or fax (515)242-5988.

A public hearing will be held on May 17, 2016, from 9 to 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of their specific needs by calling (515)281-5295.

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

These amendments are intended to implement Iowa Code chapter 256.

The following amendments are proposed.

ITEM 1. Amend rule 281—77.2(256) as follows:

281—77.2(256) Definitions. For purposes of clarity, the following definitions are used throughout the chapter:

“*AEA*” means area education agency.

“*BOEE*” means the board of educational examiners, the board responsible for establishing licensure requirements and issuing licenses.

“*Clinical experiences*” means a candidate’s direct experiences in PK-12 schools. “*Clinical experiences*” includes field experiences and internships.

“*Cooperating teachers*” means classroom teachers who provide guidance and supervision to teacher candidates during the candidates’ field experiences in the schools.

“*Department*” means the department of education.

“*Director*” means the director of education.

“*Diverse groups*” means one or more groups of individuals possessing certain traits or characteristics, including but not limited to age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status.

“*Educator preparation program*” is a synonym for practitioner preparation program.

“*ELPS*” means Educational Leadership Policy Standards, the national standards for educational administration.

“*Institution*” means a four-year college or university in Iowa offering teacher intern preparation and seeking state board approval of its teacher intern preparation program.

“*INTASC InTASC*” means the Interstate New Teacher Assessment and Support Consortium, the source of national standards for beginning teachers.

“*Intern*” means an individual who is enrolled in a teacher intern preparation program leading to teacher intern licensure and is currently employed as an intern by an Iowa school district.

“*Iowa teaching standards*” represents a set of knowledge and skills that reflects the best evidence available regarding effective teaching as listed in rule 281—83.4(284). The standards shall serve as the basis for comprehensive evaluations of teachers and as a basis for professional development plans.

“*Mentor*” means an individual, employed by a school district or area education agency as a classroom teacher, or a retired teacher, who holds a valid license issued under Iowa Code chapter 272. The individual must have a record of four years of successful teaching practice with at least two of the four years on a nonprobationary basis and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers or teacher interns.

EDUCATION DEPARTMENT[281](cont'd)

“Practitioner” means a teacher, administrator, or other school personnel holding a license issued by the board of educational examiners.

“Program” means the program for teacher intern preparation at colleges and universities leading to licensure of teacher interns.

“School district” means a school corporation as defined in Iowa Code chapter 290. A school district is also referred to as a “local education agency” or “LEA.”

“State board” means the state board of education.

“Teacher intern candidate” means an individual who is enrolled in a teacher intern preparation program leading to teacher intern licensure and who has not yet begun employment as an intern.

“Teacher intern preparation program” means the program for teacher intern preparation at colleges and universities leading to licensure of teacher interns.

“Unit” means the organizational entity within an institution with the responsibility of administering the teacher intern preparation program.

ITEM 2. Amend rule 281—77.4(256) as follows:

281—77.4(256) Criteria for Iowa teacher intern preparation programs. Each institution seeking approval of its ~~program of~~ teacher intern preparation program shall file evidence of the extent to which it ~~the program~~ meets the standards contained in this chapter by means of a written self-evaluation report and an evaluation conducted by the department. ~~For institutions not already offering practitioner preparation programs approved by the state board, the evaluation process shall include a site visit by representatives of the department and additional documentation as needed.~~ No waiver of the criteria or standards in this chapter shall be permitted. After the state board has approved the teacher intern preparation program filed by an institution, teacher intern candidates who complete the program and are recommended by the authorized official of that institution will be issued the appropriate license and endorsement(s).

ITEM 3. Rescind rule 281—77.5(256) and adopt the following new rule in lieu thereof:

281—77.5(256) Approval of programs. For initial approval of a program, institutions shall submit written documentation of the teacher intern preparation program’s compliance with the standards in rules 281—77.8(256) through 281—77.11(256). The evaluation process shall include a site visit by representatives of the department and additional documentation as needed. Approval by the state board of the institutions’ teacher intern preparation programs shall be based on the recommendation of the director after study of the factual and evaluative evidence on record about each program in terms of the standards contained in this chapter. Approval, if granted, shall cover the period of time between initial approval and the institution’s next regularly scheduled state review under rules 281—79.5(256) and 281—79.6(256). After the initial approval period, approval of the teacher intern preparation program will be included as part of the institution’s reapplication for approval of its entire practitioner preparation program. Approval, if granted to institutions offering only teacher intern preparation programs, shall be for a term of seven years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

If approval is not granted, the applying institutions will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the institutions shall be given the opportunity to present factual information concerning their program at a regularly scheduled meeting of the state board, not beyond three months of the board’s initial decision. Following a minimum of six months after the board’s decision to deny approval, the institution may reapply when it is ready to show what actions have been taken to address the areas required for improvement.

A program may be granted conditional approval upon review of appropriate documentation. In such an instance, the program shall receive a full review after one year or, in the case of a new program, at the point at which candidates demonstrate mastery of standards for licensure.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 4. Rescind rule 281—77.8(256) and adopt the following **new** rule and heading in lieu thereof:

TEACHER INTERN PREPARATION PROGRAM STANDARDS

281—77.8(256) Governance and resources standard. Governance and resources adequately support the preparation of teacher intern candidates to meet professional, state and institutional standards. As a component of the program, the institution shall work collaboratively with the local school district(s) or AEA.

77.8(1) The institution shall have a clearly understood governance structure that serves as a basis to provide guidance and support for the teacher intern preparation program.

77.8(2) The institution's responsibilities shall include but not be limited to:

- a. Establishing a teacher intern leadership team that will provide oversight of the program;
- b. Providing appropriate resources to ensure a quality program;
- c. Submitting a recommendation by the authorized official of the program to the BOEE for a teacher intern license after the teacher intern candidate's completion of the coursework and competencies as outlined in the program of study in subrule 77.10(3).

77.8(3) The leadership team's responsibilities include:

- a. Establishing the conceptual framework to provide the foundation for all components of the program;
- b. Screening and selecting teacher intern candidates;
- c. Establishing an advisory team to provide guidance to the teacher intern preparation program annually for program evaluation and continuous improvement. The advisory team shall include institutional personnel, including program faculty, and representatives from LEA 5-12 grade level teachers and administrators;
- d. Using program evaluation and continuous improvement to review and monitor the program goals, the program of study, the support system, and the assessment system.

77.8(4) The teacher intern preparation program and LEAs will work collaboratively to provide opportunities for teacher intern candidates to observe and be observed by others and to engage in discussion and reflection on clinical practice.

77.8(5) The LEA will provide the following:

- a. An offer of employment to a teacher intern candidate in the program;
- b. A mentoring and induction program with a district-assigned mentor; and
- c. An assurance that the LEA will not overload the intern with extracurricular duties.

77.8(6) The institution provides resources and support necessary for the delivery of a quality teacher intern preparation program. The resources and support include the following:

- a. Financial resources; facilities; and appropriate educational materials, equipment and library services;
- b. Commitment to a work climate, policies, and faculty/staff assignments that promote/support best practices in teaching, scholarship and service;
- c. Equitable resources and access for all program components regardless of delivery model or location;
- d. Professional development opportunities for all faculty members;
- e. Technological support for instructional needs to enhance candidate learning with instructional technology integrated into classroom experiences;
- f. Quality clinical experiences and evaluations for all educator candidates;
- g. Recruiting and supporting faculty;
- h. Sufficient faculty and administrative, clerical, and technical staff.

77.8(7) The program has a clearly articulated process regarding candidate and intern performance, aligned with the institutional policy, for decisions impacting progress through the program. Program and school district policies for removal and replacement of interns from their internship assignment are clearly communicated to all candidates, school administrators and faculty.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 5. Rescind rule 281—77.9(256) and adopt the following **new** rule in lieu thereof:

281—77.9(256) Faculty standard. Faculty qualifications and performance shall facilitate the professional development of teacher intern candidates in accordance with the following provisions.

77.9(1) The program defines the roles and requirements for faculty members by position. The program describes how roles and requirements are determined.

77.9(2) Faculty members shall have preparation and have had experiences in situations similar to those for which the teacher intern candidates are being prepared.

77.9(3) The program holds faculty members accountable for teaching prowess. This accountability includes evaluation and indicators for continuous improvement.

77.9(4) The program holds faculty members accountable for professional growth to meet the academic needs of the program.

77.9(5) Faculty members shall maintain an ongoing, meaningful involvement in activities in schools at the secondary grade level. Activities of faculty members shall include at least 40 hours of team teaching during a period not to exceed five years in duration at the middle school, junior high school or high school level.

77.9(6) Faculty members collaborate with colleagues in the intern program and colleagues in secondary settings.

77.9(7) All faculty members demonstrate an understanding of the depth, breadth and best practices of the program.

ITEM 6. Rescind rule 281—77.10(256) and adopt the following **new** rule in lieu thereof:

281—77.10(256) Program of study standard. A program's required coursework shall include a minimum of 28 semester hours or equivalent designed to ensure that teacher intern candidates develop the dispositions, knowledge, and performance expectations of the InTASC standards embedded at a level appropriate for a beginning teacher.

77.10(1) Teacher intern candidates shall develop the dispositions, knowledge, and performance expectations of the Iowa teaching standards (aligned with InTASC standards), and the BOEE's Code of Professional Conduct and Ethics at a level appropriate for a beginning teacher.

77.10(2) All components of the program of study must be initiated and completed after the candidate has completed a baccalaureate degree.

77.10(3) Coursework and competencies to be completed prior to the beginning of the candidate's initial employment as an intern include, but are not limited to:

a. Understands how learners grow and develop and implements developmentally appropriate and challenging learning experiences. This aligns with InTASC standard 1.

b. Demonstrates competence in content knowledge appropriate to the teaching position. This aligns with Iowa teaching standard 2 (281—subrule 83.4(2)) and with InTASC standards 4 and 5.

c. Demonstrates competence in classroom management. This aligns with Iowa teaching standard 6 (281—subrule 83.4(6)) and with InTASC standard 3.

d. Demonstrates competence in planning and preparing for instruction. This aligns with Iowa teaching standard 3 (281—subrule 83.4(3)) and with InTASC standard 7.

e. Uses a variety of methods to monitor student learning. This aligns with Iowa teaching standard 5 (281—subrule 83.4(5)) and InTASC standard 6.

77.10(4) Additional coursework and competencies to be completed prior to the recommendation for an initial teaching license shall include but not be limited to:

a. Uses strategies to deliver instruction that meets the multiple learning needs of students. This aligns with Iowa teaching standard 4 (281—subrule 83.4(4)) and with InTASC standards 2 and 8.

b. Engages in professional growth. This aligns with Iowa teaching standard 7 (281—subrule 83.4(7)) and with InTASC standard 9.

c. Contributes to efforts to achieve district and building goals. This aligns with Iowa teaching standard 8 (281—subrule 83.4(8)) and with InTASC standard 10.

EDUCATION DEPARTMENT[281](cont'd)

d. Demonstrates ability to enhance academic performance and support for implementation of the school district student achievement goals. This aligns with Iowa teaching standard 1 (281—subrule 83.4(1)).

77.10(5) Each teacher intern candidate demonstrates knowledge about literacy and receives preparation in literacy. Each candidate also develops and demonstrates the ability to integrate reading strategies into content area coursework.

77.10(6) Each teacher intern candidate effectively demonstrates the ability to integrate technology into instruction to support student learning.

77.10(7) Each teacher intern candidate receives dedicated coursework related to the study of human relations, cultural competency, and diverse learners, such that the candidate is prepared to work with students from diverse groups, as defined in rule 281—77.2(256). The unit shall provide evidence that teacher candidates develop the ability to meet the needs of all learners, including:

- a.* Students from diverse ethnic, racial and socioeconomic backgrounds;
- b.* Students with disabilities;
- c.* Students who are gifted and talented;
- d.* English language learners; and
- e.* Students who may be at risk of not succeeding in school.

77.10(8) Each teacher intern candidate demonstrates knowledge and application of the Iowa core to the teaching and learning process.

77.10(9) Each teacher intern candidate will be engaged in field experiences that include opportunities for both observation of exemplary instruction and involvement in co-planning and co-teaching. Each teacher intern candidate will complete at least 50 hours of field experience prior to the candidate's initial employment as an intern. The institution enters into a written contract with the cooperating school or district providing preinternship field experiences.

77.10(10) The teacher intern preparation program will provide a teacher intern seminar during the teacher internship year to:

- a.* Support and extend coursework from the teacher intern content; and
- b.* Facilitate teacher intern reflection.

77.10(11) Programs shall submit curriculum exhibit sheets for approval by the BOEE and the department.

77.10(12) In accordance with 281—Chapter 83, all interns shall be provided with a district-level mentor in addition to the program supervisor. The purpose of this district-level mentor is to provide coaching feedback dependent on the intern's classroom experience. This district-level mentor shall not serve in an evaluative role. The district-level mentor shall complete specialized training for serving as a mentor as required in rule 281—83.3(284). The program shall coordinate support between the teacher intern candidate's local district mentor and program supervisor.

77.10(13) The program shall provide an orientation for teacher intern candidates. The orientation will include, but not be limited to:

- a.* Program goals and expectations;
- b.* Licensure and ethics requirements;
- c.* Support provided by the program; and
- d.* Support provided by the LEA or AEA.

77.10(14) Teacher intern faculty shall provide teacher intern candidates with academic advising, feedback about their performance throughout the program, and consultation opportunities.

77.10(15) Teacher intern faculty shall provide regular supervision in teacher intern candidates' classrooms with additional supervision and assistance provided as needed.

ITEM 7. Rescind rule 281—77.11(256) and adopt the following **new** rule in lieu thereof:

281—77.11(256) Assessment standard. The teacher intern preparation program shall utilize a clearly defined assessment system based on program standards and include both individual candidate assessment and comprehensive program assessment.

EDUCATION DEPARTMENT[281](cont'd)

77.11(1) The teacher intern assessment system shall be used by the teacher intern preparation program to appropriately monitor individual candidate performance and to evaluate and improve the intern program.

77.11(2) Candidate assessment includes clear criteria for the following:

a. Acceptance into the program (to include testing described in Iowa Code section 256.16). Acceptance requirements include but are not limited to:

(1) Completion of a baccalaureate degree from a regionally accredited institution, meeting program-established required grade point criteria for the baccalaureate degree and content area;

(2) Completion of coursework that meets the state minimum requirements for at least one of the BOEE's secondary endorsement areas; and

(3) Screening designed to generate information about the prospective candidate's attributes identified as essential for candidates in the program.

b. Continuation in the program with clearly defined checkpoints/gates, to include:

(1) For formal admission, a requirement that candidates have successfully passed a preprofessional skills test at the level approved by the program before beginning an internship; and

(2) Verification of an offer of employment as an intern from a school or district administrator.

c. Program completion (to include the assessments described in Iowa Code section 256.16) and subsequent recommendation by the authorized official of the program for an initial teaching license.

77.11(3) Individual candidate assessment includes all of the following:

a. Measures used for candidate assessment are fair, reliable, and valid;

b. Candidates are assessed on their demonstration/attainment of program standards;

c. Multiple measures are used for assessment of the candidate on each program standard;

d. Candidates are assessed on program standards at different developmental stages;

e. Candidates are provided with formative feedback on their progress toward attainment of program standards; and

f. Candidates use the provided formative assessment data to reflect upon and guide their development and growth toward attainment of program standards.

77.11(4) Comprehensive program assessment includes all of the following:

a. Individual candidate assessment data on program standards are analyzed;

b. The aggregated assessment data are analyzed to evaluate the program;

c. Findings from the evaluation of aggregated assessment data are used to make program improvements;

d. Evaluation data are shared with stakeholders; and

e. The collection, aggregation, analysis, and evaluation of assessment data take place on a regular cycle.

77.11(5) The program shall conduct a survey of graduates and their employers to ensure that the graduates are well-prepared, and the data shall be used for program improvement.

77.11(6) The program shall regularly review, evaluate, and revise the assessment system.

77.11(7) The program shall annually report to the department such as is required by the state and federal governments.

ITEM 8. Rescind and reserve rules **281—77.12(256)** to **281—77.15(256)**.

ARC 2505C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments increase the statewide average cost of nursing facility services for 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 cost figure is used to determine a 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 is ineligible for Medicaid payment of long-term care services. 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 freestanding nursing facilities, hospital-based skilled facilities, and special population facilities in Iowa to update the statewide average cost for nursing facilities. The average private-pay cost of nursing facility services is increased from \$5,407.24 to \$5,809.13.

These amendments also update the average charges for nursing facilities, psychiatric medical institutions for children (PMICs), and mental health institutes (MHIs) and the maximum Medicaid rate for intermediate care facilities for the intellectually disabled (ICF/IDs), which 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 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 charge to a private-pay resident of nursing facility care increased from \$4,952 per month to \$5,267 per month.

The average charges for PMICs and MHIs are based on Medicaid rates because Medicaid is the primary payer of these services.

- The average charge for care in a PMIC increased from \$6,556 per month to \$7,999 per month.
- The average charge for care in an MHI increased from \$24,083 per month to \$29,708 per month.

The Iowa Department of Human Services provided the maximum Medicaid rate for care in an ICF/ID.

- The maximum Medicaid rate for ICF/ID increased from \$27,388 per month to \$28,915 per month.

The increases in these amounts will allow a few additional individuals to qualify for medical assistance with MAITs because the amendments increase the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes.

Any interested person may make written comments on the proposed amendments on or before May 17, 2016. 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. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments 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, ~~2015~~ 2016, through June 30, ~~2016~~ 2017, this average statewide cost shall be ~~\$5,407.24~~ \$5,809.13 per month or ~~\$177.87~~ \$191.09 per day.

ITEM 2. Amend paragraph **75.24(3)“b”** 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 633C.1 to 633C.5, the average statewide charges and Medicaid rates for the period from July 1, ~~2015~~ 2016, to June 30, ~~2016~~ 2017, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$4,952~~ \$5,267 per month.

(2) The maximum statewide Medicaid rate for a resident of an intermediate care facility for persons with an intellectual disability is ~~\$27,388~~ \$28,915 per month.

(3) The average statewide charge to a resident of a mental health institute is ~~\$24,083~~ \$29,708 per month.

(4) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is ~~\$6,556~~ \$7,999 per month.

(5) No change.

ARC 2504C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 119, “Record Check Evaluations for Certain Employers and Educational Training Programs,” Iowa Administrative Code.

These amendments add a definition for “deferred judgment” and clarify that deferred judgments will be considered in criminal background checks.

In keeping with case law analysis, the Department evaluates deferred judgments as convictions because the statutes that the Department relies upon to conduct record check evaluations are designed to protect Iowa’s most vulnerable populations. These amendments will assist attorneys who advise clients and judges who consider dispositive options in administrative and criminal venues.

Any interested person may make written comments on the proposed amendments on or before May 17, 2016. 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,

HUMAN SERVICES DEPARTMENT[441](cont'd)

Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

ITEM 1. Adopt the following new definition of “Deferred judgment” in rule **441—119.1(135B,135C)**:

“*Deferred judgment*” means deferred judgment as defined in Iowa Code section 907.1 and is considered an admission of committing an act. Under this chapter, the admission of committing an act must be considered a conviction for purposes of public protection.

ITEM 2. Amend subrule 119.2(1) as follows:

119.2(1) *Record check evaluations on prospective employees and students.* A requesting entity shall request a record check evaluation prior to employment or enrollment of a person whose background check indicates a criminal or dependent adult abuse or child abuse record. Any deferred judgments will be considered in criminal background checks. Criminal, child abuse and dependent adult abuse background checks are required on all prospective employees or students, including employees or students who have terminated employment or participation in a training program for any reason or any length of time and wish to return to the same employment or training program, unless an exemption is provided in these rules.

a. and *b.* No change.

ARC 2516C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), has amended general industry and construction standards concerning respirable crystalline silica, eye and face protection, and work performed near electrical equipment. The Iowa Labor Commissioner must adopt the federal standards by reference.

Federal OSHA made major, substantive changes to the standards for respirable crystalline silica. Respirable crystalline silica causes lung cancer, silicosis, chronic obstructive pulmonary disease, and kidney disease. Standards for silica exposure were adopted in 1971 and have not been changed significantly since. The prior standards are obsolete due to new medical evidence, new sampling techniques, and changing workplaces.

The new federal respirable crystalline silica standards have a five-year implementation schedule, and Iowa will follow the federal schedule.

In other rule making, federal OSHA updated references to current editions of national consensus standards for eye and face protection and corrected errors in prior rule making pertaining to electrical protection standards. Federal OSHA published notice of proposed rule making concerning eye and face

LABOR SERVICES DIVISION[875](cont'd)

protection and received no significant objections. Federal OSHA determined that public notice and opportunity for comment were not required for the corrections to the electrical protection standards.

The principal reasons for adoption of these amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa's regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on May 17, 2016, a public hearing will be held on May 18, 2016, at 10 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than May 18, 2016, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Variance procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the state of Iowa is only implementing the federal regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

These amendments are intended to implement Iowa Code section 88.5 and 29 CFR 1953.5.

The following amendments are proposed.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

80 Fed. Reg. 60036 (October 5, 2015)

81 Fed. Reg. 16090 (March 25, 2016)

81 Fed. Reg. 16861 (March 25, 2016)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:

80 Fed. Reg. 60039 (October 5, 2015)

81 Fed. Reg. 16092 (March 25, 2016)

81 Fed. Reg. 16875 (March 25, 2016)

ARC 2510C**LIBRARIES AND INFORMATION SERVICES DIVISION[286]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 256.52, the Commission of Libraries hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Operation,” Iowa Administrative Code.

The proposed amendments are intended to provide updates to the Division's administrative rules.

Any interested person may make written comments or suggestions on the proposed amendments on or before Tuesday, May 17, 2016. Written comments and suggestions should be addressed to Michael Scott, State Librarian, Miller State Office Building, 1112 East Grand Avenue, Des Moines, Iowa 50319, or sent by e-mail to michael.scott@lib.state.ia.us or by fax to (515)281-6191.

These amendments are subject to waiver pursuant to 286—Chapter 10.

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

After analysis and review of this rule making, there is no anticipated impact on jobs. These amendments are intended to implement Iowa Code section 256.51. The following amendments are proposed.

ITEM 1. Amend rule 286—1.3(256) as follows:

286—1.3(256) Organization and operation.

1.3(1) Location. The state library is located at ~~East 12th Street and~~ 1112 East Grand Avenue, Des Moines, Iowa 50319; telephone (515)281-4105; fax (515)281-6191. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excepting legal holidays.

1.3(2) Units. The state library consists of ~~seven~~ four units: library development (includes the LSTA Grant Program, public library accreditation, library staff certification, ~~Open Access, Access Plus, Enrich Iowa,~~ continuing education and consulting); information services (includes ~~public policy, the state medical, federal documents,~~ state documents, and ~~patents depository~~ the state documents depository program, special collections, the state law library, and technical services); ~~the state law library; technical services (includes the state documents depository program);~~ the state data center; ~~audiovisual services;~~ and administration.

1.3(3) Commission of libraries. The commission of libraries consists of ~~eight~~ nine members as defined in Iowa Code section 256.52. The commission shall meet at a time and place specified by the chair. Notice of a meeting and the agenda will be posted at the state library at least 24 hours prior to the meeting and shall be mailed to any interested individual or organization upon request. The operation of commission meetings shall be governed by the following procedures:

- a. A quorum shall consist of five members.
- b. Any action taken by the commission requires an affirmative vote by at least five members.
- c. Persons wishing to appear before the commission shall submit a written request to the state librarian not less than 14 days prior to a meeting. Presentations shall be allowed at the discretion of the chair. Persons wishing to submit written material shall do so at least 14 days prior to a meeting so that commission members have adequate time to receive and evaluate the material.
- d. Near the conclusion of each meeting, the chair shall set the date, time and location of the next meeting.

1.3(4) Minutes. ~~Minutes of commission meetings are available for inspection at the state librarian's office during regular business hours. Copies of minutes are available upon request at no charge, allowing for reasonable transcription time. Current and archived minutes of commission meetings can be viewed and copied free of charge at the state library. The current and archived minutes are also accessible on the state library's Web site.~~

ITEM 2. Adopt the following **new** subrule 1.3(5):

1.3(5) Library services advisory panel. The library services advisory panel consists of no fewer than 11 members as defined in Iowa Code section 256.62. The advisory panel shall meet at a time and place specified by the chair. Notice of a meeting and the agenda will be posted at the state library at least 24 hours prior to the meeting and shall be made available to any interested individual or organization upon request.

ITEM 3. Amend rule 286—1.4(256) as follows:

286—1.4(256) Information delivery.

1.4(1) Photocopies of library materials for Iowa residents. The state library will provide library service to any resident of Iowa. To ensure the availability of high-demand library materials for in-house use, the state library may choose not to lend specific library items. In lieu of lending the original item, the library may choose to provide a photocopy of the requested material at a nominal charge of 20 cents per page. ~~Materials may be faxed at a cost of \$2 for the first page and \$1 for each additional page including the cover sheet. Priority delivery services may also be requested by the borrower at additional expense.~~

1.4(2) Photocopies of library materials for nonresidents of Iowa. To encourage interstate resource sharing, the state library may enter into reciprocal free interlibrary loan photocopy agreements with

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

out-of-state libraries. For other out-of-state businesses and residents, the state library will charge the following fees: a \$15 handling fee plus 20 cents per page.

