



IOWA ADMINISTRATIVE BULLETIN

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Pages 2479 to 2580

CONTENTS IN THIS ISSUE

Pages 2487 to 2579 include **ARC 5592C** to **ARC 5593C** and **ARC 5595C** to **ARC 5617C**

ADVISORY NOTICE

Public hearings: possible use of
telephonic or electronic format due to
COVID-19..... 2580

ALL AGENCIES

Agency identification numbers..... 2485
Citation of administrative rules..... 2481
Schedule for rule making..... 2482

EXECUTIVE DEPARTMENT

Advisory Notice, Public hearings:
possible use of telephonic or electronic
format due to COVID-19..... 2580

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

Notice, Terminology—deaf and
hard-of-hearing persons, 1.5(5) **ARC 5610C**... 2487

HUMAN SERVICES DEPARTMENT[441]

Filed, Travel trailers—time frame for
consideration as permanent place of
habitation, 58.1 **ARC 5596C**..... 2537
Filed, Electronic visit verification,
amendments to chs 73, 78, 83 **ARC 5597C**.... 2538

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Filed, Property and casualty insurance;
self-study continuing education,
11.3(4)“b,” 11.5(7), 20.1, 20.2, 20.4
to 20.6, 20.11, 20.41, 20.43, 20.47(3),
20.71 **ARC 5602C** 2544
Filed, Long-term care insurance,
amendments to chs 39, 72 **ARC 5598C**..... 2547

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Notice, Boiler and pressure vessel special
inspector commissions, 90.9 **ARC 5595C**..... 2488

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Filed, Appointment of executive director,
1.3 **ARC 5599C** 2553
Filed, Waivers, 3.1, 3.4, 3.17, 8.11, 9.18,
10.6, 11.6, 13.21, 17.4(2), 17.5(13),
17.11, 17.30, 19.8, 20.8(12), 20.20,
20.25, 21.8, 23.1 **ARC 5600C**..... 2555

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Notice, Waterway speed zoning—East
Okoboji, 40.31(2) **ARC 5593C**..... 2490
Filed, Deer hunting by
residents—firearms, 106.7, 106.10(5)
ARC 5601C 2558

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Notice, Background checks for nursing
students, 2.13 **ARC 5615C** 2491
Notice, Submission of waiver
information, amendments to ch
15 **ARC 5616C**..... 2493

PAROLE BOARD[205]

CORRECTIONS DEPARTMENT[201]“umbrella”

Notice, Waivers, amendments to ch 16
ARC 5609C 2496

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Notice, Psychologists—standards of practice, supervised professional experience, waivers, amend chs 240, 244; adopt ch 243 **ARC 5617C**..... 2498

PUBLIC HEARINGS

Summarized list 2483

PUBLIC SAFETY DEPARTMENT[661]

Filed, Fire service training bureau—programs, services, fees, 53.2 **ARC 5603C** 2561

Filed, Firefighter training and certification, amendments to ch 251 **ARC 5604C**..... 2563

REAL ESTATE APPRAISER EXAMINING

BOARD[193F]

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

Notice, Five-year review of rules, amendments to chs 1, 3 to 6, 8 to 12 **ARC 5611C** 2503

REVENUE DEPARTMENT[701]

Notice, Relief from joint and several liability for substantial understatement of tax attributable to nonrequesting spouse or former spouse, 38.15 **ARC 5613C**... 2512

Notice, Interest expense deduction adjustments, 40.85, 53.29, 59.31 **ARC 5612C** 2516

Notice, Marketable food products for human consumption, 230.2(1) **ARC 5614C** ... 2530

Filed, Broadband infrastructure grant exemption, 40.84, 53.28, 59.30 **ARC 5606C**... 2567

Filed, Bundled transactions, adopt ch 216; amend ch 231 **ARC 5605C**..... 2570

TRANSPORTATION DEPARTMENT[761]

Filed, Holiday rest stops; promotion of Iowa agricultural products at interstate rest areas; maintenance bureau, 105.2(4), 105.4, 105.5, 106.3, 106.4 **ARC 5607C** 2575

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Filed, Electric vehicle charging service, 20.20 **ARC 5608C** 2577

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Notice, Veterans trust fund, 14.2 to 14.4 **ARC 5592C** 2532

PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

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

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CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rule Making 2021

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
25	Wednesday, May 12, 2021	June 2, 2021
26	Friday, May 28, 2021	June 16, 2021
27	Friday, June 11, 2021	June 30, 2021

PLEASE NOTE:

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

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

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

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

NOTE: See also the Advisory Notice on page 2580.

CIVIL RIGHTS COMMISSION[161]

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

Drinking drivers instructional course—online delivery, in-person delivery, 21.31, 21.32(1) IAB 4/21/21 ARC 5583C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: IDOE.zoom.us/j/94718226002?pwd=MENTN0xcjJZL25HN2hGZkRRVjZndz09	May 11, 2021 8 to 8:30 a.m.
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Therapeutic classrooms; telehealth services on school premises, amendments to ch 14 IAB 4/21/21 ARC 5580C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: IDOE.zoom.us/j/94718226002?pwd=MENTN0xcjJZL25HN2hGZkRRVjZndz09	May 11, 2021 9 to 10 a.m.
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Online and virtual learning, rescind ch 15; adopt ch 15 IAB 4/21/21 ARC 5581C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: IDOE.zoom.us/j/94718226002?pwd=MENTN0xcjJZL25HN2hGZkRRVjZndz09	May 11, 2021 10 to 11 a.m.
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Educator preparation programs—accreditation, approval criteria, 79.2, 79.4, 79.9 IAB 4/21/21 ARC 5582C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: IDOE.zoom.us/j/94718226002?pwd=MENTN0xcjJZL25HN2hGZkRRVjZndz09	May 11, 2021 8:30 to 9 a.m.
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LABOR SERVICES DIVISION[875]

Boiler and pressure vessel special inspector commissions, 90.9 IAB 5/5/21 ARC 5595C	Dial: 312.626.6799 Meeting ID number: 879 7671 4785 Passcode: 430189	May 25, 2021 1 p.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

Waterway speed zoning—East Okoboji, 40.31(2) IAB 5/5/21 ARC 5593C	Via videoconference Contact Greg Harson Email: gregory.harson@dnr.iowa.gov	May 26, 2021 6 p.m.
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NURSING BOARD[655]

Background checks for nursing students, 2.13 IAB 5/5/21 ARC 5615C	Board Office, Suite B 400 S.W. Eighth St. Des Moines, Iowa	May 25, 2021 9 to 10 a.m.
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Submission of waiver information, amendments to ch 15 IAB 5/5/21 ARC 5616C	Board Office, Suite B 400 S.W. Eighth St. Des Moines, Iowa	May 25, 2021 10 to 11 a.m.
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PAROLE BOARD[205]

Waivers, amendments to ch 16
IAB 5/5/21 **ARC 5609C**

Via conference call
Contact Andrea Muelhaupt
Email: andrea.muelhaupt@iowa.gov

May 25, 2021
9 to 10 a.m.
(If requested)

PROFESSIONAL LICENSURE DIVISION[645]

Psychologists—standards
of practice, supervised
professional experience,
waivers, amend chs 240, 244;
adopt ch 243
IAB 5/5/21 **ARC 5617C**

Via videoconference:
idph.webex.com/idph/j.php?MTID=m89b81013fc5dafcb8e94ebc4c230b2e0
Meeting number: 187 971 8288
Password: PmhpNm8\$
Via telephone: 408.418.9388
Access code: 187 871 8288

May 25, 2021
10 to 11 a.m.

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Five-year review of rules,
amendments to chs 1, 3 to 6, 8
to 12
IAB 5/5/21 **ARC 5611C**

Small Conference Room, Third Floor
200 E. Grand Ave.
Des Moines, Iowa

May 25, 2021
11 a.m. to 12 noon

REVENUE DEPARTMENT[701]

Relief from joint and several
liability for substantial
understatement of tax
attributable to nonrequesting
spouse or former spouse, 38.15
IAB 5/5/21 **ARC 5613C**

Via videoconference
Contact Kurt Konek
Email: kurt.konek@iowa.gov

May 25, 2021
10:30 to 11:30 a.m.
(If requested)

Interest expense deduction
adjustments, 40.85, 53.29,
59.31
IAB 5/5/21 **ARC 5612C**

Via videoconference
Contact Ben Clough
Email: ben.clough@iowa.gov

May 25, 2021
1 to 2 p.m.
(If requested)

Marketable food products for
human consumption, 230.2(1)
IAB 5/5/21 **ARC 5614C**

Via videoconference
Contact Tim Reilly
Email: tim.reilly@iowa.gov

May 25, 2021
2 to 3 p.m.

The following list will be updated as changes occur.

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

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

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Soil Conservation and Water Quality Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
OMBUDSMAN[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Interior Design Examining Board[193G]
 Utilities Division[199]
CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
EARLY CHILDHOOD IOWA STATE BOARD[249]
ECONOMIC DEVELOPMENT AUTHORITY[261]
 City Development Board[263]
IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

Status of Iowans of Asian and Pacific Islander Heritage[436]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Child Advocacy Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
IOWA PUBLIC INFORMATION BOARD[497]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Professional Licensure Division[645]
 Dental Board[650]
 Medicine Board[653]
 Nursing Board[655]
 Pharmacy Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and Workforce Development Center Administration Division[877]

ARC 5610C**HISTORICAL DIVISION[223]****Notice of Intended Action****Proposing rule making related to terminology
and providing an opportunity for public comment**

The Department of Cultural Affairs hereby proposes to amend Chapter 1, "Description of Organization," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 303.1A.

State or Federal Law Implemented

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

Purpose and Summary

The proposed amendment changes language in relation to deaf and hard-of-hearing persons in accordance with the change enacted in 2020 Iowa Acts, House File 2585.

Fiscal Impact

This rule making reflects a change of terminology and has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Kristen Vander Molen
Department of Cultural Affairs
600 East Locust Street
Des Moines, Iowa 50319
Phone: 515.281.4228
Email: kristen.vandermolen@iowa.gov

Public Hearing

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

HISTORICAL DIVISION[223](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrule 1.5(5) as follows:

1.5(5) Facilities use. Resource protection is the underlying principle guiding the use of society facilities. This subrule sets forth conditions of public use which apply to all society facilities. Additional restrictions or exceptions pertain to specific facilities as listed in subrule 1.5(6).

a. and b. No change.

c. Pets. With the exception of those assisting the deaf and hard of hearing or visually impaired, pets shall be prohibited in society buildings. All pets on the grounds of any society facility shall be on a leash and under the direct supervision of the owner. The owner assumes all liability for pets brought onto the grounds of a society facility.

d. to f. No change.

ARC 5595C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

**Proposing rule making related to special inspector commissions
and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 89.7(2).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 89.

Purpose and Summary

The proposed amendments would change the expiration date of all special inspector commissions from June 30 to December 31 and would require an applicant for a new special inspector commission to meet with the chief boiler inspector.

Fiscal Impact

It is anticipated that about \$3,000 in special inspector fees would be lost in the transition to December expirations.

Jobs Impact

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

LABOR SERVICES DIVISION[875](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commissioner no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Kathleen Uehling
Division of Labor Services
150 Des Moines Street
Des Moines, Iowa 50309
Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

May 25, 2021
1 p.m.

Dial: 312.626.6799
Meeting ID number: 879 7671 4785
Passcode: 430189

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrules 90.9(2) and 90.9(3) as follows:

90.9(2) Application.

a. A person applying for a new or renewed commission shall complete, sign, and submit to the division with the required fee the form entitled "Application for Boiler and Pressure Vessel Special Inspector Commission" provided by the division. Additionally, the applicant shall submit a copy of the applicant's current National Board work card with each application.

b. An applicant for a new Iowa special inspector commission shall schedule a meeting with the chief boiler inspector to discuss Iowa law and the responsibilities, expectations, and requirements for a special inspector.

90.9(3) Expiration.

a. The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. Each commission shall expire no later than ~~June 30~~ December 31 of each year.

LABOR SERVICES DIVISION[875](cont'd)

b. Notwithstanding paragraph 90.9(3) “a” and in order to transition from an expiration date of June 30 to an expiration date of December 31, a commission issued between June 1, 2022, and November 30, 2022, shall expire on December 31, 2023.

ARC 5593C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 40, “Boating Speed and Distance Zoning,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6), 462A.26(2) and 462A.32(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 462A.26 and 462A.32.

Purpose and Summary

Chapter 40 contains rules governing water navigation, specifically vessel speed and distance zoning. This proposed rule making would amend subrule 40.31(2). This subrule designates a five-mile-per-hour boating speed zone on East Okoboji Lake in the area known as the Narrows. The Narrows, as its name indicates, is a location where the lake is severely constricted by a large point protruding from the northeast. Currently, the speed zone is defined as an area extending 300 feet north and 200 feet south of the Narrows and is marked on the water using lines of buoys. The purpose of the zone is to reduce the speed of boat traffic for safety purposes and to reduce shoreline erosion caused by boat wakes. The amendment would extend the speed zone an additional distance of approximately 800 feet from the existing south boundary to a buoy line extending from the point at 16486 255th Avenue east to the state property adjacent to 16313 256th Avenue on the east side of East Okoboji Lake. This extension will help further reduce shoreline erosion, which is an ongoing problem in this area.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa as it requires no additional revenues or staffing to implement. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions.

NATURAL RESOURCE COMMISSION[571](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 26, 2021. Comments should be directed to:

Greg Harson
Iowa Department of Natural Resources
122 252nd Avenue
Spirit Lake, Iowa 51360
Fax: 712.336.0921
Email: gregory.harson@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held by conference call as follows. Persons who wish to attend the conference call should contact Greg Harson at gregory.harson@dnr.iowa.gov. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Greg Harson prior to the hearing to facilitate an orderly hearing.

May 26, 2021
6 p.m.

Video/conference call

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrule 40.31(2) as follows:

40.31(2) Zone 2. Zone 2 shall be the area which is 300 feet north of the area commonly known as the Narrows on East Okoboji and ~~200 feet south of the area commonly known as the Narrows on~~ extends to a southern boundary of a buoy line from the point at 16486 255th Avenue east to the state property adjacent to 16313 256th Avenue on the east side of East Okoboji.

ARC 5615C

NURSING BOARD[655]**Notice of Intended Action****Proposing rule making related to background checks for nursing students
and providing an opportunity for public comment**

The Board of Nursing hereby proposes to amend Chapter 2, "Nursing Education Programs," Iowa Administrative Code.

NURSING BOARD[655](cont'd)

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 152.5A.

Purpose and Summary

During the 2020 Legislative Session, the Legislature passed 2020 Iowa Acts, Senate File 2299, which relates to background checks for employees of certain health care facilities, providers, and agencies and students in nursing programs. 2020 Iowa Acts, Senate File 2299, section 6, amended Iowa Code section 152.5A to conform the nursing-student background check process to the requirements of Iowa Code section 135C.33. This proposed rule making updates the Board's rules regarding background checks for nursing students to incorporate the amended Iowa Code language.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Kathy Weinberg
Iowa Board of Nursing
400 S.W. Eighth Street, Suite B
Des Moines, Iowa 50309
Email: kathy.weinberg@iowa.gov

Public Hearing

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

May 25, 2021
9 to 10 a.m.

Board Office, Suite B
400 S.W. Eighth Street
Des Moines, Iowa

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

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

NURSING BOARD[655](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 655—2.13(152) as follows:

655—2.13(152) Student criminal history checks.

2.13(1) The program shall initiate criminal history and child and dependent adult abuse record checks of students and prospective students to ensure a student's ability to complete the clinical education component of the program in accordance with Iowa Code ~~section 152.5~~ sections 152.5A and 135C.33.

2.13(2) The program shall:

a. Notify all students and prospective students of the nursing program's written policy and procedure concerning criminal history and child and dependent adult abuse record checks.

b. Conduct record checks in accordance with Iowa Code sections 152.5A and 135C.33 on all students:

(1) Applying for the nursing program.

(2) Returning to the clinical education component of the nursing program. Time frames between record checks may be determined by the program.

(3) Anytime during the student's enrollment in the nursing program pursuant to the program's policy and procedure.

~~*c.* Request that the department of public safety perform a criminal history check and that the department of human services perform child and dependent adult abuse record checks.~~

~~*d. c.* Follow the guidelines and standards set forth~~ Abide by the results of the evaluation performed by the department of human services in conducting record checks and in when determining a student's ability to complete the clinical education component of a nursing program based on the record checks.

ARC 5616C**NURSING BOARD[655]****Notice of Intended Action****Proposing rule making related to submission of waiver information and providing an opportunity for public comment**

The Board of Nursing hereby proposes to amend Chapter 15, "Waiver Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 17A.9A.

State or Federal Law Implemented

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

Purpose and Summary

During the 2020 Legislative Session, the Legislature passed 2020 Iowa Acts, House File 2389, which made various amendments to Iowa Code chapter 17A. Section 10 of this legislation amended Iowa Code

NURSING BOARD[655](cont'd)

section 17A.9A by establishing an Internet site for the submission of waiver information, and agencies are now required to submit information regarding waivers within 60 days of ruling on a waiver request. This proposed rule making updates the Board's waiver-reporting rules to align with the new procedure. In addition, this rule making updates the Chapter 15 parenthetical implementation statutes and the chapter implementation sentence.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 655—Chapter 15.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Kathy Weinberg
Iowa Board of Nursing
400 S.W. Eighth Street, Suite B
Des Moines, Iowa 50309
Email: kathy.weinberg@iowa.gov

Public Hearing

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

May 25, 2021
10 to 11 a.m.

Board Office, Suite B
400 S.W. Eighth Street
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

NURSING BOARD[655](cont'd)

ITEM 1. Amend rule ~~655—15.1(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.1(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Definition.**

ITEM 2. Amend rule ~~655—15.2(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.2(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Scope of chapter.**

ITEM 3. Amend rule ~~655—15.3(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.3(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Applicability of chapter.**

ITEM 4. Amend rule ~~655—15.4(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.4(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Criteria for waiver.**

ITEM 5. Amend rule ~~655—15.5(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.5(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Filing of petition.**

ITEM 6. Amend rule ~~655—15.6(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.6(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Content of petition.**

ITEM 7. Amend rule ~~655—15.7(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.7(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Additional information.**

ITEM 8. Amend rule ~~655—15.8(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.8(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Notice.**

ITEM 9. Amend rule ~~655—15.9(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.9(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Hearing procedures.**

ITEM 10. Amend rule ~~655—15.10(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.10(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Ruling.**

ITEM 11. Amend rule ~~655—15.11(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.11(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Public availability.**

ITEM 12. Amend rule ~~655—15.12(147,ExecOrd8,78GA,ch1176)~~ as follows:

~~655—15.12(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Summary reports** Submission of waiver information. Semiannually, each division board shall prepare a summary report identifying Within 60 days of granting or denying a waiver, the board shall submit the following information to the Internet site created pursuant to Iowa Code section 17A.9A(4): the rules rule(s) for which a waiver has been

NURSING BOARD[655](cont'd)

granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by ~~these rules~~ the rule(s), and a general summary of the reasons justifying the board's actions on the waiver requests request. If practicable, the ~~report~~ submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 13. Amend rule ~~655—15.13(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.13(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Cancellation of a waiver.**

ITEM 14. Amend rule ~~655—15.14(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.14(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Violations.**

ITEM 15. Amend rule ~~655—15.15(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.15(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Defense.**

ITEM 16. Amend rule ~~655—15.16(147,ExecOrd8,78GA,ch1176)~~, parenthetical implementation statute, as follows:

~~655—15.16(147,ExecOrd8,78GA,ch1176~~ 17A,147) **Judicial review.**

ITEM 17. Amend ~~655—Chapter 15~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A and 147, ~~Executive Order Number 8, and 2000 Iowa Acts, chapter 1176.~~

ARC 5609C

PAROLE BOARD[205]

Notice of Intended Action

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

The Board of Parole hereby proposes to amend Chapter 16, "Waiver and Variance Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 904A.4A.