First 10 pages	\$7 minimum
11-20	9
21-30	10
31-50	12
Over 50	12 plus 20¢ per page

~~Materials may be faxed (no more than 20 pages) at a cost of \$2 for the first page and \$1 for each additional page including the cover sheet.~~

~~Priority delivery services may also be requested by the borrower at additional cost to the borrower.~~

~~This rule shall not preclude the state library from participating in interstate library compacts to support reciprocal resource sharing.~~

ITEM 4. Amend rule 286—1.5(256) as follows:

286—1.5(256) Access to library's collections.

1.5(1) The state library's materials collections are housed in the ~~Historical Ola Babcock Miller State Office Building, East 12th Street and 1112 East Grand Avenue, Des Moines, and in the State Capitol Building. Both buildings are listed on the National Register of Historic Places under the National Historic Preservation Act and are accessible to the disabled.~~

1.5(2) Primary research and study areas of the library's two locations are accessible to the disabled; however, upper tiers are generally closed to all public access. Staff may authorize access on a case-by-case basis or will retrieve materials requested by library users.

ITEM 5. Amend rule 286—1.6(256) as follows:

286—1.6(256) Collection policy of the library. ~~Purpose~~ The purpose of this policy is to define the intended coverage and clientele; establish collection management and selection policies; provide staff with the means to ensure consistency, responsiveness, and wise use of funds in collection building; assist in development of performance measures; establish priorities to guide budget allocations and cataloging and preservation decisions; and document the library's commitment to intellectual freedom.

~~SEE: Collection Policy. State Library of Iowa, May 28, 1993 April 2016.~~

ITEM 6. Amend subrule 1.7(5) as follows:

1.7(5) Procedure.

a. The appropriate unit supervisor shall recommend ~~and justify in writing~~ to the state librarian those materials to be deaccessioned.

b. and *c.* No change.

ARC 2511C

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.52, the Commission of Libraries hereby gives Notice of Intended Action to amend Chapter 2, “Public Records and Fair Information Practices,” Iowa Administrative Code.

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

The purpose of the proposed amendment is to update the address of the State Library.

Any interested person may make written comments or suggestions on the proposed amendment on or before Tuesday, May 17, 2016. Written comments and suggestions should be addressed to Michael Scott, State Librarian, Ola Babcock Miller State Office Building, 1112 East Grand Avenue, Des Moines, Iowa 50319, or sent by e-mail to michael.scott@lib.state.ia.us or by fax to (515)281-6191.

This amendment is subject to waiver pursuant to 286—Chapter 10.

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 256.51.

The following amendment is proposed.

Amend subrule 2.3(1) as follows:

2.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “state librarian”. Also in lieu of the words “(insert agency name and address)”, insert “State Librarian, State Library of Iowa, 1112 East 42th Street and Grand Avenue, Des Moines, Iowa 50319”.

ARC 2515C**LIBRARIES AND INFORMATION SERVICES DIVISION[286]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 256.52, the Commission of Libraries hereby gives Notice of Intended Action to rescind Chapter 4, “ICN Classroom Policy,” Iowa Administrative Code.

The rescission of Chapter 4 is proposed because the State Library no longer has an ICN classroom available for use.

Any interested person may make written comments or suggestions on the proposed amendment on or before Tuesday, May 17, 2016. Written comments and suggestions should be addressed to Michael Scott, State Librarian, Ola Babcock Miller State Office Building, 1112 East Grand Avenue, Des Moines, Iowa 50319, or sent by e-mail to michael.scott@lib.state.ia.us or by fax to (515)281-6191.

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 256.51.

The following amendment is proposed.

Rescind and reserve **286—Chapter 4.**

ARC 2514C**LIBRARIES AND INFORMATION SERVICES DIVISION[286]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 256.52, the Commission of Libraries hereby gives Notice of Intended Action to amend Chapter 7, “Internet Use Policy,” Iowa Administrative Code.

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

The proposed amendments are intended to bring the Libraries and Information Services Division into compliance with the Children's Internet Protection Act (Pub. L. No. 106-554 and 47 USC 254(h)) and provide updates to the Division's administrative rules.

Any interested person may make written comments or suggestions on the proposed amendments on or before Tuesday, May 17, 2016. Written comments and suggestions should be addressed to Michael Scott, State Librarian, Ola Babcock Miller State Office Building, 1112 East Grand Avenue, Des Moines, Iowa 50319, or sent by e-mail to michael.scott@lib.state.ia.us or by fax to (515)281-6191.

These amendments are subject to waiver pursuant to 286—Chapter 10.

After analysis and review of this rule making, there is no anticipated impact on jobs.

These amendments are intended to implement Iowa Code section 256.51.

The following amendments are proposed.

ITEM 1. Amend rule 286—7.1(256) as follows:

286—7.1(256) Rights and responsibilities.

7.1(1) The state library expects the use of all its electronic sources such as the Internet to be responsible, ethical, and legal, and consistent with the purpose for which those resources are provided. The state library complies with the Children's Internet Protection Act (Pub. L. No. 106-554 and 47 USC 254(h)). To this end:

a. The state library affirms the right of every individual to have access to constitutionally protected material as stated in the library's collection development policy.

b. Parents or guardians, not the library or its staff, are responsible for the Internet use by their children.

c. Internet access is provided in a public area shared by users of all ages, backgrounds, and sensibilities. Users should consider this when accessing potentially controversial information and images.

d. The state library reserves the right to ask users to discontinue the display of information and images which cause a disruption.

e. Users should respect the privacy of other Internet users by not observing what sites others are accessing.

f. Users will not misrepresent themselves as any other user; will not attempt to modify or gain access to files, passwords, or data belonging to others; will not seek unauthorized access to any computer system, ~~or~~ and will not damage or alter software components of any network or database.

g. Illegal activities subject to prosecution include:

(1) Destruction of or damage to equipment, software, or data belonging to the library;

(2) Violation of computer system security or system configuration;

(3) Violation of the copyright laws of the United States;

(4) Downloading or provision of child pornography or display of pornography where it may be seen by children.

h. To the extent practical, steps shall be taken to promote the safety and security of users of the Internet when they are using electronic mail, chat rooms, instant messaging and other forms of direct electronic communications.

i. Safety and security of minors.

(1) Prevention of inappropriate network usage.

1. Technology measures shall be used to prevent unauthorized access and other unlawful activities.

2. Technology measures shall be used to prevent unauthorized disclosure, use, and dissemination of personal identification information.

(2) Prevention of access to inappropriate material.

1. Technology protection measures, i.e., Internet filters, shall be used to block or filter access to inappropriate material on the Internet.

2. Blocking shall be applied to visual depictions of material deemed obscene, to child pornography, or to any material deemed harmful to minors.

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

3. Technology protection measures may be disabled by library staff for adults or, in the case of minors, minimized for bona fide research or other lawful purposes.

7.1(2) Violation of this computer use policy shall result in the loss of computer privileges and may lead to financial responsibility. Illegal activities will be prosecuted.

ITEM 2. Amend rule 286—7.2(256) as follows:

286—7.2(256) Access to Internet computers.

~~1. **7.2(1)** The Internet is available for any user who visits the state library. Access is on a first-come, first-served basis. Appointments are not accepted, but users are welcome to call ahead to check availability.~~

~~2. **7.2(2)** Internet computers are available for use during the library's normal business hours. Use must be completed 15 minutes prior to the library's closing. The Internet may be unavailable due to unforeseen problems with hardware, software or telecommunications.~~

~~3. **7.2(3)** Users may be asked to log their beginning time at the main desk before using the computer for Internet access. Initial use will be limited to one hour. If no other users are waiting, use time may be extended at the discretion of the librarian on duty. State employees have unlimited Internet use. Non-state employees can use the Internet up to one hour each day.~~

~~4. **7.2(4)** While respecting individual users' right to privacy, state library staff reserves the right to monitor use of Internet workstations to ensure compliance with this policy. Staff may ask users to remove themselves from library equipment if observed behavior is in conflict with this policy.~~

~~5. **7.2(5)** Staff use of computers for research and maintenance may, at times, supersede users' access.~~

ITEM 3. Rescind and reserve rules **286—7.3(256)** and **286—7.4(256)**.

ITEM 4. Amend rule 286—7.5(256) as follows:

~~**286—7.5(256) Downloading and saving files.** Downloading will be allowed only for selected files, such as census data or government documents not available in print format. Such files may be saved only to floppy disk on the A: drive, never to the hard disk. Users must purchase a clean disk from the main desk for downloading. Users cannot use their own disks. Downloaded files cannot be viewed on the state library computers. Users cannot load or read their own disks on the state library computers.~~

~~Downloaded files may contain viruses. The state library is not responsible for damage to a user's computer, or for any loss of data or damage to files on a user's computer as a result of downloaded files. Downloading and saving files to the user's own portable device is allowed. Files saved to the computer's drives are erased at the end of each user's session.~~

ITEM 5. Amend rule 286—7.6(256) as follows:

286—7.6(256) Staff assistance.

~~1. Users are expected to have a basic knowledge of computer use and the Internet. Staff cannot provide in-depth training for users, but will provide information on training classes in the area. An online tutorial will be available for users not familiar with the Internet.~~

~~2. **7.6(1)** State library staff will answer basic questions about Internet use or help locate resources. Internet reference books are available in the library's collection.~~

~~3. **7.6(2)** Staff reserves the right to waive the procedures contained in this document as circumstances warrant.~~

ARC 2513C**LIBRARIES AND INFORMATION SERVICES DIVISION[286]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 256.52, the Commission of Libraries hereby gives Notice of Intended Action to rescind Chapter 8, “Iowa Regional Library System,” and Chapter 9, “Appointment Process for Library Service Area Boards of Trustees,” Iowa Administrative Code.

Chapters 8 and 9 are being rescinded because Iowa Code sections 256.60 and 256.61, which the chapters implement, have been repealed.

Any interested person may make written comments or suggestions on the proposed amendment on or before Tuesday, May 17, 2016. Written comments and suggestions should be addressed to Michael Scott, State Librarian, Ola Babcock Miller State Office Building, 1112 East Grand Avenue, Des Moines, Iowa 50319, or sent by e-mail to michael.scott@lib.state.ia.us or by fax to (515)281-6191.

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement 2011 Iowa Acts, chapter 132, section 66.

The following amendment is proposed.

Rescind and reserve **286—Chapter 8 and Chapter 9.**

ARC 2503C**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 152C.3, the Board of Massage Therapy hereby gives Notice of Intended Action to amend Chapter 131, “Licensure of Massage Therapists,” and Chapter 133, “Continuing Education for Massage Therapists,” Iowa Administrative Code.

These proposed amendments ease regulatory burdens for massage therapists while maintaining continuing education standards that will ensure the ongoing competency of practitioners in the state of Iowa. These amendments will afford the same protection of the health and safety of Iowans as the current regulations and will also reduce the cost of maintaining a massage therapy license.

The proposed amendments reduce biennial continuing education requirements for massage therapists from 24 hours to 16 hours, while requiring a minimum of 8 hours every two years in hands-on massage therapy courses. In addition, the amendments eliminate the confusing “Category A” and “Category B” designations for continuing education courses, which are a common source of questions and are difficult for a number of practicing massage therapists to understand. These amendments also address a reported shortage of quality hands-on continuing education courses in the rural areas of the state by allowing more flexibility in terms of the modalities in which continuing education hours may be obtained.

Any interested person may make written comments on the proposed amendments no later than May 18, 2016, addressed to Tony Alden, Professional Licensure Division, Department of Public Health,

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail tony.alden@idph.iowa.gov; fax (515)281-3121.

A public hearing will be held on May 18, 2016, from 9 to 10 a.m. in the Fifth Floor Conference Room 526, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Waiver provisions pertaining to these administrative rules are contained in Chapter 18.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code sections 152C.3 and 272C.2.

The following amendments are proposed.

ITEM 1. Rescind subrule **131.2(6)**.

ITEM 2. Renumber subrules **131.2(7)** to **131.2(10)** as **131.2(6)** to **131.2(9)**.

ITEM 3. Amend rule 645—131.4(152C), introductory paragraph, as follows:

645—131.4(152C) Examination requirements. The examination required by the board shall be the examination required pursuant to subrule ~~131.2(7)~~ 131.2(6).

ITEM 4. Rescind paragraph **131.5(1)“c.”**

ITEM 5. Reletter paragraphs **131.5(1)“d”** to **“f”** as **131.5(1)“c”** to **“e.”**

ITEM 6. Amend subrule 131.8(3) as follows:

131.8(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—133.2(152C) and the mandatory reporting requirements of subrule 131.8(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date; and

~~*c.* Submit evidence of current certification in CPR.~~

ITEM 7. Amend subparagraph **131.14(3)“a”(2)** as follows:

(2) Verification of completion of ~~12 hours of continuing education within two years of application for reactivation or, beginning August 15, 2006, for a licensee whose license is inactive, verification of completion of 24~~ 16 hours of continuing education within two years of application.

ITEM 8. Amend subparagraph **131.14(3)“b”(2)** as follows:

(2) Verification of completion of ~~12 hours of continuing education within two years of application for reactivation or, for a licensee whose license expires August 15, 2006, or thereafter, verification of completion of 24~~ 16 hours of continuing education within two years of application; and

ITEM 9. Amend rule 645—133.2(152C), introductory paragraph, as follows:

645—133.2(152C) Continuing education requirements. Each biennium, each person who is licensed to practice as a massage therapist in this state shall be required to complete a minimum of ~~24~~ 16 hours of continuing education. A biennium is a two-year period beginning with the date the license was granted.

ITEM 10. Amend subrule 133.3(2) as follows:

133.3(2) Specific criteria. A licensee shall obtain a minimum of ~~24~~ 16 hours of continuing education credit every two years. ~~Twelve hours must be obtained in Category A and 12 hours may be in either Category A or B. A licensee may choose to obtain all 24 hours in Category A. A minimum of 8 of the 16 hours must be hands-on training. A maximum of 8 hours of the 16 hours may be independent study.~~ Licensees may obtain continuing education hours of credit by:

~~*a.* Category A specific continuing education requirements.~~

~~(1) A minimum of 12 hours of the 24 hours shall be:~~

~~1. Direct, hands-on training attended personally by the licensee;~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- ~~2. — Related to the actual practice of massage/bodywork therapy;~~
- ~~3. — Sponsored by a local, state, national or international professional organization or chapter of massage/bodywork therapy, or a professional, hands-on school of massage/bodywork therapy that meets or exceeds the standards set forth in 645—Chapter 132;~~
- ~~4. — Presented by a massage/bodywork therapist with a minimum of five years of clinical experience in massage/bodywork therapy. The individuals presenting the continuing education activity must have specialized education, training and experience by reason of which said individuals are considered qualified concerning the subject matter of the program.~~
 - ~~(2) Excluded content areas for continuing education in Category A are any massage/bodywork techniques that do not directly make physical contact with the body and that are outside the scope of practice in accordance with the definition of massage therapy set forth in rule 645—131.1(152C), including but not limited to: Reiki, Barbara Brennan Healing Sciences, reflexology, bloodletting, and ear candling.~~
 - ~~b. — Category B specific continuing education requirements.~~
 - ~~(1) A maximum of 12 hours of the 24 hours may be in either of the following:~~
 - ~~1. — Content areas that are programs of learning which contribute directly to professional competency and enhance the practice of the licensee.~~
 - ~~2. — Content areas that are hands-on training programs.~~
 - ~~(2) Programs that are taken in Category B do not have to be sponsored by organizations noted in 133.3(2)“a”(1)“3” and instructors do not have to have a minimum of five years of clinical experience in massage/bodywork therapy.~~
 - ~~(3) A licensee may receive credit on a one-time basis, not to exceed two hours of continuing education credit every two years, for delivery of course(s) in a massage school setting, if the following criteria are met:~~
 - ~~1. — The course(s) is part of a curriculum approved by the board as outlined in 645—132.4(152C);~~
 - ~~2. — The licensee is qualified to teach the course(s) as outlined in 645—132.3(152C);~~
 - ~~3. — The school provides an official written statement that verifies the following:~~
 - ~~● — Course title and number of credit hours;~~
 - ~~● — Inclusive dates the course was taught by the licensee;~~
 - ~~● — Teaching qualifications of the licensee.~~
 - ~~(4) A maximum of six hours may be obtained in independent study courses in the areas of massage/bodywork techniques, ethics, mandatory reporter training, and practice management.~~
 - ~~(5) A licensee shall obtain two hours of credit in CPR for every two-year renewal period.~~
 - ~~(6) Only the number of hours obtained during the two-year renewal period to meet mandatory reporter training requirements may be utilized in the renewal period. No hours shall be carried over into the next biennium.~~
 - ~~(7) Excluded content areas for continuing education in Category B include, but are not limited to, any program or training that is outside the scope of practice of massage therapy in accordance with the definition of massage therapy set forth in rule 645—131.1(152C) or that does not enhance professional competency relating to the field of massage/bodywork therapy. Bloodletting and ear candling are excluded content areas.~~
 - ~~a. — Attending workshops, conferences, or symposiums.~~
 - ~~b. — Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.~~
 - ~~c. — Teaching curriculum at a school of massage therapy or presenting professional continuing education programs that meet the criteria listed in this subrule. One hour of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. A maximum of 4 hours may be awarded under this paragraph per biennium.~~
 - ~~d. — Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of massage therapy will be necessary in order for the licensee to receive the following continuing education credits:~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

1 academic clock hour = 1 continuing education hour of credit

e. Teaching in an approved college, university, or graduate school. The licensee may receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

f. Authoring research the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

g. Taking courses directly beneficial to business practices necessary for operating a massage practice. Content areas include, but are not limited to, business management, financial management, accounting, tax preparation, marketing, human relations, communication skills, business ethics, and massage ethics.

h. Taking courses related to personal skills topics, such as career burnout, communication skills, human relations, and other like topics.

i. Completing programs which enhance a supplemental or complementary skill set directly related to promoting the public health while providing massage therapy. Content areas include, but are not limited to, CPR, first-aid, mandatory reporter training, contraindication training, sanitation, and geriatric care.

j. Passing a board-approved national certifying examination administered by the Federation of State Massage Therapy Boards or the National Certification Board for Therapeutic Massage Therapy and Bodywork within the biennial continuing education compliance period. A copy of the applicant's official notification may be used by the board as verification.

ARC 2519C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 421.6, the Department of Revenue hereby gives Notice of Intended Action to rescind Chapter 1, “State Board of Tax Review—Administration,” and Chapter 2, “State Board of Tax Review—Conduct of Appeals and Rules of Practice and Procedure,” and to amend Chapter 6, “Organization, Public Inspection,” Chapter 7, “Practice and Procedure Before the Department of Revenue,” Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Chapter 11, “Administration,” Chapter 67, “Administration,” Chapter 71, “Assessment Practices and Equalization,” Chapter 73, “Property Tax Credit and Rent Reimbursement,” Chapter 76, “Determination of Value of Railroad Companies,” Chapter 77, “Determination of Value of Utility Companies,” Chapter 80, “Property Tax Credits and Exemptions,” Chapter 81, “Administration,” Chapter 85, “Tobacco Master Settlement Agreement,” and Chapter 103, “State-Imposed and Locally Imposed Hotel and Motel Taxes—Administration,” Iowa Administrative Code.

This proposed rule making revises the Department of Revenue’s rules to conform to 2015 Iowa Acts, chapter 109 (“the Act”). The Act caused the State Board of Tax Review to be dissolved upon the final disposition of all cases pending before the board on the effective date of the Act, or July 1, 2016, whichever occurs earlier. At the time of this rule making, the State Board of Tax Review has disposed of all of its pending cases and has been dissolved. The Act also provided that appeals previously brought

REVENUE DEPARTMENT[701](cont'd)

before the State Board of Tax Review will now be heard by the Director of Revenue. In response to the Director's having an appellate role in certain tax areas, the Iowa Code was amended to provide that the Department of Revenue shall become the agency actor in place of the Director.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 17, 2016. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Request for a public hearing must be received by May 17, 2017.

After analysis and review of this rule making, the Department estimates that there will be a small fiscal impact in the elimination of the State Board of Tax Review, as it will eliminate the state funding of the Board. No fiscal impact has been found for the other portions of the bill that transfer the former responsibilities of the Director of Revenue to the Department.

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

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

These amendments are intended to implement Iowa Code sections 421.60, 425.7, 425.17, 425.18, 425.26, 425.27, 425.29, 425.31, 426A.6, 426C.7, 426C.8, 428.28, 428.29, 429.1, 429.2, 429.3, 433.1, 433.2, 433.3, 433.4, 433.5, 433.7, 433.8, 433.9, 434.2, 434.12, 434.14, 434.15, 434.16, 434.17, 434.22, 437.2, 437.4, 437.5, 437.6, 437.7, 437.8, 437.9, 437.10, 437.12, 438.4, 438.5, 438.6, 438.7, 438.8, 438.9, 438.11, 438.12, 438.13, 438.14, 438.15, 440.2, 440.5, 440.6, 440.7, 441.17, 441.21, 441.24, 441.26, 441.47, and 441.48 and 2015 Iowa Acts, chapter 109.

The following amendments are proposed.

ITEM 1. Rescind and reserve **701—Chapter 1.**

ITEM 2. Rescind and reserve **701—Chapter 2.**

ITEM 3. Amend subrules 6.1(1) and 6.1(2) as follows:

6.1(1) *Establishment of the department.* ~~By an Act of the general assembly (chapter 1245, Acts of the 71st GA), a department of revenue and finance was created in lieu of three separate state agencies. The department is administered by the director with a three-member state board of tax review established within the department for administrative and budgetary purposes. As to the organization and functions of the state board of tax review, see rules contained in 701—Chapters 1 to 5. Iowa Code section 421.2 establishes a department of revenue to be administered by a director of revenue.~~

~~Effective July 1, 2003, the Iowa department of revenue and finance is titled the Iowa department of revenue.~~

The department of revenue in recognizing its responsibilities has adopted the following creed to guide and lend direction to its endeavors:

“The Department of Revenue is dedicated to serving the citizens of Iowa and other public officials, while performing the following mission:

~~“Collect all taxes due, which any person may be required by law to pay, but no more. “To serve Iowans and to support government services in Iowa by collecting all taxes required by law, but no more.~~

“In carrying out this mission the department resolves to provide the best service possible in a cordial and helpful manner and to provide maximum opportunity and incentive for the professional growth and development of all our employees.”

The office of the department is maintained at the seat of government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa ~~50306~~ 50319.

6.1(2) *Organization of the department.* The department consists of the office of the director; and the following divisions: property tax, tax policy and communications, internal services, tax management, and research and analysis; ~~process improvement and innovation; and the state board of tax review.~~ For

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ease of administration, the director has organized the department's divisions in some instances into bureaus, sections, subsections, and units.

a. The office of the director. ~~The office of the director consists of the director and the following areas within this office: strategic planning and public/private partnership.~~ The essential functions of the ~~director's office of the director~~ include:

- (1) Overall management of the agency ~~and review of protest and revocation cases on appeal.~~
- (2) Review of protest and revocation cases on appeal.
- ~~(2)~~ (3) Strategic planning and coordination of the future operations and goals of the department.
- ~~(3)~~ (4) ~~Providing~~ Provision of financial checks and balances within the department.
- ~~(4)~~ (5) ~~Public/private partnership provides for~~ Facilitation of a working relationship between the public sector and the private sector.

b. Divisions.

(1) Property tax division. The property tax division provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for ~~railroads, electric, water, and pipeline companies~~ centrally assessed property.

(2) Tax management division. The tax management division includes the processing services section, the compliance services section and the collection services section. The essential functions of the tax management division include:

1. Functions performed by the processing services section, ~~including~~ which is responsible for registration of taxpayers, deposit of tax revenue, processing of tax returns, ~~records management of records,~~ and provision of mail services;

2. Functions performed by the compliance services section, including office examination of returns, identification of nonfilers and underreporters of income, assessment, and review and approval of refund claims. The compliance services section also performs field audits and is responsible for audits for criminal prosecution; and

3. Functions performed by the collection services section, which is responsible for the timely collection of past-due tax liabilities, as well as collection activities for ~~the judicial branch of state government and for~~ other state agencies and local governments.

(3) Tax policy and communications division. The tax policy and communications division consists of audit services, taxpayer services, and policy. The essential functions of the tax policy and communications division include:

1. Functions performed by the audit services section, which ~~develops and reviews audit programs and completed audits, manuals, and guidelines for auditors, and which provides support for the compliance services section, and~~ coordinates the administrative process of protests and protest resolution and includes the clerk of the hearings section;

2. Functions performed by the taxpayer services section, which is responsible for responding to inquiries from the public, ~~practitioners~~ and other agencies, drafting brochures and graphics, ~~completing returns,~~ maintaining the department's online tax research library and Web page site, and coordinating public education by the department; and

3. Functions performed by the tax policy section, which is responsible for ~~the interpretation of legislation, statutes and cases~~ interpreting state and federal law, developing and maintaining rules for the department and monitoring tax-related issues considered by the general assembly and the United States Congress. This section also drafts declaratory orders, offers technical advice and completes studies and reports.

(4) Internal services division. The essential functions of the internal services division include:

1. Functions performed by the central accounting team, which include operating budget development, maintenance, and reporting; ~~and~~

2. Functions performed by the employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service-;

3. Functions performed by the application development section, including system analysis, programming, database administration and support, in coordination with the information technology enterprise of the department of administrative services; and

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4. Functions performed by the technical planning and support section, including providing technical support to the department on software and hardware issues, in coordination with the information technology enterprise of the department of administrative services.

(5) Research and analysis division. The essential functions of the research and analysis division include:

1. Functions performed by the research and program analysis section, which provides research on tax issues, compiles statistical tax data, undertakes tax credit tracking and analysis, projects state receipts and refunds, and evaluates the fiscal impact of tax legislation and policies on the state budget; and

2. Functions performed by the performance analysis section, which develops and maintains performance measures for the department to align the department's resources, systems, and employees to meet strategic goals and priorities.

~~(6) Process improvement and innovation division. The essential functions of the process improvement and innovation division include:~~

~~1. Functions performed by the application development section, including system analysis, programming, database administration and support, in coordination with the information technology enterprise of the department of administrative services;~~

~~2. Functions performed by the technical planning and support section, including providing technical support to the department on software and hardware issues, in coordination with the information technology enterprise of the department of administrative services; and~~

~~3. Functions performed by the process improvement section, including identifying, analyzing, and improving existing processes within the department.~~

ITEM 4. Amend subrule 7.8(7) as follows:

7.8(7) The protest shall substantially state in separate numbered paragraphs the following:

a. Proper allegations showing:

(1) Date of assessment department action, such as the assessment notice, refund denial, etc.;

~~(2) Date of refund denial;~~

~~(3) (2) Whether the protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;~~

~~(4) (3) Whether the protest involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;~~

~~(5) (4) The assessment, refund claim, and refund denial, copies~~ Copies of which shall be attached the documented department action, such as the assessment notice, refund claim, and refund denial letter;

~~(6) (5) Other items that the protester wishes to bring to the attention of the department; and~~

~~(7) (6) A request for attorney fees, if applicable.~~

b. The type of tax, the taxable period or periods involved and the amount in controversy.

c. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to any particular statute or statutes and any rule or rules involved, if known.

e. Description of records or documents ~~which~~ that were not available or were not presented to department personnel prior to the filing of the protest, if any. Copies of any records or documents that were not previously presented to the department shall be provided.

f. Any other matters deemed relevant and not covered in the above paragraphs.

g. The desire of the protester to waive informal or contested case proceedings if waiver is desired.

Unless the protester so indicates a waiver, informal procedures will be initiated.

h. A statement setting forth the relief sought by the protester.

i. The signature of the protester or that of the protester's representative, the addresses of the protester and of the protester's representative, and the telephone number of the protester or the protester's representative. A copy of the power of attorney for the protester's representative shall be attached.

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ITEM 5. Amend paragraph **7.17(10)“b”** as follows:

b. Finality of decision. A decision entered in an expedited case proceeding shall not be reviewed by the director, ~~state board of tax review~~, or any other court, and shall not be treated as a precedent for any other case.

ITEM 6. Amend paragraph **10.8(1)“f”** as follows:

f. The taxpayer presents proof that the taxpayer at the due date of the return, deposit form, or payment relied upon applicable, documented, written advice made specifically to the taxpayer, the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The advice must be current and not superseded by a court decision, ruling of a quasi-judicial body such as an administrative law judge, or the director, ~~or the state board of tax review~~, or by the adoption, amendment, or repeal of a rule or law.

ITEM 7. Amend subrule 11.4(5) as follows:

11.4(5) Preservation of records. The records required in this rule shall be preserved for a period of five years and open for examination by the department during this period of time. *McCarville v. Ream*, 247 Iowa, 72 N.W.2d 476 (1956).

The department shall be able to examine the records of a taxpayer for a period of years as is necessary to adequately determine if tax is due in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review~~ or district court or ~~supreme~~ an appellate court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and the department will compute the tax liability as authorized in Iowa Code section ~~422.54~~ 423.37.

ITEM 8. Amend rule **701—11.4(422,423)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.47, 422.50, 422.54, 423.16 and 423.21~~ 423.37, 423.41, and 423.45.

ITEM 9. Amend subrule 67.3(13) as follows:

67.3(13) General requirements. If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review~~, or district court or ~~supreme~~ an appellate court, books, papers, records, memoranda, or documents specified in this rule ~~which~~ that relate to the period covered by the assessment must be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and rule 701—67.5(452A), estimate gallonage, applies.

ITEM 10. Amend rules 701—71.8(428,441) and 701—71.9(428,441) as follows:

701—71.8(428,441) Abstract of assessment. Each city and county assessor shall submit annually to the ~~director~~ department of revenue at the times specified in Iowa Code section 441.45 an abstract of assessment for the current year. The assessor shall use the form of abstract prescribed and furnished by the department of revenue, and shall enter on the abstract all information required by the department. However, the department may approve the use of a computer-prepared abstract if the data is in essentially the same format as on the form prescribed by the department. The information entered on the abstract of assessment shall be reviewed and considered by the ~~director of revenue~~ department in equalizing the valuations of classes of properties.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

701—71.9(428,441) Reconciliation report. The assessor's report of any revaluation required by Iowa Code section 428.4 shall be made on the reconciliation report prescribed and furnished by the department

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of revenue. The assessor shall enter on the report all information required by the department. The reconciliation report shall be a part of the abstract of assessment required by Iowa Code section 441.45 and shall be reviewed and considered by the ~~director~~ department in equalizing valuations of classes of property.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

ITEM 11. Amend rule 701—71.11(441) as follows:

701—71.11(441) Equalization of assessments by class of property.

71.11(1) Commencing in 1977 and every two years thereafter, the ~~director~~ department of revenue shall order the equalization of the levels of assessment of each class of property as provided in rule 701—71.12(441) by adding to or deducting from the valuation of each class of property, as reported to the department on the abstract of assessment and reconciliation report ~~which that~~ is a part of the abstract, the percentage in each case as may be necessary to bring the level of assessment to its actual value as defined in Iowa Code section 441.21. Valuation adjustments shall be ordered if the ~~director~~ department determines that the aggregate valuation of a class of property as reported on the abstract of assessment submitted by the assessor is at least 5 percent above or below the aggregate valuation for that class of property as determined by the ~~director~~ department pursuant to rule 701—71.12(441). Equalization orders of the ~~director~~ department shall be restricted to equalizing the aggregate valuations of entire classes of property among the several assessing jurisdictions. All classifications of real estate shall be applied uniformly throughout the state of Iowa.

71.11(2) Equalization percentage adjustments determined for residential realty located outside incorporated areas and not located on agricultural land shall apply to buildings located on agricultural land outside incorporated areas, which are primarily used or intended for human habitation, as defined in subrule 71.1(4).

Equalization percentage adjustments determined for residential realty located within incorporated cities and not located on agricultural land shall apply to buildings located on agricultural land within incorporated cities ~~which that~~ are primarily used or intended for human habitation as defined in subrule 71.1(4).

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.

ITEM 12. Amend paragraph **71.12(1)“b”** as follows:

b. Use of other relevant data. The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department ~~of revenue~~, to determine the level of assessment of agricultural real estate.

ITEM 13. Amend paragraphs **71.12(2)“a”** and **“b”** as follows:

a. Use of assessment/sales ratio study.

(1) Basic data shall be that set forth in rule 701—71.10(421) refined by eliminating any sales determined to be abnormal or by adjusting the sales to eliminate the effects of factors ~~which that~~ resulted in the determination that the sales having been determined to be were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The ~~director~~ department of revenue may also supplement the assessment/sales ratio study with appraisals made by department ~~of revenue~~ appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of residential real estate in each assessing jurisdiction. The ~~director of revenue~~ department may consider sales and appraisal data for prior years if it is determined the use of the sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals ~~which that~~ would indicate abnormal or unusual conditions or reporting

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discrepancies ~~which that~~ would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department, ~~of revenue~~ to determine the level of assessment of residential real estate.

ITEM 14. Amend paragraphs **71.12(3)“a”** and **“b”** as follows:

a. Use of assessment/sales ratio study.

(1) Basic data shall be that set forth in rule 701—71.11(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors ~~which that~~ resulted in the determination that the sales having been determined to be were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The ~~director~~ department of revenue may also supplement the assessment/sales ratio study with appraisals made by department ~~of revenue~~ appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of multiresidential real estate in each assessing jurisdiction. The ~~director of revenue~~ department may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals that would indicate abnormal or unusual conditions or reporting discrepancies that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department ~~of revenue~~, to determine the level of assessment of multiresidential real estate.

~~Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.~~

ITEM 15. Amend paragraphs **71.12(4)“a”** and **“b”** as follows:

a. Use of assessment/sales ratio study.

(1) Basic data shall be that set forth in rule 701—71.10(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors ~~which that~~ resulted in the determination that the sales having been determined to be were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The ~~director~~ department of revenue may also supplement the assessment/sales ratio study with appraisals made by department ~~of revenue~~ appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of commercial real estate in each assessing jurisdiction. The ~~director of revenue~~ department may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization

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order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value. Properties receiving a dual classification with the primary use being commercial shall be included.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals that would indicate abnormal or unusual conditions or reporting discrepancies that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the ~~department of revenue~~, to determine the level of assessment of commercial real estate. The diverse nature of commercial real estate precludes the use of a countywide or citywide income capitalization study.

~~Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.~~

ITEM 16. Amend subrules 71.12(5), 71.12(6) and 71.12(7) as follows:

71.12(5) Industrial real estate. It is not possible to determine the level of assessment of industrial real estate by using accepted equalization methods. The lack of sales data precludes the use of an assessment/sales ratio study, the diverse nature of industrial real estate precludes the use of a countywide or citywide income capitalization study, and the limited number of industrial properties precludes the use of sample appraisals. The level of assessment of industrial real estate can only be determined by the valuation of individual parcels of industrial real estate. Any attempt to equalize industrial valuations by using accepted equalization methods would create an arbitrary result. However, under the circumstances set forth in Iowa Code subsection 421.17(10), the ~~director~~ department may correct any errors in such assessments ~~which that~~ are brought to the ~~director's~~ attention of the department, including errors related to property with a dual classification if the primary use of the property is from the industrial portions.

71.12(6) Centrally assessed property. Property assessed by the ~~director~~ department of revenue pursuant to Iowa Code chapters 428 and 433 to 438, inclusive, is equalized internally by the ~~director~~ department in the making of the assessments. Further, the assessments are equalized with the aggregate valuations of other classes of property as a result of actions taken by the ~~director of revenue~~ department pursuant to rule 701—71.11(441).

71.12(7) Miscellaneous real estate. Since it is not possible to use accepted equalization methods to determine the level of assessment of mineral rights and interstate railroad and toll bridges, these classes of property shall not be subject to equalization by the ~~director~~ department of revenue. However, under the circumstances set forth in Iowa Code section 421.17(10), the ~~director~~ department may correct any errors in assessments which are brought to the ~~director's~~ attention of the department.

ITEM 17. Amend rules 701—71.14(441) to 701—71.17(441) as follows:

701—71.14(441) Hearings before the ~~director~~ department.

71.14(1) Protests. Written or oral protest against the proposed percentage adjustments as set forth in the tentative equalization notice issued by the ~~director~~ department of revenue shall be made only on behalf of the affected assessing jurisdiction. The protests shall be made only by officials of the assessing jurisdiction, including, but not limited to, an assessing jurisdiction's city council or board of supervisors, assessor, or city or county attorney. An assessing jurisdiction may submit a written protest in lieu of making an oral presentation before the ~~director~~ department, or may submit an oral protest supported by written documentation. Protests against the adjustments in valuation contained in the tentative equalization notices shall be limited to a statement of the error or errors complained of and

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shall include such facts as might lead to their correction. No other factors shall be considered by the ~~director~~ department in reviewing the protests. Protests and hearings on tentative equalization notices before the ~~director~~ department are excluded from the provisions of the Iowa Administrative Procedure Act governing contested case proceedings.

71.14(2) *Conduct of hearing.* The ~~director~~ department shall schedule each hearing so as to allow the same amount of time within which each assessing jurisdiction can make its presentation. During the hearing each assessing jurisdiction shall be afforded the opportunity to present evidence relevant to its protest. The ~~director or the director's designated~~ division administrator for the property tax division shall act as the department's representative. The department's representative shall preside at the hearing, which shall be held at the time and place designated by the ~~director~~ department or such other time and place as may be mutually agreed upon by the ~~director~~ department and the protesting assessing jurisdiction.

This rule is intended to implement Iowa Code section 441.48.

701—71.15(441) Final equalization order and appeals.

71.15(1) *Issuance of final equalization order.* After the tentative equalization notice has been issued and an opportunity for a hearing described in rule 701—71.14(441) has been afforded, the ~~director~~ department of revenue shall issue a final equalization order by mail to the county auditor. The order shall specify any percentage adjustments in the aggregate valuations of any class of property to be made effective for the county as of January 1 of the year in which the order is issued. The final equalization order shall be issued on or before October 1 unless for good cause it cannot be issued until after October 1. The final equalization order shall be implemented by the county auditor.

71.15(2) *Appeal of final equalization order.* ~~An~~ The city or county officials of the affected county or assessing jurisdiction may appeal a final equalization order to the state board of tax review director of revenue by filing a notice of appeal with the clerk of the hearings section of the department of revenue. The ~~protest~~ notice of appeal must be filed or postmarked not later than ten days after the date the final equalization order is issued.

a. Form of appeal. The notice of appeal shall be in writing and in the same format as provided in 701—subrule 7.8(6).

- (1) The notice of appeal shall substantially state in separate numbered paragraphs the following:
1. The county or assessing jurisdiction;
 2. The date on which the final equalization order was issued;
 3. The portion of the equalization order being appealed;
 4. A clear and concise assignment of each and every error;
 5. A clear and concise statement of the facts upon which the affected county or assessing jurisdiction relies as sustaining the assignment of error;
 6. The relief requested;
 7. The signature of the city or county officials bringing the appeal, or their representative, along with the address to which all subsequent correspondence, notice or papers shall be served or mailed.

(2) A county or assessing jurisdiction may amend its notice of appeal at any time prior to the commencement of the evidentiary hearing. The department may request that the county or assessing jurisdiction amend the notice of appeal for clarification.

b. Filing of notice of appeal. The notice of appeal must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box 14457, Des Moines, Iowa 50319, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a notice of appeal is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a notice of appeal, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

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c. Answer. The department of revenue shall file an answer with the clerk of the hearings section within 30 days after the filing of the pleading responded to, unless attacked by motion as provided in 701—subrule 7.17(5), and then the answer shall be filed within 30 days after the date on which the fact finder issues a ruling on the motion. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

d. Docketing. Appeals shall be assigned a docket number as provided in rule 701—7.10(17A). Records consisting of the case name and the corresponding docket number assigned to the case must be maintained by the clerk of the hearings section. The records of each case shall also include each action and each act done, with the proper dates as follows:

- (1) The title of the appeal;
- (2) Brief statement of the date of the final equalization order, the property tax classification affected, and the relief sought;
- (3) The manner and time of service of notice of appeal;
- (4) The appearance of all parties;
- (5) Notice of hearing, together with manner and time of service; and
- (6) The decision of the director or administrative law judge or other disposition of the case and the date.

e. Hearing. Rules 701—7.14(17A) through 701—7.22(17A) shall apply to any hearing or proceeding regarding the appeal of a final equalization order to the director of revenue.

This rule is intended to implement Iowa Code chapter 17A and sections 441.48 and 441.49.

701—71.16(441) Alternative method of implementing equalization orders.

71.16(1) Application for permission to use an alternative method.

a. A request by an assessing jurisdiction for permission to use an alternative method of applying the final equalization order must be made in writing to the ~~director~~ department of revenue within ten days from the date the county auditor receives the final equalization order. The written request shall include the following information:

~~a-~~ (1) Facts evidencing the need to use an alternative method of implementing the final equalization order. Such facts shall clearly show that the proposed method is essential to ensure compliance with the provisions of Iowa Code section 441.21.

~~b-~~ (2) The exact methods to be employed in implementing the requested alternative method for each class of property.

~~c-~~ (3) The specific method of notifying affected property owners of the valuation changes.

~~d-~~ (4) Evidence that the alternative method will result in an aggregate property class valuation adjustment equivalent to that prescribed in the ~~director's~~ department's final equalization order.

b. The ~~director~~ department of revenue shall review each written request for an alternative method and shall notify the assessing jurisdiction of acceptance or rejection of the proposed method by October 15. The assessing jurisdiction shall immediately inform the county auditor of the ~~director's~~ department's decision. The county auditor shall include a description of any approved alternative method in the required newspaper publication of the final equalization order. In those instances where the approved alternative method includes individual property owner notification, the publication shall not be considered proper notice to the affected property owners.

71.16(2) Implementation of alternative method. If an alternative method is approved by the ~~director~~ department of revenue, any individual notification of property owners shall be completed by the assessor by not later than October 25.

71.16(3) Appeal by property owners. If an alternative method is approved by the ~~director~~ department of revenue, the special session of the local board of review to hear equalization protests shall be extended to November 30. In such instances, protests may be filed up to and including November 4.

This rule is intended to implement Iowa Code section 441.49.

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701—71.17(441) Special session of boards of review.

71.17(1) *Grounds for protest.* The only ground for protesting to the local board of review reconvened in special session pursuant to Iowa Code section 441.49 is that the application of the ~~director's department's~~ final equalization order results in a value greater than that permitted under Iowa Code section 441.21.

71.17(2) *Authority of board of review.* When in special session to hear protests resulting from equalization adjustments, the local board of review shall only act upon protests for those properties for which valuations have been increased as a result of the application of the ~~director~~ department of revenue's final equalization order.

The local board of review may adjust valuations of those properties it deems warranted, but under no circumstance shall the adjustment result in a value less than that which existed prior to the application of the ~~director's department's~~ equalization order. The local board of review shall not adjust the valuation of properties for which no protests have been filed.

71.17(3) *Report of board of review.* In the report to the ~~director~~ department of revenue of action taken by the local board of review in special session, the board of review shall report the aggregate valuation adjustments by class of property as well as all other information required by the ~~director~~ department of revenue to determine if such actions may have substantially altered the equalization order.

71.17(4) *Meetings of board of review.* If the final equalization order does not increase the valuation of any class of property, the board of review is not required to meet during the special session. If the final equalization order increases the valuation of one or more classes of property but no protests are filed by the times specified in Iowa Code section 441.49, the board of review is not required to meet during the special session.

This rule is intended to implement Iowa Code sections 421.17(10) and 441.49.

ITEM 18. Amend paragraph **71.25(2)“d”** as follows:

d. ~~Director~~ Department of revenue. The ~~director~~ department of revenue may make an omitted assessment of any property assessable by the ~~director~~ department at any time within two years from the date the assessment should have been made.

ITEM 19. Amend rule 701—71.26(441) as follows:

701—71.26(441) Assessor compliance.

71.26(1) The assessor shall determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the Iowa Real Property Appraisal Manual prepared by the department. The assessor may use an alternative manual to value property if it is a unique type of property not covered in the manual prepared by the department.

71.26(2) If the department finds that an assessor is not in compliance with the rules of the department relating to valuation of property or has disregarded the forms and guidelines contained in the real property appraisal manual, the department shall notify the assessor and each member of the conference board for that assessing jurisdiction. The notice shall be mailed by restricted certified mail and shall specify the areas of noncompliance and the steps necessary to achieve compliance. The notice shall also inform the assessor and conference board that if compliance is not achieved, a penalty may be imposed.

71.26(3) The conference board shall respond to the department within 30 days of receipt of the notice of noncompliance. The conference board may respond to the notice by asserting that the assessor is in compliance with the rules, guidelines, and forms of the department or by informing the department that the conference board intends to submit a plan of action to achieve compliance. If the conference board responds to the notification by asserting that the assessor is in compliance, a hearing before the director of revenue shall be held on the matter within 60 days of receipt of the notice of noncompliance. The director's decision is subject to judicial review in accordance with Iowa Code chapter 17A. If it is agreed that the assessor is not in compliance, the conference board shall submit a plan of action within 60 days of receipt of the notice of noncompliance.

71.26(4) The plan of action shall contain a time frame under which compliance shall be achieved, which shall be no later than January 1 of the following assessment year. The plan ~~of action~~ shall contain

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the signature of the assessor and of the chairperson of the conference board. The department shall review the plan to determine whether the plan is sufficient to achieve compliance. Within 30 days of receipt of the plan, the department shall notify the assessor and the chairperson of the conference board that it has accepted the plan or that it is necessary to submit an amended plan of action.

71.26(5) By January 1 of the assessment year following the calendar year in which the plan of action was submitted to the department, the conference board shall submit a report to the department verifying that the plan of action was followed and compliance has been achieved. The department may conduct a field inspection to ensure that the assessor is in compliance. By January 31, the department shall notify the assessor and the conference board, by restricted certified mail, either that compliance has been achieved or that the assessor remains in noncompliance. If the department determines that the assessor remains in noncompliance, the department shall take steps to withhold up to 5 percent of the reimbursement payment authorized in Iowa Code section 425.1 until the ~~director of revenue~~ department determines that the assessor is in compliance.

71.26(6) If the conference board disputes the determination of the department, the chairperson of the conference board may appeal the determination to the ~~state board of tax review~~ director of revenue under 701—Chapter 7.

This rule is intended to implement Iowa Code ~~Supplement~~ section 441.21.

ITEM 20. Amend rule 701—73.30(425) as follows:

701—73.30(425) Audit of claim.

73.30(1) Authority. The ~~director~~ department of revenue may audit the records of the county treasurer to determine the accuracy of claims filed for property tax credits. The ~~director~~ department may also investigate the eligibility of a claimant for a property tax credit or rent reimbursement.

73.30(2) Recomputed rent reimbursement claim. If it is determined a computed rent reimbursement is in error, the ~~director~~ department shall collect any overpayment from the claimant or reimburse the claimant for any underpayment. If a claimant fails to reimburse the department for an overpayment, the amount of overpayment shall be deducted from any future rent reimbursement to which the claimant is entitled.

73.30(3) Recomputed property tax credit claim. If it is determined a computed property tax credit has been overpaid, the ~~director~~ department shall notify the claimant and county treasurer of the overpayment. The county treasurer shall collect the overpayment from the claimant as if it were an unpaid property tax and reimburse the ~~director~~ department for the amount of overpayment. However, if the property upon which the credit was allowed is no longer owned by the claimant, the ~~director~~ department shall collect the amount of overpayment directly from the claimant. If it is determined a computed property tax credit has been underpaid, the ~~director~~ department shall reimburse the claimant directly for the amount of underpayment.

This rule is intended to implement Iowa Code section 425.27.

ITEM 21. Amend subrule 76.2(3) as follows:

76.2(3) The ~~director~~ department of revenue may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

ITEM 22. Amend subrule 76.5(1) as follows:

76.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market-derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream.

a. The net railway operating income to be capitalized shall be a weighted average net railway operating income. The weighted average net railway operating income shall consist of an average of the three 12-month periods immediately preceding the valuation date. Each of the three preceding 12-month periods shall be weighted by multiplying the first preceding period by 60 percent, the second preceding

REVENUE DEPARTMENT[701](cont'd)

period by 30 percent, and the third preceding period by 10 percent. There shall be no adjustment for the company's current-year deferred income taxes to this income stream.

b. The ~~director~~ department may also utilize a "free cash flow model" in calculating the railway operating income to be capitalized. The "free cash flow model" shall consist of an average of the five 12-month periods immediately preceding the valuation date. Each of the five preceding 12-month periods shall be given equal weighting in the calculation of the five-year average railway operating income to be capitalized. Each year the net railway operating income shall be adjusted by adding the current-year deferred income taxes associated with maintenance expenditures, adding the current-year depreciation expense, and subtracting the current-year capital expenditures necessary to maintain the plant.

c. The ~~director~~ department may give consideration to both calculations of operating income as described in this subrule to determine the railway operating income to be capitalized. The ~~director~~ department may also consider, in both calculations, adjustments for extraordinary, unusual, and infrequent items. These adjustments would not be expected to occur annually and are different from the typical railroad business operations. The purpose and intent of the income indicator of value is to match income with sources of capital and therefore every source of capital utilized or available to be utilized to purchase assets should be reflected in the capitalization rate determination as well as all operating income. The ~~director~~ department shall not include a separate adjustment to either income stream for noncapitalized operating leases. In the event the railroad company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

ITEM 23. Amend rule 701—76.7(434) as follows:

701—76.7(434) Correlation. In making a final determination of value, the ~~director~~ department shall give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the railroad company's entire operating property. The stock and debt indicator of value and the income indicator of value shall each be weighted at 50 percent. In this particular circumstance, when the ~~director~~ department utilizes the stock and debt indicator and the income indicator in the correlation process, the cost indicator will be given no weighting. If circumstances dictate that a particular method is inappropriate for a specific company, that method shall be given little or no weight in the final correlation of value.