State or Federal Law Implemented

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

Purpose and Summary

The proposed amendments update Chapter 16 in accordance with changes included in 2020 Iowa Acts, House File 2389, section 10. The legislation called for deletions of the word "variance" when the word is used in relation to "waiver." Amendments are also proposed for the submission of information regarding waivers on the Legislative Services Agency's Internet site.

PAROLE BOARD[205](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Andrea Muelhaupt
Board of Parole
Jessie Parker Building
510 East 12th Street
Des Moines, Iowa 50319
Email: andrea.muelhaupt@iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

May 25, 2021
9 to 10 a.m.

Via conference call

Persons who wish to participate in the conference call should contact Andrea Muelhaupt before 4:30 p.m. on May 18, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing. The public hearing will be canceled without further notice if no oral presentation is requested.

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend **205—Chapter 16**, title, as follows:

~~WAIVER AND VARIANCE RULES~~

PAROLE BOARD[205](cont'd)

ITEM 2. Amend rule 205—16.1(17A) as follows:

205—16.1(17A) Definition. For purposes of this chapter, “a waiver ~~or variance~~” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 205—16.4(17A) as follows:

205—16.4(17A) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule 205—16.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend rule 205—16.12(17A) as follows:

205—16.12(17A) Summary reports Submission of waiver information. ~~Semiannually, the board shall prepare a summary report identifying~~ The board shall submit information about granted and denied waivers to the Internet site pursuant to Iowa Code section 17A.9A within 60 days. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board’s actions on waiver requests. If practicable, the report submission shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself and the extent to which the granting of the waiver has established a precedent for additional waivers. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

ARC 5617C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Proposing rule making related to standards of practice and telepsychology and providing an opportunity for public comment

The Board of Psychology hereby proposes to amend Chapter 240, “Licensure of Psychologists”; to adopt a new Chapter 243, “Practice of Psychology”; and to amend Chapter 244, “Prescribing Psychologists,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76 and 272C.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 154B and sections 147.9, 147.55, 272C.4, 272C.9 and 272C.10 and 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed rule making establishes standards of practice for psychologists who provide patient care through telepsychology, requires Health Insurance Portability and Accountability Act (HIPAA)-compliant technology, and imposes other requirements to ensure the patient’s confidential health information is secure. These rules align with the Board of Medicine’s rules governing telemedicine, which will ensure that psychologists operate under uniform standards when coordinating remote care. The proposed chapter also establishes the minimum standards of practice for licensed

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

psychologists, provides definitions of practice terminology, and specifies the requirements for patient records management, psychological testing, participation in judicial proceedings and reporting to the Board.

In addition, there are two proposed amendments that pertain to technical corrections. The first amendment pertains to Chapter 240 and ensures uniformity with the chapter by removing the requirement that supervised professional experience by a postdoctoral supervisee take place in the same physical setting as the supervisor. The second amendment pertains to 2020 Iowa Acts, House File 2389, which amended Iowa Code chapter 17A to remove the term “variance” and required that agencies’ rules about waiver procedures refer only to waivers. The word “variance” is therefore proposed to be removed from Chapter 244.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Sharon Dozier
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.0254
Fax: 515.281.3121
Email: sharon.dozier@idph.iowa.gov

Public Hearing

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

May 25, 2021
10 to 11 a.m.

Via videoconference:
idph.webex.com/idph/j.php?MTID=m89b81013fc5dafcb8e94ebc4c230b2e0
Meeting number: 187 971 8288
Password: PmhpNm8\$
Via telephone: 408.418.9388
Access code: 187 971 8288

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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subparagraph **240.6(2)“a”(3)** as follows:

(3) Work in the same physical setting as the supervisor unless ~~a completed off-site supervision form is submitted to and approved by the board~~ the requirements stated in subparagraph 240.6(2)“b”(11) are met;

ITEM 2. Adopt the following **new** 645—Chapter 243:

CHAPTER 243
PRACTICE OF PSYCHOLOGY

645—243.1(154B) Definitions.

“*APA*” means the American Psychological Association.

“*Clinical records*” means records created by a licensee regarding the observation and treatment of patients, such as progress notes, but does not include psychotherapy notes.

“*Examinee*” means a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney about the psychological functioning of that examinee.

“*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder.

“*Licensee*” or “*licensed*” means an individual with an active license to practice psychology, including a provisional license, or a certificate of exemption issued by the board.

“*Patient*” means an individual under the care of a licensee in a clinical role and is synonymous with the term client.

“*Personal representative*” means a person authorized to act on behalf of the patient in making health care-related decisions. A personal representative may include a parent or legal guardian, an individual with a health care power of attorney, an individual with a general power of attorney or durable power of attorney that includes the power to make health care decisions, or a court-appointed legal guardian.

“*Psychotherapy notes*” means notes recorded by a licensee documenting or analyzing the contents of a conversation during a private therapy session with a patient, or a group, joint, or family therapy session, that are maintained separately from the patient's clinical records. Psychotherapy notes excludes medication prescription monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of any clinical tests, and any summary of the following items: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

“*Telepsychology*” means the provision of psychological services using telecommunication technologies.

“*Test data*” means raw and scaled scores, patient responses to test questions or stimuli, and notes and recordings concerning patient statements and behavior during an examination.

645—243.2(147,154B,272C) Purpose and scope. The purpose of this chapter is to set the minimum standards of practice for licensees practicing in Iowa. The practice of psychology is occurring in Iowa

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

if the patient or examinee is located in Iowa. Licensees shall ensure any interns or residents under supervision adhere to the minimum standards of practice and must comply with the requirements set forth in rule 645—240.9(154B). The APA Code of Ethics is applicable and enforceable to the extent it does not conflict with any standards of practice set forth in this chapter. A licensee may be disciplined for any violation of this chapter or the APA Code of Ethics.

645—243.3(154B) Access to records.

243.3(1) Clinical records generally. Upon a signed release from the patient or the patient's personal representative, a licensee shall provide clinical records in accordance with the release unless there is a ground for denial under HIPAA.

243.3(2) Psychotherapy notes. A licensee is not required to release psychotherapy notes in response to a signed release, but a licensee who chooses to release psychotherapy notes may only provide psychotherapy notes if the signed release specifically authorizes the release of psychotherapy notes.

243.3(3) Substance use disorder treatment programs. Licensees who practice in a federally assisted substance use disorder treatment program, also known as a part 2 program, are prohibited from disclosing any information that would identify a patient as having a substance use disorder unless the patient provides written consent in compliance with part 2 requirements.

243.3(4) Clinical records of minor patients. A minor patient is a patient who is under the age of 18 and is not emancipated. A licensee is not required to release the clinical records of a minor patient to the minor's personal representative if releasing such records is not in the minor's best interest. When a minor patient reaches the age of 18, the clinical records belong to the patient.

243.3(5) Clinical records of deceased patients. A licensee shall provide the clinical records of a deceased patient to the deceased patient's executor upon a written request accompanied by a copy of the patient's death certificate and a copy of the legal document identifying the requestor as the patient's executor.

243.3(6) Forensic records. A licensee shall provide forensic records consistent with the APA Specialty Guidelines for Forensic Psychology.

243.3(7) Board. A licensee shall provide clinical records, test data, or forensic records to the board as requested during the investigation of a complaint. A licensee is not required to obtain a patient release to send such information to the board because the board is a health oversight agency.

243.3(8) Exceptions. Nothing herein shall be construed as requiring a licensee to disclose information when there is a legal basis for not disclosing the information.

645—243.4(154B) Psychological testing. A licensee may administer psychological tests and assessments to a patient or examinee provided the licensee has appropriate training for any psychological test or assessment utilized and the test or assessment is scientifically founded.

243.4(1) Use of proctors. A licensee may delegate the administration of a standardized test, intelligence test, or objective personality assessment to an appropriately trained individual. The licensee is responsible for supervising any proctors.

243.4(2) Release of test data. A licensee shall not provide test data to any person, except that upon a written request of a patient or examinee who is the subject of a test, the test data shall be disclosed to a licensed psychologist designated by the patient or examinee. A psychologist who receives test data in this manner may not further disseminate the test data.

645—243.5(154B) Judicial proceedings. Prior to participating in a judicial proceeding, a licensee shall become familiar with the rules governing the proceeding. A licensee shall understand and clearly identify the licensee's role in the proceeding.

243.5(1) Licensure. A license to practice psychology in Iowa or an exemption from licensure is not required solely to testify as an expert witness in court, provided the psychologist did not personally examine the examinee. A psychologist who personally examines an examinee located in Iowa for the purpose of providing an expert opinion is required to be licensed or exempt from licensure at the time of the evaluation.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

243.5(2) Custody evaluations. A licensee who performs a child custody evaluation shall comply with the APA Guidelines for Child Custody Evaluations in Family Law Proceedings.

645—243.6(147,154B,272C) Reports required. Within 30 days, a licensee shall report to the board the following:

243.6(1) A change of name or address. Name and address changes may be reported at www.idph.iowa.gov/Licensure.

243.6(2) A criminal conviction, even if the adjudication of guilt is deferred, withheld, or not entered. A conviction includes Alford pleas and pleas of nolo contendere.

243.6(3) Any disciplinary action taken by another licensing authority in this state, another state, territory, or country.

243.6(4) Any occurrence of any judgment or settlement of a malpractice claim or action.

243.6(5) Acts or omissions of the board's statute or administrative rules committed by another person licensed to practice by the board when a licensee has first-hand knowledge of such acts or omissions. This duty to report does not apply when a licensee has knowledge as a result of the other licensee being a patient.

645—243.7(154B) Telepsychology. A psychologist may practice telepsychology provided the following are met:

243.7(1) The psychologist must be licensed or be exempt from licensure in the jurisdiction where the patient or examinee is located.

243.7(2) Prior to initiating telepsychology with a new patient or examinee, a licensee shall take reasonable steps to verify the identity and location of the patient or examinee.

243.7(3) A licensee shall ensure informed consent for telepsychology includes a description of any limitations of services as a result of the technology utilized.

243.7(4) A licensee shall gain competency in the use of a particular technology prior to utilizing it in practice. A licensee shall only use technologies that are secure and functioning properly.

243.7(5) A licensee shall apply the same ethical and professional standards of care and professional practice that are required when providing in-person psychological services. If the same standard of care cannot be met with telepsychology, a licensee shall not utilize telepsychology.

645—243.8(154B) Records. A licensee shall complete clinical records as soon as practicable to ensure continuity of services. All clinical records shall be completed within 30 days after the service or evaluation is complete in the absence of significant extenuating circumstances. Clinical records and psychotherapy notes shall be retained for at least seven years after the last date of service, or until at least three years after a minor reaches the age of 18, whichever is later. Forensic records shall be completed and retained consistent with the APA Specialty Guidelines for Forensic Psychology.

These rules are intended to implement Iowa Code chapters 147, 154B, and 272C.

ITEM 3. Amend rule 645—244.12(148,154B) as follows:

645—244.12(148,154B) Joint waiver ~~or variance~~—joint rule. Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

ARC 5611C

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Notice of Intended Action

**Proposing rule making related to five-year review of rules
and providing an opportunity for public comment**

The Real Estate Appraiser Examining Board hereby proposes to amend Chapter 1, "Organization and Administration," Chapter 3, "General Provisions for Examinations," Chapter 4, "Associate Real Property Appraiser," Chapter 5, "Certified Residential Real Property Appraiser," Chapter 6, "Certified General Real Property Appraiser," Chapter 7, "Disciplinary Actions Against Certified and Associate Appraisers," Chapter 8, "Investigations and Disciplinary Procedures," Chapter 9, "Renewal, Expiration and Reinstatement of Certificates and Registrations, and Inactive Status," Chapter 10, "Reciprocity," Chapter 11, "Continuing Education," and Chapter 12, "Fees," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 543D.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 543D.

Purpose and Summary

The proposed amendments implement what the Board considers to be high- and medium-priority changes based on a five-year rolling review of its rules. This is the second level of changes from the Board. The highest-priority changes have already gone through the rule-making process and became effective on November 25, 2020. These amendments will reduce conflict between the rules and statute, reduce conflict within the rules and better follow current internal practices.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

Brandy March
Real Estate Appraiser Examining Board
East Grand Office Park
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9025
Email: brandy.march@iowa.gov

Public Hearing

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

May 25, 2021
11 a.m. to 12 noon

Small Conference Room, Third Floor
200 East Grand Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 1.20(2) as follows:

1.20(2) Summary of certification requirements. As more fully set out in 193F—Chapters 3, 5, and 6, a person who is in the process of completing the education, experience, and examination required for certification as a certified appraiser may not submit an application for certification to the board until all prerequisites have been satisfactorily completed. The prerequisites include the following: qualifying college and core criteria appraiser education, qualifying examination, 1,500 hours of qualifying experience in a minimum of 12 months for residential appraisers or 3,000 hours of qualifying experience in a minimum of 18 months for general appraisers, and work product review. Work product review requires numerous steps, as provided in 193F—5.6(543D) and 193F—6.6(543D). The work product review process includes the applicant's submission of a work product experience log to the board; the board's selection of three appraisals to review; communication of the selected appraisals to the applicant; the applicant's submission of the three appraisals and associated work files to the board in electronic and paper formats; review of the appraisals and work files by a reviewer retained by the board; the reviewer's submission of review reports to the board; a meeting between the applicant, the applicant's supervisor, and the board's work product review committee; a formal board vote at a board meeting; and communication of approval, denial, or deferral to the applicant. All of these steps must be completed before an applicant with approved work product can submit an application for certification to the board office. If the applicant's supervisor is unable to attend the work product review meeting, the applicant, or the applicant's supervisor, must submit the circumstances surrounding the absence to the executive officer and receive approval from the executive officer for the supervisor's absence.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 2. Amend rule 193F—1.23(272C,543D) as follows:

193F—1.23(272C,543D) Applications. Unless otherwise provided by rule of the board, abandoned applications shall be deemed withdrawn. An application is abandoned if the applicant has not accessed or modified the application through the board's electronic licensing database within the preceding six months, or when approved by the board but the applicant has failed to pay any required fees within 30 calendar days of the date approved by the board. For purposes of this rule, "application" means any request, application, registration, or petition submitted to the board through the licensing database, including but not limited to the following:

1. to 22. No change.

ITEM 3. Amend rule 193F—3.2(543D), introductory paragraph, as follows:

193F—3.2(543D) Examinations. Examinations for certified residential real property appraisers and certified general real property appraisers shall be AQB-endorsed and administered by the board or its authorized representative as often as the board deems necessary, but not less than one time per year. Successful completion of the examination is valid for a period of 24 months.

ITEM 4. Amend subrule 3.4(1) as follows:

3.4(1) All initial applications for certification or associate registration shall be made on forms provided by the board. The board may deny an application as described in Iowa Code sections 543D.12 and 543D.17. Specific examples of grounds for denial include knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or participating in any form of fraud or misrepresentation; the revocation of another professional license; or, subject to the limitations and processes set forth in Iowa Code section 272C.15 and corresponding implementing rules located at 193F—Chapter 13, a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions and duties of a person developing real estate appraisals and communicating real estate appraisals to others. The board may also deny an application based on disciplinary action pending or taken against an associate appraiser registration applicant consistent with Iowa Code section 272C.12.

ITEM 5. Renumber subrules **4.1(4)** and **4.1(5)** as **4.1(5)** and **4.1(6)**.

ITEM 6. Adopt the following **new** subrule 4.1(4):

4.1(4) Supervision. An applicant must obtain the services of a certified appraiser who meets the supervisor qualification criteria in rule 193F—15.3(543D).

ITEM 7. Amend renumbered subrule 4.1(5) as follows:

4.1(5) Application form. After completing the education, training, background check, and obtainment of a supervisor outlined in subrules 4.1(1) and 4.1(2) to 4.1(4), a person applying for registration as an associate appraiser shall apply for registration on the form provided by the board. The form and the appropriate application fee shall be submitted to the board. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:

- a. Be on a form prescribed by the board or, in the event there are no paper forms, be submitted through the state's database;
- b. Be signed by the applicant and supervisor(s), be certified as accurate, or display an electronic signature by the applicant and supervisor(s) if submitted electronically;
- c. Be fully completed;
- d. Reflect, on its face, full compliance with all applicable qualifying education requirements including the supervisory appraiser/trainee appraiser course;
- e. Be accompanied by the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

credit card transaction is rejected, or the applicant's check is returned for insufficient funds or written on a closed account.

ITEM 8. Amend subrule 4.2(4) as follows:

4.2(4) Logs. An associate appraiser shall maintain an appraisal experience log that includes all information required by the AQB and the board as a precondition for certification and shall maintain the log contemporaneously with the performance of supervised real property appraisal services. Every log page shall have the names and signatures of the associate appraiser and supervisory appraiser, the state certification number of the supervisory appraiser, and the date of ~~signature~~ signatures. Required log entries shall, at a minimum, include the following for each appraisal:

- a. Type of property;
- b. Date of report;
- c. ~~Address~~ Complete address of appraised property or full legal description;
- d. A specific description of work performed by the associate appraiser, ~~and~~ scope of review, and supervision of the supervisory appraiser;
- e. Number of actual work hours by the associate on the assignment; and
- f. The approach(es) to value utilized in the report.

ITEM 9. Amend subrule 4.6(1) as follows:

4.6(1) In order to reinstate or reactivate an associate registration that has lapsed or been placed in inactive or retired status, the applicant must complete all continuing education required for reinstatement pursuant to 193F—subrule 11.2(5). For purposes of this rule, in addition to the most recent edition of a seven-hour USPAP course, the board shall allow for continuing education only those courses that have been AQB-approved as qualifying education required for certification, as outlined in rules 193F—5.2(543D) and 193F—6.2(543D). The purpose of this requirement is to ensure that those associates reinstating a lapsed, retired, or inactive registration are progressing toward certification. Any qualifying education course taken under this rule as continuing education shall also apply as qualifying education toward certification. If the applicant has completed all qualifying education prior to applying to reinstate a lapsed, retired, or inactive associate registration, the applicant may use any approved continuing education course as provided in 193F—Chapter 11, in addition to the required seven-hour USPAP update course, toward the continuing education required for reinstatement.

ITEM 10. Amend subrule 5.3(1) as follows:

5.3(1) Qualification.

~~a.~~ In order to qualify to sit for the certified residential real property appraiser examination, the applicant must:

(1) ~~Complete~~ complete the board's application form and provide copies of documentation of completion of all courses claimed that qualify the applicant to sit for the examination. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:

- a. Be on a form prescribed by the board or, in the event there are no paper forms, be submitted through the state's database;
- b. Be signed by the applicant, be certified as accurate, or display an electronic signature by the applicant if submitted electronically;
- c. Be fully completed;
- d. Reflect, on its face, full compliance with all applicable continuing education requirements; and
- e. Be accompanied by the proper fee specified in 193F—Chapter 12. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or written on a closed account.