This rule is intended to implement Iowa Code section 434.15.

ITEM 24. Amend rule 701—76.8(434) as follows:

701—76.8(434) Allocation of unit value to state.

76.8(1) Allocation by ~~director~~ the department. The ~~director~~ department shall allocate that portion of the total unit value of the railroad company's operating property to the state of Iowa based on factors ~~which that~~ are representative of the ratio that the railroad company's property and activity in the state of Iowa bear to the railroad company's total property and activity. These factors are:

- a.* Gross operating revenue weighted 40 percent.
- b.* All track mileage weighted 35 percent.
- c.* Revenue traffic units weighted 15 percent.
- d.* Car and locomotive mileage weighted 10 percent.

76.8(2) Alternative methods. In the event that the allocation prescribed by subrule 76.8(1) does not fairly and reasonably allocate unit value of the railroad company's operating property to the state of Iowa, the ~~director~~ department shall consider such other factors as the ~~director~~ department deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code section 434.15.

ITEM 25. Amend subrule 77.2(3) as follows:

77.2(3) The ~~director~~ department may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

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ITEM 26. Amend rule 701—77.6(428,433,437,438) as follows:

701—77.6(428,433,437,438) Cost approach to unit value. The cost approach to unit value shall be determined by combining the cost of the operating properties of the utility and deducting therefrom an allowance for depreciation calculated on a straight-line basis. Other forms of depreciation may be deducted if found to exist. The ~~director~~ department may use the replacement cost new less depreciation (RCNLD) valuation methodology for determining the assessed value of the Iowa operating property required under Iowa Code chapter 433.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

ITEM 27. Amend rule 701—77.7(428,433,437,438) as follows:

701—77.7(428,433,437,438) Correlation. In making a final determination of value, the ~~director~~ department may give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the utility company's entire operating property. Generally, for other than pipeline companies, the stock and debt indicator of value shall be considered to be the most useful, the income indicator the next most useful, and the cost indicator the least useful. If circumstances dictate that a particular indicator is inappropriate or less reliable for a particular company, the correlation of the indicators of value shall be adjusted accordingly. The correlation for pipeline companies will consider the cost indicator to be the most useful, the income indicator the next most useful, and the stock and debt indicator the least useful. In making the final determination of value, the ~~director~~ department will weigh the stock and debt indicator of value at 10 percent, the income indicator of value at 40 percent and the cost indicator of value at 50 percent.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

ITEM 28. Amend rule 701—77.8(428,433,437,438) as follows:

701—77.8(428,433,437,438) Allocation of unit value to state.

77.8(1) Allocation by ~~director~~ the department. The ~~director~~ department shall allocate that portion of the total unit value of the utility company's operating property to the state of Iowa based on factors ~~which~~ that are representative of the ratio that the utility company's property and activity in the state of Iowa bear to the utility company's total property and activity. These factors are:

a. Gross operating property weighted 75 percent, and

b. Gross operating revenues, or MCF miles, or barrel miles weighted 25 percent. The selection of the property and use factor to be utilized shall depend on the type of utility being valued.

77.8(2) Alternative methods. In the event that the allocation prescribed by subrule 77.8(1) does not fairly and reasonably allocate unit value of the utility company's operating property to the state of Iowa, the ~~director~~ department shall consider such other factors as the ~~director~~ department deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

ITEM 29. Amend subrule 80.8(7) as follows:

80.8(7) Minimum assessment. The partial exemption shall apply only to the value added in excess of the actual value of the property as of the year immediately preceding the year in which value added was first assessed. If the actual value of the property is reduced for any year during the period in which the partial exemption applies, any reduction in value resulting from the partial exemption shall not reduce the assessment of the property below its actual value as of January 1 of the assessment year immediately preceding the year in which value added was first assessed. This subrule applies regardless of whether the reduction in actual value is made by the assessor, the board of review, a court order, or an equalization order of the ~~director~~ department of revenue.

ITEM 30. Amend subrule 81.4(13) as follows:

81.4(13) General requirements. If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review or district court or supreme or appellate court~~, books, papers,

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records, memoranda or documents specified in this rule ~~which~~ that relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

The records will be considered inadequate when the requirements of this rule are not met. The director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed (agreements must be in writing).

ITEM 31. Amend subrule 85.22(4) as follows:

85.22(4) Procedure for contesting notice of noninclusion or deletion.

a. A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing a written protest of that decision with the Iowa Department of Revenue, Clerk of the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, pursuant to rule 701—7.8(17A). The protest shall conform generally to the requirements of 701—subrules 7.8(1) through 7.8(10) to the extent applicable. The protest will, thereafter, be processed and a contested case hearing will be held in general conformity with ~~the rules set forth in 701—Chapter 7, rules~~ 701—7.10(17A), 701—7.12(17A) and 701—7.14(17A) to 701—7.16(17A), 701—subrule 7.17(8), and rules 701—7.19(17A) to 701—7.22(17A)₂ to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

b. The form, status, finality and appealability of orders shall be controlled by the general provisions of 701—subrule 7.17(8), except that no appeal to or on motion of ~~the state board of tax review or~~ any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

c. Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under 701—subrule 7.17(9). However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals will be satisfied if the tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

d. If a claim is made that a particular entity is the tobacco product manufacturer and the entity obtains an order allowing it and any of the brands it claims to be responsible for to be listed in the directory pending final resolution of its status and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond shall be forfeited to the state.

ITEM 32. Amend rule 701—103.4(423A) as follows:

701—103.4(423A) Retailers required to keep records.

103.4(1) Every retailer shall keep and preserve the following records:

~~1.~~ a. A daily record of the amount of all cash and time payments and credit sales from the renting of rooms subject to tax under Iowa Code chapter 423A.

~~2.~~ b. A record of all deductions and exemptions taken in filing a tax return.

103.4(2) The records required in this rule must be preserved for a period of three years and open for examination by the department during this period of time.

103.4(3) Retailers performing all or part of their record keeping and retention of books, records, and other sources of information under electronic data interchange process or technology, see 701—subrule 11.4(4).

103.4(4) If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review, district court, or supreme an appellate~~ court, books, papers, records, memoranda or documents specified in this rule ~~which~~ that relate to the period covered by the assessment shall be

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preserved until the final disposition of the appeal. This provision applies equally to parties to the appeal and other retailers who could claim a refund as a result of the resolution of the appeal.

103.4(5) Failure to keep and preserve adequate records shall be grounds for revocation of the state-imposed tax permit.

This rule is intended to implement Iowa Code section 423.41 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.

ARC 2520C**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 71, “Assessment Practices and Equalization,” Iowa Administrative Code.

These amendments update the dates for filing protests of appeal with the local board of review for property tax assessments. These amendments also add a reference to the Iowa Code, which requires that the auditor notify taxpayers individually if their assessment increases due to an equalization order and allows assessors and taxpayers to agree upon an assessed value prior to the protest period. These changes were enacted as part of 2015 Iowa Acts, chapter 116.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 17, 2016. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by May 17, 2016.

After analysis and review of this rule making, the Department anticipates a small fiscal impact to local governments due to the additional notice requirements for auditors.

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

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

These amendments are intended to implement Iowa Code sections 441.35 and 441.37.

The following amendments are proposed.

ITEM 1. Amend paragraph **71.20(3)“c”** as follows:

c. Notice to taxpayers. If the value of any property is increased by a board of review or a board of review assesses property not previously assessed by the assessor, the person to whom the property is assessed shall be notified by regular mail of the board’s action. The notification shall state that the taxpayer may protest the action by filing a written protest with the board of review within five days of the date of the notice. After at least five days have passed since notifying the taxpayer, the board of review shall meet to take final action on the matter, including the consideration of any protest filed. However, if the valuations of all properties within a class of property are raised or lowered by a uniform percentage in a nonreassessment year, notice to taxpayers ~~need~~ shall be provided ~~only~~ by newspaper publication as described in Iowa Code section 441.35 and in the manner specified in Iowa Code section 441.36.

REVENUE DEPARTMENT[701](cont'd)

ITEM 2. Amend paragraph 71.20(4)“a” as follows:

a. A board of review may act only upon written protests which have been filed with the board of review between April 16 2 and ~~May 5~~ April 30, inclusive. In the event ~~May 5~~ April 30 falls on a Saturday or Sunday, protests filed the following Monday shall be considered to have been timely filed. Protests postmarked by ~~May 5~~ April 30 or the following Monday if ~~May 5~~ April 30 falls on a Saturday or Sunday shall also be considered to have been timely filed. All protests must be in writing and signed by the taxpayer or the taxpayer’s authorized agent. 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. 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.

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 JoAnn Johnson, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for April is 3.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective April 12, 2016, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TREASURER OF STATE(cont'd)

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .05%
More than 397 days	Minimum .30%

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.

ARC 2501C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Pursuant to the authority of Iowa Code section 15.106A, the Economic Development Authority hereby amends Chapter 102, “Entrepreneur Investment Awards Program,” Iowa Administrative Code.

These amendments update program definitions and the application process, allow the Authority to negotiate the award amount with a recipient service provider, increase the aggregate program cap on awards and establish a cap for individual awards, identify the acceptable uses of award funds, and change program eligibility criteria and competitive scoring criteria.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 20, 2016, as **ARC 2374C**. The Authority received public comments regarding the intended scope of allowable entrepreneurial support activities and the use of funds. The commenter indicated that the inclusion of the words “emerging and early-stage innovation companies” in subrule 102.5(4) and paragraph 102.6(1)“b” improperly narrows the scope of entrepreneurial support activities and limits the use of funds in that the purpose of the program described in rule 261—102.2(15E) is to “provide financial assistance to service providers that provide technical and financial assistance to entrepreneurs and start-up companies.” The commenter also posited that paragraph 102.6(2)“e” requires that an applicant’s service model be judged against a national service model.

The phrases in the proposed rules that the commenter has highlighted mirror the corresponding language in Iowa Code section 15E.362. The Authority has reviewed the comments and determined that the result of revising the rules based on the comments would be to promulgate amendments that are inconsistent with the corresponding statutory provision. Therefore, the Authority has not revised the language of the rules since publication of the Notice of Intended Action.

The Economic Development Authority Board adopted these amendments at the Board meeting held on March 29, 2016.

After analysis and review of this rule making, no negative impact on jobs has been found, and the Authority finds that providing financial assistance for providers of business development services will have a positive effect on job creation and growth.

These amendments are intended to implement Iowa Code section 15E.362.

These amendments will become effective June 1, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 261—102.1(15E) as follows:

261—102.1(15E) Authority. The authority for adopting rules establishing the entrepreneur investment awards program under this chapter is provided in ~~2012 Iowa Acts, House File 2473, division I~~ Iowa Code sections 15.106A and 15E.362.

ITEM 2. Amend rule 261—102.2(15E) as follows:

261—102.2(15E) Purpose. The purpose of the entrepreneur investment awards program is to provide ~~grants~~ financial assistance to service providers that provide technical and financial assistance to ~~covered~~ entrepreneurs and start-up companies seeking to create, locate, or expand a business in the state.

ITEM 3. Amend rule **261—102.3(15E)**, definitions of “Applicant,” “Deliverables” and “Iowa-based business,” as follows:

“*Applicant*” means a ~~service provider~~ person applying to the authority for a ~~grant~~ financial assistance under the program.

“*Deliverables*” means the performance of duties or other obligations required of an applicant under a contract entered into with the authority in consideration for the receipt of ~~grant funds~~ financial assistance under the program. At a minimum, “deliverables” includes the continued maintenance of all initial eligibility requirements for the duration of a contract entered into under the program and may include

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

such other terms and conditions as the authority deems necessary to effectuate the legislative intent of the program or to protect the interest of taxpayers.

"Iowa-based business" means a service provider whose ~~domicile~~ principal place of operations is in Iowa and that is actively providing services to covered entrepreneurs business development services in the state.

ITEM 4. Adopt the following **new** definitions of "Business development services," "Eligible entrepreneurial assistance provider" and "Financial assistance" in rule **261—102.3(15E)**:

"Business development services" includes but is not limited to corporate development services, business model development services, business planning services, marketing services, financial strategies and management services, mentoring and management coaching, and networking services.

"Eligible entrepreneurial assistance provider" or *"service provider"* means a person meeting the requirements of rule 261—102.6(15E).

"Financial assistance" means the same as defined in Iowa Code section 15.327.

ITEM 5. Rescind the definitions of "Covered entrepreneurs," "Domicile," "Expended funds" and "Service provider" in rule **261—102.3(15E)**.

ITEM 6. Amend subrule 102.4(1) as follows:

102.4(1) Program description. The program is designed to provide ~~grants~~ financial assistance to service providers meeting the eligibility requirements described in rule 261—102.6(15E). All awards of ~~grant funds~~ financial assistance must ultimately be approved by the board, and a contract must be entered into before ~~grant~~ funds will be disbursed. All contracts will specify the deliverables required in consideration for the provision of ~~funds~~ financial assistance.

ITEM 7. Amend subrule 102.4(2) as follows:

102.4(2) Application and award procedures. Eligible service providers may submit applications to the authority. The applications will receive an initial review to confirm program eligibility before being sent to the committee for a recommendation on funding. The committee will provide its recommendation to the board for a final determination on funding. The board may approve, deny, or defer each application for a ~~grant~~ financial assistance under the program. The board will consider applications for ~~funding on a first-come, first-served basis~~ financial assistance during the annual filing window described in subrule 102.4(5). The amount of financial assistance awarded to a service provider is within the discretion of the authority as determined by the board. If the board approves ~~funding for an award of financial assistance for a service provider~~, the authority will prepare a required contract specifying the terms and conditions under which ~~funds are~~ financial assistance is provided to the service provider.

ITEM 8. Amend paragraph **102.4(3)"c"** as follows:

c. The tracking and monitoring of the service provider's performance under a program contract, including an analysis of whether the service provider's deliverables meet all requirements of the contract and including an evaluation of the value added by the service provider to the businesses of ~~covered~~ entrepreneurs. The evaluation shall be provided by the corporation in furtherance of the program review and report required of the authority pursuant to Iowa Code section 15E.362.

ITEM 9. Adopt the following **new** subrules 102.4(5) and 102.4(6):

102.4(5) Annual filing window. In order to facilitate the competitive application and scoring process described in rule 261—102.6(15E), the authority and the corporation will accept applications for financial assistance only during the annual filing window. This filing window shall be from May 15 to June 1 of each calendar year. During the month of June, the authority and the corporation will process the applications and prepare them for consideration by the committee and the board at the first monthly meeting of the committee and the board following June 30 of each year. The authority may adjust the annual filing window dates under extenuating circumstances and will notify affected parties of such circumstances.

102.4(6) Miscellaneous. The authority may contract with outside service providers for assistance with the program. The authority may also make client referrals to eligible service providers regardless of the amount of financial assistance provided.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 10. Amend rule 261—102.5(15E) as follows:

261—102.5(15E) Program funding.

102.5(1) Aggregate fiscal year limitation. The authority will not award more than \$200,000 \$1 million in grants financial assistance under the program in any one fiscal year.

102.5(2) Individual applicant limitation. The authority will ~~limit the amount of program funds that any individual applicant may receive.~~ The amount awarded to an individual applicant shall equal the lowest of the following amounts: negotiate the amount of financial assistance to be provided to a service provider. However, the authority will not award more than \$200,000 to any one service provider in any one fiscal year.

a. ~~An amount equal to 25 percent of the applicant's total expended funds during the applicant's previous fiscal year.~~

b. ~~An amount equal to 100 percent of funds raised by the applicant in the previous fiscal year from private foundations, the federal government, local governments, financial institutions, or individuals.~~

c. ~~Two hundred thousand dollars.~~

102.5(3) Program funding source and allocation. Moneys for ~~grants~~ financial assistance under the program will be awarded from the moneys in the entrepreneur investment awards program fund created pursuant to Iowa Code section 15E.363. Moneys are deposited in this fund by the authority pursuant to Iowa Code section 15.335B. The amount deposited each year depends on the amount allocated for such purposes under Iowa Code section 15.335B.

102.5(4) Use of grant funds. An applicant receiving ~~grant funds~~ financial assistance under the program shall only use ~~such~~ the funds for the purpose of defraying operating costs actually incurred by the service provider in providing business development services to emerging and early-stage innovation companies in this state. Financial assistance provided under the program shall not be distributed to owners or investors of the company to which business development services are provided and shall not be distributed to other persons assisting in the provision of business development services.

102.5(5) Sunset date. ~~No grants will be awarded under the program after June 30, 2014, unless the program is extended by the general assembly.~~

ITEM 11. Amend rule 261—102.6(15E) as follows:

261—102.6(15E) Eligibility requirements and competitive scoring process.

102.6(1) Eligibility. In order to be eligible for a ~~grant~~ financial assistance under the program, an applicant must meet the requirements of this rule. ~~This includes meeting a list of objective criteria as well as a list of subjective criteria as follows.~~ A service provider applying to the program must meet all of the following criteria for eligibility:

a. The service provider must have its principal place of operations located in this state.

b. The service provider must offer a comprehensive set of business development services to emerging and early-stage innovation companies to assist in the creation, location, growth, and long-term success of the company in this state.

c. The business development services may be performed at the physical location of the service provider or the company.

d. The business development services may be provided in consideration of equity participation in the company, a fee for services, a membership agreement with the company, or any combination thereof.

102.6(1) Objective criteria. An applicant shall meet all of the following criteria:

a. ~~The applicant's expended funds total shall be at least \$500,000 during the applicant's most recent previous fiscal year. In order to establish that this criterion is met, the applicant may be required to provide financial information, payroll information, invoices, canceled checks, bank statements or other similar information.~~

b. ~~The applicant must provide services that meet the broad-based needs of covered entrepreneurs. In order to establish that this criterion is met, the applicant may be required to provide documentation substantiating the provision of such services. Such documentation may include strategic plans, operating~~

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

~~plans, marketing plans, budgets, audited financials, corporate minutes, articles of incorporation, operating agreements, or bylaws.~~

~~e.—The applicant must communicate and cooperate with other entities in the state offering similar services. In order to establish that this criterion is met, the applicant may be required to provide documentation demonstrating communication and cooperation. Such documentation may include contracts or memoranda of understanding with other entities or may include two or more affidavits of cooperation, signed by an officer of another entity with which the applicant is in cooperation and stating with particularity the manner and extent to which there is communication and cooperation. The authority reserves the right to make the final determination as to whether such another entity in the state offers similar services.~~

~~d.—The applicant must engage various funding sources for covered entrepreneurs. In order to establish that this criterion is met, an applicant may be required to provide documentation demonstrating the results achieved for covered entrepreneurs including amounts and types of funding sources successfully engaged for a reasonable number of recent clients or partners. Such documentation may also include the overall, lifetime success rate in engaging such funding sources.~~

~~e.—The applicant must communicate and cooperate with various entities for purposes of locating suitable facilities for covered entrepreneurs. In order to establish that this criterion is met, the applicant may be required to provide documentation demonstrating its efforts to locate such facilities for clients. Such documentation may include two or more affidavits of cooperation from local entities, signed by an officer of such an entity and stating with particularity the efforts undertaken to locate such facilities.~~

~~f.—The applicant shall be an Iowa-based business.~~

~~**102.6(2) Subjective criteria.** An applicant shall meet all of the following criteria:~~

~~a.—The business experience of the professional staff employed by the applicant. In order to allow assessment of this criterion, the applicant may be required to submit documentation of such experience. Such documentation may include résumés, curriculum vitae, and other professional biographical information.~~

~~b.—The business plan review capacity of the applicant's professional staff. In order to allow assessment of this criterion, the applicant may be required to submit documentation of such capacity. Such documentation may include project lists, work plans, or other resources reasonably necessary to assess capacity.~~

~~c.—The expertise of the applicant's professional staff in all aspects of business disciplines. If the information required pursuant to the criterion in paragraph 102.6(2)“a” is insufficient to allow assessment of this criterion, additional information may be required.~~

~~d.—The applicant's professional staff's access to external service providers including legal, accounting, marketing, and financial services. In order to allow assessment of this criterion, the applicant may be required to submit documentation of such access. Appropriate sources of documentation in this context will be determined on an ad hoc basis.~~

~~**102.6(2) Competitive scoring criteria.** The authority will award financial assistance on a competitive basis. In making awards of financial assistance, the authority will consider the following criteria:~~

~~a. The business experience of the professional staff employed or retained by the service provider. 25 points.~~

~~b. The business plan review capacity of the professional staff of the service provider. 15 points.~~

~~c. The expertise in all aspects of business disciplines of the professional staff of the service provider. 15 points.~~

~~d. The access of the service provider to external service providers, including legal, accounting, marketing, and financial services. 15 points.~~

~~e. The service model and likelihood of success of the service provider and its similarity to other successful service providers in the country. 15 points.~~

~~f. The financial need of the service provider. 15 points.~~

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ITEM 12. Amend subrule 102.7(1) as follows:

102.7(1) Contract required. An applicant awarded ~~grant funds~~ financial assistance under the program shall enter into a contract with the authority for the receipt of such funds. The authority will include certain deliverables in the contract as recommended by the corporation and will delegate to the corporation the tracking and monitoring of all contract provisions. The corporation shall provide regular reports to the authority on the progress of the applicant and on the results of the tracking and monitoring. The authority will make the final determination as to compliance with the terms of the contract and will make the final determination as to whether and when to disburse funds to the applicant.

[Filed 3/31/16, effective 6/1/16]

[Published 4/27/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/27/16.

ARC 2518C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 510B.3, the Insurance Division hereby amends Chapter 59, "Pharmacy Benefits Managers," Iowa Administrative Code.

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

1. Implement 2015 Iowa Acts, House File 395.
2. Incorporate the findings in *Pharm. Care Mgmt Ass'n v. Gerhart*, No. 4:14-CV-00345 (S.D. Iowa Feb. 18 and Sep. 8, 2015, appealed to the U.S. Court of Appeals for the Eighth Circuit, *PCMA v. Gerhart and Miller*, No. 15-3292). The Court did not enjoin the legislation, nor did it prohibit the promulgation of administrative rules related to the legislation.
3. Clarify duties of pharmacy benefits managers that will allow the Commissioner to administer Iowa Code chapter 510B. Pharmacy benefits managers are engaged to stand in the stead of insurers and other entities to administer and manage prescription drug benefits provided under the health insurance plans issued by the insurers and other entities. The Insurance Division has the duties to regulate and to supervise the conducting of the business of insurance in Iowa, pursuant to Iowa Code section 505.1. The Insurance Commissioner has general control, supervision, and direction over all insurance business transacted in the state, pursuant to Iowa Code section 505.8, and must provide assistance to the public and to consumers of insurance products in Iowa. The services provided by pharmacy benefits managers affect both the public (which includes pharmacies) and consumers of insurance products. Further, the services provided by pharmacy benefits managers not only contribute to the efficiency of how insurers administer the payment of benefits, but also contribute to insurance costs reflected in the rates charged by insurers to consumers of insurance. The Commissioner is required to review risks, costs and rates. (See, e.g., Iowa Code chapter 513C and sections 505.8(1), 505.8(19) and 514A.13.) The amendments provide means by which the Insurance Division and the Commissioner can obtain the information necessary to determine whether insurers, through their pharmacy benefits managers, are providing uniform, fair, administratively efficient and cost-efficient services to insurers, pharmacies and consumers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 2, 2016, as **ARC 2433C**. A public hearing was held on March 22, 2016, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, and written comments were accepted through March 30, 2016. Comments were received. The following list summarizes the changes made to the amendments in response to public comment and Division review:

A. The words "requests information" were removed from the definition of "complaint" in rule 191—59.2(510B).

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B. The first instance of the word “generic” was removed from the new definition of “maximum reimbursement amount,” and other clarifying changes were made to the definition.

C. In the Notice, amended subrule 59.4(6), new subrule 59.5(3) and amended paragraph “e” of renumbered subrule 59.6(3) required pharmacy benefits managers to include certain items in the complaint summary of renumbered subrule 59.8(2). Those requirements have been moved to renumbered subrule 59.8(2). Consequently, subrule 59.4(6), which was proposed for amendment in the Notice, is now rescinded herein, new subrule 59.5(3) was not adopted, and paragraph “e” of renumbered subrule 59.6(3) is stricken. Cross references have been corrected accordingly.

D. The word “formulary” was removed from new subrule 59.5(1) and renumbered rule 191—59.7(510B) and replaced with the words “therapeutically, pharmaceutically equivalent multiple-source prescription.”

E. In new subrule 59.5(2), a reasonableness requirement was added to the appeal process requirement.

F. Proposed new subrule 59.8(3) has been renumbered as 59.8(4), and a new subrule 59.8(3) has been added to clarify the confidentiality of the quarterly complaint summaries.