(2) ~~Pay the fee specified in 193F—Chapter 12.~~

~~b.~~ The core criteria, collegiate education, and experience must be completed and the documentation submitted to the board at the time of application to sit for the examination.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 11. Amend rule 193F—5.6(543D) as follows:

193F—5.6(543D) Work product review.

5.6(1) An applicant shall submit a complete appraisal log at the time of application for examination and work product review. The board will select three appraisals that demonstrate a diversity of experience and approaches to value over various time frames for work product review and request that the applicant submit ~~four~~ one paper copies copy of each report and ~~four~~ one paper copies copy of each work file in addition to an electronic format requested by the board for each of the selected appraisals along with the appropriate form and fee. The work product submission shall not be redacted by the applicant; however, the applicant may request the reports remain confidential as specified in subrule 5.6(2). The fee for work product review of the appraisals is provided in 193F—Chapter 12. The board may select the appraisals at random from the entire log or within certain types of appraisals. The board reserves the right to request one or more additional appraisals if those submitted by the applicant raise issues concerning the applicant's competency or compliance with applicable appraisal standards or the degree to which the submitted appraisals are representative of the applicant's work product. Such additional appraisals may be selected at random from the applicant's log or may be selected specifically to provide an example of the applicant's work product regarding a particular type of appraisal.

5.6(2) to 5.6(8) No change.

5.6(9) After accumulating a minimum of 500 hours of appraisal experience, an applicant may voluntarily submit work product to the board to be reviewed by a peer reviewer for educational purposes only. A maximum of three reports may be submitted for review during the experience portion of the certification process. Work product submitted for educational purposes only will not result in disciplinary action on either the associate appraiser or the associate appraiser's supervisor so long as the appraisal review does not reveal negligent or egregious errors or omissions. The fee for voluntary submissions of work product for review is provided in 193F—Chapter 12.

5.6(10) No change.

ITEM 12. Amend subrule 6.3(1) as follows:

6.3(1) In order to qualify to sit for the certified general real property appraiser examination, the applicant must:

~~a. Complete~~ complete the board's application form and provide copies of documentation of completion of all courses claimed that qualify the applicant to sit for the examination. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:

a. Be on a form prescribed by the board or, in the event there are no paper forms, be submitted through the state's database;

b. Be signed by the applicant, be certified as accurate, or display an electronic signature by the applicant if submitted electronically;

c. Be fully completed;

d. Reflect, on its face, full compliance with all applicable continuing education requirements; and

e. Be accompanied by the proper fee specified in 193F—Chapter 12. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or written on a closed account.

~~b. Pay the fee specified in 193F—Chapter 12.~~

~~e. The degree, education~~ core criteria, collegiate education, and experience must be completed and documentation submitted to the board at the time of application to sit for the examination.

ITEM 13. Amend rule 193F—6.6(543D) as follows:

193F—6.6(543D) Work product review.

6.6(1) An applicant shall submit a complete appraisal log at the time of application for examination and work product review. The board will then select three appraisals that demonstrate a diversity of

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

experience and approaches to value over various time frames for work product review and request that the applicant submit ~~four~~ one paper ~~copies~~ copy of each report and ~~four~~ one paper ~~copies~~ copy of each work file in addition to an electronic format requested by the board for each of the selected appraisals along with the appropriate form and fee. The work product submission shall not be redacted by the applicant; however, the applicant may request the reports remain confidential as specified in subrule 6.6(2). The fee for work product review of the appraisals is provided in 193F—Chapter 12. The board may select the appraisals at random from the entire log or within certain types of appraisals. The board reserves the right to request one or more additional appraisals if those submitted by the applicant raise issues concerning the applicant's competency or compliance with applicable appraisal standards or the degree to which the submitted appraisals are representative of the applicant's work product. Such additional appraisals may be selected at random from the applicant's log or may be selected specifically to provide an example of the applicant's work product regarding a particular type of appraisal.

6.6(2) and 6.6(3) No change.

6.6(4) ~~The board, or a committee of the board, will evaluate the submitted work product.~~ The board will submit the appraisals to a peer review consultant for an opinion on the appraiser's compliance with applicable appraisal standards.

6.6(5) to 6.6(8) No change.

6.6(9) After accumulating a minimum of 500 hours of appraisal experience, an applicant may voluntarily submit work product to the board to be reviewed by a peer reviewer for educational purposes only. A maximum of three reports may be submitted for review during the experience portion of the certification process. Work product submitted for educational purposes only will not result in disciplinary action on either the associate appraiser or the associate appraiser's supervisor so long as the appraisal review did not reveal negligent or egregious errors or omissions. The fee for voluntary submissions of work product for review is provided in 193F—Chapter 12.

6.6(10) No change.

ITEM 14. Amend paragraph **7.3(3)“h”** as follows:

h. Representing oneself as a registered associate appraiser or certified appraiser when one's registration or certificate has been suspended, revoked, surrendered, ~~or~~ placed on inactive or retired status, or has lapsed.

ITEM 15. Amend rule 193F—8.14(543D) as follows:

193F—8.14(543D) Decisions. The board shall make findings of fact and conclusions of law, and may take one or more of the following actions including but not limited to:

1. Dismiss the charges;
2. Suspend or revoke the appraiser's certification or associate's registration as authorized by law;
3. Impose civil penalties, the amount which shall be set at the discretion of the board, but which shall not exceed \$1000 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 543D.17 and chapter 272C or for any repeat offenses;
4. Impose a period of probation, either with or without conditions;
5. Require reexamination;
6. Require additional professional education, reeducation, or continuing education;
7. Issue a citation and a warning;
8. Require desk review of the appraiser's work product;
9. Issue a consent order either with or without conditions;
10. Require consultation with one or more peer reviewers;
11. Revoke an appraiser's eligibility to supervise;
12. Require submission of monthly logs;
- ~~10.~~ 13. Impose any other form of discipline authorized by a provision of law that the board, in its discretion, believes is warranted under the circumstances of the case.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 16. Amend paragraph **8.15(1)“h”** as follows:

h. Whether the respondent practiced with a lapsed, inactive, retired, suspended, revoked, or surrendered certificate or registration.

ITEM 17. Amend **193F—Chapter 9**, title, as follows:

RENEWAL, EXPIRATION AND REINSTATEMENT OF
CERTIFICATES AND REGISTRATIONS, RETIRED STATUS, AND INACTIVE STATUS

ITEM 18. Amend rule 193F—9.5(272C,543D) as follows:

193F—9.5(272C,543D) Inactive status.

9.5(1) to 9.5(3) No change.

9.5(4) *Renewal.* A person registered as inactive may renew the person's certificate or associate registration to inactive status on the biennial schedule described in 193F—9.1(272C,543D). Such person is exempt from the continuing education requirements for renewal and will be charged a reduced rate, as provided in 193F—Chapter 12. An inactive certificate or associate registration shall lapse if not timely renewed. An active certificate holder or associate registrant may renew as inactive if such person has not completed all continuing education requirements and may thereafter apply for active status, through the reactivation process as provided in subrule 9.6(6), when the deficiency has been remedied.

9.5(5) *Grounds for discipline.* Certified and associate appraisers are not authorized to practice or to hold themselves out to the public as certified or registered appraisers during the period of time that the certificate or registration is in retired or inactive status. Any violation of this subrule shall be grounds for discipline.

9.5(6) No change.

ITEM 19. Renumber rule **193F—9.6(272C,543D)** as **193F—9.7(272C,543D)**.

ITEM 20. Adopt the following new rule 193F—9.6(272C,543D):

193F—9.6(272C,543D) Retired status. An associate or certified appraiser may place the associate or certified appraiser's registration or certification in retired status. For purposes of this rule, the term "retired" means any person who has retired from working as an associate or certified appraiser in all jurisdictions and who has requested to be placed in retired status on forms provided by the board. An associate or certified appraiser may request the associate or certified appraiser's registration or certification be placed into active status so long as the associate or certified appraiser has not renewed the registration or certification to inactive status or allowed the registration or certification to lapse before submitting the application to return to active status. The board will not provide a refund of biennial registration and certification fees when an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Associate and certified appraisers in retired status are exempt from the renewal requirement. While in retired status, appraisers may not hold themselves out to the public as being registered or certified appraisers during the period of time that the registration or certification is in retired status. For all intents and purposes, retired status is similar to lapsed status with the exceptions that:

9.6(1) The associate or certified appraiser may place the associate or certified appraiser's registration or certification in retired status at any point;

9.6(2) Until such time as the registration or certification expires, the applicant will not be subject to the reactivation or reinstatement criteria;

9.6(3) If the associate or certified appraiser places the registration or certification into inactive status at the time of renewal, or the applicant lets the registration or certification lapse, the applicant will be required to reactivate or reinstate pursuant to rule 193F—4.6(272C,543D), or subrule 9.4(5) or 9.5(6) as applicable.

ITEM 21. Amend renumbered rule 193F—9.7(272C,543D) as follows:

193F—9.7(272C,543D) Property of the board. Every certificate or associate registration issued by the board shall, while it remains in the possession of the holder, be preserved by the holder but shall,

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

nevertheless, always remain the property of the board. In the event that a certificate or associate registration is revoked or suspended, ~~or~~ is not renewed, ~~or~~ is registered in inactive status, or is requested to be placed in retired status, it shall, on demand, be delivered by the holder to the board. The board shall generally not request return of a certificate or associate registration if it has not been revoked, suspended or voluntarily surrendered in a disciplinary action, but may do so if the board reasonably determines that grounds exist to believe that a person holding a lapsed, retired, or inactive certificate or associate registration has engaged in a practice for which active certification or registration is required.

ITEM 22. Amend subrule 10.1(2) as follows:

10.1(2) The board may issue a reciprocal certificate to a nonresident individual who is certified and demonstrates good standing in another state. An appraiser who is listed in good standing on the National Registry of the Appraisal Subcommittee satisfies the requirement that good standing be demonstrated and does not need to submit additional documentation. An appraiser who is not listed in good standing on the National Registry of the Appraisal Subcommittee must supply an official letter of good standing issued by the licensing board of the appraiser's resident state and bearing its seal. An appraiser may verify the appraiser's status on the National Registry of the Appraisal Subcommittee by accessing the ASC's website at www.asc.gov.

ITEM 23. Amend rule 193F—10.2(543D) as follows:

193F—10.2(543D) Nonresident temporary practice.

10.2(1) The board will recognize, on a temporary basis, the certification of an appraiser issued by another state for a period of six months, unless the applicant requests, and is approved for, a one-time extension, of which the one-time extension will not exceed six months, prior to the expiration of the original issued temporary practice permit.

10.2(2) The appraiser must register with the board and identify the property(ies) to be appraised, and the name and address of the client ~~and the estimated length of time the appraiser will be in the state.~~ The appraiser must demonstrate good standing to be considered for a temporary practice permit. An appraiser who is listed in good standing on the National Registry of the Appraisal Subcommittee satisfies the requirement that good standing be demonstrated and does not need to submit additional documentation. An appraiser who is not listed in good standing on the National Registry of the Appraisal Subcommittee must supply an official letter of good standing issued by the licensing board of the appraiser's resident state and bearing its seal. An appraiser may verify the appraiser's status on the National Registry of the Appraisal Subcommittee by accessing the ASC's website at www.asc.gov. Registration shall be on a form provided by the board and submitted to the board office prior to the performance of the appraisal. The appraiser shall pay the appropriate fee as required in rule 193F—12.1(543D).

10.2(3) An appraiser holding an inactive, retired, or lapsed certificate as a real estate appraiser in Iowa may apply for a temporary practice permit if the appraiser holds an active, unexpired certificate as a real estate appraiser in good standing in another jurisdiction and is otherwise eligible for a temporary practice permit.

10.2(4) and **10.2(5)** No change.

10.2(6) An appraiser holding an inactive, retired, or lapsed Iowa certificate who applies to reinstate to active status in Iowa shall not be given credit for any fees paid during the biennial period for one or more temporary practice permits.

10.2(7) and **10.2(8)** No change.

ITEM 24. Amend rule 193F—11.2(272C,543D) as follows:

193F—11.2(272C,543D) Continuing education requirements.

11.2(1) to **11.2(4)** No change.

11.2(5) Prior to reinstatement or reactivation of a certified general registration or a certified residential registration, a certified credential holder in inactive, retired, or lapsed status must complete all required continuing education hours that would have been required if the certified credential holder was in active status. The required hours must also include the most recent edition of a ~~7-hour~~ seven-hour

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

National USPAP Update Course. Waivers may not be granted to credential holders who have failed to meet the continuing education requirements.

11.2(6) During each two-year renewal period, a continuing education program may be taken for credit only once, except USPAP courses as long as it is not the same USPAP course (e.g., an appraiser may take the 2018-2019 USPAP and the 2020-2021 USPAP update course but may not take two 2018-2019 USPAP update courses).

11.2(7) to **11.2(9)** No change.

ITEM 25. Amend subrule 11.7(3) as follows:

11.7(3) All required forms and attachments must be submitted for approval at least 30 days prior to the first offering of each program. The board will approve or deny each program, in whole or part, within 15 days of the date the board receives ~~the fee and~~ a fully completed application. Payments for course program applications must be made within 30 calendar days of the date the application is approved by the board or the application approval may be reversed.

ITEM 26. Amend rule 193F—12.1(543D) as follows:

193F—12.1(543D) Required fees. The following fee schedule applies to certified general, certified residential and associate appraisers.

Initial examination application fee	\$150
Examination fee (and reexamination fee)	\$145
Biennial registration fee for active status (initial, reciprocal, renewal):	
Certified real property appraiser > one year	\$200
Certified real property appraiser < one year	\$100
Associate real property appraiser > one year	\$200
Associate real property appraiser < one year	\$100
Biennial registration fee for inactive status (initial, reciprocal, renewal):	
Certified real property appraiser	\$100
Associate real property appraiser	\$50
Temporary practice permit fee (each request)	\$100
Fee to reinstate a lapsed <u>or retired</u> license (lapsed <u>or retired</u> to active status)	\$150 (plus the registration fee)
Fee to reactivate an inactive <u>or retired</u> license (inactive <u>or retired</u> to active status)	\$50 (plus the registration fee)
Formal wall certificate	\$25
Work product review fees:	
Original submission, certified residential	\$300
Original submission, certified general	\$650
Additional residential reports as requested by the board	\$150 per report
Additional nonresidential reports as requested by the board	\$250 per report
Voluntary submission of residential reports for review	\$150 per report
Voluntary submission of nonresidential reports for review	\$250 per report
Course application fee (non-AQB-approved courses and secondary providers)	\$50
Pre-/post-course application fee	\$25

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

Background check	\$51
ASC National Registry fee > one year, separate from registration fee	\$80
ASC National Registry fee < one year, separate from registration fee	\$40
Fee to add supervisory appraiser	\$25
Fee to add course instructor	\$10
Waiver to administrative rules	\$25
Late renewal fee (associate, certified)	\$50

ITEM 27. Amend rule 193F—12.3(543D) as follows:

193F—12.3(543D) Federal registry fee. The board shall collect and transmit to the Federal Financial Institutions Examination Council, on an annual basis, a roster of individuals who have received certification or registration as real property appraisers and a registry fee of \$40 for each individual listed on the roster. ~~The registry fee is included in the registration fee.~~

ARC 5613C

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rule making related to relief from joint and several liability
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 38, “Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 422.21 and 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 422.21.

Purpose and Summary

This proposed rule making updates rule 701—38.15(422) to reflect certain changes to Iowa Code section 422.21(7) and to provide taxpayers with additional clarity when seeking relief from joint and several liability for tax, penalty, and interest owed to the Department. The proposed changes to the rule describe who may qualify for relief from joint and several liability, the information applicants for relief must submit to the Department, the standard for evaluating whether an individual is eligible for relief, the administrative process for appealing a denial of relief, and the rights of the nonrequesting spouse or former spouse.

The amended rule provides that if an individual has sought and received a determination under Section 6015 of the Internal Revenue Code regarding relief from joint and several liability at the federal level, that individual is required to provide that documentation to the Department. In circumstances where the individual seeking relief from joint and several liability has not received a final determination from the Internal Revenue Service regarding the individual’s eligibility for relief at the federal level, the amended rule explains that the applicant bears the burden of showing that the individual is eligible for relief under Section 6015 of the Internal Revenue Code and describes the information the applicant must present to the Department to establish eligibility. The amended rule also clarifies the time period in which a request

REVENUE DEPARTMENT[701](cont'd)

for relief from joint and several liability must be submitted to the Department and the process through which a taxpayer whose request for relief has been denied may appeal that decision.

Additionally, the amended rule addresses the rights of the nonrequesting spouse or former spouse. The amended rule outlines the Department's role in notifying the nonrequesting spouse or former spouse and describes the information any such notice must contain. Finally, the amended rule articulates the process by which a nonrequesting spouse or former spouse may intervene before the Department in order to participate in the determination of whether relief from joint and several liability is appropriate and lists the information that must be contained in the nonrequesting spouse's or former spouse's notice of intervention.

Fiscal Impact

This rule making has no fiscal impact beyond the legislation it is intended to implement.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Kurt Konek
Department of Revenue
Hoover State Office Building
P.O. Box 10547
Des Moines, Iowa 50306
Phone: 515.587.0440
Email: kurt.konek@iowa.gov

Public Hearing

If requested, a public hearing will be held on May 25, 2021, via videoconference call from 10:30 to 11:30 a.m. Persons who wish to participate in the videoconference call should contact Kurt Konek before 4:30 p.m. on May 24, 2021, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

REVENUE DEPARTMENT[701](cont'd)

Amend rule 701—38.15(422) as follows:

701—38.15(422) Relief of innocent spouse from joint and several liability under Iowa Code section 422.21(7) for substantial understatement of tax attributable to other nonrequesting spouse or former spouse. Married or formerly married taxpayers are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where the spouses file separately on the combined return form. However, pursuant to Iowa Code section 422.21(7), a married person who meets is eligible for relief under the criteria for an innocent spouse established in Section 6015 of the Internal Revenue Code may be relieved of liability for an understatement of Iowa tax that is attributable to erroneous items of the other nonrequesting spouse or former spouse. For state income tax purposes, the requirements set forth in this rule shall control to the extent that they conflict with Section 6015 of the Internal Revenue Code.

38.15(1) Filing status required for return with an innocent spouse relief from joint and several liability. For state income tax purposes, a married or formerly married taxpayer filing a return with a spouse can may qualify as an innocent spouse for relief from joint and several liability under Iowa Code section 422.21(7) only if the taxpayers file taxpayer filed a joint return or file filed separately on the a combined return form. A married taxpayer who files a separate return that has been accepted by the state will not be eligible for innocent spouse status.

38.15(2) Scope of relief for Iowa income tax purposes. An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. An erroneous item is any item resulting in an understatement or deficiency in Iowa taxes to the extent that the item is omitted from, or improperly reported or characterized on, an Iowa tax return, including Iowa deductions and tax credits that would not be included on a federal return.

38.15(3) Presumption and burden of proof when requesting innocent spouse relief.

a. Presumption. The department shall presume that a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief for the relevant tax years shows that the innocent spouse granted relief by that document qualifies for innocent spouse relief for Iowa income tax purposes for those tax years. If the person seeking innocent spouse relief does not provide the department with a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief within the time frame set forth in subrule 38.15(4), the department shall presume that the person seeking innocent spouse relief does not meet the criteria to qualify for innocent spouse relief for Iowa income tax purposes and shall deny the request. The burden is on the person seeking innocent spouse relief to rebut this presumption with other evidence.

b. Request without Internal Revenue Service approval. If the department denies a claim for innocent spouse relief, the person seeking innocent spouse relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in Section 6015 of the Internal Revenue Code and the related regulations. The department will defer to federal court cases, letter rulings, and revenue rulings in interpreting Section 6015 of the Internal Revenue Code and the related regulations. The provisions of Sections 6015(e) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes for tax years beginning on or after January 1, 2002. The burden is on the person seeking innocent spouse relief to show that the person meets the federal criteria for innocent spouse relief.

38.15(3) Requirement to provide IRS determination or other evidence of eligibility.

a. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for tax relief from the federal government under Section 6015 of the Internal Revenue Code and received a final determination letter or other document issued by the Internal Revenue Service in connection with relief requested under Section 6015 of the Internal Revenue Code, the person is required to provide the department with a copy of such letter or document within the time frame set forth in subrule 38.15(6). Failure to provide this required information, if it exists, will result in the denial of the request for relief from joint and several liability under Iowa Code section 422.21(7).

REVENUE DEPARTMENT[701](cont'd)

b. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for federal relief under Section 6015 of the Internal Revenue Code but did not receive a final determination letter or other document issued by the Internal Revenue Service in connection with the requested relief, the person must provide the department with other evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

c. If the person seeking relief under Iowa Code section 422.21(7) did not apply for federal relief under Section 6015 of the Internal Revenue Code, the person must submit a written statement to the department detailing the reason for not applying for relief under Section 6015 of the Internal Revenue Code as well as evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

38.15(4) *Burden of proof; evaluation of criteria listed under Section 6015 of the Internal Revenue Code.* The burden is on the person seeking relief from joint and several liability to show that the person is eligible for relief under Iowa Code section 422.21(7). In determining whether the person seeking relief from joint and several liability is eligible for relief under Iowa Code section 422.21(7), the department shall apply this rule and the relevant criteria set forth in Section 6015 of the Internal Revenue Code and the related federal regulations.

38.15(5) *Protesting a denied request for relief from joint and several liability.* If the department denies a claim for relief from joint and several liability under Iowa Code section 422.21(7), the person seeking relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in this rule and Section 6015 of the Internal Revenue Code and the related regulations. In protest proceedings, the burden is on the person seeking relief from joint and several liability to show that the person meets the criteria for relief under this rule and Section 6015 of the Internal Revenue Code.

~~**38.15(4)**~~ **38.15(6)** *Time period for requesting innocent-spouse relief from joint and several liability.* For tax periods beginning on or after January 1, 2004, ~~innocent-spouse relief from joint and several liability~~ must be requested within two years after the date ~~the department initiates collection action against the person claiming innocent-spouse relief~~ of the notice of assessment. However, an ~~extended time period~~ applicant who fails to request meet this deadline may be granted equitable relief for ~~innocent spouses~~ if the applicant satisfies the criteria listed under Section 6015(f) of the Internal Revenue Code ~~can be granted under the provisions of~~ and, if applicable, Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

38.15(7) *Notice to nonrequesting spouse or former spouse.* On or before 60 days from the date the person seeking relief from joint and several liability files a request with the department, the department may notify the nonrequesting spouse or former spouse of the request for relief. The notice will advise the nonrequesting spouse or former spouse of the right to intervene by filing a notice of intervention with the department in accordance with subrules 38.15(8) and 38.15(9). The notice shall not include the current address or contact information of the spouse or former spouse requesting relief. The department will use the last-known address of the nonrequesting spouse when sending the notice.

38.15(8) *Intervention by nonrequesting spouse or former spouse.* If the nonrequesting spouse or former spouse desires to intervene, such individual shall file a notice of intervention with the department not later than 60 days after the date the notice of the request for relief from joint and several liability is sent by the department to the nonrequesting spouse or former spouse, unless the department directs otherwise.

38.15(9) *Contents of notice of intervention.*

a. A notice of intervention must be in the following format:

REVENUE DEPARTMENT[701](cont'd)

DEPARTMENT OF REVENUEName of Intervenor**NOTICE OF
INTERVENTION**Address of IntervenorDocket No.

b. A notice of intervention must contain all of the following, where applicable and known to the intervenor:

(1) The name, address, telephone number, and identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or individual tax identification number (ITIN) of the person who is requesting intervention);

(2) The docket number of the proceeding initiated by the person seeking relief from joint and several liability under Iowa Code section 422.21(7);

(3) A copy of a determination letter or other document, if any, issued by the Internal Revenue Service showing that the person seeking relief from joint and several liability under Section 6015 of the Internal Revenue Code has been granted or denied relief for the relevant tax years;

(4) A clear and concise statement of the grounds for intervention, all relevant facts, and the reasons why the intervenor agrees or disagrees with the person seeking relief from joint and several liability as to that person's entitlement to such relief;

(5) A citation to any specific statutes, rules, policies, decisions, or orders which may be relevant in the department's determination of the applicability of relief from joint and several liability to the person seeking such relief;

(6) Any information known to the petitioner relating to the department's treatment of similar cases; and

(7) The signature of the intervenor at the conclusion of the notice of intervention attesting to the accuracy and truthfulness of the information set forth in the notice of intervention.

This rule is intended to implement Iowa Code section 422.21 as amended by ~~2002 Iowa Acts, House File 2116~~ 2020 Iowa Acts, House File 2641.

ARC 5612C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rule making related to interest expense deduction adjustments and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 40, "Determination of Net Income," Chapter 53, "Determination of Net Income," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 422.7, 422.35 and 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 422.7, 422.35 and 422.61.

REVENUE DEPARTMENT[701](cont'd)

Purpose and Summary

The proposed rules implement the adjustments to income for Iowa individual and corporate income and franchise taxes for interest expense deductions, which are limited for federal income tax purposes but permitted in full for Iowa purposes for tax years beginning on or after January 1, 2020. The rules also cover adjustments that may be needed due to Iowa's changing conformity with these federal limitations for tax years 2018 and 2019.

Fiscal Impact

This rule making has no fiscal impact beyond the legislation it is intended to implement. The final fiscal estimate for 2020 Iowa Acts, House File 2641, estimated the fiscal impact of this provision to be -\$6.2 million for FY 2021, -\$4.1 million for FY 2022, -\$8.8 million for FY 2023, -\$14.4 million for FY 2024, and -\$16.7 million for FY 2025.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Benjamin Clough
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.587.0662
Email: ben.clough@iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

May 25, 2021
1 to 2 p.m.

Via videoconference call

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

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

Persons who wish to participate in the videoconference call should contact Ben Clough before 4:30 p.m. on May 14, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

REVENUE DEPARTMENT[701](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** rule 701—40.85(422):

701—40.85(422) Interest expense deduction adjustments. For tax years beginning on or after January 1, 2020, the limit on the amount of business interest expense that a taxpayer may deduct in a taxable year under Internal Revenue Code (IRC) Section 163(j) does not apply for Iowa purposes. This rule provides information on how taxpayers must calculate and report their business interest expense deduction for Iowa purposes for tax year 2018 (subrule 40.85(2)), when Iowa did not conform to the limitation; tax year 2019 (subrule 40.85(3)), when Iowa did conform to the limitation; and tax years 2020 and later (subrule 40.85(4) et seq.), when Iowa again does not conform to this limitation. All references to the Code of Federal Regulations (Treas. Reg.) and certain other information in this rule are based on final Internal Revenue Service (IRS) regulations and guidance in effect on January 13, 2021.

40.85(1) Definitions. The following terms apply to the interpretation and application of this rule.

“*Current-year business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(9).

“*Excess business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(16).

“*Iowa partnership*” means any partnership required to file an Iowa return (IA 1065) for the relevant tax year.

“*Iowa S corporation*” means any S corporation required to file an Iowa return (IA 1120S) for the relevant tax year.

“*Non-Iowa partnership*” means any partnership that is not required to file an Iowa return (IA 1065) for the relevant tax year.

“*Non-Iowa S corporation*” means any S corporation that is not required to file an Iowa return (IA 1120S) for the relevant tax year.

40.85(2) Tax year 2018. For tax years beginning on or after January 1, 2018, but before January 1, 2019 (tax year 2018), Iowa conforms with the IRC in effect on January 1, 2015, meaning the 30 percent limitation on the business interest expense deduction first imposed by IRC Section 163(j) under Public Law 115-97 (TCJA) does not apply for Iowa purposes.

a. In general. For tax year 2018, Iowa taxpayers are permitted to deduct current-year business interest expense without regard to the limitations imposed by IRC Section 163(j) under the TCJA. The taxpayer's additional deduction is computed on the 2018 Nonconformity Adjustments Worksheet. Taxpayers who qualify for these higher Iowa deductions in 2018 may need to make further adjustments in 2019 for amounts deducted under this subrule for Iowa purposes but disallowed and carried forward for federal purposes. See subrule 40.85(3) for more information about these 2019 adjustments.

b. Special rules for partnerships and S corporations.

(1) Iowa partnerships and S-corporations. Partnerships and S corporations required to file Iowa returns in tax year 2018 are required to make adjustments for Iowa's nonconformity with IRC Section 163(j) at the entity level, meaning they can deduct the full interest expense on the entity's own Iowa return and the reduction to the partner's or shareholder's share of the entity's income will be included in the all source modifications line of the partners' or shareholders' Iowa Schedules K-1.

EXAMPLE 1: P, a partnership doing business in Iowa, has \$100,000 in current-year business interest expense in 2018. For federal purposes, \$20,000 of that amount is disallowed under IRC Section 163(j). The partnership deducts \$80,000 at the entity level in 2018, and the remaining disallowed \$20,000 is

REVENUE DEPARTMENT[701](cont'd)

allocated to the partners to be deducted in future years. For Iowa purposes, the \$80,000 of business interest expense allowed for federal purposes is included in the partnership's non-separately stated ordinary business income (loss), and the partnership will make an adjustment on the entity's IA 1065 to deduct the \$20,000 of current-year business interest expense that was disallowed for federal purposes. The \$20,000 additional Iowa deduction will be reported to the partners as an all source modification on the partners' IA 1065 Schedules K-1, and partners will receive the benefit of this all source modification item when the partners report their Iowa partnership income on their own Iowa tax return for the year. The partners will not be permitted to make further Iowa adjustments on their own Iowa tax return for the excess business interest expense amounts passed through to them from the partnership for federal purposes.

(2) Owners of partnerships and S corporations with no entity-level 2018 Iowa filing requirement.

1. Non-Iowa partnerships. Iowa partners who received interest expense deductions from partnerships that were not required to file 2018 Iowa returns may claim the larger Iowa deduction for business interest expenses passed through from the partnership on the partner's own 2018 Iowa return by including in the partner's Iowa deduction the amount of disallowed business interest expense deduction shown on the 2018 federal Schedule K-1 (Form 1065), line 13, code K received from the non-Iowa partnership.

EXAMPLE 2: X is an Iowa resident and a partner in P2, an out-of-state partnership with no business in Iowa and no Iowa filing obligation. In 2018, P2 has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, P2 is permitted to deduct \$80,000 on its 2018 federal partnership return. The \$20,000 in excess business interest expense is then allocated to P2's partners. X is allocated \$5,000 in excess business interest expense from P2. Because P2 is not required to file an Iowa return, and therefore X did not receive a 2018 IA 1065 Schedule K-1 from P2, X is permitted to deduct the \$5,000 allocated from P2 as current-year business interest expense on X's 2018 Iowa income tax return.

2. Non-Iowa S corporations. Iowa shareholders of S corporations that have no Iowa filing requirement are limited to the deduction actually passed through to them on the federal Schedule K-1 received from the S corporation for Iowa purposes in tax year 2018. These shareholders are not permitted to make adjustments for interest expense disallowed at the entity level for the non-Iowa S corporation.

EXAMPLE 3: R is an Iowa resident and a shareholder in X, an out-of-state S corporation with no business in Iowa and no Iowa filing obligation. In 2018, X has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, X is permitted to deduct \$80,000 on its 2018 federal income tax return. The \$20,000 in excess business interest expense is then carried forward to be deducted by X in future tax years. Because X is not required to file an Iowa return, and excess business interest expense amounts are carried forward at the entity level for S corporations rather than being allocated to shareholders, R is not eligible to make an adjustment for X's disallowed business interest expense amounts on R's 2018 Iowa income tax return. R will only be able to benefit from the deductions for these disallowed amounts for Iowa purposes in the same years that X actually deducts the carried-forward amounts for federal purposes.

40.85(3) Tax year 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020 (tax year 2019), Iowa conforms to the IRC in effect on March 24, 2018.

a. *Applicable limitation.* For tax year 2019, Iowa conforms to the 30 percent limitation on the business interest expense deduction imposed by IRC Section 163(j). Because of Iowa's fixed conformity date, Iowa did not conform with the higher 50 percent limitation retroactively imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to the extent that increased limitation applied in tax year 2019 for federal purposes. For tax year 2019 only, taxpayers are required to calculate their Iowa business interest expense deduction by applying the limitations of IRC Section 163(j) without regard to IRC Section 163(j)(10).

EXAMPLE 4: Taxpayer Z has an adjusted taxable income (ATI) of \$100,000 for tax year 2019 and \$80,000 in deductible business interest expense. For federal purposes, Z's business interest expense deduction is limited to \$50,000 (50 percent of ATI) under the CARES Act. However, because Iowa only

REVENUE DEPARTMENT[701](cont'd)

conforms to the 30 percent limitation imposed by the TCJA, and not the higher CARES Act limitation for 2019, Z's Iowa business interest expense deduction for the year is limited to \$30,000. Z will report this difference by entering a negative \$20,000 adjustment on IA 101, line 3 (Z may have additional adjustments on this line if the current year federal deduction included amounts carried forward from 2018).

b. Addition to income for tax year 2018 federal carryforward amounts deducted in tax year 2019. To the extent a taxpayer's tax year 2019 federal business interest expense deduction includes amounts that were disallowed and carried forward to future years under IRC Section 163(j) in tax year 2018 for federal purposes, but allowed as a deduction in tax year 2018 for Iowa purposes under paragraph 40.85(2)"a" (in general), subparagraph 40.85(2)"b"(1) (Iowa partnerships and S corporations), or numbered paragraph 40.85(2)"b"(2)"1" (non-Iowa partnerships), these carried-forward amounts must be added back in computing Iowa income. These prior deductions and current adjustments are calculated and tracked on the IA 101 Nonconformity Adjustments form. Note that shareholders of non-Iowa S corporations should not be required to add back 2018 carryforward amounts deducted by the S corporation 2019, because the shareholders were not permitted to deduct these excess amounts for Iowa purposes in 2018. See numbered paragraph 40.85(2)"b"(2)"2."

EXAMPLE 5: X is a partner in P under the same facts described in Example 1 above. For tax year 2019, X completes federal Form 8990 and is eligible to deduct \$1,000 of the excess business interest expense allocated to X from P in 2018 on X's 2019 federal income tax return. This \$1,000 federal deduction for prior-year excess business interest expense allocated from P must be added back in computing X's 2019 Iowa income. The same add-back would be required if this scenario were applied to the facts in Example 2 above.

40.85(4) Tax years beginning on or after January 1, 2020. For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation, subject to the contingency described in Iowa Code section 422.7(60)"b" relating to tax years in which additional first-year depreciation is allowed for Iowa tax purposes.

a. Current-year business interest expense. For tax years beginning on or after January 1, 2020, a taxpayer's current-year business interest expense is fully deductible to the extent permitted by IRC Section 163 for Iowa purposes without regard to any limitation under subsection 163(j). Even though Iowa does not conform to IRC Section 163(j), provisions of the IRC other than Section 163(j) may subject interest expense to disallowance, deferral, capitalization, or other limitations, and those other provisions of the IRC still generally apply for Iowa purposes. No additional Iowa adjustments are permitted for federal limitations such as those described in Treas. Reg. Section 1.163(j)-3(b)(4), which are determined after the application of IRC Section 163(j) for federal purposes. See Treas. Reg. Section 1.163(j)-3 for examples of other provisions of the IRC that may restrict interest expense deductions for federal and Iowa purposes, independent of the IRC Section 163(j) limitation.

b. Carryforward.

(1) Special one-time carryforward catch-up (tax year 2020 only). For tax years beginning on or after January 1, 2020, but before January 1, 2021 (tax year 2020), taxpayers who filed a 2019 Iowa return are permitted to deduct all interest expense deduction amounts that were disallowed and carried forward under IRC Section 163(j) for Iowa purposes in tax year 2019. This deduction shall be calculated and reported on the taxpayer's 2020 Iowa income tax return using form IA 163A. Business interest expense amounts carried over from tax year 2018 at the federal level shall not be deducted for Iowa tax purposes in tax year 2020.

EXAMPLE 6: In 2019, X had \$100,000 in current-year business interest expense. X's business interest expense deduction was limited to \$50,000 for federal purposes and limited to \$30,000 for Iowa purposes due to Iowa's nonconformity with the CARES Act for that year. See paragraph 40.85(3)"a." In 2020, X is again subject to an IRC Section 163(j) limitation and is not permitted to deduct any prior-year carryforward amounts for federal purposes. However, because Iowa does not conform to the IRC Section 163(j) limitation for 2020, X may deduct all of X's current-year business interest expense and all \$70,000 (\$100,000 - \$30,000) of X's disallowed Iowa interest expense carried over from 2019. X must complete the IA 163 in order to calculate X's current-year business interest expense deduction, and the IA 163A to

REVENUE DEPARTMENT[701](cont'd)

determine the total amount of 2019 disallowed Iowa interest expense amounts which may be deducted in full on X's 2020 Iowa return.

(2) Addition to income for prior-year federal carryforward amounts deducted in the current year. When current-year interest expense is limited at the federal level, the disallowed business interest expense is carried forward to be deducted in future years for federal purposes, when certain conditions are met. See Treas. Reg. Section 1.163(j)-1(b)(10) for the definition of "disallowed business interest expense." Iowa law allows taxpayers to fully deduct current-year business interest expense, and no amounts are carried forward for Iowa purposes. Disallowed business interest expense carryforward amounts from prior years, including excess business interest expense allocated to a partner in a prior year, cannot be deducted for Iowa purposes except as described in subparagraph 40.85(4)"b"(1). All prior-year disallowed business interest expense carryforward amounts deductible under IRC Section 163(j) in the current year at the federal level, including excess business interest expense allocated to a partner in a prior year, must be added back in computing the taxpayer's Iowa income for the year.

EXAMPLE 7: In 2020, taxpayer X has \$100,000 in current-year business interest expense. For federal purposes, X is subject to the IRC Section 163(j) limitation. X deducts \$70,000 in business interest expense on X's 2020 federal return and carries the remaining \$30,000 forward to be deducted in future years. For Iowa purposes, X deducts the full \$100,000 in current-year business interest expense in 2020.

In 2021, X has \$50,000 in current-year business interest expense. For federal purposes, X is permitted to deduct the full \$50,000 in interest expense generated in 2021, plus \$5,000 of the amount that was disallowed in 2020 for a total federal deduction of \$55,000 in 2021. X must add the federal carryforward amount (\$5,000) back on X's 2021 Iowa return, limiting X's 2021 Iowa deduction to the \$50,000 in current-year business interest expense.

40.85(5) Partners and partnerships.

a. Partnership-level adjustments. For tax years beginning on or after January 1, 2020, an Iowa partnership that is subject to the IRC Section 163(j) limitation for federal purposes is permitted to deduct all current-year business interest expense at the partnership level in that tax year for Iowa purposes.