G. The language of paragraph “h” of renumbered subrule 59.8(1) and paragraph “b” of new subrule 59.8(4) was changed so that a pharmacy benefits manager has to provide in a complaint report the name of a pharmacy services administration organization only when the pharmacy benefits manager has knowledge that a pharmacy services administration organization is involved in the matter that is the subject of the complaint.

H. Clarifying changes have been made to new paragraphs 59.10(4)“c” and “d” and subparagraph 59.10(4)“e”(1).

I. Changes have been made to new subrule 59.10(5) to clarify the confidentiality protections of pharmacy benefits managers’ information.

The Insurance Division received comments requesting delay of the effective date of these amendments, related both to the appeal of the case cited in paragraph “2” above and to the alleged short time until the effective date of the amendments. The Insurance Division is not changing the effective date from the one stated in the Notice.

- The Court opinion regarding *Pharm. Care Mgmt Ass’n v. Gerhart*, No. 4:14-CV-00345 (S.D. Iowa Feb. 18 and Sep. 8, 2015) is the law in effect at this time. As stated above, the Court did not enjoin the legislation nor the promulgation of rules related to it. The legislative bills which these rule amendments are clarifying were enacted in 2007, 2014 and 2015. The appeal of the case provides no reason to delay the adoption of these rule amendments.

- Iowa Code section 510B.3(6) gives the Commissioner the authority to adopt rules to administer Iowa Code chapter 510B. The Insurance Division has conducted several informal interactions with interested parties concerning preliminary drafts of what ultimately became these amendments. Interested parties have had ample opportunity to provide comments, which the Insurance Division has considered and taken into account as it has deemed appropriate. The Insurance Division is aware of no impediment to the interested parties being able to comply with these amendments by the effective date.

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

These amendments will impose no fiscal impact to the State.

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

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

These amendments shall become effective June 1, 2016.

The following amendments are adopted.

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

ITEM 2. Amend rule **191—59.2(510B)**, definitions of “Complaint” and “Pharmacy,” as follows:
“*Complaint*” means a written communication ~~expressing a grievance or an inquiry concerning a transaction between a pharmacy benefits manager and from a pharmacy-~~ to a pharmacy benefits manager that makes an inquiry or expresses a grievance and includes, but is not limited to, the following:

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

2. Any pharmacy's appeal or request for an independent third-party review of an audit report pursuant to subrules 59.4(4) and 59.4(5).

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

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

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

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

"Maximum reimbursement amount," as defined in Iowa Code section 510B.1(6), includes but is not limited to any prices used by a pharmacy benefits manager for therapeutically, pharmaceutically equivalent multiple-source prescription drugs such as maximum allowable cost, federal upper limit pricing, generic effective rate pricing, or any other pricing strategies used by the pharmacy benefits manager.

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

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

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

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

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

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

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

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ITEM 7. Rescind and reserve subrule **59.4(6)**.

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

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

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

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

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

ITEM 10. Amend renumbered subrule 59.6(3) as follows:

59.6(3) The following apply to terminations or suspensions of contracts with pharmacies by pharmacy benefits managers:

a. No change.

b. ~~A pharmacy shall not be terminated or suspended from the pharmacy benefits manager's provider network or otherwise penalized by a pharmacy benefits manager solely because the pharmacy files a complaint, grievance or appeal with any entity.~~ A pharmacy benefits manager shall not neither take action, nor imply or state that it may or will take action, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefits manager's provider network solely or mainly because the pharmacy files a complaint, grievance or appeal with any entity as defined in rule 191—59.2(510B), with any entity.

c. and *d.* No change.

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

f. e. If a pharmacy requests an independent third-party review of a termination or suspension decision and the termination is found to be substantiated, the cost of the third-party review shall be paid by the pharmacy. If a pharmacy requests an independent third-party review of a termination or suspension decision and the termination is found to be unsubstantiated, the cost of the third-party review shall be paid by the pharmacy benefits manager.

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

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

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ITEM 12. Amend renumbered rule 191—59.8(510B) as follows:

191—59.8(510B) Complaints.

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

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

b. to e. No change.

f. Covered entity benefits certificate; ~~and~~

g. The final determination and outcome of the complaint;

h. The name of any pharmacy services administrative organization, if known by the pharmacy benefits manager, with which the pharmacy or the pharmacy benefits manager has a contract and that is involved in the matter of the complaint; and

i. For complaints related to a maximum reimbursement amount, documentation demonstrating compliance with subrule 59.5(1) and rule 191—59.7(510B).

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

a. No change.

b. Information related to any pharmacy's appeal or request for an independent third-party review of an audit report pursuant to subrules 59.4(4) and 59.4(5);

c. Information related to any pharmacy's comment on or contest or appeal of a maximum reimbursement rate or maximum reimbursement amount list pursuant to subrule 59.5(2);

d. Information related to any request by a pharmacy for and the outcome of an independent third-party review of a termination or suspension decision pursuant to paragraph 59.6(3) "d";

~~*b. e.*~~ A summary of the information listed in paragraph 59.7(1) 59.8(1) "a," excluding documentation; and

~~*e. f.*~~ The information listed in paragraphs 59.7(1) 59.8(1) "b," "d," "e," and "g."

ITEM 13. Adopt the following **new** subrules 59.8(3) and 59.8(4):

59.8(3) *Confidentiality.* The quarterly complaint summary shall be confidential pursuant to subrule 59.10(5).

59.8(4) *Inquiries and complaints from the commissioner.*

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

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

(1) The pharmacy benefits managers can determine that information from their records and other knowledge of the subject matter of the inquiry or complaint; or

(2) The commissioner has provided enough information in the inquiry or complaint for the pharmacy benefits manager to identify such facts.

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

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

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

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pharmacy benefits managers pursuant to Iowa Code chapter 507, and cooperation with the commissioner in conducting investigations pursuant to Iowa Code chapter 507B.

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

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

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

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

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

- (1) A remuneration collected by the pharmacy benefits manager which is allocated to a covered entity;
- (2) An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer;
- (3) A pharmacy network fee; and
- (4) Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or labeler for a drug switch program, a formulary management program, a mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function.

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

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

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

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

d. Iowa Code section 510B.8(2) “*b*” permits pharmacy benefits managers to establish maximum reimbursement amounts, as defined in Iowa Code section 510B.1(6), for prescription drugs including, but not limited to, those with at least two or more A-rated therapeutically equivalent, multiple-source prescription drugs with a significant cost difference. Any pricing methodology used by a pharmacy benefits manager for determining the maximum reimbursement amounts for prescription drugs, including but not limited to those with at least two or more A-rated therapeutically equivalent, multiple-source prescription drugs with a significant cost difference, shall be disclosed to the commissioner, if the commissioner requires pursuant to Iowa Code sections 510B.8(1) and 510B.8(2).

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

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

1. Obtained from multiple nationally recognized comprehensive data sources including, for example, the U.S. Center for Medicare and Medicaid Services’ national average drug acquisition

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cost, pharmaceutical wholesalers, prescription drug vendors, and pharmaceutical manufacturers for prescription drugs;

2. Nationally available; and
3. Available for purchase by multiple pharmacies in the state of Iowa.

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

59.10(5) Confidentiality. Information provided by a pharmacy benefits manager to the commissioner under this rule or under rule 191—59.8(510B) shall be deemed confidential under Iowa Code sections 22.7(2), 22.7(3), 22.7(6), 505.8(8), 505.8(9), 507.14, and 510B.3, as applicable.

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

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

[Filed 4/8/16, effective 6/1/16]

[Published 4/27/16]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/27/16.

ARC 2506C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.91(8), the Iowa Finance Authority hereby amends Chapter 9, “Title Guaranty Division,” Iowa Administrative Code.

The amendment strikes rules 265—9.1(16) to 265—9.22(16) and adopts new rules 265—9.1(16) to 265—9.11(16) in order to reorganize Chapter 9. The purpose of the amendment is to clarify the rules, align the language with statutory authority and current practice, and streamline the process for obtaining a waiver of the 40-year title plant requirement.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2128C** on September 2, 2015. A public hearing was held on September 22, 2015, at the Iowa Finance Authority. A request for a regulatory analysis, pursuant to Iowa Code section 17A.4A, was requested by the Iowa Land Title Association on September 15, 2015. A regulatory analysis was prepared by the Authority and published in the Iowa Administrative Bulletin on November 25, 2015, beginning on page 839. Accordingly, by operation of law, the public comment period and the public hearing were extended until December 15, 2015. One member of the public attended the extended public hearing held on December 15, 2015. No public comment was made at the extended hearing.

Public comments were received from Iowa Land Title Association, abstractors and attorneys. Comments received addressed the definition of “abstract” and “participating abstractor.” Comments were also received about subrules pertaining to title plant inspections and title plant waivers, including:

- The content of the application,
- Criteria for a waiver of the 40-year title plant requirement,
- Definitions of “hardship” and “public interest,”
- Rulings by the Division Board,
- Mentoring by and liability of attorneys,
- Geographic limitations,
- Conditions, and
- Revocation.

Based on public comments, the Authority made the following changes from the published Notice:

- Added a definition of “abstractor” to rule 265—9.1(16).

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- Throughout the chapter, removed the phrase “or oral” from the phrase “written or oral instructions given by the division.”
- Moved eligibility considerations that applied to issuance of closing protection letters from paragraph 9.7(4)“a” to a new subrule 9.6(3) to apply the eligibility considerations to all participants. Noticed subrules 9.6(3) to 9.6(13) were renumbered as 9.6(4) to 9.6(14), and the remaining provisions regarding issuing closing protection letters are found in paragraphs 9.7(4)“a” and “b.”
- Replaced the reference to “‘Title Insurance and Settlement Company Best Practices’ set forth by the American Land Title Association” with the phrase “title and settlement best practices adopted by the division” in new paragraph 9.6(3)“g.”
- In subrule 9.6(6), clarified that liability insurance is also known as errors and omissions insurance and changed “liability insurance” to “professional liability insurance.”
- Clarified in paragraph 9.6(14)“f” that material noncompliance with the law, rules, and other instructions will be based on a finding by the Division Director instead of reliance on a complaint or claim.
- In numbered paragraph 9.7(1)“d”(6)“4,” provided for giving considerable weight in the granting of a title plant waiver if the applicant has experience abstracting under the supervision of a participating attorney or participating abstractor in certain circumstances; or if the participating attorney or participating abstractor has supervised the applicant’s abstracting for a period of two years and attests to the Division Board regarding the applicant’s ability to abstract.
- Added numbered paragraph 9.7(1)“d”(8)“4” to clarify that the revocation of a waiver recipient’s authorization to provide services on behalf of the Division is grounds for the Division Board to withdraw a waiver.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Authority’s general rule on waivers at 265—Chapter 18.

The Iowa Finance Authority adopted this amendment on March 9, 2016.

After analysis and review of this rule making, no adverse impact on jobs is expected.

This amendment is intended to implement Iowa Code sections 16.2A, 16.4C, 16.91, 16.92, and 16.93.

This amendment will become effective June 1, 2016.

The following amendment is adopted.

Amend **265—Chapter 9** as follows:

CHAPTER 9
TITLE GUARANTY DIVISION

265—9.1(16) Definitions. The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

“*Abstract of title*” or “*abstract*,” for the purposes of the title guaranty program, means a written or electronic summary of all matters of record including, but not limited to, grants, conveyances, easements, encumbrances, wills, and judicial proceedings affecting title to a specific parcel of real estate, together with a statement including, but not limited to, all liens, judgments, taxes and special assessments affecting the property and a certification by a participating abstractor that the summary is complete and accurate; provided, however, that for purposes of issuance of a title guaranty certificate covering nonpurchase financing, and for only such purposes, the “abstract of title” or “abstract” may also mean a title guaranty report of title.

“*Authority*” means the Iowa finance authority described in Iowa Code chapter 16.

“*Certificate*” means the division certificate to guarantee title, including any part or schedule thereof and any endorsements thereto.

“*Closing protection letter*” means an agreement by the division to indemnify a lender or owner or both for loss caused by a division closer’s theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the division closer.

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~~“Commitment” means the division commitment to guarantee title, including any part or schedule thereof and any endorsements thereto.~~

~~“Division” means the title guaranty division of the Iowa finance authority.~~

~~“Division board” means the board of the title guaranty division created pursuant to Iowa Code section 16.2A(1).~~

~~“Division closer” means a participating attorney, a participating abstractor, or an independent closer who is authorized by the division to conduct a division closing under the protection of a closing protection letter.~~

~~“Division closing” means a settlement in which a division closer is appointed to finalize a real estate transaction in accordance with general and specific instructions prior to disbursement of the proceeds and for which a closing protection letter is issued.~~

~~“Division escrow account” means, in conjunction with division closings, escrows, settlements, and title indemnities, any checking account utilized for the purpose of:~~

~~1. Deposits, including, but not limited to, the acceptance of incoming funds from the lender or borrower or both; and~~

~~2. Disbursements, including, but not limited to, sellers’ proceeds, mortgage payoffs, expenses of sale, and professional fees.~~

~~However, “division escrow account” shall not include client trust accounts subject to the requirements of chapter 45 of the Iowa Court Rules.~~

~~“Electronic record,” for the purposes of the title guaranty program, means a record created, generated, sent, communicated, received, or stored by electronic means that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~

~~“Field issuer” means a participating attorney, a participating abstractor, or an independent closer authorized by the division to issue commitments and certificates.~~

~~“Form” or “forms” means printed instruments used in guaranteeing title to Iowa real estate that, when completed and executed, create contractual obligations or rights affecting the division.~~

~~“Grandfathered attorney” means a participating attorney who has been providing abstract services continuously from November 12, 1986, to the date of application to be a participating abstractor, either personally or through persons under the participating attorney’s supervision and control, who is exempt from the requirement to own or lease a title plant.~~

~~“Independent closer” means a person or entity, other than a participating attorney or a participating abstractor, conducting a division closing and authorized to close a transaction under protection of a closing protection letter.~~

~~“Manual” means a title guaranty reference book approved by the division board containing division certificate forms and certain Iowa statutory requirements.~~

~~“Nonpurchase financing,” for the purposes of the title guaranty program, means a refinanced or junior mortgage securing an amount fixed by the division board and included in the manual.~~

~~“Participant” means a participating attorney or a participating abstractor.~~

~~“Participating abstractor” means an abstractor who is authorized to participate in the title guaranty program and who is in full compliance with the abstractor’s participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division.~~

~~“Participating attorney” means an attorney who is authorized to participate in the title guaranty program, who is in full compliance with the attorney’s participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division, and who is not subject to current disciplinary proceedings by the Iowa supreme court that preclude the attorney from practicing law in this state.~~

~~“Person” shall have the same meaning as in Iowa Code section 4.1(20).~~

~~“Residential property,” for the purposes of the title guaranty program, means residential real estate consisting of single family housing or multifamily housing of no more than four units.~~

~~“Supervision and control,” for the purposes of the title guaranty program, means that a participant’s or independent closer’s shareholders, partners, associates, secretaries, paralegals, and other persons~~

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~~under the participant's or independent closer's supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant or independent closer, shall comply with the requirements of the contracts, forms, the manual, staff supplements, and any other written or oral instructions or requirements given by the division. A participant or independent closer shall be liable to the division for loss or damage suffered by the division resulting from acts or omissions of the participant's or independent closer's shareholders, partners, associates, secretaries, paralegals, and other persons under the participant's or independent closer's supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant or independent closer as an agent of the division as though the act or omission were that of the participant or independent closer.~~

~~"Title guaranty report of title," for the purpose of nonpurchase financing, means a written or electronic short form of the abstract of title covering the borrower's title, liens, and encumbrances. The division board shall approve requirements and procedures for the title guaranty report of title in the manual.~~

~~"Title search(es)" or "search(es)," for the purposes of the title guaranty program, means the abstract of title.~~

265—9.2(16) Purpose. This chapter describes the mission, organization, programs and operations of the division, including the office where and the means by which interested persons may obtain information and make submissions or requests.

265—9.3(16) Mission. The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state. Surplus funds in the title guaranty fund shall be transferred to the authority's housing program fund after providing for adequate reserves and for the operating expenses of the division.

265—9.4(16) Organization.

9.4(1) Location. The office of the division is located at 2015 Grand Avenue, Des Moines, Iowa 50312. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's Web site address is www.iowafinanceauthority.gov, and the division's telephone and facsimile numbers are as follows: (515)725-4900 (general telephone number); 1-800-432-7230 (toll-free telephone number); 1-800-618-4718 (TTY); and (515)725-4901 (facsimile).

9.4(2) Division board. A chair and vice-chair shall be elected annually by the members of the division board, generally at the first meeting following July 1 of each year, which is the beginning of the fiscal year.

9.4(3) Meetings. Meetings of the division board shall be held quarterly on the date and time determined by the board. Meetings of the division board may also be held at the call of the chair or on written request of two members. The division will give advance public notice of the specific date, time and place of each division board meeting, and will post the tentative agenda for each meeting at least 24 hours before commencement of the meeting at the main office of the authority, as well as on the authority's Web site. Meetings may occasionally be conducted by electronic means. Any interested person may attend and observe division board meetings except for any portion of a meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the division board meetings are available for viewing at the main office of the authority or via the authority's Web site. Three members of the division board constitute a quorum. An affirmative vote of a majority of the appointed board members is necessary for any substantive action taken by the division board. The majority shall not include any board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

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~~265—9.5(16) Location where public may obtain information.~~ Requests for information, inquiries, submissions, petitions and other requests may be directed to the division at the address set forth in subrule 9.4(1). Requests may be made personally, by telephone, mail, E-mail or any other medium available.

~~265—9.6(16) Title guaranty program.~~

~~9.6(1) Operation.~~ The division operates a program to offer guaranties of real property titles in the state through the issuance of title guaranty commitments and certificates by the division, by participating abstractors for the division pursuant to subrule 9.6(4), paragraph “c,” herein, or by participating attorneys pursuant to Iowa Code section 16.91(7).

~~9.6(2) Application for title guaranty commitments or certificates.~~ The division may authorize entities engaged in the real estate industry to apply directly to the division staff, an independent closer, a participating attorney, or a participating abstractor for a title guaranty commitment or certificate. The applicant shall complete and submit such forms and other information as the division may require and pay the appropriate fee. Entities engaged in the real estate industry that the division may authorize to apply include, but are not limited to, mortgage lenders as defined in Iowa Code section 16.1(1)“y,” and closing and escrow companies.

~~9.6(3) Participating attorneys.~~ An attorney licensed to practice law in the state of Iowa may participate in the title guaranty program upon approval by the division director of an application submitted by the licensed attorney to the division and upon execution and acceptance by the division director of the attorney’s participation agreement.

~~a.—License.~~ A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

~~b.—Underwriting determinations.~~ A participating attorney shall make all underwriting determinations prior to or at the time of closing. If the participating attorney does not attend the closing and is not available by telephone during the closing, all underwriting determinations must have been made by the participating attorney issuing the opinion, commitment or certificate prior to closing. For purposes of this rule, the term “underwriting determinations” includes, but is not limited to, guaranteeing access, reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages or other liens, and any other matters disclosed by the opinion, commitment or other sources of title information. A participating attorney who causes or allows an erroneous underwriting determination to be made by someone other than a member of the division’s legal staff or the participating attorney who issued the opinion, commitment or certificate shall be strictly liable to the division for loss or damage the division may suffer as a result of the erroneous underwriting determination.

~~(1) A participating attorney shall make all underwriting determinations arising out of the issuance of an attorney title opinion or a title commitment or certificate using both:~~

~~1.—Generally accepted and prudent title examining methods; and~~

~~2.—Procedures implemented by the division and outlined in these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division.~~

~~(2) Any underwriting determination about which there may be a bona fide difference of opinion among local lawyers and that is not specifically covered by materials provided by the division shall be approved by division legal staff.~~

~~c.—Authority of participating attorney.~~ A participating attorney is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the attorney’s participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the participating attorney under the preceding sentence is not exclusive and is subject to the rights of the authority, the division, and other participants, independent closers, agents, or representatives of the division to transact the business of opining on titles to real estate and issuing commitments and certificates and is further subject to the right of the division to appoint other participants and independent closers.

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~~9.6(4) Participating abstractors.~~ An abstractor or abstracting concern may participate in the title guaranty program upon approval by the division director of an application to the division and upon execution and acceptance by the division director of an abstractor's participation agreement.

~~a.—Title plant.~~ Participating abstractors shall own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for titles to real property guaranteed by the division. Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor's participation in the title guaranty program.

~~b.—Title plant exemption.~~ Grandfathered attorneys and attorneys and abstractors who have received a waiver of the use of an up-to-date plant described in Iowa Code section 16.91(5) "a"(2), either personally or through persons under their supervision and control, shall be exempt from the requirement to own or lease a title plant. This exemption is a personal exemption of the individual participant, is not transferable, and terminates at such time as the participant ceases providing abstracting services or upon the death or incapacity of the participant.

~~c.—Issuing title guaranty.~~ Pursuant to a written contract with the division director, a participating abstractor may be authorized to issue a title guaranty commitment or certificate for the division when the participating attorney who prepares the opinion allows issuance by the participating abstractor. Written contractual approval by the division director for division issuance will be based upon the completion of a division request form by a participating abstractor and the attachment of all disclosures required by the division. A participating abstractor authorized to issue a title guaranty commitment or certificate must comply with the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division and in no other manner whatsoever. The rights of the participating abstractor under the preceding sentence are not exclusive and are subject to the rights of the authority, the division, and other field issuers of the division to issue commitments or certificates and are further subject to the right of the division to appoint other field issuers. A participating abstractor's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to the written contract with the division.

~~d.—Authority of participating abstractor.~~ A participating abstractor is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the abstractor's participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division and in no other manner whatsoever. The authority of the participating abstractor under the preceding sentence is not exclusive and is subject to the rights of the authority, the division, and other participating abstractors, agents, or representatives of the division to transact the business of abstracting, which includes but is not limited to any manner of title search or review of titles to real estate, and is further subject to the right of the division to appoint other participating abstractors.

~~9.6(5) Participation requirements.~~

~~a.—Errors and omissions insurance.~~ A participant shall maintain errors and omissions insurance at all times while acting as an agent of the division, with such coverage and in such amounts as the division board may direct from time to time by resolution.

~~(1) The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of required errors and omissions insurance at least 30 days prior to the date of the meeting at which the matter will be considered.~~

~~(2) Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.~~

~~b.—Participation fees.~~ A participant shall pay a participation fee set by resolution of the division board subject to the approval of the authority board.