(1) Excess business interest expense. A partnership may include as a reduction on the partnership's Iowa income tax return any excess business interest expense, as defined in Treas. Reg. Section 1.163(j)-1(b)(16), of the partnership that was disallowed and allocated to the partners for that tax year for federal purposes.

(2) Tiered partnerships. For partnerships that receive excess business interest expense passed through from a partnership in which they are a partner, see paragraph 40.85(5)"b" for information on how to report Iowa adjustments for that passed-through income.

b. Partner-level adjustments.

(1) Interest expense from Iowa partnerships. Iowa adjustments related to excess business interest expense of an Iowa partnership are made at the entity level as described in subparagraph 40.85(5)"a"(1) and are reported to partners on an IA 1065 Schedule K-1. Partners are not permitted to make any Iowa adjustment at the partner level to their federal interest expense deduction for amounts of excess business interest expense allocated from an Iowa partnership on the partner's federal Schedule K-1 related to that Iowa partnership. See Example 1 above.

(2) Interest expense from non-Iowa partnerships. For tax years beginning on or after January 1, 2020, partners may include as part of their Iowa business interest expense deduction the total amount of current-year excess business interest expense deduction passed through to them from all non-Iowa partnerships as shown on the federal Schedule K-1 (Form 1065), line 13, code K. See Example 2 above.

(3) Partnership basis. A partner's basis is reduced (but not below zero) by the amount of excess business interest expense the partnership passes through to the partner each year. See Treas. Reg. Section 163(j)-6(h) for detailed information about how to make these basis adjustments. For federal purposes, immediately before disposition of the partnership interest, the partner's basis is then increased by the amount of any passed-through business interest expense which has not yet been treated as paid or accrued by the partner as described in Treas. Reg. Section 163(j)-6(h)(3). No basis increase at the time of disposition is allowed for Iowa purposes for passed-through business interest expense amounts that

REVENUE DEPARTMENT[701](cont'd)

were deducted for Iowa, but not for federal, purposes due to Iowa's nonconformity with IRC Section 163(j).

40.85(6) S corporation adjustments. For federal purposes, IRC Section 163(j) limitations are applied at the S corporation level. Unlike partnerships, disallowed business interest expense amounts are carried forward and deducted in future years at the entity level rather than being passed through to shareholders. See rule 701—53.29(422) for more information about the IRC Section 163(j) adjustments required for corporations, including S corporations, for Iowa purposes. See also Treas. Reg. Section 1.163(j)-6(l) for more information about the application of IRC Section 163(j) to S corporations for federal purposes.

This rule is intended to implement Iowa Code section 422.7(60).

ITEM 2. Adopt the following **new** rule 701—53.29(422):

701—53.29(422) Interest expense deduction adjustments. For tax years beginning on or after January 1, 2020, the limit on the amount of business interest expense that a taxpayer may deduct in a taxable year under Internal Revenue Code (IRC) Section 163(j) does not apply for Iowa purposes. This rule provides information on how taxpayers must calculate and report their business interest expense deduction for Iowa purposes, for tax year 2018 (subrule 53.29(2)), when Iowa did not conform to the limitation; tax year 2019 (subrule 53.29(3)), when Iowa did conform to the limitation; and tax years 2020 and later (subrule 53.29(4) et seq.), when Iowa again does not conform to this limitation. All references to the Code of Federal Regulations (Treas. Reg.) and certain other information in this rule are based on final Internal Revenue Service (IRS) regulations and guidance in effect on January 13, 2021.

53.29(1) Definitions. The following terms apply to the interpretation and application of this rule.

“*Current-year business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(9).

“*Excess business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(16).

“*Iowa partnership*” means any partnership required to file an Iowa return (IA 1065) for the relevant tax year.

“*Iowa S corporation*” means any S corporation required to file an Iowa return (IA 1120S) for the relevant tax year.

“*Non-Iowa partnership*” means any partnership that is not required to file an Iowa return (IA 1065) for the relevant tax year.

“*Non-Iowa S corporation*” means any S corporation that is not required to file an Iowa return (IA 1120S) for the relevant tax year.

53.29(2) Tax year 2018. For tax years beginning on or after January 1, 2018, but before January 1, 2019 (tax year 2018), Iowa conforms with the IRC in effect on January 1, 2015, meaning the 30 percent limitation on the business interest expense deduction first imposed by IRC Section 163(j) under Public Law 115-97 (TCJA) does not apply for Iowa purposes.

a. In general. For tax year 2018, Iowa taxpayers are permitted to deduct current-year business interest expense without regard to the limitations imposed by IRC Section 163(j) under the TCJA. The taxpayer's additional deduction is computed on the 2018 Nonconformity Adjustments Worksheet. Taxpayers who qualify for these higher Iowa deductions in 2018 may need to make further adjustments in 2019 for amounts deducted under this subrule for Iowa purposes but disallowed and carried forward for federal purposes. See subrule 53.29(3) for more information about these 2019 adjustments.

b. Special rules for partnerships and S corporations.

(1) Iowa partnerships and S corporations. Partnerships and S corporations required to file Iowa returns in tax year 2018 are required to make adjustments for Iowa's nonconformity with IRC Section 163(j) at the entity level, meaning they can deduct the full interest expense on the entity's own Iowa return and the reduction to the partner's or shareholder's share of the entity's income will be included in the all source modifications line of the partners' or shareholders' Iowa Schedules K-1.

EXAMPLE 1: P, a partnership doing business in Iowa, has \$100,000 in current-year business interest expense in 2018. For federal purposes, \$20,000 of that amount is disallowed under IRC Section 163(j). The partnership deducts \$80,000 at the entity level in 2018, and the remaining disallowed \$20,000 is

REVENUE DEPARTMENT[701](cont'd)

allocated to the partners to be deducted in future years. For Iowa purposes, the \$80,000 of business interest expense allowed for federal purposes is included in the partnership's non-separately stated ordinary business income (loss), and the partnership will make an adjustment on the entity's IA 1065 to deduct the \$20,000 of current-year business interest expense that was disallowed for federal purposes. The \$20,000 additional Iowa deduction will be reported to the partners as an all source modification on the partners' IA 1065 Schedules K-1, and partners will receive the benefit of this all source modification item when the partners report their Iowa partnership income on their own Iowa tax return for the year. The partners will not be permitted to make further Iowa adjustments on their own Iowa tax return for the excess business interest expense amounts passed through to them from the partnership for federal purposes.

(2) Owners of partnerships and S corporations with no entity-level 2018 Iowa filing requirement.

1. Non-Iowa partnerships. Iowa partners who received interest expense deductions from partnerships which were not required to file 2018 Iowa returns may claim the larger Iowa deduction for business interest expenses passed through from the partnership on the partner's own 2018 Iowa return by including in the partner's Iowa deduction the amount of disallowed business interest expense deduction shown on the 2018 federal Schedule K-1 (Form 1065), line 13, code K received from the non-Iowa partnership.

EXAMPLE 2: ABC, Inc. is a corporation doing business in Iowa and a partner in P2, an out-of-state partnership with no business in Iowa and no Iowa filing obligation. In 2018, P2 has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, P2 is permitted to deduct \$80,000 on its 2018 federal partnership return. The \$20,000 in excess business interest expense is then allocated to P2's partners. ABC, Inc. is allocated \$5,000 in excess business interest expense from P2. Because P2 is not required to file an Iowa return, and therefore ABC, Inc. did not receive a 2018 IA 1065 Schedule K-1 from P2, ABC, Inc. is permitted to deduct the \$5,000 allocated from P2 as current-year business interest expense on ABC, Inc.'s 2018 Iowa income tax return.

2. Non-Iowa S corporations. Iowa shareholders of S corporations that have no Iowa filing requirement are limited to the deduction actually passed through to them on the federal Schedule K-1 received from the S corporation for Iowa purposes in tax year 2018. These shareholders are not permitted to make adjustments for interest expense disallowed at the entity level for the non-Iowa S corporation. See Example 3 in 701—subrule 40.85(2) for an example of how Iowa shareholders of non-Iowa S corporations should report the business interest expense deduction allocated to them from the S corporation.

53.29(3) Tax year 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020 (tax year 2019), Iowa conforms to the IRC in effect on March 24, 2018.

a. *Applicable limitation.* For tax year 2019, Iowa conforms to the 30 percent limitation on the business interest expense deduction imposed by IRC Section 163(j). Because of Iowa's fixed conformity date, Iowa did not conform with the higher 50 percent limitation retroactively imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to the extent that increased limitation applied in tax year 2019 for federal purposes. For tax year 2019 only, taxpayers are required to calculate their Iowa business interest expense deduction by applying the limitations of IRC Section 163(j) without regard to IRC Section 163(j)(10).

EXAMPLE 3: XYZ Corp. has an adjusted taxable income (ATI) of \$100,000 for tax year 2019 and \$80,000 in deductible business interest expense. For federal purposes, XYZ Corp.'s business interest expense deduction is limited to \$50,000 (50 percent of ATI) under the CARES Act. However, because Iowa only conforms to the 30 percent limitation imposed by the TCJA, and not the higher CARES Act limitation for 2019, XYZ Corp.'s Iowa business interest expense deduction for the year is limited to \$30,000. XYZ Corp. will report this difference by making a \$20,000 adjustment on IA 101, line 3 (XYZ Corp. may have additional adjustments on this line if the current-year federal deduction included amounts carried forward from 2018).

b. *Addition to income for tax year 2018 federal carryforward amounts deducted in tax year 2019.* To the extent a taxpayer's tax year 2019 federal business interest expense deduction includes

REVENUE DEPARTMENT[701](cont'd)

amounts that were disallowed and carried forward to future years under IRC Section 163(j) in tax year 2018 for federal purposes, but allowed as a deduction in tax year 2018 for Iowa purposes under paragraph 53.29(2)“a” (in general), subparagraph 53.29(2)“b”(1) (Iowa partnerships and S corporations), or numbered paragraph 53.29(2)“b”(2)“1” (non-Iowa partnerships), these carried-forward amounts must be added back in computing Iowa income. These prior deductions and current adjustments are calculated and tracked on the IA 101 Nonconformity Adjustments form. Note that shareholders of non-Iowa S corporations should not be required to add back 2018 carryforward amounts deducted by the S corporation in 2019, because the shareholders were not permitted to deduct these excess amounts for Iowa purposes in 2018. See numbered paragraph 53.29(2)“b”(2)“2.”

EXAMPLE 4: QRS, Inc. is a partner in P under the same facts described in Example 1 above. For tax year 2019, QRS, Inc. completes federal Form 8990 and is eligible to deduct \$1,000 of the excess business interest expense allocated to QRS, Inc. from P in 2018 on QRS, Inc.’s 2019 federal income tax return. This \$1,000 federal deduction for prior-year excess business interest expense allocated from P must be added back in computing QRS, Inc.’s 2019 Iowa income. The same add-back would be required if this scenario was applied to the facts in Example 2 above.

53.29(4) Tax years beginning on or after January 1, 2020. For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation, subject to the contingency described in Iowa Code section 422.7(60)“b” relating to tax years in which additional first-year depreciation is allowed for Iowa tax purposes.

a. Current-year business interest expense. For tax years beginning on or after January 1, 2020, a taxpayer’s current-year business interest expense is fully deductible to the extent permitted by IRC Section 163 for Iowa purposes without regard to any limitation under IRC Section 163(j). Even though Iowa does not conform to IRC Section 163(j), provisions of the IRC other than Section 163(j) may subject interest expense to disallowance, deferral, capitalization, or other limitations, and those other provisions of the IRC still generally apply for Iowa purposes. No additional Iowa adjustments are permitted for federal limitations such as those described in Treas. Reg. Section 1.163(j)-3(b)(4), which are determined after the application of IRC Section 163(j) for federal purposes. See Treas. Reg. Section 1.163(j)-3 for examples of other provisions of the IRC that may restrict interest expense deductions for federal and Iowa purposes, independent of the IRC Section 163(j) limitation.

b. Carryforward.

(1) Special one-time carryforward catch-up (tax year 2020 only). For tax years beginning on or after January 1, 2020, but before January 1, 2021 (tax year 2020), taxpayers who filed a 2019 Iowa return are permitted to deduct all interest expense deduction amounts that were disallowed and carried forward under IRC Section 163(j) for Iowa purposes in tax year 2019. This deduction shall be calculated and reported on the taxpayer’s 2020 Iowa income tax return using form IA 163A. Excess business interest expense amounts carried over from tax year 2018 at the federal level shall not be deducted for Iowa tax purposes in tax year 2020.

EXAMPLE 5: In 2019, QRS, Inc. had \$100,000 in current-year business interest expense. QRS, Inc.’s business interest expense deduction was limited to \$50,000 for federal purposes and limited to \$30,000 for Iowa purposes due to Iowa’s nonconformity with the CARES Act for that year. See paragraph 53.29(3)“a.” In 2020, QRS, Inc. is again subject to an IRC Section 163(j) limitation and is not permitted to deduct any prior-year carryforward amounts for federal purposes. However, because Iowa does not conform to the IRC Section 163(j) limitation for 2020, QRS, Inc. may deduct all of the company’s current-year business interest expense and all \$70,000 (\$100,000 - \$30,000) of QRS, Inc.’s disallowed Iowa interest expense carried over from 2019. QRS, Inc. must complete the IA 163 in order to calculate the company’s current-year business interest expense deduction, and the IA 163A to determine the total amount of 2019 disallowed Iowa interest expense amounts, which may be deducted in full on QRS, Inc.’s 2020 Iowa return.

(2) Addition to income for prior-year federal carryforward amounts deducted in the current year. When current-year interest expense is limited at the federal level, the disallowed business interest expense is carried forward to be deducted in future years for federal purposes, when certain conditions are met. See Treas. Reg. Section 1.163(j)-1(b)(10) for the definition of “disallowed business interest

REVENUE DEPARTMENT[701](cont'd)

expense.” Iowa law allows taxpayers to fully deduct current-year business interest expense, and no amounts are carried forward for Iowa purposes. Disallowed business interest expense carryforward amounts from prior years, including excess business interest expense allocated to a partner in a prior year, cannot be deducted for Iowa purposes except as described in subparagraph 53.29(4)“b”(1). All prior-year disallowed business interest expense carryforward amounts deductible under IRC Section 163(j) in the current year at the federal level, including excess business interest expense allocated to a partner in a prior year, must be added back in computing the taxpayer’s Iowa income for the year.

EXAMPLE 6: In 2020, QRS, Inc. has \$100,000 in current-year business interest expense. For federal purposes, QRS, Inc. is subject to the IRC Section 163(j) limitation. QRS, Inc. deducts \$70,000 in business interest expense on QRS, Inc.’s 2020 federal return and carries the remaining \$30,000 forward to be deducted in future years. For Iowa purposes, QRS, Inc. deducts the full \$100,000 in current-year business interest expense in 2020.

In 2021, QRS, Inc. has \$50,000 in current-year business interest expense. For federal purposes, QRS, Inc. is permitted to deduct the full \$50,000 in interest expense generated in 2021, plus \$5,000 of the amount that was disallowed in 2020 for a total federal deduction of \$55,000 in 2021. QRS, Inc. must add the federal carryforward amount (\$5,000) back on the company’s 2021 Iowa return, limiting QRS, Inc.’s 2021 Iowa deduction to the \$50,000 in current-year business interest expense.

c. Consolidated groups. Corporations that were included on a federal consolidated return but that either file separate returns for Iowa purposes or file an Iowa consolidated return that does not include all members of the federal consolidated group are required to recalculate their proper current-year business interest expense deduction as described in paragraph 53.29(4)“a,” and the amount of any prior-year disallowed business interest expense carryforward which must be added back for Iowa purposes as described in paragraph 53.29(4)“b,” for the separate entity or Iowa consolidated group by completing pro forma federal interest expense deduction forms for the separate entity or Iowa consolidated group. Treas. Reg. Section 1.163(j)-4(d) and any other applicable federal regulations or guidance govern how Iowa consolidated groups should make this pro forma calculation. For more information about the election to file Iowa consolidated returns and group membership requirements, see rule 701—53.15(422).

(1) *Departure from group.* In the event that a member leaves the consolidated group, both the newly separated member and the remaining group shall be required to include any carryforward amounts allocated to them under Treas. Reg. Section 1.163(j)-5(b)(3)(iii) in their respective Iowa incomes in the year or years the separate company or group actually deducts those amounts for federal purposes.

(2) *Carryforwards from separate return limitation years (SRLY).* A consolidated group is not permitted to deduct any disallowed business interest expense carryforward amount of a member arising in a SRLY for Iowa purposes and must add back such amounts on the Iowa return in the same year in which the consolidated group is permitted to deduct the SRLY carryforward amount for federal purposes. See 26 Treas. Reg. Section 1.163(j)-5(d) for more information about the federal treatment of these carryforward amounts.

53.29(5) Partners and partnerships.

a. Partnership-level adjustments. For tax years beginning on or after January 1, 2020, partnerships that file an Iowa income tax return for a tax year in which the partnership is subject to the IRC Section 163(j) limitation for federal purposes are permitted to deduct all current-year business interest expense at the partnership level in that tax year. See rule 701—paragraph 40.85(5)“a” for more information about the calculation and reporting of partnership-level adjustments.

b. Partner-level adjustments.

(1) *Interest expense from Iowa partnerships.* Iowa adjustments related to excess business interest expense of an Iowa partnership are made at the entity level as described in 701—paragraph 40.85(5)“a” and are reported to partners on an IA 1065 Schedule K-1. Partners are not permitted to make any Iowa adjustment at the partner level to their federal interest expense deduction for amounts of excess business interest expense allocated from an Iowa partnership on the partner’s federal Schedule K-1 related to that Iowa partnership. See Example 1 above.

(2) *Interest expense from non-Iowa partnerships.* For tax years beginning on or after January 1, 2020, partners may include as part of their Iowa business interest expense deduction the total amount

REVENUE DEPARTMENT[701](cont'd)

of current-year excess business interest expense deduction passed through to them from all non-Iowa partnerships as shown on the federal Schedule K-1 (Form 1065), line 13, code K. See Example 2 above.

(3) Partnership basis. A partner's basis is reduced (but not below zero) by the amount of excess business interest expense the partnership passes through to the partner each year. See Treas. Reg. Section 1.163(j)-6(h) for detailed information about how to make these basis adjustments. For federal purposes, immediately before disposition of the partnership interest, the partner's basis is then increased by the amount of any passed-through business interest expense which has not yet been treated as paid or accrued by the partner as described in Treas. Reg. Section 1.163(j)-6(h)(3). No basis increase at the time of disposition is allowed for Iowa purposes for passed-through business interest expense amounts that were deducted for Iowa, but not for federal, purposes due to Iowa's nonconformity with IRC Section 163(j).

53.29(6) S corporation adjustments. For federal purposes, IRC Section 163(j) limitations are applied at the S corporation level. Unlike partnerships, disallowed business interest expense amounts are carried forward and deducted in future years at the entity level rather than being passed through to shareholders. S corporations should calculate their entity-level business interest expense deduction for Iowa purposes under the provisions of this rule. See also Treas. Reg. Section 1.163(j)-6(l) for more information about the application of IRC Section 163(j) to S corporations for federal purposes.

This rule is intended to implement Iowa Code section 422.35(27).

ITEM 3. Adopt the following **new** rule 701—59.31(422):

701—59.31(422) Interest expense deduction adjustments. For tax years beginning on or after January 1, 2020, the limit on the amount of business interest expense that a taxpayer may deduct in a taxable year under Internal Revenue Code (IRC) Section 163(j) does not apply for Iowa purposes. This rule provides information on how taxpayers must calculate and report their business interest expense deduction for Iowa purposes, for tax year 2018 (subrule 59.31(2)), when Iowa did not conform to the limitation; tax year 2019 (subrule 59.31(3)), when Iowa did conform to the limitation; and tax years 2020 and later (subrule 59.31(4) et seq.), when Iowa again does not conform to this limitation. All references to the Code of Federal Regulations (Treas. Reg.) and certain other information in this rule are based on final Internal Revenue Service (IRS) regulations and guidance in effect on January 13, 2021.

59.31(1) Definitions. The following terms apply to the interpretation and application of this rule.

“*Current-year business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(9).

“*Excess business interest expense*” means the same as defined in Treas. Reg. Section 1.163(j)-1(b)(16).

“*Iowa partnership*” means any partnership required to file an Iowa return (IA 1065) for the relevant tax year.

“*Iowa S corporation*” means any S corporation required to file an Iowa return (IA 1120S) for the relevant tax year.

“*Non-Iowa partnership*” means any partnership that is not required to file an Iowa return (IA 1065) for the relevant tax year.

“*Non-Iowa S corporation*” means any S corporation that is not required to file an Iowa return (IA 1120S) for the relevant tax year.

59.31(2) Tax year 2018. For tax years beginning on or after January 1, 2018, but before January 1, 2019 (tax year 2018), Iowa conforms with the IRC in effect on January 1, 2015, meaning the 30 percent limitation on the business interest expense deduction first imposed by IRC Section 163(j) under Public Law 115-97 (TCJA) does not apply for Iowa purposes.

a. In general. For tax year 2018, Iowa taxpayers are permitted to deduct current-year business interest expense without regard to the limitations imposed by IRC Section 163(j) under the TCJA. The taxpayer's additional deduction is computed on the 2018 Nonconformity Adjustments Worksheet. Taxpayers who qualify for these higher Iowa deductions in 2018 may need to make further adjustments in 2019 for amounts deducted under this subrule for Iowa purposes but disallowed and carried forward for federal purposes. See subrule 59.31(3) for more information about these 2019 adjustments.

REVENUE DEPARTMENT[701](cont'd)

b. Special rules for partnerships and S corporations.

(1) Iowa partnerships and S corporations. Partnerships and S corporations required to file Iowa returns in tax year 2018 are required to make adjustments for Iowa's nonconformity with IRC Section 163(j) at the entity level, meaning they can deduct the full interest expense on the entity's own Iowa return and the reduction to the partner's or shareholder's share of the entity's income will be included in the all source modifications line of the partners' or shareholders' Iowa Schedules K-1.

EXAMPLE 1: P, a partnership doing business in Iowa, has \$100,000 in current-year business interest expense in 2018. For federal purposes, \$20,000 of that amount is disallowed under IRC Section 163(j). The partnership deducts \$80,000 at the entity level in 2018, and the remaining disallowed \$20,000 is allocated to the partners to be deducted in future years. For Iowa purposes, the \$80,000 of business interest expense allowed for federal purposes is included in the partnership's non-separately stated ordinary business income (loss), and the partnership will make an adjustment on the entity's IA 1065 to deduct the \$20,000 of current-year business interest expense that was disallowed for federal purposes. The \$20,000 additional Iowa deduction will be reported to the partners as an all source modification on the partners' IA 1065 Schedules K-1, and partners will receive the benefit of this all source modification item when the partners report their Iowa partnership income on their own Iowa tax return for the year. The partners will not be permitted to make further Iowa adjustments on their own Iowa tax return for the excess business interest expense amounts passed through to them from the partnership for federal purposes.

(2) Owners of partnerships and S corporations with no entity-level 2018 Iowa filing requirement.

1. Non-Iowa partnerships. Iowa partners who received interest expense deductions from partnerships which were not required to file 2018 Iowa returns may claim the larger Iowa deduction for business interest expense passed through from the partnership on the partner's own 2018 Iowa return by including in the partner's Iowa deduction the amount of disallowed business interest expense deduction shown on the 2018 federal Schedule K-1 (Form 1065), line 13, code K received from the non-Iowa partnership.

EXAMPLE 2: ABC, Inc. is a corporation doing business in Iowa, and a partner in P2, an out-of-state partnership with no business in Iowa and no Iowa filing obligation. In 2018, P2 has \$100,000 in current-year business interest expense and is subject to the IRC Section 163(j) limitation for federal purposes. At the entity level, P2 is permitted to deduct \$80,000 on its 2018 federal partnership return. The \$20,000 in excess business interest expense is then allocated to P2's partners. ABC, Inc. is allocated \$5,000 in excess business interest expense from P2. Because P2 is not required to file an Iowa return, and therefore ABC, Inc. did not receive a 2018 IA 1065 Schedule K-1 from P2, ABC, Inc. is permitted to deduct the \$5,000 allocated from P2 as current-year business interest expense on ABC, Inc.'s 2018 Iowa income tax return.

2. Non-Iowa S corporations. Iowa shareholders of S corporations that have no Iowa filing requirement are limited to the deduction actually passed through to them on the federal Schedule K-1 received from the S corporation for Iowa purposes in tax year 2018. These shareholders are not permitted to make adjustments for interest expense disallowed at the entity level for the non-Iowa S corporation. See Example 3 in 701—subrule 40.85(2) for an example of how Iowa shareholders of non-Iowa S-corporations should report the business interest expense deduction allocated to them from the S corporation.

59.31(3) Tax year 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020 (tax year 2019), Iowa conforms to the IRC in effect on March 24, 2018.

a. Applicable limitation. For tax year 2019, Iowa conforms to the 30 percent limitation on the business interest expense deduction imposed by IRC Section 163(j). Because of Iowa's fixed conformity date, Iowa did not conform with the higher 50 percent limitation retroactively imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to the extent that increased limitation applied in tax year 2019 for federal purposes. For tax year 2019 only, taxpayers are required to calculate their Iowa business interest expense deduction by applying the limitations of IRC Section 163(j) without regard to IRC Section 163(j)(10).

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 3: X Bank has an adjusted taxable income (ATI) of \$100,000 for tax year 2019, and \$80,000 in deductible business interest expense. For federal purposes, X Bank's business interest expense deduction is limited to \$50,000 (50 percent of ATI) under the CARES Act. However, because Iowa only conforms to the 30 percent limitation imposed by the TCJA, and not the higher CARES Act limitation for 2019, X Bank's Iowa business interest expense deduction for the year is limited to \$30,000. X Bank will report this difference by making a \$20,000 adjustment on IA 101, line 3 (X Bank may have additional adjustments on this line if the current-year federal deduction included amounts carried forward from 2018).

b. Addition to income for tax year 2018 federal carryforward amounts deducted in tax year 2019. To the extent a taxpayer's tax year 2019 federal business interest expense deduction includes amounts that were disallowed and carried forward to future years under IRC Section 163(j) in tax year 2018 for federal purposes, but allowed as a deduction in tax year 2018 for Iowa purposes under paragraph 59.31(2)"a" (in general), subparagraph 59.31(2)"b"(1) (Iowa partnerships and S corporations), or numbered paragraph 59.31(2)"b"(2)"1" (non-Iowa partnerships), these carried-forward amounts must be added back in computing Iowa income. These prior deductions and current adjustments are calculated and tracked on the IA 101 Nonconformity Adjustments form. Note that shareholders of non-Iowa S corporations should not be required to add back 2018 carryforward amounts deducted by the S corporation in 2019, because the shareholders were not permitted to deduct these excess amounts for Iowa purposes in 2018. See numbered paragraph 59.31(2)"b"(2)"2."

EXAMPLE 4: QRS, Inc. is a partner in P under the same facts described in Example 1 above. For tax year 2019, QRS, Inc. completes federal Form 8990 and is eligible to deduct \$1,000 of the excess business interest expense allocated to QRS, Inc. from P in 2018 on QRS, Inc.'s 2019 federal income tax return. This \$1,000 federal deduction for prior-year excess business interest expense allocated from P must be added back in computing QRS, Inc.'s 2019 Iowa income. The same add-back would be required if this scenario was applied to the facts in Example 2 above.

59.31(4) Tax years beginning on or after January 1, 2020. For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation, subject to the contingency described in Iowa Code section 422.7(60)"b" relating to tax years in which additional first-year depreciation is allowed for Iowa tax purposes.

a. Current-year business interest expense. For tax years beginning on or after January 1, 2020, a taxpayer's current-year business interest expense is fully deductible to the extent permitted by IRC Section 163 for Iowa purposes without regard to any limitation under IRC Section 163(j). Even though Iowa does not conform to IRC Section 163(j), provisions of the IRC other than Section 163(j) may subject interest expense to disallowance, deferral, capitalization, or other limitations, and those other provisions of the IRC still generally apply for Iowa purposes. No additional Iowa adjustments are permitted for federal limitations such as those described in Treas. Reg. Section 1.163(j)-3(b)(4), which are determined after the application of IRC Section 163(j) for federal purposes. See Treas. Reg. Section 1.163(j)-3 for examples of other provisions of the IRC that may restrict interest expense deductions for federal and Iowa purposes, independent of the Section 163(j) limitation.

b. Carryforward.

(1) Special one-time carryforward catch-up (tax year 2020 only). For tax years beginning on or after January 1, 2020, but before January 1, 2021 (tax year 2020), taxpayers who filed a 2019 Iowa return are permitted to deduct all interest expense deduction amounts that were disallowed and carried forward under IRC Section 163(j) for Iowa purposes in tax year 2019. This deduction shall be calculated and reported on the taxpayer's 2020 Iowa income tax return using form IA 163A. Excess business interest expense amounts carried over from tax year 2018 at the federal level shall not be deducted for Iowa tax purposes in tax year 2020.

EXAMPLE 5: In 2019, X Bank had \$100,000 in current-year business interest expense. X Bank's business interest expense deduction was limited to \$50,000 for federal purposes and limited to \$30,000 for Iowa purposes due to Iowa's nonconformity with the CARES Act for that year. See paragraph 59.31(3)"a." In 2020, X Bank is again subject to an IRC Section 163(j) limitation and is not permitted to deduct any prior-year carryforward amounts for federal purposes. However, because Iowa does

REVENUE DEPARTMENT[701](cont'd)

not conform to the IRC Section 163(j) limitation for 2020, X Bank may deduct all of the company's current-year business interest expense and all \$70,000 (\$100,000 - \$30,000) of X Bank's disallowed Iowa interest expense carried over from 2019. X Bank must complete the IA 163 in order to calculate the company's current-year business interest expense deduction, and the IA 163A to determine the total amount of 2019 disallowed Iowa interest expense amounts, which may be deducted in full on X Bank's 2020 Iowa return.

(2) Addition to income for prior-year federal carryforward amounts deducted in the current year. When current-year interest expense is limited at the federal level, the disallowed business interest expense is carried forward to be deducted in future years for federal purposes when certain conditions are met. See Treas. Reg. Section 1.163(j)-1(b)(10) for the definition of "disallowed business interest expense." Iowa law allows taxpayers to fully deduct current-year business interest expense, and no amounts are carried forward for Iowa purposes. Disallowed business interest expense carryforward amounts from prior years, including excess business interest expense allocated to a partner in a prior year, cannot be deducted for Iowa purposes except as described in subparagraph 59.31(4)"b"(1). All prior year disallowed business interest expense carryforward amounts deductible under IRC Section 163(j) in the current year at the federal level, including excess business interest expense allocated to a partner in a prior year, must be added back in computing the taxpayer's Iowa income for the year.

EXAMPLE 6: In 2020, X Bank has \$100,000 in current-year business interest expense. For federal purposes, X Bank is subject to the IRC Section 163(j) limitation. X Bank deducts \$70,000 in business interest expense on X Bank's 2020 federal return and carries the remaining \$30,000 forward to be deducted in future years. For Iowa purposes, X Bank deducts the full \$100,000 in current-year business interest expense in 2020.

In 2021, X Bank has \$50,000 in current-year business interest expense. For federal purposes, X Bank is permitted to deduct the full \$50,000 in interest expense generated in 2021, plus \$5,000 of the amount that was disallowed in 2020 for a total federal deduction of \$55,000 in 2021. X Bank must add the federal carryforward amount (\$5,000) back on the company's 2021 Iowa return, limiting X Bank's 2021 Iowa deduction to the \$50,000 in current-year business interest expense.

59.31(5) Partners and partnerships.

a. Partnership-level adjustments. For tax years beginning on or after January 1, 2020, partnerships that file an Iowa income tax return for a tax year in which the partnership is subject to the IRC Section 163(j) limitation for federal purposes are permitted to deduct all current-year business interest expense at the partnership level in that tax year. See 701—paragraph 40.85(5)"a" for more information about the calculation and reporting of partnership-level adjustments.

b. Partner-level adjustments.

(1) Interest expense from Iowa partnerships. Iowa adjustments related to excess business interest expense of an Iowa partnership are made at the entity level as described in 701—paragraph 40.85(5)"a" and are reported to partners on an IA 1065 Schedule K-1. Partners are not permitted to make any Iowa adjustment at the partner level to their federal interest expense deduction for amounts of excess business interest expense allocated from an Iowa partnership on the partner's federal Schedule K-1 related to that Iowa partnership. See Example 1 above.

(2) Interest expense from non-Iowa partnerships. For tax years beginning on or after January 1, 2020, partners may include as part of their Iowa business interest expense deduction the total amount of current-year excess business interest expense deduction passed through to them from all non-Iowa partnerships as shown on the federal Schedule K-1 (Form 1065), line 13, code K. See Example 2 above.

(3) Partnership basis. A partner's basis is reduced (but not below zero) by the amount of excess business interest expense the partnership passes through to the partner each year. See Treas. Reg. Section 163(j)-6(h) for detailed information about how to make these basis adjustments. For federal purposes, immediately before disposition of the partnership interest, the partner's basis is then increased by the amount of any passed-through business interest expense which has not yet been treated as paid or accrued by the partner as described in Treas. Reg. Section 163(j)-6(h)(3). No basis increase at the time of disposition is allowed for Iowa purposes for passed-through business interest expense amounts that

REVENUE DEPARTMENT[701](cont'd)

were deducted for Iowa, but not for federal, purposes due to Iowa's nonconformity with IRC Section 163(j).

59.31(6) S corporation adjustments. For federal purposes, IRC Section 163(j) limitations are applied at the S-corporation level. Unlike partnerships, disallowed business interest expense amounts are carried forward and deducted in future years at the entity level rather than being passed through to shareholders. S corporations should calculate their entity-level business interest expense deduction for Iowa purposes under the provisions of rule 701—53.29(422). See also Treas. Reg. Section 1.163(j)-6(l) for more information about the application of IRC Section 163(j) to S corporations for federal purposes.

This rule is intended to implement Iowa Code sections 422.35(27) and 422.61.

ARC 5614C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to marketable food products for human consumption and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3.

Purpose and Summary

Iowa Code section 423.3(49) provides a limited exemption for manufacturers producing "marketable food products for human consumption." Specifically, the Iowa Code section exempts from sales tax:

"The sales price from the sale of carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services and the lease or rental of tangible personal property when used by a manufacturer of food products to produce *marketable food products for human consumption*, including but not limited to treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture." [Emphasis added]

This exemption was first codified in 1985 and has only been amended once, in 2005, to add leases or rentals of otherwise-qualifying tangible personal property to the exemption. The phrase "marketable food products for human consumption" has never been defined in the Iowa Code or the Department's administrative rules. The Department's long-standing interpretation of the term, articulated through audits and protests, has been that only final food products, not food ingredients, are "marketable food products for human consumption." This interpretation is consistent with the statutory construction principle that exemption provisions be narrowly construed.

To provide clarity to taxpayers seeking to claim this exemption as manufacturers of marketable food products for human consumption, the Department proposes to adopt this definition of the term. The Department notes that if a taxpayer does not produce marketable food products for human consumption, the taxpayer may still be eligible for other processing-related exemptions, such as those in Iowa Code section 423.3(47).

REVENUE DEPARTMENT[701](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.782.0535
Email: tim.reilly@iowa.gov

Public Hearing

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

May 25, 2021
2 to 3 p.m.

Via videoconference call

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

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

Persons who wish to participate in the videoconference call should contact Tim Reilly before 4:30 p.m. on May 24, 2021, to facilitate an orderly hearing. A link will be provided to participants prior to the hearing.

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** subrule 230.2(1):

230.2(1) “Marketable food products for human consumption” means products intended to be sold ultimately at retail as items which furnish energy, sustain growth, support vital processes in the human body, and are final products ready for and capable of consumption without the need for further processing

REVENUE DEPARTMENT[701](cont'd)

after being sold to the purchaser. “Marketable food products for human consumption” includes food products traditionally accepted and sold as food products and products that have been enhanced or compounded with nutritional elements. “Marketable food products for human consumption” does not include medicines or dietary or food supplements. A product that may be consumed by a human but is sold for other purposes is not a marketable food product for human consumption.

a. Certain entities eligible. An entity that processes a product owned by another entity is eligible for this exemption, subject to satisfying the other requirements to properly claim the exemption.

EXAMPLE: Company A owns and operates a processing facility. Company B owns corn and contracts with Company A to process the corn. Company B maintains ownership of the corn the entire time it is processed and in possession of Company A. Company B sells the processed corn to Company C, who will make retail sales of the processed corn. Company A is eligible to claim this exemption for any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to process the corn.

b. Determination. The burden is on the taxpayer seeking to claim this exemption to establish a product is a marketable food product for human consumption. The department’s determination shall be a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE: A manufacturer produces products, such as glucosamine, that are used as ingredients in orange juice, which is produced by a different entity. The glucosamine is not a marketable food product for human consumption. The orange juice is a marketable food product for human consumption.

ARC 5592C**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]****Notice of Intended Action****Proposing rule making related to veterans trust fund
and providing an opportunity for public comment**

The Department of Veterans Affairs hereby proposes to amend Chapter 14, “Veterans Trust Fund,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 35A.13.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 35A.13.

Purpose and Summary

The proposed rule making amends Chapter 14 so the rules for the Veterans Trust Fund are not as restrictive to veterans, their spouses and their dependents.

Fiscal Impact

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

Jobs Impact

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

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 25, 2021. Comments should be directed to:

Melissa Miller
Iowa Department of Veterans Affairs
Camp Dodge, Bldg. #3465
7105 NW 70th Avenue
Johnston, Iowa 50131
Email: melissa.miller2@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 801—14.2(35A) as follows:

801—14.2(35A) Definition. For purposes of this chapter, “veteran” means the same as defined in Iowa Code section 35.1, ~~or~~ and federal VA regulations; a resident of Iowa who served in the armed forces of the United States, completed a minimum aggregate of 90 days of active federal service, other than training, and was discharged under honorable conditions₂; or a former member of the national guard, reserve, or regular component of the armed forces of the United States who was honorably discharged due to injuries incurred while on active federal service that precluded completion of a minimum aggregate of 90 days of active federal service, other than training.