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~~(1) The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of participation fees at least 30 days prior to the date of the meeting at which the matter will be considered.~~

~~(2) Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.~~

~~9.6(6) *Abstract of title.* All abstracts of title shall be prepared and conducted in compliance with division procedures as specified in the manual, staff supplements, and any other written or oral instructions or requirements given by the division that are in effect at the time of abstracting. A participating abstractor shall retain a written or electronic copy of each abstract of title prepared for a title guaranty certificate and shall provide such copy to the division upon request.~~

~~9.6(7) *Attorney title opinion.* All attorney title opinions shall be prepared and issued in compliance with division procedures as specified in the manual, staff supplements, and any other written or oral instructions or requirements given by the division that are in effect at the time of issuance. A participating attorney who is a field issuer may issue a commitment as the preliminary attorney title opinion and the certificate as the final attorney title opinion in compliance with division procedures. A written or electronic copy of each attorney title opinion shall be retained by a field issuer, and a copy thereof shall be provided to the division upon request.~~

~~9.6(8) *Closing protection letters.*~~

~~a. *Issuance of closing protection letters.* Division closers may be authorized to receive a closing protection letter approved by the division board when:~~

- ~~(1) A division closer has completed division forms and procedures training;~~
- ~~(2) The division director has approved the application, and~~
- ~~(3) A division commitment is issued.~~

~~b. *Application.* Application for designation of division closer status shall be on forms provided by the division, and all requested information shall be provided with the application form. The division may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the division within 30 days after the division requests the information. The application shall be accompanied by a fee to be set by the division board. The division director shall approve or deny the application within 90 days after the application has been accepted for processing and send written notice thereof to the applicant.~~

~~c. *Guidelines.* In determining whether to approve or deny an application for designation of division closer status, the division director may consider the following factors, including but not limited to:~~

~~(1) The needs of the public and the needs of existing or potential customers of the applicant that are served by a designation of division closer status.~~

~~(2) A history of operation and management of the applicant's business.~~

~~(3) Character, fitness, financial responsibility and experience of the applicant and the applicant's employees.~~

~~(4) Criminal background checks for felony or misdemeanor convictions of the applicant or the applicant's employees involving moral turpitude.~~

~~(5) A record of defaulting by the applicant or the applicant's employees in the payment of moneys collected for others in this state or other states.~~

~~(6) A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.~~

~~(7) The applicant's credit report, which is to be submitted directly to the division director at the expense of the applicant.~~

~~(8) Other factors as determined by the division director to be relevant.~~

~~d. *Investigation.* The division director may conduct an investigation as deemed necessary. The division director may solicit, by whatever manner deemed appropriate, comments from other persons conducting closings, or from any other person or entity which may be affected by or have an interest in the pending application.~~

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~~*e.—Revocation.* The division director has discretion to revoke a division closer's status for reasons including but not limited to the following:~~

~~(1) When the financial condition of the division closer deteriorates.~~

~~(2) When the division director determines that the division closer's activities are being conducted unlawfully or in an unsafe or unsound manner.~~

~~*f.—Authority of division closer.* A division closer is authorized to conduct division closings only for the purposes and in the manner set forth in the division closer's agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other instructions or requirements given by the division and in no other manner whatsoever. The authority of the division closer under the preceding sentence is not exclusive and is subject to the rights of the authority, the division, and other division closers to transact the business of guaranteeing titles to real estate in Iowa and is further subject to the right of the division to appoint other division closers.~~

~~A division closer shall obtain the written authorization of a member of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under 9.6(8) "f" is not obtained through the act or omission of the division closer, the division closer shall be strictly liable to the division for any resulting loss or damage.~~

~~*g.—Division escrow accounts.* The division board shall approve procedures and requirements for the maintenance of division escrow accounts. Division closers shall comply with the rules and requirements set by the division board with respect to the procedures, format, and style for maintaining the division escrow accounts. The division board may require the division closer to provide an irrevocable letter of direction to the institution at which each division escrow account is established, authorizing the division to review and audit the institution's records of such account at any time that the division, in its discretion, deems necessary.~~

~~**9.6(9) General provisions.**~~

~~*a.—Commitment and certificate amount limitations.* A field issuer shall obtain the written authorization of a member of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under this paragraph is not obtained through the act or omission of the field issuer, the field issuer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.~~

~~*b.—Title/closing files and forms.* A participant or independent closer shall maintain separate title, client and closing files or maintain client files in such a manner that information pertaining to activities of the participant or the independent closer is readily available to the division. A participant or independent closer shall maintain files for a period of ten years after the effective date of the commitment and certificate or certificates.~~

~~(1) The division will provide forms to a participant or independent closer for use in acting for the division. A participant or independent closer may not alter any form supplied by the division, or use a form supplied by another person or entity to bind the division, or otherwise bind the division to liability with a form, other writing or representation not supplied or authorized by the division. In addition, the participant or independent closer shall:~~

~~1.—Return the original of any canceled certificate to the division, and~~

~~2.—Not transfer or attempt to transfer unissued commitments or certificates to another participant, independent closer, or other person or entity unless authorized in writing by the division.~~

~~(2) If a participant or independent closer fails to comply with the requirements of 9.6(9) "b," in addition to the division's other rights and remedies, the division may refuse to supply any forms to the participant or independent closer until the participant or independent closer complies with the requirements of 9.6(9) "b" to the satisfaction of the division.~~

~~(3) The participant or independent closer shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participant or independent closer to account for any form supplied by the division, or the failure of the participant or independent closer to comply with the requirements of 9.6(9) "b."~~

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c.—Training. The division director may require a participant, an independent closer, and the participant's and independent closer's staff to attend training sessions or continuing education seminars as deemed necessary by the division director in order to ensure compliance with division requirements and procedures.

d.—Office audits. The division may, with or without notice to a participant or an independent closer, audit the participant or independent closer at the participant's or independent closer's office. This audit may include, but need not be limited to, a review of the participant's or independent closer's commitment and certificate issuance procedures, an audit of serialized forms, an audit and test of title plants and tract indices, an audit of closing operation and closing procedures, an audit of the division escrow account(s), and verification of the participant's or independent closer's compliance with division rules, participation agreements, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division.

e.—Interest in property. No participant or independent closer shall prepare an abstract of title, issue attorney title opinions, commitments, or certificates, or conduct a closing upon property in which the participant or independent closer has an interest without prior authorization of the division.

265—9.7(16) Waiver of up-to-date title plant requirement. The division board shall consider an application by an attorney or abstractor for waiver of the use of an up-to-date title plant requirement described in Iowa Code Supplement section 16.91(5) "a"(2).

9.7(1) Mission. The division is authorized under Iowa Code chapter 16 to issue title guaranties throughout the state. The division's public purpose is to facilitate lenders' participation in the secondary market and to promote land title stability through use of the abstract attorney opinion system. The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing title guaranties. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of title guaranties throughout the state, rapid service, and a competitive price. To assist the division in this mission, Iowa Code Supplement section 16.91(5) "b" expressly allows the division to waive the up-to-date title plant requirement.

9.7(2) Definitions. The following words and phrases, when used in this rule, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

"Availability of title guaranties" means that title guaranties are uniformly accessible throughout the state to buyers and lenders with competitive pricing, service, and quality and that there are two or more abstractors physically located in all 99 counties.

"Exempt attorney-abstractor," as it relates to the title plant requirement, means a grandfathered attorney or a waived attorney.

"Grandfathered attorney" means a participating attorney who has been providing abstract services continuously from November 12, 1986, to the date of application to be a participating abstractor, either personally or through persons under the participating attorney's supervision and control, who is exempt from the requirement to own or lease a title plant. This exemption is a personal exemption of the individual participating attorney, is not transferable, and terminates at such time as the participating attorney ceases providing abstracting services or upon the death or incapacity of the participating attorney.

"Hardship" means deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances. Financial hardship alone may constitute a hardship.

"Interested person" means a person requesting a plant waiver, all division board members, all participating abstractors in the county for which the waiver is requested, the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information that an application for waiver has been made to the division.

"Person" means an individual, including a corporation, limited liability company, government or governmental subdivision or agency, business trust, trust, partnership or association, or any other legal entity.

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~~“Public interest” means that which is beneficial to the public as a whole, including but not limited to increasing competition among abstractors, encouraging the use of title guaranties throughout the state, making title guaranties more competitive than out-of-state title insurance, increasing the division’s market share, improving the quality of land titles, protecting consumers, and encouraging maximum participation by participating abstractors and participating attorneys physically located in all 99 counties.~~

~~“Waiver” or “variance” means an action by the division which suspends in whole or in part the requirement of the use of a current tract index described in Iowa Code Supplement section 16.91(5) as applied to an abstractor.~~

~~9.7(3) Filing of application. An applicant must submit a plant waiver application in writing to the attention of the director of the Title Guaranty Division of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312.~~

~~9.7(4) Content of application. The title guaranty division may provide an application form on the division’s Web site. A plant waiver application shall include, at a minimum, the following information where applicable and known to the applicant:~~

- ~~a. The name, business address, E-mail address, and telephone number of the abstractor for whom a waiver is being requested;~~
- ~~b. The type of waiver being requested, as described in subrule 9.7(8);~~
- ~~c. A general description of the applicant’s business;~~
- ~~d. A description of intention to develop a 40-year tract index;~~
- ~~e. The relevant facts that the applicant believes would justify a waiver under subrules 9.7(7) and 9.7(8); and~~
- ~~f. A signed statement from the applicant attesting to the accuracy of the facts provided in the application.~~

~~9.7(5) Notification and response.~~

~~a. The division director shall acknowledge an application upon receipt. All interested persons shall be contacted by E-mail and Web-site posting, and notice shall be given by United States first-class mail to any party requesting the same in writing. Notice shall be given within 14 days of the receipt of the application by the division director. Notification to an interested person is not a requirement for the division board to consider the waiver, and failure to inform an interested person of an application for waiver shall not void or otherwise nullify any action or decision of the division board.~~

~~b. Any person may submit a written statement in support of or in opposition to the application.~~

~~c. The application shall be placed on the agenda for the next scheduled division board meeting which is at least 30 days after the application is filed unless a special meeting is requested by the chairperson of the board or by written request of two board members.~~

~~9.7(6) Board meeting action.~~

~~a. The informal review of the waiver is not a contested case proceeding but other agency action wherein the rules of evidence are not applicable.~~

~~b. To preserve order, the chairperson of the board may set reasonable limitations upon the number of persons who may appear before the division board and the time allotted for presentations in favor of and against the requested waiver.~~

~~c. Title guaranty director review. The title guaranty director shall investigate and review the petition and its supporting documentation and, at the waiver meeting before the board, shall give the board a recommendation to grant or deny the waiver.~~

~~d. The board shall consider the application, the criteria and type of waiver set forth in subrules 9.7(7) and 9.7(8), and then vote on the application.~~

~~9.7(7) Criteria for waiver or variance. In response to an application completed pursuant to subrule 9.7(4), the division board may issue a ruling permanently or provisionally waiving the requirement set forth in Iowa Code Supplement section 16.91(5)“a”(2) of an up-to-date title plant requirement, if the board finds both of the following:~~

~~a. The title plant requirement described in Iowa Code Supplement section 16.91(5)“a”(2) imposes a hardship to the abstractor or attorney; and~~

~~b. The waiver is:~~

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- (1) ~~Clearly in the public interest; or~~
- (2) ~~Absolutely necessary to ensure availability of title guaranties throughout the state.~~

~~9.7(8) Type of waiver or variance granted.~~ Provisional and permanent waivers described in this subsection may be granted by the division board. Guidelines for provisional and permanent waivers are as follows:

~~a. Provisional waivers.~~ The division board may grant a provisional waiver of one year or less to an applicant intending to build a title plant. If such time period is not sufficient, the applicant may reapply to the division board for an extension of the waiver up to one additional year at the discretion of the division board. The division board may grant a provisional waiver when the applicant provides the following:

- (1) ~~Evidence that a title plant will be built for a specified county;~~
- (2) ~~Evidence of significant financial loss due to the inability to provide abstracts for the division;~~
- (3) ~~Evidence that the provisional waiver is necessary in order to produce a revenue stream to justify the expense associated with building a title plant; and~~
- (4) ~~Professional references from two licensed Iowa attorneys or one participating plant abstractor attesting to the applicant's ability to abstract.~~

~~b. Permanent waivers for attorneys.~~ The division board may grant a permanent waiver to an Iowa-licensed attorney.

(1) ~~Attorneys granted a permanent waiver hold the same status as grandfathered attorneys and, absent express legislative authority to the contrary, the board will not limit geographically an attorney's ability to abstract for the division. However, the applicant may by contract with the division board agree voluntarily to limit the applicant's abstracting for the division to one or more specified counties.~~

(2) ~~A permanent waiver is personal in nature and nontransferable. An attorney granted a permanent waiver shall be personally liable for abstracting conducted on behalf of the division. Although an attorney may abstract through a separate entity, such liability cannot be transferred to a corporate entity nor may an attorney utilize a corporate structure which would shield the attorney from personal liability.~~

(3) ~~Permanent waivers are predicated upon the attorney's retaining an Iowa license to practice law. An attorney whose license is suspended shall reapply to the division director upon reinstatement by the Iowa supreme court. The division director has the discretion to refer the matter to the division board.~~

(4) ~~There are two circumstances when an attorney may be granted a permanent waiver:~~

1. ~~For attorney applicants with experience abstracting under the supervision and control of an exempt attorney abstractor, the board shall consider, at a minimum, the following:~~

- ~~The applicant's abstract experience. The board shall give considerable weight to an applicant's experience abstracting under the personal supervision and control of an exempt attorney abstractor with whom the applicant has had a close working relationship or with whom the applicant is a legal partner or associate.~~

- ~~Professional references. The board shall give considerable weight to a recommendation from the exempt attorney abstractor or grandfathered attorney who personally supervised the applicant's abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant's ability to abstract.~~

- ~~Samples of abstracts prepared by the applicant.~~

- ~~The division board shall give consideration to the number of participating abstractors physically located in the county or counties where the applicant seeks to abstract in determining whether a waiver should be granted.~~

2. ~~For attorney applicants without experience working under the supervision and control of an exempt attorney abstractor, the board shall consider, at a minimum, the following:~~

- ~~The applicant's abstract experience;~~

- ~~Professional references;~~

- ~~Samples of abstracts prepared by the applicant;~~

- ~~The applicant's business plan;~~

- ~~Evidence of clients and volume of additional transactions that will be brought into the title guaranty abstract/attorney system as a result of the waiver;~~

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● ~~The number, availability, service and quality of other abstractors available to perform abstracting and whether the grant of a permanent waiver will adversely impact the business of other participating abstractors;~~

● ~~Whether the applicant demonstrates the inability to abstract under the supervision and control of an exempt attorney.~~

c. Permanent waivers for non-attorneys.

(1) ~~The board may grant a permanent waiver with limitations as to county, or transaction type, or both.~~

(2) ~~In determining whether to grant a waiver, the board shall consider, at a minimum, the following:~~

1. ~~The applicant's abstract experience, maintenance of a title plant by the applicant in any other county, and degree of participation by the applicant in the title guaranty division standards in excellence program;~~

2. ~~Professional references;~~

3. ~~Samples of abstracts prepared by the applicant;~~

4. ~~The applicant's business plan;~~

5. ~~Evidence of clients and volume of additional transactions that will be brought into the title guaranty abstract/attorney system as a result of the waiver;~~

6. ~~The number, availability, service and quality of other abstractors available to perform abstracting and whether the grant of a permanent waiver will adversely impact the business of other participating abstractors.~~

9.7(9) Ruling. ~~The division board shall direct the division director to prepare, or cause to be prepared, a proposed written ruling setting forth the board's rationale for granting or denying the waiver. Action to adopt or direct changes to the proposed ruling will be taken by the division board at a subsequent meeting. However, if the board directs the division director to prepare a proposed ruling granting the waiver, the applicant may start abstracting while the ruling is being prepared, and staff shall issue a new participating abstractor number to the applicant immediately.~~

a. ~~The ruling granting or denying a waiver shall contain a reference to the particular applicant, discuss the application of subrules 9.7(7) and 9.7(8), and describe how granting the waiver would or would not advance the division's statutory mission described in subrule 9.7(1). The ruling will summarize the relevant facts and reasons upon which the action is based and include a description of the precise scope and duration of the waiver if the waiver contains limitations, restrictions or requirements.~~

b. ~~The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division board upon consideration of all relevant factors. Relevant factors to be considered are the unique circumstances set out in the application, presentations given before the board, the professional knowledge and expertise of the board members and division staff, and any other resources available to the entire division board. Consideration should be afforded to rulings on prior plant waiver requests, but the division board shall not be bound by such rulings.~~

c. ~~Within seven days of its issuance, any ruling issued under subrule 9.7(9) shall be transmitted to the applicant, the Iowa State Bar Association and the Iowa Land Title Association.~~

d. ~~The decision of the division board shall be final agency action and all appeals shall be filed with the Iowa District Court for Polk County.~~

9.7(10) Title plant certification. ~~For applicants granted a provisional waiver, an inspection of the title plant shall be performed by division staff or a designee of the title guaranty director. The inspection shall determine if the title plant meets the criteria set forth in paragraph 9.6(4) "a" and shall occur before the division board grants up-to-date title plant status to the applicant. If the applicant, following verification of up-to-date title plant status by the division board, proposes to conduct business under a name other than that of the entity to which the provisional waiver was granted, the applicant must obtain prior written approval to do so from the division. Any transfer of a title plant must be approved by division staff in order for the title plant to be a title guaranty abstractor.~~

9.7(11) Public availability. ~~Applications for waivers and rulings on waiver applications are public records under Iowa Code chapter 22. Some applications or rulings may contain information the division~~

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~~is authorized or required to keep confidential. Division staff may accordingly redact confidential information from applications or rulings prior to public inspection or dissemination.~~

~~9.7(12) Voiding or cancellation.~~ A waiver or variance is voidable if material facts upon which the petition is based are not true or if material facts have been withheld. A waiver or variance issued by the division board may be withdrawn, canceled, or modified if, after appropriate notice and meeting, the division board issues a ruling finding any of the following:

~~a.~~ That the petitioner or the applicant who was the subject of the waiver ruling withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

~~b.~~ That the alternative search method assuring that the public interest will be adequately protected after issuance of the ruling has been demonstrated to be insufficient; or

~~c.~~ That the subject of the waiver ruling has failed to comply with all conditions contained in the ruling.

~~265—9.8(16) Title guaranty contracts, forms, manual, and staff supplements.~~ The division shall adopt and issue such contracts, forms, and the manual as the division deems necessary to set out standards and requirements, and such other matters that the division deems necessary for implementation and effective administration of the title guaranty program. The contents of the contracts, forms, and the manual shall be applicable to participants and independent closers in the title guaranty program.

~~9.8(1) Division board adoption.~~ The form of title guaranty commitments and certificates will be adopted, revised, or amended by resolution of the division board, and the form of such commitments and certificates is subject to the approval of the authority board. The manual will be adopted, revised, or amended on approval of a majority vote of the division board.

~~a.~~ The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed adoption of or change to the form of title guaranty commitments and certificates at least 30 days prior to the date of the division board meeting at which the matter will be considered.

~~b.~~ Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

~~9.8(2) Division staff adoption.~~ Under the direction of the division director, the division staff shall adopt and issue staff supplements as the division deems necessary to set out standards and requirements of these rules, applicable statutes, and the manual; to address nonresidential, extraordinary and unusual risk situations; and to address such other matters that the division deems necessary for implementation and effective administration of the title guaranty program.

~~265—9.9(16) Mortgage release certificate.~~ Pursuant to Iowa Code section 16.92, the division is charged with the administration of a system, after notification to lenders, to clear paid-off mortgages from real estate titles in Iowa by executing and filing with county recorders release certificates for mortgages that have been paid in full.

~~9.9(1) Definitions.~~ As used in this rule, unless the context otherwise requires:

~~“Certificate”~~ means the certificate of release or partial release of mortgage issued by the division.

~~“Claim for damages”~~ means a claim for actual money damages against the division caused by the division’s wrongfully or erroneously, through an act of negligence, filing a certificate while division staff are acting within the scope of their office or employment.

~~“Effective release” or “satisfaction”~~ means a release or satisfaction of mortgage pursuant to Iowa Code chapter 655.

~~“Mortgage”~~ means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount, including any future advances, equal to or less than:

~~1.~~ \$20 million for mortgages paid off by the division staff or a division closer within a division closing, unless prior written approval is obtained from the division director.

~~2.~~ \$1 million for all other mortgages.

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~~“Real estate lender or closer” means a person licensed to regularly lend moneys to be secured by a mortgage on real property in this state, a licensed real estate broker, a licensed attorney, or a participating abstractor.~~

~~9.9(2) Request for certificate.~~ Applications, forms, procedures and practices for the implementation of an effective mortgage release certificate by the division pursuant to Iowa Code section 16.92 shall be provided in the staff supplements. Further, any fee to be charged for the mortgage release application shall be set by the division board upon the recommendation of the division director.

~~9.9(3) Authority to sign certificate.~~ The division director or designee of the division director may execute and record the certificates pursuant to Iowa Code section 16.92 and this rule.

~~9.9(4) Additional remedies.~~ In addition to any other remedy provided by law, the division may recover from the real estate lender or closer who requested the certificate all expenses incurred, and all damages including punitive or exemplary damages paid to the mortgagee or mortgage service provider, in satisfaction or resolution of a claim for damages.

~~265—9.10(16) Rates.~~ The rate or fee, if any, for the owner’s guaranty, the lender’s guaranty, the various endorsements, and the closing protection letter will be fixed by the division board by resolution. In situations involving extraordinary risk, unusual transactions, or unique or multiple endorsements, the division, under the direction of the division director, may make additional charges that are added to and become part of the rate or fee. The rates or fees of any other products or services that will be offered by the division shall be set by the division board upon the recommendation of the division director.

~~A participant or independent closer shall calculate the title guaranty fees and premiums according to the applicable rate schedule in effect on the effective date of the commitment or the certificate, whichever is earlier. A participant or independent closer shall collect the fee in effect for any other product or service offered by the division at the time the product or service is sold. Additional participant or independent closer responsibilities with regard to the collection and use of fees and premiums shall be set forth in the manual and staff supplements.~~

~~265—9.11(16) Claims.~~

~~9.11(1) Definitions.~~ The following words and phrases, when used in this rule, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

~~“Claim” means loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment, certificate, closing protection letter, mortgage release certificate, or by reason of any other matter for which the division is actually, possibly, or allegedly liable.~~

~~“Claim loss” means amounts paid by the division in the investigation and resolution of a claim including, but not limited to, payments to the guaranteed, payments to adverse claimants, attorneys’ fees, and all other expenses and costs related to or arising from the claim in accordance with the provisions of this rule.~~

~~“Party” means a participant, independent closer, or any other person or entity that has a contractual relationship with the division to provide coverage or services for which a claim may be brought against the division.~~

~~9.11(2) Claim procedures.~~ In the event of a claim, the rights of the division and a party are as follows:

~~a.—Upon receipt of notice by a party of a claim, the party must notify the division in writing within three business days of receipt of information about a claim by the party and shall mail notification to the division by first-class mail at the division’s address in subrule 9.4(1). In addition, if the nature of the claim is such that the guaranteed claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by notice given more promptly than required by the preceding sentence, the party shall notify the division by telephone, facsimile transmission, overnight mail or other overnight delivery service, or any combination of these methods.~~

~~b.—When a party receives a request from the division for information with respect to a claim, the party shall supply to the division any documents, correspondence, surveys, abstracts of title, title~~

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~~searches, other writings, or other information known by or available to the party and relevant to the claim, even if not specifically requested by the division.~~

~~*e.*—A party shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the party's attention with such promptness as the circumstances permit.~~

~~*d.*—The division may, with or without prior notice to the party or parties involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable.~~

~~**9.11(3) Claim loss recovery:**~~

~~*a.*—Any claim losses paid are recoverable from a party by the division.~~

~~*b.*—In the absence of knowledge by the party about the title defect or other matter causing the claim loss, the division shall not seek recovery from the party when a claim loss arises from one or more of the following:~~

~~(1) Hidden defects, including, but not limited to, forged deeds and mortgages, false affidavits, and false statements of marital status;~~

~~(2) Errors by public officials in maintaining and indexing the public records, including, but not limited to, errors by county assessors, recorders, clerks, and treasurers;~~

~~(3) Errors in these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division that the party relies upon in issuing an abstract of title, opinion, commitment, certificate, or endorsement;~~

~~(4) Errors in surveys provided by registered Iowa land surveyors that the party relies upon in giving survey coverage or issuing an endorsement or endorsements; or~~

~~(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract of title, opinion, commitment, certificate, or endorsement.~~

~~*e.*—The party shall reimburse the division for a claim loss when the division determines, in accordance with 9.11(3) "*d*," that the party is liable and when the claim loss arises from one or more of the following:~~

~~(1) Errors by the party in the title search and report of information in the public record;~~

~~(2) Reliance by the party upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;~~

~~(3) Errors made by the party in examining the title information provided in an abstract of title, survey, affidavit, or other source of title information;~~

~~(4) Errors made by the party in the preparation or review of an abstract of title, opinion, commitment or certificate;~~

~~(5) Knowing issuance of an abstract of title, opinion, commitment or certificate by the party upon a defective title; or~~

~~(6) Failure of the party to follow these rules, the manual, staff supplements, or any other written or oral instructions or requirements given by the division with respect to any other matters not included within 9.11(3) "*e*."~~

~~*d.*—Unless another rule, the Code of Iowa, the manual, a procedure, or a guideline provides for a different standard of liability or other rule for determining whether the party shall be liable for a claim loss, the division shall apply the following standards:~~

~~(1) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3) "*e*"(1), the division may demand reimbursement from the party if the party was grossly negligent in conducting the title search. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public record, the reliance of the party upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the party.~~

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~~(2) In the event that a claim loss occurs for which the division may seek recovery from a party under 9.11(3)“e”(2), the division may demand reimbursement from that party if the party relied upon sources of title searches or other title information that had not been approved by the division at the time of the reliance.~~

~~(3) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3)“e”(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a title commitment or certificate.~~

~~1. The division may make full review of local county abstracting standards and bar title rules as a guide to determine whether the party has failed to meet the standard of skill and competence of an abstractor who prepares an abstract of title or an attorney who examines titles in the community where the claim arose.~~

~~2. The division may also consider whether the party followed these rules, the manual, staff supplements, or any other written or oral instructions or requirements given by the division in examining the title.~~

~~3. In addition, the division may seek input from other parties in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract of title or of an attorney who examines titles in that community.~~

~~(4) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3)“e”(4), the division may demand reimbursement from the party if the party negligently prepared and reviewed an abstract of title, opinion, commitment or certificate.~~

~~(5) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3)“e”(5), the division may demand reimbursement from the party if the issuance of the abstract of title, opinion, commitment or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract of title, opinion, commitment or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.~~

~~(6) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3)“e”(6), the division may demand reimbursement from the party if the party failed to follow these rules, the manual, staff supplements, or any other written or oral instructions or requirements given by the division with respect to the matter causing the claim loss.~~

~~(7) In the event the division seeks reimbursement from a party, the division shall state the basis of the reimbursement.~~

~~e. The division board may, from time to time by resolution, establish levels of authority, including dollar amounts, for the division board, the division director and the division staff for the settlement of claims made against the division.~~

265—9.12(16) Rules of construction. In the construction of this chapter, the following rules of construction shall be observed, unless either the rules of Iowa Code chapter 4, Construction of Statutes, or the following rules of construction are inconsistent with the manifest intent or the context of a rule:

~~1. The word “shall” means mandatory and not permissive and the word “may” means permissive and not mandatory.~~

~~2. The word “closing” includes, but is not limited to, the recording of a deed executed and delivered in lieu of a mortgage foreclosure or pursuant to a mortgage foreclosure proceeding and also includes the entry into a binding agreement and transfer of possession by a seller to a buyer on a contract sale of land.~~

~~3. Nothing contained in this chapter shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other person.~~

~~4. Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other penalties or sanctions under this chapter, or otherwise, against the participating abstractor, participating attorney, independent closer or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.~~

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~~5. The failure of the division to enforce a right or remedy under this chapter, a statute, or common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.~~

~~265—9.13(16) Seal.~~ The division shall have a corporate seal that may be altered from time to time. The seal shall impress the words “Title Guaranty Division Iowa Finance Authority” and may be used to authenticate acts and legal instruments of the division.

~~265—9.14(16) Rules of construction.~~ Rescinded IAB 1/13/10, effective 2/17/10.

~~265—9.15(16) Implementation.~~ Rescinded IAB 1/13/10, effective 2/17/10.

~~265—9.16(16) Forms, endorsements, and manuals.~~ Rescinded IAB 8/4/04, effective 9/8/04.

~~265—9.17(16) Application for waiver of participation requirements.~~ Rescinded IAB 8/4/04, effective 9/8/04.

~~265—9.18(16) Rates.~~ Rescinded IAB 8/4/04, effective 9/8/04.

~~265—9.19(16) Charges.~~ Rescinded IAB 8/4/04, effective 9/8/04.

~~265—9.20(16) Mortgage release certificate.~~ Rescinded IAB 1/13/10, effective 2/17/10.

~~265—9.21(16) Seal.~~ Rescinded IAB 1/13/10, effective 2/17/10.

~~265—9.22(16) Closing protection letters.~~ Rescinded IAB 1/13/10, effective 2/17/10.

~~265—9.1(16) Definitions.~~ The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

“Abstract” means a written or electronic summary of all matters of record affecting title to a specific parcel of real estate prepared in accordance with abstract minimum standards adopted by the division, provided however, that for nonpurchase transactions, “abstract” may also mean a written or electronic short-form summary setting forth the titleholders, liens, and encumbrances in accordance with guidelines adopted by the division.

“Abstractor” means a person who is engaged in the practice of searching public records for the purpose of creating abstracts.

“Authority” means the Iowa finance authority established by Iowa Code chapter 16.

“Certificate” means the form used to guarantee title, including any part or schedule thereof and any endorsements thereto.

“Claim” means loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment, certificate, closing protection letter, mortgage release certificate, or by reason of any other matter for which the division is actually, possibly, or allegedly liable.

“Claim loss” means amounts paid by the division in the investigation and resolution of a claim including, but not limited to, payments to the guaranteed, payments to adverse claimants, attorneys’ fees, and all other expenses and costs related to or arising from the claim.

“Closing protection letter” means the division’s written agreement to indemnify a lender or borrower or both for loss caused by a participating closer’s theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the participating closer.

“Commitment” means the division’s written offer to issue a certificate.

“Division” means Iowa title guaranty, a division of the Iowa finance authority.

“Division board” means the board of the division created pursuant to Iowa Code section 16.2A(1).

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“Field issuer” means a participant authorized by the division to issue commitments and certificates.
“Mortgage release certificate” means a certificate of release or a certificate of partial release issued by the division, pursuant to Iowa Code section 16.92.

“Participant” means a participating attorney, a participating abstractor, or a participating closer.

“Participating abstractor” means an abstractor who is authorized by the division to prepare abstracts for division purposes.

“Participating attorney” means an attorney licensed to practice law in the state of Iowa who is authorized by the division to prepare title opinions for division purposes.

“Participating closer” means any of the following authorized by the division to issue a closing protection letter: an Iowa licensed attorney disbursing funds through an interest on lawyer trust account, a closing agent licensed by the Iowa division of banking, or a real estate broker licensed by the Iowa real estate commission disbursing funds through a real estate trust account.

“Party” means a participant, or any other person, that has a contractual relationship with the division to provide services for which a claim may be brought against the division.

“Person” means an individual or legal entity, including corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

265—9.2(16) Purpose. This chapter describes the mission, organization, programs and operations of the division, including the office where and the means by which a person may obtain information and make submissions or requests.

265—9.3(16) Mission. The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney’s title opinion system, a low-cost mechanism to facilitate mortgage lenders’ participation in the secondary market and add to the integrity of the land-title transfer system in the state of Iowa and to perform other duties as assigned by Iowa law. Surplus funds generated by the division shall be transferred to the authority’s housing assistance fund after providing for adequate reserves and for the operating expenses of the division.

265—9.4(16) Organization.

9.4(1) Location. The office of the division is located at 2015 Grand Avenue, Des Moines, Iowa 50312. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division’s Web-site address is www.iowatitleguaranty.gov, and the division’s telephone and facsimile numbers are as follows: (515)725-4900 (general telephone number); 1-800-432-7230 (toll-free telephone number); and (515)725-4901 (facsimile). The division’s e-mail address is titleguaranty@iowa.gov. Inquiries, submissions, applications and other requests for information may be directed to the division at the address set forth herein. Requests may be made personally or by telephone, fax, mail or e-mail.

9.4(2) Division board. A chair and vice chair shall be elected annually by the members of the division board at the first quarterly meeting following July 1 of each year, which is the beginning of the division’s fiscal year.

9.4(3) Meetings. Meetings of the division board shall generally be held quarterly on the date and time determined by the division board. Meetings of the division board may also be held at the call of the chair or on written request of two division board members. The division will give advance public notice of the specific date, time and place of each division board meeting. At least 24 hours before commencement of a division board meeting, the division will post the tentative agenda at the office of the division and on the division’s Web site. Division board meetings may be conducted by conference call. Any person may attend and observe division board meetings except for any portion of a division board meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the division board meetings are available at the office of the division and on the division’s Web site. Three members of the division board constitute a quorum. An affirmative vote of a majority of the division board members is necessary for any substantive action taken by the division board. The majority shall not include any

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division board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

265—9.5(16) Operation. The division offers guaranties of real property titles in the state through the issuance of commitments and certificates.

9.5(1) Commitments, certificates, forms and manuals. The terms, conditions, and form of commitments and certificates shall be approved by the division board. The division may adopt and use manuals and other forms as the division deems necessary for implementation and administration of the title guaranty program.

a. The division will provide forms to a participant for use in issuing commitments and certificates on behalf of the division. A participant may not alter any form supplied by the division or use a form supplied by another person to bind the division. In addition, the participant shall not transfer or attempt to transfer unissued commitments or certificates to another participant or other person unless authorized in writing by the division.

b. If a participant fails to comply with the requirements of this rule, in addition to the division's other rights and remedies, the division may refuse to allow the participant access to any forms until the participant complies with the requirements of this chapter to the satisfaction of the division.

c. A participant shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participant to account for any form supplied by the division, or the failure of the participant to comply with the requirements of this rule.

9.5(2) Application for commitments and certificates. The division shall make an application for commitments and certificates available at the office of the division and on the division's Web site.

9.5(3) Rates. The division shall set the rates for certificates and closing protection letters in an amount sufficient to permit the title guaranty program to operate on a self-sustaining basis, including payment of administrative costs and the maintenance of an adequate reserve against claims. In transactions involving extraordinary risk or unusual or unique endorsements, the division may charge additional fees.

265—9.6(16) Participants.

9.6(1) General provisions. An applicant shall submit a participant application and the first year's annual fee and shall sign a participation agreement in order to be authorized to provide one or more services on behalf of the division.

9.6(2) Participant application. Applications for participation and renewal are available on the division's Web site. An applicant shall submit an application to provide one or more services on behalf of the division. If the applicant is approved as a participant, the participant is required to submit a renewal application annually.

9.6(3) Eligibility considerations. In determining whether to approve or deny a participant application, the division may consider the following, including but not limited to:

- a.* The needs of the public and the needs of existing or potential customers of the applicant.
- b.* A history of the operation and management of the applicant's business.
- c.* The character, fitness, financial responsibility and experience of the applicant and the applicant's employees.
- d.* A credit report or criminal background check of the applicant or the applicant's employees.
- e.* A record of default in the payment of moneys collected for others by the applicant or the applicant's employees.
- f.* A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.

g. Compliance with the title and settlement best practices adopted by the division.

h. Other factors as determined by the division.

9.6(4) Participation agreement. The participation agreement sets forth the contractual relationship between the participant and the division. A new participation agreement is executed annually and when otherwise required by the division.

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9.6(5) Annual fee. A participant may be required to pay an annual fee to be eligible to participate in the title guaranty program. The fee, if any, shall be set by the division.

9.6(6) Professional liability insurance. A participant shall maintain professional liability insurance, also known as errors and omissions insurance, at all times while acting as an agent of the division, with such coverage and in such amounts as the division may determine.

9.6(7) Agent relationship. A participant is only authorized to act as an agent of the division for the purposes and in the manner set forth in the participant's participation agreement, the Code of Iowa, these rules, manuals and any other written instructions given by the division. The authority of a participant to act as an agent of the division is not exclusive and is subject to the rights of the authority, the division, and other participants, agents, or representatives of the division.

9.6(8) Conflict of interest. A participant shall not, without prior authorization of the division, prepare an abstract or issue a title opinion, commitment, certificate, or closing protection letter for a transaction in which the participant has a personal or financial interest in the real estate that is the subject of that transaction.

9.6(9) Clearance of title objections. All title objections must be cleared in accordance with applicable division manuals and any other written instructions given by the division prior to the issuance of a certificate. Any underwriting determination about which there may be a bona fide difference of opinion among attorneys, which is not specifically addressed by division manuals or instructions, shall be approved by the division in writing.

9.6(10) Commitment and certificate coverage limitations. A field issuer shall obtain written authorization from the division prior to issuing a commitment or certificate that exceeds the allowable maximum amount of coverage, as determined by the division. If authorization required under this subrule is not obtained through the act or omission of the field issuer, the field issuer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.

9.6(11) Document retention. A participant shall maintain transaction files in such a manner that information pertaining to activities of the participant is readily available to the division while protecting confidential client information. A participant shall retain files for a period of ten years after the effective date of the certificate or the effective date of the commitment if a certificate is not issued. A participating abstractor shall retain a written or electronic copy of each abstract prepared for division purposes and shall provide a copy to the division upon request.

9.6(12) Training. The division may require a participant and the participant's staff, as a condition of participation, to participate in training sessions or continuing education seminars as deemed necessary by the division in order to ensure compliance with division requirements and procedures.

9.6(13) Compliance. Participants shall comply with the Code of Iowa, these rules, the participation agreement, manuals, and any other written instructions given by the division. The division may audit the participant, with or without notice, for verification of compliance. An audit may include, but not be limited to, a review of the participant's commitment and certificate issuance procedures, a test of title plants and tract indices, and a review of closing policies and procedures and escrow account details. An inspection of a title plant may be performed by the division or its designee to determine if the title plant meets the criteria set forth in paragraph 9.7(1) "a."

9.6(14) Revocation. The division has discretion to revoke a participant's authorization to provide services on behalf of the division for reasons including, but not limited to, the following:

- a. Failure to comply with the terms and conditions of the participation agreement.
- b. Failure to submit an annual renewal application.
- c. Knowingly withholding or misrepresenting material facts relied upon by the division.
- d. Fraud, theft, dishonesty, or misappropriation of funds or documents.
- e. Deterioration of the participant's financial condition adversely affecting the participant's ability to provide services on behalf of the division.
- f. A finding by the division director of material noncompliance with the Code of Iowa, these rules, manuals, and any other written instructions given by the division.
- g. Other factors as determined by the division.

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265—9.7(16) Services offered.

9.7(1) Abstracting. Abstracts utilized for division purposes must be prepared by a participating abstractor.

a. Title plant. A participating abstractor shall own and maintain, or lease and use, a title plant including tract indices for each county in which that participating abstractor prepares abstracts for division purposes, unless exempt under paragraph 9.7(1)“c” or authorized under paragraph 9.7(1)“d.” Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor’s participation in the title guaranty program. A government-maintained and -controlled database is not considered a title plant for division purposes.

b. Intent to build title plant. The division may authorize an abstractor that is building or that intends to build a title plant to prepare abstracts for use by the division, upon review of the following:

- (1) The abstractor’s business plan;
- (2) Evidence that a title plant will be built for a specific county or counties within three years;
- (3) A time line for completion of the title plant; and
- (4) A description of the applicant’s abstracting experience.

c. Grandfathered attorney. A participating attorney who has provided abstracts continuously from November 12, 1986, to the date of application to provide abstracts for division purposes, either personally or through persons under the participating attorney’s supervision and control, shall be exempt from the requirements to own or lease a title plant. This exemption is unique to the participating attorney, is nontransferable, and terminates at such time as the participating attorney ceases providing abstracts for division purposes or upon the death or incapacity of the participating attorney.

d. Title plant waivers. The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of certificates throughout the state, rapid service, and a competitive price. Iowa Code section 16.91(5)“b” allows the division board to waive the up-to-date title plant requirements under certain conditions.

(1) General provisions. The division board shall consider an application for a title plant waiver upon submission by an attorney or an abstractor.

(2) Submission of application. The division shall provide an application form at the office of the division and on the division’s Web site. An applicant must submit an application in writing to the attention of the division director at the office of the division.

(3) Content of application. The applicant must provide, at a minimum, the following information:

1. The name, business address, e-mail address, and telephone number of the applicant;
2. The applicant’s business plan;
3. The county or counties in which the applicant intends to abstract;
4. A description of the applicant’s abstracting experience;
5. Samples of abstracts prepared by the applicant;
6. A history of any professional disciplinary action against the applicant;
7. Professional references in support of the applicant;
8. The relevant facts that the applicant believes would justify a waiver under 9.7(1)“d”(5) and 9.7(1)“d”(6)“4”; and

9. A signed statement from the applicant attesting to the accuracy of the facts provided in the application.

(4) Notification and response.

1. The division shall notify the applicant upon receipt of a complete application.
2. The division shall publish notice of an application on the division’s Web site within 7 calendar days of receipt of a complete application. A copy of the application and supporting documents will be provided to any interested person upon request.

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3. The Iowa State Bar Association and Iowa Land Title Association shall be provided notice of an application. Provision of the notice to the identified associations is not a requirement for the division board to consider the application, and failure to inform an interested person of an application shall not void or otherwise nullify any action or decision of the division board.

4. If a complete application is received at least 90 days prior to the next scheduled division board meeting, the application shall be placed on the agenda for that division board meeting. The division shall receive public comments up to 45 calendar days prior to that division board meeting.

(5) Criteria for title plant waiver. Pursuant to Iowa Code section 16.91(5)“b,” the division board may issue a ruling waiving the title plant requirement set forth in Iowa Code section 16.91(5)“a”(2) if the board finds the following:

1. The title plant requirement imposes a hardship to the applicant; and

2. The waiver is:

- Clearly in the public interest; or
- Absolutely necessary to ensure availability of certificates throughout the state.

3. For purposes of paragraph 9.7(1)“d,” “hardship” means deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances.

4. For purposes of paragraph 9.7(1)“d,” “public interest” means that which is beneficial to the public as a whole, including but not limited to increasing competition among abstractors, encouraging the use of certificates throughout the state, making certificates more competitive than out-of-state title insurance, increasing the division’s market share, improving the quality of land titles, and protecting consumers.

(6) Board meeting and ruling.

1. The review of a waiver application is not a contested case proceeding.

2. The division director or designee shall review an application and its supporting documentation.

The division director shall present to the division board a proposed written ruling. The division board shall adopt, amend or reject the proposed written ruling. If the proposed written ruling is rejected, the division board shall instruct the division director to prepare an alternative written ruling to be considered at a subsequent division board meeting.

3. The written ruling shall summarize the relevant facts and the basis for granting or denying the waiver. The written ruling may specify the scope and duration of the waiver and any restrictions, conditions, or requirements.

4. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division board upon consideration of all relevant factors. Relevant factors to be considered include, but are not limited to, the division director’s proposed written ruling, the facts and circumstances set out in the application, any history of professional disciplinary action against the applicant, adverse claims made against the applicant, prior waiver withdrawal actions against the participating attorney or participating abstractor, public comments, the professional knowledge and expertise of the board members and division staff, and any other resources available to the entire division board. The division board shall give considerable weight to an applicant’s experience abstracting under the supervision of a participating abstractor or participating attorney with whom the applicant has had a close working relationship or with whom the applicant is a partner or associate. The division board shall also give considerable weight to a recommendation from a participating abstractor or participating attorney who supervised the applicant’s abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant’s ability to abstract. Consideration should be afforded to rulings on prior waiver requests, but the division board shall not be bound by such rulings. The division board may limit a waiver as to county, or transaction type, or both.

5. The written ruling shall be mailed to the applicant within 7 days of its issuance.

6. The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(7) Conditions. A waiver is unique to the recipient and is nontransferable. A waiver recipient shall be accountable to the division for abstracts prepared for division purposes. The division may require a

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waiver recipient to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division may review the waiver recipient annually and may require a renewal, modification or addition to any required assurances. Retention of a waiver is dependent on the applicant's meeting the requirements for a participant in rule 265—9.6(16). If the waiver recipient fails to meet the terms of the recipient's participation agreement, the waiver may be withdrawn by the division board.

(8) Withdrawal of a waiver. A waiver issued by the division board may be withdrawn or modified if, after public notice and division board meeting, the division board issues a written ruling finding any of the following:

1. That the waiver recipient knowingly withheld or misrepresented material facts relied upon by the division board in granting the waiver; or

2. That the waiver recipient failed to comply with all conditions contained in the written ruling; or

3. That the abstracts prepared by the waiver recipient fail to meet the abstract minimum standards adopted by the division; or

4. That the division has revoked the waiver recipient's authorization to provide services on behalf of the division pursuant to subrule 9.6(14).

The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(9) Public availability. Applications for waivers and written rulings are public records under Iowa Code chapter 22. Some applications or written rulings may contain information that the division is authorized or required to keep confidential. The division may redact confidential information from applications or written rulings prior to public inspection or dissemination.

9.7(2) Issuing title opinions.

a. All title opinions shall be prepared by participating attorneys and issued in compliance with division procedures as specified in manuals and any other written instructions given by the division.

b. A participating attorney who is a field issuer may issue a commitment as the preliminary title opinion and the certificate as the final title opinion.

c. A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

9.7(3) Issuing commitments and certificates. Pursuant to a participation agreement with the division, a participant may be authorized to issue a commitment or certificate on behalf of the division. A participant's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to terms of the participation agreement.

9.7(4) Issuing closing protection letters.

a. Pursuant to a participation agreement with the division, a participant may be authorized to issue a closing protection letter on behalf of the division.

b. The division may require the participating closer to provide an irrevocable letter of direction to the institution at which each escrow account is established, authorizing the division to review and audit the institution's records of such account at any time that the division, in its discretion, deems necessary.

265—9.8(16) Claims.

9.8(1) Claim procedures. In the event of a claim, the rights of the division and a party are as follows:

a. Upon receipt of notice by a party of a claim, the party must notify the division in writing within three business days of receipt of information about a claim by the party and shall mail notification to the division by first-class mail at the division's address as set forth in subrule 9.4(1). In addition, if the nature of the claim is such that the guaranteed claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by notice given more promptly than required by the preceding sentence, the party shall notify the division by telephone, facsimile transmission, e-mail, overnight mail or other overnight delivery service, or any combination of these methods.

b. When a party receives a request from the division for information with respect to a claim, the party shall supply to the division any documents, correspondence, surveys, abstracts of title, title

IOWA FINANCE AUTHORITY[265](cont'd)

searches, other writings, or other information known by or available to the party and relevant to the claim, even if not specifically requested by the division.

c. A party shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the party's attention with such promptness as the circumstances permit.

d. The division may, with or without prior notice to the party or parties involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable.

9.8(2) Claim loss recovery.

a. Any claim losses paid are recoverable from a party by the division.

b. In the absence of knowledge by the party about the title defect or other matter causing the claim loss, the division shall not seek recovery from the party when a claim loss arises from one or more of the following:

(1) Hidden defects, including, but not limited to, forged deeds and mortgages, false affidavits, and false statements of marital status;

(2) Errors by public officials in maintaining and indexing the public records, including, but not limited to, errors by county assessors, recorders, clerks, and treasurers;

(3) Errors in these rules, manuals, and any other written instructions given by the division that the party relies upon in issuing an abstract, title opinion, commitment or certificate;

(4) Errors in surveys provided by registered Iowa land surveyors that the party relies upon in issuing a certificate that provides survey coverage; or

(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract, title opinion, commitment, or certificate.

c. The party shall reimburse the division for a claim loss when the division determines, in accordance with paragraph 9.8(2)"d," that the party is liable and when the claim loss arises from one or more of the following:

(1) Errors by the party in the preparation of an abstract or any other report of information in the public record;

(2) Reliance by the party upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;

(3) Errors made by the party in examining the title information provided in an abstract, survey, affidavit, or other source of title information;

(4) Errors made by the party in the preparation or review of an abstract, title opinion, commitment or certificate;

(5) Issuance of an abstract, title opinion, commitment or certificate by the party with knowledge that title is defective; or

(6) Failure of the party to follow the Code of Iowa, these rules, manuals, or any other written instructions given by the division.

d. Unless another rule, the Code of Iowa, manuals, or any other written instruction given by the division provides for a different standard of liability or other rule for determining whether the party shall be liable for a claim loss, the division shall apply the following standards:

(1) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)"c"(1), the division may demand reimbursement from the party if the party was grossly negligent in preparing the abstract. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public record, the reliance of the party upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the party.

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(2) In the event that a claim loss occurs for which the division may seek recovery from a party under subparagraph 9.8(2)“c”(2), the division may demand reimbursement from that party if the party relied upon sources of abstracts or other title information that had not been approved by the division at the time of the reliance.

(3) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)“c”(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a commitment or certificate.

1. The division may make full review of local county abstracting standards and bar title rules as a guide to determine whether the party has failed to meet the standard of skill and competence of an abstractor who prepares an abstract or an attorney who examines titles in the community where the claim arose.

2. The division may also consider whether the party followed the Code of Iowa, these rules, manuals, or any other written instructions given by the division in examining the title.

3. In addition, the division may seek input from other parties in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract or of an attorney who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)“c”(4), the division may demand reimbursement from the party if the party negligently prepared or reviewed an abstract, title opinion, commitment or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)“c”(5), the division may demand reimbursement from the party if the issuance of the abstract, title opinion, commitment or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract, title opinion, commitment or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.

(6) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)“c”(6), the division may demand reimbursement from the party if the party failed to follow the Code of Iowa, these rules, manuals, or any other written instructions given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a party, the division shall state the basis of the reimbursement.

e. The division board may establish levels of authority, including dollar amounts, for the division for the settlement of claims made against the division.

265—9.9(16) Mortgage release certificate. Pursuant to Iowa Code section 16.92, the division is charged with the administration of a program to release, after proper notification, paid-off mortgages from real estate titles in Iowa by executing and filing with the county recorder a mortgage release certificate.

9.9(1) Application. The division shall provide a mortgage release application at the office of the division and on the division’s Web site. The following may submit an application for a mortgage release certificate:

a. A person authorized to regularly lend moneys to be secured by a mortgage on real property in Iowa.

b. A licensed real estate broker.

c. A licensed attorney.

d. A participating abstractor.

e. A licensed closing agent.

9.9(2) Application fee. An applicant may be required to pay a fee to apply for a mortgage release certificate. The fee shall be set by the division.

9.9(3) Maximum principal amount of mortgage. The division board may set a maximum principal amount for mortgages that may be released by a mortgage release certificate.

IOWA FINANCE AUTHORITY[265](cont'd)

9.9(4) Authority to sign certificate. A mortgage release certificate shall be executed by the division director or designee of the division director.

265—9.10(16) Rules of construction. In this chapter, the following rules of construction shall be observed:

1. The word “shall” means mandatory and not permissive and the word “may” means permissive and not mandatory.
2. Nothing contained in this chapter shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other person.
3. Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other remedies or sanctions under this chapter, or otherwise against a participant or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.
4. The failure of the division to enforce a right or remedy under this chapter, a statute, or common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

265—9.11(16) Seal. The division shall have a corporate seal that may be altered by the division from time to time.

These rules are intended to implement Iowa Code sections 16.2A, 16.4C, 16.5, 16.90 to 16.94, 17A.3, 17A.9, 17A.10, and 535.8(10), ~~2007 Iowa Code Supplement sections 16.1, 16.2, 16.3, 16.5, 16.40, and 16.91, and Iowa Code section 16.93 as amended by 2008 Iowa Acts, Senate File 2117.~~

[Filed 4/7/16, effective 6/1/16]

[Published 4/27/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/27/16.

ARC 2500C

MANAGEMENT DEPARTMENT[541]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8.6, the Department of Management hereby rescinds Chapter 4, “Contract Compliance,” Iowa Administrative Code.