ITEM 2. Amend subrules 14.3(1) and 14.3(2) as follows:

14.3(1) Income. For the purposes of this chapter, an applicant’s household income, including VA pension benefits, service-connected disability income, and social security income, shall not exceed ~~200~~ 300 percent of the federal poverty guidelines for the number of family members living in the primary residence in effect on the date the application is received by the county director of veterans affairs. Federal poverty guidelines shall be those guidelines established by the Iowa department of human services for the veteran’s family size. The commission shall adjust the guidelines on July 1 of each year to reflect the most recent federal poverty guidelines. The commission may waive the income threshold if all income is from a fixed source and all other sources of assistance have been exhausted.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

14.3(2) Resources. ~~The department may not pay benefits under this chapter if the available liquid assets of the veteran are in excess of \$15,000.~~ For the purposes of this chapter, “available liquid assets” means cash on hand, cash in a checking or savings account, stocks, bonds, certificates of deposit, treasury bills, money market funds and other liquid investments owned individually or jointly by the applicant and the applicant’s spouse, unless the applicant and spouse are separated or are in the process of obtaining a divorce, but does not include funds deposited in IRAs, Keogh plans or deferred compensation plans, unless the veteran is eligible to withdraw such funds without incurring a penalty. Cash surrender value of life insurance policies, real property, established burial account, or a personal vehicle shall not be included as available liquid assets.

ITEM 3. Amend subrule 14.4(1) as follows:

14.4(1) Travel expenses for wounded veterans, ~~and~~ their spouses and their dependents, directly related to ~~follow-up~~ medical care. Travel expenses under this subrule include the unreimbursed cost of airfare, lodging, and a per diem of ~~\$25~~ \$50 per day for required ~~out-of-state medical travel that exceeds 125 miles~~ medical appointments from the veteran’s home. Spouses may be reimbursed for in-state lodging and a per diem of ~~\$25~~ \$50 per day when visiting a veteran who is in a hospital for medical care related to ~~a service-connected~~ an injury or disability. ~~The distance from the veteran’s home to the hospital must exceed 100 miles.~~ The veteran or the veteran’s spouse shall provide such evidence as the commission may require, which includes but is not limited to evidence the injury or disability is service-connected, the necessity of treatment in a particular facility, and documentation of expenses. The maximum amount for lodging travel expense reimbursement shall be \$90. The maximum amount of aid payable in a consecutive 12-month period under this subrule is \$1,000. ~~The commission may waive the income threshold for this benefit.~~

ITEM 4. Amend paragraph **14.4(2)“a,”** introductory paragraph, as follows:

a. The commission may pay a veteran not more than ~~\$3,000~~ \$5,000 for retraining or postsecondary education and Internet connection to enable the veteran to obtain gainful employment. The commission may provide aid under this subrule if all of the following apply:

ITEM 5. Amend subparagraph **14.4(2)“a”(4)** as follows:

(4) The veteran requesting aid has not received full reimbursement or payment from any other retraining or education scholarship programs and the veteran does not have other assets or income available to meet retraining or initial training expenses. Applicants requesting aid under this subrule will only be granted the unpaid portion of their tuition statement; and the payment a monthly Internet invoice. Payments will be made directly to the institution and Internet provider.

ITEM 6. Amend subrule 14.4(3) as follows:

14.4(3) Unemployment or underemployment assistance during a period of unemployment or underemployment due to prolonged physical or mental illness resulting from military service or disability resulting from military service (must be physically and mentally able to return to work). The commission may provide subsistence payments only to a veteran who has suffered a loss of income due to prolonged physical or mental illness resulting from military service or disability resulting from military service. The commission may provide subsistence payments of up to \$500 per month of unemployment or underemployment to a veteran. A veteran must provide documentation of assistance from Iowa workforce development and vocational rehabilitation, if eligible. No payment may be made under this subrule if the veteran has other assets or income available to meet basic subsistence needs. A period of unemployment implies that it is possible for the veteran to be employed in the future. A rating from the VA of 100 percent due to individual unemployability (IU) rated permanent and total indicates that a veteran is unemployable and will not qualify for assistance under this subrule. The veteran shall provide such evidence as the commission may require, which includes but is not limited to evidence ~~that the mental illness or disability is service-connected and evidence~~ that the veteran is unemployed or underemployed for the period of payments. To qualify as underemployed, the applicant must be currently working at an income that is below 150 percent of federal poverty guidelines ~~due to limitations~~

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

~~caused by the applicant's service-connected disability or illness.~~ The maximum amount of aid payable in a consecutive 12-month period under this subrule is \$3,000 and a lifetime maximum of \$6,000.

ITEM 7. Amend paragraphs **14.4(4)“b”** and **“c”** as follows:

b. The maximum amount that may be paid under this subrule for any consecutive 12-month period may not exceed \$10,000 for dental care, \$500 for vision care, \$1,500 per ear for hearing care, and \$1,500 for prescription drugs and prescribed over-the-counter drugs. Lifetime maximum benefit: \$10,000 per eligible family member.

c. The commission shall not provide health care aid under this subrule unless the aid recipient's health care provider agrees to accept, as full payment for the health care provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the commission determines the veteran is capable of paying. Payment under this subrule will be provided directly to the health care provider. ~~The commission shall not pay health care aid under this subrule if the available liquid assets of the veteran are in excess of \$15,000.~~

ITEM 8. Amend paragraph **14.4(5)“c”** as follows:

c. Assistance under this subrule cannot duplicate assistance from other entities, and the maximum amount that may be paid may not exceed ~~\$2,500~~ \$5,000.

ITEM 9. Rescind paragraph **14.4(5)“d.”**

ITEM 10. Amend paragraph **14.4(6)“d”** as follows:

d. The commission may provide up to \$150 per hour and \$75 per half-hour for outpatient counseling visits to providers who will accept as full payment for the counseling services the amount provided. Counseling and substance abuse services provided in a group setting may be paid up to \$40 per hour. Counseling and substance abuse services may also be provided in an inpatient setting, subject to the maximum amount eligible under paragraph 14.4(6)“f.”

ITEM 11. Amend paragraph **14.4(6)“f”** as follows:

f. The commission may not provide counseling under this subrule unless the aid recipient's counseling service provider agrees to accept, as full payment for the counseling services provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the commission determines the veteran is capable of paying. The commission will make payment directly to the entity providing counseling and substance abuse services. ~~The commission shall not pay for counseling under this subrule if the available liquid assets of the veteran are in excess of \$15,000.~~

ITEM 12. Amend paragraph **14.4(7)“c”** as follows:

c. The maximum amount that may be paid under this subrule may not exceed ~~\$7,500~~ \$10,000.

ITEM 13. Amend subrule 14.4(8) as follows:

14.4(8) *Emergency expenses related to vehicle repair or a one-time replacement vehicle, housing repair, or temporary housing assistance.*

a. No change.

b. Assistance for vehicle repair is limited to expenses that are required for continued use of the vehicle. This assistance will only be granted in cases where the vehicle is needed for travel to and from work-related activities, the applicant is over the age of 65, or substantial hardship will occur if the vehicle is not repaired. Assistance may be provided in situations where the applicant does not have sufficient means to pay an insurance deductible. Assistance may be paid directly to the entity performing the maintenance or the insurance company owed the deductible. In certain circumstances, reimbursement may be made to the veteran or to the unremarried spouse of a deceased veteran in order for the vehicle to be released from the entity providing the service. Assistance will not be provided for damage caused during the commission of a crime, for cosmetic needs, for damage resulting in an auto accident when automobile insurance has not been purchased, or for routine maintenance. Vehicle replacement is a one-time use not exceeding \$5,000.

c. and d. No change.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

e. The maximum amount that may be paid under this subrule for any consecutive 12-month period may not exceed \$2,500 for vehicle repair, \$3,000 for housing repair, and \$1,000 for transitional housing. Lifetime maximum benefit for housing repair and vehicle repair: \$10,000 each.

~~*f.* The commission shall not pay a reimbursement under this subrule if the available liquid assets of the veteran are in excess of \$15,000.~~

ARC 5596C

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed****Rule making related to travel trailers**

The Human Services Department hereby amends Chapter 58, “Emergency Assistance,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 29C.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 29C.

Purpose and Summary

This amendment increases the time frame in which a person or household may stay in a travel trailer or fifth-wheel travel trailer from 90 days to 180 days before the travel trailer is considered a permanent place of habitation. This change was enacted in 2019 Iowa Acts, Senate File 435.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5471C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 8, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 1, 2021.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following rule-making action is adopted:

Amend rule **441—58.1(29C)**, definitions of “Fifth-wheel travel trailer” and “Travel trailer,” as follows:

“*Fifth-wheel travel trailer*,” as set forth in Iowa Code section 321.1(36C)(c), means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed 45 feet. If the vehicle is used in this state as a place of human habitation for more than ~~90~~ 180 consecutive days in one location, the vehicle shall be classed as a manufactured or mobile home regardless of the size limitations provided in this definition.

“*Travel trailer*,” as set forth in Iowa Code section 321.1(36C)(b), means a vehicle without motive power used, manufactured, or constructed to permit its use as a conveyance upon the public streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to 8 feet, 6 inches in width and its overall length shall not exceed 45 feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the vehicle is used in this state as a place of human habitation for more than ~~90~~ 180 consecutive days in one location, the vehicle shall be classed as a manufactured or mobile home regardless of the size limitations provided in this definition.

[Filed 4/9/21, effective 7/1/21]

[Published 5/5/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5597C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to electronic visit verification

The Human Services Department hereby amends Chapter 73, “Managed Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 249A.

State or Federal Law Implemented

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

Purpose and Summary

Electronic visit verification (EVV) is a federal requirement for states to implement. In December 2016, the 21st Century Cures Act was signed into law. Section 12006 of the Act requires EVV for personal care services beginning January 1, 2020, and for home health services beginning January 1, 2023. Iowa was granted a one-year good-faith exemption, so the requirement for Iowa is January 1, 2021, for personal care services and January 1, 2023, for home health services. The Department is using a managed care implementation model for EVV.

EVV uses technology to electronically record when attendants begin and end providing services to Medicaid members. EVV will be used to ensure members are receiving the care they need that is outlined in the members’ service plan. EVV will be used to monitor the delivery and utilization of personal care and home health services in nontraditional settings and will provide verification of the visit with location information and a time stamp. EVV will be used to ensure quality and program integrity. It

HUMAN SERVICES DEPARTMENT[441](cont'd)

also streamlines billing for providers. Once a visit is complete, the claim is sent to the managed care organization (MCO) for payment.

EVV was implemented January 1, 2021, in accordance with federal regulations. Payments were made outside of the system in January to allow providers to start using the system and become familiar with its applications. Providers began fully using the system February 1, 2021. These amendments provide additional guidance for providers.

Beginning January 1, 2021, personal care service providers including consumer-directed attendant care (CDAC) providers, homemaker providers, and consumer choice option employees that provide personal care services are required to use EVV. The Department has extended the deadline for assisted living and residential care facilities to July 1, 2021. The EVV implementation for the fee-for-service (FFS) population will be deployed in a second phase for compliance.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 10, 2021, as **ARC 5437C**. The Department received comments from two respondents/organizations. The respondents' comments suggesting changes to these rules and the Department's responses to these comments follow:

Comment 1: One respondent submitted two comments regarding the 21st Century Cures Act and the fact that EVV was being required for personal care or home health care services provided by CDAC who live in the same home as the person they provide for. The respondent stated there was no checking in or out when they are there 24 hours a day. The respondent requested that an exception be made for caregivers who reside with the person they are providing care for.

The respondent also stated that personal care services (PCS) that are provided to inpatients or residents of a hospital, nursing home, intermediate care facility for individuals with intellectual disabilities, or an institution for mental illness, and PCS that do not require an in-home visit, are not subject to the EVV requirement. The respondent stated that the Centers for Medicare and Medicaid Services (CMS) is aware that PCS are provided in a variety of settings offering 24-hour service availability. CMS interprets the reference in the statute to an "in-home visit" to exclude PCS provided in congregate residential settings where 24-hour service is available. Consistent with this difference in service delivery model, typical reimbursement for services provided in these congregate settings utilizes a per diem methodology, rather than discrete per "visit" or per service payment structures. Therefore, the respondent stated CMS finds that services provided in a congregate residential setting are distinct from an "in-home visit" subject to EVV requirements under the statute.

Department response 1: When developing the rules for the EVV solution and the settings where EVV would be required for use, the Department reviewed guidance provided by CMS. The PCS for which the EVV solution is required to be used are CDAC and homemaker services. Both of these services are provided and billed in 15-minute units rather than a per diem rate. Providing services in 15-minute units is more aligned with providing discrete in-home per visit services provided by in-home caregivers. CMS guidance advises that states may choose to implement EVV for live-in caregivers and in congregate settings, particularly when using discrete units of reimbursement, such as on an hourly basis (or in Iowa's case, 15-minute units). As such, the Department made the determination to require PCS provided by live-in caregivers and in congregate settings to use the EVV solution. The Department did not make a change from the Notice to allow the exclusion of live-in caregivers and services provided in congregate settings from the EVV solution.

Comment 2: One respondent recommended adding language to subrule 73.18(2) specific to the Consumer Choice Option (CCO) program within that subrule as it is the responsibility of the CCO member to maintain the adequate record keeping regarding their service delivery (per subparagraph 78.34(13)"m"(5)) and the responsibility of the financial management service provider (Veridian Fiscal Solutions) to maintain the payment documentation. The term "provider" could confuse these responsibilities. The respondent suggested wording changes to the administrative rule.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Department response 2: The requirements identified in rule 441—79.3(249A) codify the service documentation for home- and community-based services (HCBS), including services required to use EVV. The CCO rules in subparagraph 78.34(13)“m”(4) require CCO documentation to comport with the service documentation requirements in rule 441—79.3(249A). The EVV solution may be used to document PCS and, when used, can meet the requirements in rule 441—79.3(249A) for maintenance of service records.

Since the service documentation requirements are already established in rule 441—79.3(249A), the Department did not make a change from the EVV rules published under Notice.

Comment 3: The respondent recommended including the service of homemaker as a required EVV service for CCO. In addition, the respondent recommended adding language stating that it is the responsibility of the member to make copies of the time sheet since the financial management service provider (Veridian Fiscal Solutions) will no longer receive the information for EVV services. The respondent stated this requirement would align with the requirement outlined in subparagraph 78.34(13)“m”(5) indicating that if the information is submitted electronically, the member shall maintain a record for five years. In addition, the respondent recommended being more specific that the Form 470-4429 can only be used for the documentation of services provided, not for the submission of time for payment. The respondent stated that the way these changes are currently written, it could be interpreted that there is an option between the EVV solution and the time sheet as a way to submit for payment. The respondent suggested wording changes to the administrative rule.

Department response 3: PCS is the generic description for all services that are required to use EVV. For Iowa and the HCBS program, personal care includes CDAC and homemaker services. As such, homemaker services do not need to be specifically identified in the context of the rule.

As noted in Department response 2, rule 441—79.3(249A) codifies the requirements for service documentation for HCBS services, including services required to use EVV. The CCO rules in subparagraph 78.34(13)“m”(4) require CCO documentation to comport with the service documentation in rule 441—79.3(249A). The EVV solution may be used to document PCS and, when used, can meet the requirements for maintenance of service records in rule 441—79.3(249A).

Since the service documentation requirements are already established in rule 441—79.3(249A), the Department did not make changes from the EVV rules published under Notice.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 8, 2021.

Fiscal Impact

EVV implementation for personal care services will be completed via the MCO, and the approved contracted vendor will be in compliance with the mandate for the MCO population. There is no direct cost to the state. The FFS population compliance costs are larger than the non-compliance fee given the smaller FFS personal care services population and will be deployed to be in compliance in a second phase. The non-compliance fee is estimated at \$5,000 in SFY21 and \$15,000 in SFY22. There could potentially be an additional fee of approximately \$10,000 for the first six months of SFY23. The expectation is that FFS personal care will be implemented in the second phase when home health is implemented in January 2023. The Department expects to incur costs in SFY22 as it prepares for the January 2023 implementation. These development costs are currently estimated at \$2,040,000 and are expected to be reimbursed at a 90 percent federal match rate. There may also be development costs in SFY23, but the amount is not yet known. Estimates were based on market research. Estimates for the non-compliance costs for personal care services associated with the Federal Medical Assistance Percentages (FMAP) reduction in CY21 through CY23 were based on the FFS population currently receiving PCS.

Jobs Impact

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—73.1(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 2. Amend subrule 73.18(2) as follows:

73.18(2) Content of individual treatment record. The managed care organization shall ensure that participating providers maintain an adequate record-keeping system that includes a complete medical or service record for each enrolled member including documentation of all services provided to each enrollee in compliance with the contract and provisions of rule 441—79.3(249A) and pursuant to federal funding requirements, including 42 CFR 456 as amended to October 16, 2015. Beginning January 1, 2021, the managed care organization shall require use of an electronic visit verification system for personal care services.

ITEM 3. Amend paragraph **78.34(7)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.~~

ITEM 4. Amend subparagraph **78.34(13)“m”(4)** as follows:

(4) ~~Employees~~ For personal care services, employees shall use an electronic visit verification system that captures all documentation requirements of the Consumer Choices Option Semi-Monthly Time Sheet (Form 470-4429) or use Form 470-4429. All other employees shall complete, sign and date Form 470-4429, Consumer Choices Option Semi-Monthly Time Sheet, for each date of service provided to a member. Documentation shall comport All employees shall maintain documentation that complies with 441—subparagraph 79.3(2)“e”(3), “Service documentation.” rule 441—79.3(249A).

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Amend paragraph **78.37(15)“c”** as follows:

c. Service documentation. The consumer-directed attendant care individual and agency providers ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). ~~Assisted living facilities may choose to use Form 470-4389 or may devise another system that adheres to the requirements of rule 441—79.3(249A).~~ The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 6. Amend paragraph **78.38(8)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 7. Amend paragraph **78.41(8)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 8. Amend paragraph **78.43(13)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 9. Amend paragraph **78.46(1)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 10. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.1(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 11. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.21(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 12. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.41(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 13. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.60(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 14. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.81(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 15. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.101(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 16. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.121(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service

HUMAN SERVICES DEPARTMENT[441](cont'd)

performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

[Filed 4/9/21, effective 7/1/21]

[Published 5/5/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5602C

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to property casualty insurance and producer continuing education

The Insurance Division hereby amends Chapter 11, "Continuing Education for Insurance Producers," and Chapter 20, "Property and Casualty Insurance," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 505.8, 515.115, 515F.37 and 522B.18.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 505, 515, 515F and 522B.

Purpose and Summary

These amendments are a result of the Division's review of rules. The amendments to Chapter 11 remove the cap on self-study continuing education for insurance producers. This change will effectively make the classroom continuing education requirement an option.

These amendments update Chapter 20 by removing unnecessary language, correcting statute references, and conforming to current practice.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5500C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by Douglas M. Ommen, Iowa Insurance Commissioner, on April 15, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

INSURANCE DIVISION[191](cont'd)

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **11.3(4)“b”** as follows:

b. A producer may receive ~~up to 18~~ CE credits for self-study courses during a CE term that do not meet the definition of paragraph 11.3(4)“a” if the producer:

(1) and (2) No change.

ITEM 2. Amend subrule 11.5(7) as follows:

11.5(7) A CE course must be offered for a minimum of one credit. Fractional credits will not be awarded. The total credit that may be awarded for a CE course is limited to 36 credits, ~~except that credit for a self-study course as defined in paragraph 11.3(4)“b” is limited to 18 CE credits.~~

ITEM 3. Amend rule 191—20.1(505,509,514A,515,515A,515F) as follows:

191—20.1(505,509,514A,515,515A,515F) General filing requirements for filing rates and forms.