2015 Iowa Acts, House File 510, division V, moved the responsibilities set forth in Iowa Code sections 19B.6, 19B.7 and 19B.8 from the Department of Management to the Department of Administrative Services. As a result, 541—Chapter 4 is rescinded.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2400C** on February 17, 2016. The Department received no comments during the comment period. This amendment is identical to that published under Notice of Intended Action.

The Department of Management adopted this amendment on March 23, 2016.

This amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions or on small business.

A waiver provision is not included.

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

This amendment is intended to implement Iowa Code section 19B.7.

This amendment will become effective June 1, 2016.

The following amendment is adopted.

MANAGEMENT DEPARTMENT[541](cont'd)

Rescind and reserve **541—Chapter 4.**

[Filed 3/31/16, effective 6/1/16]

[Published 4/27/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/27/16.

ARC 2502C

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 7, "Advanced Registered Nurse Practitioners," Iowa Administrative Code.

Chapter 7 is being promulgated to implement 2015 Iowa Acts, Senate File 462, which authorizes the prescribing of epinephrine auto-injectors in the name of a facility as defined in 2015 Iowa Acts, Senate File 462, section 1 [Iowa Code subsection 135.185(1)], a school district, or an accredited nonpublic school.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2345C** on January 6, 2016. The Board has made one technical change from the Notice. Senate File 462 has been codified, so three references to the Senate File have been updated to reference Iowa Code subsection 135.185(1).

These amendments were adopted by the Board on March 23, 2016.

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

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

These amendments are intended to implement Iowa Code chapters 135 and 280 and 2015 Iowa Acts, Senate File 462, section 1.

These amendments will become effective June 1, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition in rule **655—7.1(152)**:

"Epinephrine auto-injector" means a device for immediate self-administration or administration by another trained person of a measured dose of epinephrine to a person at risk of anaphylaxis.

ITEM 2. Adopt the following **new** rule 655—7.3(152):

655—7.3(152) Prescribing epinephrine auto-injectors in the name of a facility.

7.3(1) An ARNP may issue a prescription for one or more epinephrine auto-injectors in the name of a facility as defined in Iowa Code subsection 135.185(1), a school district, or an accredited nonpublic school.

7.3(2) An ARNP who prescribes epinephrine auto-injectors in the name of an authorized facility, as defined in Iowa Code subsection 135.185(1), a school district, or an accredited nonpublic school, to be maintained for use pursuant to Iowa Code sections 135.185, 260.16 and 260.16A, provided the ARNP has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.

[Filed 4/6/16, effective 6/1/16]

[Published 4/27/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/27/16.

ARC 2512C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby amends Chapter 46, "Withholding," and Chapter 231, "Exemptions Primarily of Benefit to Consumers," Iowa Administrative Code.

Iowa Code chapter 99B, "Social and Charitable Gambling," was recently revised and reorganized by 2015 Iowa Acts, chapter 99. Two of the Department's administrative rules were impacted by those changes.

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

Rule 701—231.9(423), which is related to an exemption for the sales price from the sale of raffle tickets, cross references Iowa Code section 99B.5, which regulated raffles prior to the reorganization of Iowa Code chapter 99B. Beginning July 1, 2015, raffles are regulated under Iowa Code section 99B.24, and the Department's rule is updated accordingly. Language in the rule is updated from stating that these sales are "not subject to tax" to more accurately state that they are "exempt from sales and use tax."

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2434C** on March 2, 2016. Public comments were allowed until March 22, 2016. No public comments were received on this rule making. These amendments are identical to those published under the Notice of Intended Action.

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

The Department of Revenue adopted these amendments on April 6, 2016.

After analysis and review of this rule making, the Department finds that the amendments to these rules are likely to have little or no impact on jobs. These amendments only update the rules to reflect recent changes to the language and organization of Iowa Code chapter 99B.

These amendments are intended to implement Iowa Code sections 422.16 and 423.3(62).

These amendments will become effective June 1, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **46.1(1)"e"** as follows:

e. Withholding from prizes from games of skill, games of chance, or raffles. Every person making any payment of a "prize subject to withholding" must deduct and withhold a tax in an amount equal to 5 percent of the prize from a game of skill, a game of chance, or a raffle. Effective July 1, 2015, any person making any payment of a "prize subject to withholding" for bingo must withhold tax in the same manner as persons making payments of prizes subject to withholding for games of skill, games of chance, or raffles. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph "e," with the information required by that paragraph. Payers of prizes subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the prize by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph "f."

"Prizes subject to withholding" means any payment of a prize where the amount won exceeds \$600.

REVENUE DEPARTMENT[701](cont'd)

ITEM 2. Amend rule 701—231.9(423) as follows:

701—231.9(423) Raffles.

231.9(1) *For raffles conducted prior to July 1, 2015.* ~~The~~ Prior to July 1, 2015, the sales price from the sale of tickets for a raffle conducted at a fair pursuant to Iowa Code section 99B.5 is ~~not subject to exempt from sales and use tax.~~

231.9(2) *For raffles conducted on or after July 1, 2015.* On or after July 1, 2015, the sales price from the sale of tickets for a raffle licensed and conducted at a fair pursuant to Iowa Code section 99B.24 is exempt from sales and use tax.

This rule is intended to implement ~~2005~~ 2016 Iowa Code subsection ~~423.3(61)~~ 423.3(62).

[Filed 4/8/16, effective 6/1/16]

[Published 4/27/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/27/16.

ARC 2507C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 425.15, the Department of Revenue hereby amends Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

The subject matter of rule 701—80.1(425) is the homestead property tax credit. The amendment to subrule 80.1(3) is to implement an amendment to the Iowa Code for an expansion of the disabled veteran tax credit under Iowa Code section 425.15.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2370C** on January 20, 2016. No public comments were received on this rule making. The adopted amendment is identical to that published under Notice of Intended Action.

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

The Department of Revenue adopted this amendment on April 8, 2016.

After analysis and review of this rule making, a positive impact on jobs may exist. This amendment expands the eligibility for the disabled veteran's homestead tax credit. This credit furthers the goals of the Home Base Iowa Program by creating a property tax incentive for veterans and transitioning service members to make Iowa their "state of choice."

This amendment is intended to implement Iowa Code section 425.15.

This amendment will become effective June 1, 2016.

The following amendment is adopted.

Amend subrule 80.1(3) as follows:

80.1(3) Disabled veteran's homestead tax credit.

a. Qualification for credit. The disabled ~~veteran's homestead~~ veteran tax credit may be claimed by any ~~person~~ of the following owners of homestead property:

(1) A veteran who acquired homestead property under 38 U.S.C. Sections 21.801 and 21.802 or Sections 2101 and 2102 provided the veteran's annual income and that of the veteran's spouse do not exceed \$35,000.

(2) A veteran, as defined in Iowa Code section 35.1, with a permanent service-connected disability rating of 100 percent, as certified by the U.S. Department of Veterans Affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the 100 percent disability rate, as certified by the U.S. Department of Veterans Affairs.

(3) A former member of the national guard of any state who otherwise meets the service requirements of Iowa Code section 35.1(2) "b"(2) or 35.1(2) "b"(7), with a permanent service-connected

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disability rating of 100 percent, as certified by the U.S. Department of Veterans Affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the 100 percent disability rate, as certified by the U.S. Department of Veterans Affairs.

(4) An individual who is a surviving spouse or a child and who is receiving dependency and indemnity compensation pursuant to 38 U.S.C. Section 1301 et seq., as certified by the U.S. Department of Veterans Affairs.

b. Application for credit. Except for the 2014 assessment year, an application for the disabled veteran tax credit must be filed with the local assessor on or before July 1 of the assessment year. Any supporting documentation required by the assessor must be current within the previous 12 months of the date on which the application is filed. The filing deadline for applications for the 2014 assessment year shall be July 1, 2015. The credit applicable to assessment year 2014 shall be allowed only on a homestead which the owner occupied on July 1, 2014, and for at least six months during the 2014 assessment year.

c. Amount of credit. The amount of the credit is equal to the entire amount of tax payable on the homestead. Even though this financial assistance is available to disabled veterans on only one homestead during their lifetime, the credit may be claimed upon the acquisition of other homesteads for which no financial assistance is available providing all qualifications have been met.

d. Continuance of credit. The credit shall continue to the estate or surviving spouse and child who are the beneficiaries of an owner described in subparagraph 80.1(3)“a”(1), (2), or (3) if the surviving spouse remains unmarried. If an owner or beneficiary of an owner ceases to qualify for the credit, the owner or beneficiary must notify the assessor of the termination of eligibility.

[Filed 4/8/16, effective 6/1/16]

[Published 4/27/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/27/16.

ARC 2508C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 426C.9, the Department of Revenue hereby amends Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

The subject matter of rule 701—80.30(426C) is the business property tax credit. The rule implements Iowa Code chapter 426C. The amendment updates the rule to reflect several legislative changes that occurred during the Eighty-Sixth General Assembly, Second Session.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2371C** on January 20, 2016. No public comment was received. The adopted amendment is identical to that published under Notice of Intended Action.

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

The Department of Revenue adopted this amendment on April 8, 2016.

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

This amendment is intended to implement Iowa Code chapter 426C.

This amendment will become effective June 1, 2016.

The following amendment is adopted.

Amend rule 701—80.30(426C) as follows:

701—80.30(426C) Business property tax credit.

80.30(1) Definitions. For purposes of this rule, the following definitions shall govern.

“Contiguous parcels” means any of the following:

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1. Parcels that share a common boundary. There is a rebuttable presumption that parcels separated by a roadway, alley, or waterway do not share a common boundary. The burden of proof shall be upon the property owners to provide evidence or verification that parcels separated by a roadway, alley, or waterway share a common boundary. Parcels owned to the middle of a road, waterway, alley, or railway in fee simple title are considered to share a common boundary.

2. Parcels within the same building or structure regardless of whether the parcels share a common boundary.

3. Permanent improvements to the land that are situated on one or more parcels of land that are assessed and taxed separately from the permanent improvements if the parcels of land upon which the permanent improvements are situated share a common boundary. This arrangement is more commonly referred to as buildings or permanent improvements that are taxed as buildings upon leased land.

"Dwelling unit" means an apartment, group of rooms, or single room that is occupied as separate living quarters, or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building. A vacant dwelling unit that does not have active utility services is not considered to be intended for occupancy. Dwelling units do not include hotels, motels, inns, or other buildings where rooms are rented for less than one month.

"Multiresidential property" means, for valuations established on or after January 1, 2015, any of the following types of property:

1. ~~Mobile home park as defined in Iowa Code section 435.1.~~
2. ~~Manufactured home community and land-leased community as defined in Iowa Code sections 335.30A and 414.28A and 2013 Iowa Acts, chapter 123, section 28.~~
3. ~~Assisted living facility as defined in Iowa Code section 231C.2. Assisted living facility also includes:~~
 - ~~A health care facility as defined in Iowa Code section 135C.1;~~
 - ~~A child foster care facility under Iowa Code chapter 237; or~~
 - ~~Property used for a hospice program as defined in Iowa Code section 135J.1.~~
4. ~~Property primarily used or intended for human habitation containing three or more separate dwelling units.~~
5. ~~That portion of a building that is used or intended for human habitation and a proportionate share of the land upon which the building is situated, regardless of the number of dwelling units located in the building, if the use for human habitation is not the primary use of the building and such building is not otherwise classified as residential property.~~

~~Multiresidential property does not include hotels, motels, inns, or other buildings where rooms or dwelling units are usually rented for less than one month.~~

"Parcel" means each separate item shown on the tax list, manufactured or mobile home tax list, schedule of assessment, or schedule of rate change or charge. For fiscal years beginning on or after January 1, 2016, "parcel" also means ~~that each~~ portion of a parcel assigned to be commercial property, industrial property, or railway property pursuant to 2013 Iowa Acts, chapter 123, section 28 a distinct classification as set forth in rule 701—71.1(405,427A,428,441,499B).

"Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Property unit" means contiguous parcels all of which are located within the same county, with the same property tax classification, are owned by the same person, and are operated by that person for a common use and purpose.

80.30(2) No change.

80.30(3) *Application for credit.*

a. No change.

b. For a business property tax credit against property taxes due and payable during fiscal years beginning on and after July 1, 2015, and before July 1, 2017, no business property tax credit shall be allowed unless the first application for business property tax credit is received in the office of the applicable city or county assessor on or before March 15 preceding the fiscal year during which the credit first is claimed. For example, the first application for a business property tax credit against property

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taxes due and payable during the fiscal year beginning July 1, 2016, must be received in the office of the applicable city or county assessor on or before March 15, 2016.

c. For a business property tax credit against property taxes due and payable during fiscal years beginning on or after July 1, 2017, no business property tax credit shall be allowed unless the first application for the business property tax credit is received in the office of the applicable city or county assessor on or before July 1 preceding the fiscal year during which the credit is first claimed. For example, the first application for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2017, must be received in the office of the applicable city or county assessor on or before July 1, 2016.

~~e. d.~~ A claim filed after the filing deadlines set forth in paragraphs 80.30(3) “a₂” and 80.30(3) “b₂” and 80.30(3) “c” will be applied against property taxes due and payable for the following year.

~~d. e.~~ Once filed, the claim for credit is applicable to subsequent years, and no further filing shall be required as long as the parcel or property unit satisfies the requirements of the credit. If the parcel or property unit ceases to qualify for the credit, the owner shall provide written notice to the assessor by the date for filing claims in ~~paragraph~~ paragraphs 80.30(3) “b” and 80.30(3) “c,” as applicable, following the date on which the parcel or property unit ceases to qualify for the credit. When all or a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the buyer, transferee, or new owner who wishes to receive the credit shall refile the claim for credit. When a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the owner of the portion of the parcel or property unit for which ownership did not change shall refile the claim for credit. A transfer entered in the auditor’s transfer books under 2015 Iowa Code section 558.57 shall be prima facie evidence of a change in ownership of the parcel or property unit. The burden shall be on the claimant to prove that a transfer entered in the auditor’s transfer books did not result in a change in ownership. The deadline for refiling the claim shall be the same as the deadline for filing the claim.

~~e. f.~~ In the event ~~March 15~~ the application deadline falls on either a Saturday or Sunday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following Monday.

~~f. g.~~ In the event ~~March 15~~ the application deadline falls on a state holiday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following business day.

~~g. h.~~ For assessment years 2013, 2014, and 2015, Table 1 shows the applicable claim receipt deadlines and the taxes toward which the claim applies.

Table 1

	Assessment Year 2013	Assessment Year 2014	Assessment Year 2015	Assessment Year 2016	Assessment Year 2017
Claim Receipt Deadline	January 15, 2014	March 16, 2015* ¹	March 15, 2016	July 1, 2016	July 3, 2017 ²
For Taxes Payable	September 2014 & March 2015	September 2015 & March 2016	September 2016 & March 2017	September 2017 & March 2018	September 2018 & March 2019

*¹ March 15, 2015, falls on a Sunday.

² July 1, 2017, falls on a Saturday.

~~h. i.~~ An assessor may not refuse to accept an application for business property tax credit. Assessors shall remit claims for credit to the county auditor with a recommendation to allow or disallow the claim. If it is the opinion of the assessor that a business property tax credit should not be allowed, the assessor’s recommendation to the county auditor shall include in writing the reasons for recommending disallowance.

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~~i.~~ j. Upon receipt from the assessor of the claims and recommendations, the county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim for credit, the board shall send written notice by mail to the claimant at the claimant's last-known address. The written notice shall state the reasons for disallowing the claim for the credit. Notwithstanding the foregoing, the board is not required to send notice that a claim for credit is disallowed if the claimant voluntarily withdraws the claim.

80.30(4) Appeals.

a. No change.

b. *Reversal.* If the board of supervisors' disallowance of the claim for credit is reversed upon appeal, the credit shall be allowed on the applicable parcel or property unit. The ~~director~~ department of revenue, the county auditor, and the county treasurer shall provide the credit and change their books and records accordingly. If the claimant has paid one or both of the installments of the tax payable in the year or years in question, the county treasurer shall remit the amount of the credit to the claimant and submit a request to the department for reimbursement from the business property tax credit fund. The amounts payable as credits awarded on appeal shall be allocated and paid from the balance remaining in the business property tax credit fund established in Iowa Code section 426C.2.

80.30(5) Audit.

a. *Authority and period.* The ~~director~~ department of revenue may audit any credit provided under ~~2013 Iowa Acts, chapter 123~~ Iowa Code section 426C.4. However, the ~~director~~ department shall not adjust a credit allowed more than three years from October 31 of the year in which the claim for credit was filed.

b. *Recalculation or denial.* If an audit reveals that the amount of the credit was incorrectly calculated or that the credit should not have been allowed, the ~~director~~ department shall recalculate the credit, if applicable, and notify both the claimant and the county auditor of the recalculation and the reasons it is being made.

c. *Recapture.* If the credit has already been paid, the ~~director~~ department shall notify the claimant, the county treasurer, and the applicable assessor of the recalculation or denial of the credit. If the claimant still owns the parcel or property unit for which the credit was claimed, the county treasurer shall collect the tax owed in the same manner as other due and payable property taxes are collected. If the claimant no longer owns the parcel or property unit for which the credit was claimed, the department may recover the amount of tax owed by filing a lien under Iowa Code section 422.26 or by issuing a jeopardy assessment under Iowa Code section 422.30. Upon collection, the amount of the erroneously allowed credit shall be deposited in the business property tax credit fund.

d. *Appeal of recalculation or denial.* The claimant or the board of supervisors may appeal any decision of the ~~director~~ department to the ~~state board of tax review~~ director of revenue. The ~~state board~~ director shall review the ~~director's~~ department's decision ~~in accordance with Iowa Code section 421.1, subsection 5~~ within 30 days from the date of the notice of recalculation or denial provided to the claimant and county auditor. The director shall grant a hearing, at which the director shall determine the correct credit, if any. The director shall notify the claimant, board of supervisors, county auditor, and county treasurer of the decision by mail. The claimant, or the board of supervisors, and the director may all seek judicial review of the state board of tax review's director's decision pursuant to the provisions of Iowa Code chapter 17A.

e. No change.

80.30(6) Property eligible for credit.

a. *Eligible parcels and property units.*

(1) ~~Except as provided in subrule 80.30(8), individual parcels or multiple parcels that comprise a property unit that is~~ Parcels and property units classified and taxed as commercial property, industrial property, or railway property under Iowa Code chapter 434 are eligible for the business property tax credit for the unit. The assessor shall keep a permanent file of all eligible property units in the assessor's jurisdiction. Each assessment year, the assessor shall update the file based on transfers of property from the auditor's transfer book.

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~~(2) Parcels that, in part, would satisfy the requirements for classification as multiresidential property as defined in 2013 Iowa Acts, chapter 123, section 28, where the primary use of the building is not for human habitation with three or more units and the building is not otherwise classified as a residential property are eligible for the business property tax credit against valuations established prior to January 1, 2015.~~

~~b. Eligible property units. Except as provided in subrule 80.30(8), only property units made up of property assessed and taxed as commercial property, industrial property, or railway property under Iowa Code chapter 434 are eligible for the business property tax credit. To be eligible as a property unit, all of the parcels that make up the property unit must be:~~

- ~~(1) Located within the same county;~~
- ~~(2) The same property classification;~~
- ~~(3) Owned by the same person;~~
- ~~(4) Contiguous as defined in subrule 80.30(1); and~~
- ~~(5) Operated by that person for a common use and purpose.~~

~~e. b. Taxable status of parcels and property units.~~

~~(1) A parcel that is fully exempt from property tax is not eligible to receive the business property tax credit. A property unit that is comprised of one or more parcels that are Property that is fully exempt from property tax is not eligible to receive the business property tax credit.~~

~~(2) to (5) No change.~~

80.30(7) No change.

80.30(8) Property ineligible for credit. ~~All of the~~ The following are not eligible to receive a business property tax credit or to be part of a property unit that receives the business property tax credit:

~~a. No change.~~

~~b. Mobile home park as defined in Iowa Code section 435.1 Property classified as multiresidential under 701—subrule 71.1(5).~~

~~c. Manufactured home community and land-leased community as defined in Iowa Code sections 335.30A and 414.28A and 2013 Iowa Acts, chapter 123, section 28.~~

~~d. Assisted living facility as defined in Iowa Code section 231C.2. Assisted living facility also includes:~~

- ~~(1) A health care facility as defined in Iowa Code section 135C.1;~~
- ~~(2) A child foster care facility under Iowa Code chapter 237; or~~
- ~~(3) Property used for a hospice program as defined in Iowa Code section 135J.1.~~

~~e. Property primarily used or intended for human habitation with three or more separate dwelling units.~~

80.30(9) Application of credit.

~~a. No change.~~

~~b. A person may claim and receive one business property tax credit for each property unit. A claim for credit on a parcel that is part of a property unit constitutes a claim for credit on the entire unit.~~

~~c. and d. No change.~~

~~e. Once filed and allowed, the credit shall continue to be allowed on the parcel or property unit for successive years without further filing of an application unless the parcel or property unit ceases to qualify for the credit under Iowa Code chapter 421~~C~~ 426C.~~

~~f. When all or a portion of a parcel or property unit is sold or transferred or ownership otherwise changes, the new owner must reapply for the credit. The owner of the portion of a parcel or property unit that did not change shall also reapply for the credit. When the composition of a property unit changes as the result of a sale, transfer, or change in ownership, the owner of the property unit must reapply for the credit on the entire unit.~~

~~g. The following noninclusive examples illustrate the application of the business property tax credit under various circumstances.~~

~~EXAMPLE 1. No change.~~

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EXAMPLE 2. Same facts as in EXAMPLE 1, but Mr. Jones files his application on ~~March 17, 2015~~ July 3, 2016. Mr. Jones' application should be approved, but the credit will be against taxes due and payable in the fiscal year beginning July 1, ~~2016~~ 2018.

EXAMPLE 3. and EXAMPLE 4. No change.

80.30(10) Calculation of credit.

a. No change.

b. *Department process and methodology.*

(1) Department of management information. The department shall obtain from the department of management tax district and applicable consolidated rates. The department shall calculate the credit using the estimated consolidated levy rates obtained from the department of management. The department shall modify the credit accordingly upon certification by the auditor of the actual consolidated levy rates.

(2) to (5) No change.

This rule is intended to implement Iowa Code chapter 426C.

[Filed 4/8/16, effective 6/1/16]

[Published 4/27/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/27/16.

AGENCY	RULE	DELAY
Human Services Department[441]	25.106 [IAB 3/16/16, ARC 2438C]	Effective date of May 1, 2016, delayed 70 days by the Administrative Rules Review Committee at its meeting held April 8, 2016. [Pursuant to §17A.4(7)]
Labor Services Division[875]	rescind chs 61, 62; adopt chs 61 to 63 [IAB 3/2/16, ARC 2428C]	Effective date of April 6, 2016, delayed 70 days by the Administrative Rules Review Committee at its meeting held March 4, 2016. [Pursuant to §17A.4(7)] Delay Lifted: At its meeting held April 8, 2016, the Committee lifted the delay, effective April 9, 2016.



Senate Joint Resolution 2006

A JOINT RESOLUTION
 NULLIFYING AN ADMINISTRATIVE RULE BY THE BOARD OF EDUCATIONAL
 EXAMINERS ESTABLISHING A SPECIAL EDUCATION ENDORSEMENT AND
 SPECIALIZATIONS AND INCLUDING EFFECTIVE DATE PROVISIONS.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. 282 Iowa administrative code, rule 14.2, subrules 10 and 11, are nullified.

Sec. 2. EFFECTIVE DATE. This joint resolution, being deemed of immediate importance, takes effect upon enactment.



PAM JOCHUM
President of the Senate



LINDA UPMEYER
Speaker of the House

I hereby certify that this joint resolution originated in the Senate and is known as Senate Joint Resolution 2006, Eighty-sixth General Assembly.



MICHAEL E. MARSHALL
Secretary of the Senate



Senate Joint Resolution 2007

A JOINT RESOLUTION

NULLIFYING ADMINISTRATIVE RULES INCREASING FEES ASSESSED BY THE BOARD OF EDUCATIONAL EXAMINERS AND INCLUDING EFFECTIVE DATE PROVISIONS.

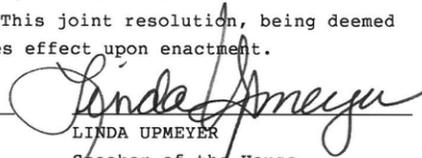
BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. The amendments to 282 Iowa administrative code, chapter 12, as appearing in ARC 2229C, as published in the Iowa administrative bulletin, volume XXXVIII, number 10, dated November 11, 2015, pp. 804-805, are nullified.

Sec. 2. EFFECTIVE DATE. This joint resolution, being deemed of immediate importance, takes effect upon enactment.



PAM JOCHUM
President of the Senate



LINDA UPMEYER
Speaker of the House

I hereby certify that this joint resolution originated in the Senate and is known as Senate Joint Resolution 2007, Eighty-sixth General Assembly.



MICHAEL E. MARSHALL
Secretary of the Senate