20.1(1) Insurance companies required to file rates or forms with the division shall submit required rate and form filings and any fees required for the filings electronically using the National Association of Insurance Commissioners' System for Electronic Rate and Form Filing (SERFF). Insurance companies must comply with the division's requirements for submissions, including both the Iowa general instructions and the specific submission requirements for the type of insurance for which the companies are submitting forms or rates, as set out on the SERFF ~~Web site at~~ www.serff.org website at serff.com.

20.1(2) No change.

ITEM 4. Amend rule 191—20.2(505) as follows:

191—20.2(505) Objection to form filing.

20.2(1) No change.

20.2(2) Within 20 days after receipt of the request for a hearing, the commissioner will hold a hearing to consider the objection to the filing. The commissioner will provide not less than 10 days' written notice of the time and place of the hearing to the person or association filing the ~~demand request~~, to the filing insurer or organization, and to any other person requesting notice. The commissioner may suspend or postpone the effective date of the filing pending the hearing. Upon consideration of the information received at the hearing, the commissioner may determine whether or not to approve the filing.

ITEM 5. Amend subrule 20.4(3) as follows:

20.4(3) A form filing which has not been previously approved, disapproved or questioned shall be deemed approved on or after 30 days from ~~its receipt~~ the date that all necessary requirements are submitted to SERFF.

ITEM 6. Amend rule 191—20.5(515A) as follows:

191—20.5(515A) Rate or manual rule filing.

20.5(1) Every insurer shall determine and file its final rates with the commissioner pursuant to provisions of Iowa Code chapter 515F, except for insurers of workers' compensation who are specifically excluded by Iowa Code section ~~515F.5~~ 515F.3(2) and residual market mechanisms.

INSURANCE DIVISION[191](cont'd)

a. Advisory organizations, defined in Iowa Code section 515F.2 and licensed pursuant to Iowa Code section 515F.8, may file on behalf of their member and subscriber companies prospective loss costs, supplementary ~~rate~~ rating information and supporting information as defined in Iowa Code section 515F.2. Advisory organization filings shall be filed and made effective in accordance with the provisions of Iowa Code sections 515F.4 to 515F.6 or 515F.23 to 515F.25 that apply to the filing and approval of rates and supplementary rating information.

b. An insurer may satisfy its obligation to make rate filings by becoming a participating insurer of a licensed advisory organization that makes reference filings of advisory prospective loss costs and by authorizing the commissioner to accept such filings on its behalf. The insurer's rates shall be the prospective loss costs filed by the advisory organization which have been put into effect in accordance with paragraph 20.5(1) "a," combined with the loss cost adjustments which are filed in accordance with ~~this paragraph~~ 20.5(1) "a."

c. An insurer may satisfy its obligation to make filings of supplementary rating information by becoming a participating insurer of a licensed advisory organization ~~which that~~ that makes such filings and by authorizing the commissioner to accept such filings on its behalf, subject to any modifications filed by the insurer.

d. No change.

20.5(2) No change.

20.5(3) Insurers making filings ~~in~~ on their own behalf and advisory organizations making a filing on behalf of an insurer shall identify each page filed by printing, typing or stamping their own name thereon.

20.5(4) If a company filing rates used the manuals of an advisory organization in its filings, any portion of the manuals of the advisory organization ~~which that~~ will not be followed by the filing must be clearly shown as deleted or amended by use of an appropriately numbered exception page.

20.5(5) For residual market mechanisms, insurers making filings ~~in~~ on their own behalf shall identify the submission as an independent filing or a deviation from the ~~bureau filing~~ previously filed form, rate, or rule. A deviation filing is a submission which represents modification of a form or rate or rule previously filed by an authorized rating organization or advisory organization on behalf of its member and subscriber companies. If an insurer has previously filed forms modifying coverage provided by the applicable standard ~~or bureau~~ forms, such fact should be noted in the rate filing.

ITEM 7. Amend rule 191—20.6(515A) as follows:

191—20.6(515A) Exemption from rate filing requirement.

20.6(1) No change.

20.6(2) If the commissioner finds that a proposed rate represents a classification for which credible and homogeneous statistical experience does not exist and cannot be analyzed using standard actuarial techniques to produce a statistically significant average rate for the individual risks within the classification, the commissioner may exempt the ~~proposed rate~~ insurer from the filing requirement for that proposed rate.

20.6(3) An insurer shall maintain statistical records of the experience and expenses attendant upon the risks covered by any rate exempted by the commissioner from the filing requirement. The insurer may supplement statistical information ~~with information~~ filed with the commissioner with information by an advisory organization licensed pursuant to Iowa Code section 515F.8.

This rule is intended to implement Iowa Code section 515A.4(6).

ITEM 8. Amend rule 191—20.11(515) as follows:

191—20.11(515) Exemption from form and rate filing requirements.

20.11(1) The following lines of insurance shall be exempt from the form filing requirements of Iowa Code section 515.102:

- a.* Aircraft hull and aviation liability.
- b.* Difference-in-conditions.
- c.* Kidnap-ransom.

INSURANCE DIVISION[191](cont'd)

- d. Manuscript policies and endorsements issued to not more than two insureds in Iowa.
- e. Political risk.
- f. Reinsurance.
- g. Terrorism.
- h. War risk.
- i. Weather insurance.

20.11(2) No change.

20.11(3) An insurer shall, within 30 days of the commissioner's request, provide the commissioner with any of the information which is exempted from form and rate filing requirements.

ITEM 9. Amend rule 191—20.41(515,515F) as follows:

191—20.41(515,515F) Purpose. This division is intended to implement and interpret ~~2003 Iowa Acts, chapter 119,~~ Iowa Code sections 515F.30 to 515F.38 for the purpose of establishing procedures and requirements for a mandatory risk-sharing facility for basic property insurance coverage. This division is also intended to encourage improvement of and reasonable loss prevention measures for properties located in Iowa and to further orderly community development.

ITEM 10. Amend rule 191—20.43(515,515F), introductory paragraph, as follows:

191—20.43(515,515F) Definitions. In addition to the definitions of Iowa Code sections 514F.2 and 515F.32 and rule 191—20.1(505,509,514A,515,515A,515F), the following definitions apply:

ITEM 11. Amend rule **191—20.43(515,515F)**, definition of "Iowa FAIR Plan," as follows:

"*Iowa FAIR Plan Association*" or "*the Plan*" means the nonprofit, unincorporated mandatory risk-sharing facility established and governed by Iowa Code sections 515F.30 through 515F.38 and this division to provide for basic property insurance.

ITEM 12. Amend subrule 20.47(3) as follows:

20.47(3) The governing committee may designate, ~~with the approval of the commissioner, a rate service organization as defined in Iowa Code chapter 515F,~~ an independent inspection firm to make inspections as required under the Plan and to perform such other duties as may be authorized by the governing committee.

ITEM 13. Amend rule **191—20.71(515)**, definition of "ISO," as follows:

"*ISO*" means the ~~insurance services office~~ Insurance Services Office, Inc.

[Filed 4/15/21, effective 6/9/21]

[Published 5/5/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5598C

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to long-term care insurance

The Insurance Division hereby amends Chapter 39, "Long-Term Care Insurance," and Chapter 72, "Long-Term Care Asset Preservation Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 514G.111 and 514H.9.

INSURANCE DIVISION[191](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 514G and 514H.

Purpose and Summary

These amendments are a result of the Division's five-year review of rules. These amendments update the chapters by correcting statutory, Iowa Acts, and website references. Changes are made to Chapter 72 to reflect the repeal of Iowa Code chapter 249G. The rules in Chapter 72 are still necessary in order to set forth the requirements for policies sold prior to December 31, 2009.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5472C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by Douglas M. Ommen, Iowa Insurance Commissioner, on April 15, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 191—39.2(514G) as follows:

191—39.2(514G) Authority. This chapter is issued pursuant to the authority vested in the commissioner under Iowa Code section ~~514G.7~~ 514G.105 in accordance with the procedures set forth in Iowa Code chapter 17A.

ITEM 2. Amend subrule 39.5(19) as follows:

39.5(19) “*Similar policy forms*” means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition of group long-term care insurance in Iowa Code section

INSURANCE DIVISION[191](cont'd)

514G.4(4) 514G.103 are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, noninstitutional long-term care benefits only, or comprehensive long-term care benefits.

ITEM 3. Amend paragraph **39.6(2)“b”** as follows:

b. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in Iowa Code section 514G.7(3)“b” 514G.105(3)“b” expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in Iowa Code section 514G.7(3)“b.” 514G.105(3)“b.”

ITEM 4. Amend subrule 39.6(7), introductory paragraph, as follows:

39.6(7) *Electronic enrollment for group policies.* In the case of a group defined in Iowa Code section 514G.4(4) long-term care insurance, any requirement that a signature of an insured be obtained by a producer or insurer shall be deemed satisfied if:

ITEM 5. Amend subrule 39.7(5) as follows:

39.7(5) *Other limitations or conditions on eligibility for benefits.* A long-term care insurance policy or certificate containing any limitations or conditions for eligibility, other than those prohibited in Iowa Code section 514G.7(4)“b,” 514G.105(3)“b,” shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph “Limitations or Conditions on Eligibility for Benefits.”

ITEM 6. Amend subrule 39.8(5) as follows:

39.8(5) Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information to the insurance commissioner in the format prescribed by the National Association of Insurance Commissioners, substantially similar to Appendix A.

ITEM 7. Amend subrule 39.10(2) as follows:

39.10(2) Where the policy is issued to a group, the required offer in subrule 39.10(1) shall be made to the group policyholder; except, if the policy is issued to a group defined in Iowa Code section 514G.4(5)“d,” 514G.103(9)“d,” other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

ITEM 8. Amend subrule 39.11(1), introductory paragraph, as follows:

39.11(1) Application forms shall include the following questions designed to elicit information whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer, except where the coverage is sold without a producer, containing such questions may be used. With regard to a replacement policy issued to a group defined by Iowa Code section 514G.4(5)“a,” 514G.103(9)“a,” the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificate holder has been notified of the replacement.

ITEM 9. Amend rule 191—39.14(514G) as follows:

191—39.14(514G) Filing requirement. Prior to an insurer or similar organization’s offering group long-term care insurance to a resident of this state pursuant to Iowa Code section 514G.4(5)“d,” 514G.103(9)“d,” it shall file with the commissioner evidence that the group policy or certificate

INSURANCE DIVISION[191](cont'd)

thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

ITEM 10. Amend rule 191—39.18(514G), introductory paragraph, as follows:

191—39.18(514G) Standard format outline of coverage. This rule, which is not applicable to life policies with long-term care riders attached, implements, interprets and makes specific the provisions of Iowa Code section ~~514G.7(1)~~ 514G.105 in prescribing a standard format and the content of an outline of coverage.

ITEM 11. Amend subrule 39.29(2) as follows:

39.29(2) When a group long-term care insurance policy is issued, the offer required in subrule 39.29(1) shall be made to the group policyholder. However, if the policy is issued as group long-term care insurance to a group as defined in Iowa Code section ~~514G.4(4)“d,”~~ 514G.103(9)“d,” other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

ITEM 12. Amend paragraph **39.30(7)“b”** as follows:

b. For certificates issued on or after July 1, 2003, under a group long-term care insurance policy as defined in Iowa Code section ~~514G.4(4)“a”~~ 514G.103 that was in force on February 1, 2003, the provisions of this rule shall not apply.

ITEM 13. Amend rule 191—39.41(514G) as follows:

191—39.41(514G) Purpose. This division is intended to implement Iowa Code chapter 514G as amended by ~~2008 Iowa Acts, House File 2694,~~ to provide a uniform process for insureds covered under long-term care insurance to request an independent review of a denial of coverage based on a benefit trigger determination.

ITEM 14. Amend rule 191—39.43(514G) as follows:

191—39.43(514G) Definitions. For purposes of this division, the definitions found in ~~2008 Iowa Acts, House File 2694, section 4,~~ Iowa Code section 514G.103 shall apply.

ITEM 15. Amend rule 191—39.44(514G) as follows:

191—39.44(514G) Notice of benefit trigger determination and content. The notice required by ~~2008 Iowa Acts, House File 2694, section 10,~~ Iowa Code section 514G.109 shall contain the following information:

1. The reason that the insurer determined that the policy benefit trigger has not been met by the insured.
2. A description of the internal appeal mechanism provided under the long-term care policy.
3. A description of how the insured, after exhausting the insurer's internal appeal process, has the right to have the benefit trigger determination reviewed under the independent review process required by ~~2008 Iowa Acts, House File 2694, section 11~~ Iowa Code section 514G.110.

ITEM 16. Amend subrule 39.47(1) as follows:

39.47(1) The commissioner shall provide written notice of the certification decision to the insurer and the insured within the two-business-day period specified in ~~2008 Iowa Acts, House File 2694, section 11~~ Iowa Code section 514G.110.

ITEM 17. Amend subrule 39.51(2), introductory paragraph, as follows:

39.51(2) Each insurer shall provide the commissioner a detailed description of the process that the insurer has in place to ensure compliance with the requirements of this division and of ~~2008 Iowa Acts, House File 2694, sections 10 and 11~~ Iowa Code sections 514G.109 and 514G.110. The description required by this subrule shall be filed in a format as directed by the commissioner on or before March 1, 2009, and thereafter as requested by the commissioner. The description shall include:

INSURANCE DIVISION[191](cont'd)

ITEM 18. Amend subrule 39.53(5) as follows:

39.53(5) Procedures to ensure adherence to the requirements of this division and Iowa Code chapter 514G ~~as amended by 2008 Iowa Acts, House File 2694~~, by any contractor, subcontractor, subvendor, agent or employee affiliated with the independent review entity.

ITEM 19. Amend rule 191—39.54(514G) as follows:

191—39.54(514G) Toll-free telephone number. The independent review entity shall establish a toll-free telephone service to receive information relating to independent reviews pursuant to this division and Iowa Code chapter 514G ~~as amended by 2008 Iowa Acts, House File 2694~~. The system shall include a procedure to ensure the capability of accepting, recording, or providing instruction to respond to incoming telephone calls during other than normal business hours. The independent review entity shall also establish a facsimile and electronic mail service.

ITEM 20. Amend rule 191—39.75(514H,83GA,HF723), parenthetical implementation statute, as follows:

191—39.75(514H,83GA,HF723) Purpose.

ITEM 21. Amend subrule 39.75(1) as follows:

39.75(1) This division is intended to implement Iowa Code chapter 514H ~~as amended by 2009 Iowa Acts, House File 723~~, and Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171, to establish, in conjunction with the department of human services, a long-term care partnership program in Iowa to provide for financing of long-term care through a combination of private insurance and Iowa Medicaid. This program is also known as the long-term care asset disregard incentive program.

ITEM 22. Amend rule 191—39.76(514H,83GA,HF723), parenthetical implementation statute, as follows:

191—39.76(514H,83GA,HF723) Effective date.

ITEM 23. Amend rule 191—39.77(514H,83GA,HF723), introductory paragraph, as follows:

191—39.77(514H,83GA,HF723) Definitions. For purposes of this division, the definitions in Iowa Code chapter 514H ~~as amended by 2009 Iowa Acts, House File 723~~, and the definitions in rule 191—39.4(514G) shall apply. In addition, the following definitions shall apply:

ITEM 24. Amend rule **191—39.77(514H,83GA,HF723)**, definition of “Iowa long-term care partnership policy,” as follows:

“*Iowa long-term care partnership policy*” or “*partnership policy*” means an insurance policy that meets the following requirements:

1. and 2. No change.
3. The policy meets all of the applicable requirements of this chapter and Iowa Code chapter 514H ~~as amended by 2009 Iowa Acts, House File 723~~.
4. and 5. No change.

ITEM 25. Amend rules **191—39.78(514H,83GA,HF723)** to **191—39.85(514H,83GA,HF723)**, parenthetical implementation statutes, by striking “514H,83GA,HF723” wherever it appears and inserting “514H” in lieu thereof.

ITEM 26. Amend subrule 39.80(2) as follows:

39.80(2) An insurer or a producer soliciting or offering to sell a partnership policy shall provide to each prospective applicant a copy of the Iowa Long-Term Care Partnership Program Consumer Guide. The Iowa Long-Term Care Partnership Program Consumer Guide ~~form~~ may be found ~~on the division's website~~, www.iid.state.ia.us at shipp.iowa.gov.

INSURANCE DIVISION[191](cont'd)

ITEM 27. Amend **191—Chapter 39**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 514D.9, ~~Iowa Code chapter and chapters 514G and Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723.~~

ITEM 28. Amend **191—Chapter 39**, Appendix I, Additional Information section, as follows:
Additional Information

If you have questions regarding the long-term care insurance policies or certificates, please contact [carrier name]. If you have questions regarding current laws governing Medicaid eligibility, you should contact the Iowa Department of Human Services (~~Sally Oudekerk, Medicaid Policy Specialist, Bureau of Medical Support~~ Allison Scott, Medicaid Program Manager, telephone number (515)281-3709 (515)418-3497, email address ~~soudeke@dhs.state.ia.us~~ ascott@dhs.state.ia.us).

ITEM 29. Amend rule 191—72.1(249G) as follows:

191—72.1(249G 514H) Purpose. The purpose of this chapter is to ~~establish~~ set forth the minimum standards for long-term care insurance policies ~~and certificates to qualify for participation sold prior to December 31, 2009, that participate~~ in the Iowa long-term care asset preservation program; establish documentation and reporting requirements for issuers of policies or certificates to qualify under the Iowa long-term care asset preservation program; provide full disclosures in the sale of long-term care insurance policies and certificates which qualify under the Iowa long-term care asset preservation program; and facilitate public understanding regarding long-term care insurance and long-term care insurance policies and certificates which qualify under the Iowa long-term care asset preservation program.

ITEM 30. Amend rule 191—72.2(249G) as follows:

191—72.2(249G 514H) Applicability and scope. The requirements of this chapter apply to any long-term care insurance policy or certificate that was authorized for sale by the division of insurance as qualifying under the Iowa long-term care asset preservation program under former Iowa Code chapter 249G. No long-term care insurance policy or certificate which has been approved by the division of insurance as a certified long-term care insurance policy or certificate under this chapter may be advertised, solicited, or issued for delivery in this state after December 31, 2009.

ITEM 31. Amend rules **191—72.3(249G)** to **191—72.15(249G)**, parenthetical implementation statutes, by striking “249G” wherever it appears and inserting “514H” in lieu thereof.

ITEM 32. Amend rule **191—72.3(249G)**, definition of “Long-term care asset preservation program,” as follows:

“*Long-term care asset preservation program*” means the program authorized in former Iowa Code chapter 249G.

ITEM 33. Amend rule **191—72.3(249G)**, definition of “Preadmission screening program,” as follows:

“*Preadmission screening program review*” means the program which requires that each person seeking admission to a nursing facility must be screened and approved for admission ~~by the Iowa Foundation of Medical Care~~ in accordance with 441-IAC-81.3(249A) rule 441—81.3(249A).

ITEM 34. Amend paragraphs **72.7(1)“c”** and **“d”** as follows:

c. Include a provision that the policy or certificate will utilize the “insured event” criteria, defined in ~~72.3(249G) rule 191—72.3(514H)~~, for determining eligibility for benefits and for determining the amount of asset disregard. Approval for admission to a nursing facility under the “preadmission screening program,” as defined in ~~72.3(249G) rule 191—72.3(514H)~~, shall be deemed sufficient but not necessary to meet this insured event criteria.

d. Include a provision that policy or certificate benefits can be used to purchase nursing facility care or home- and community-based care. Home- and community-based care shall include, at a minimum, but not be limited to, the following:

(1) to (5) No change.

INSURANCE DIVISION[191](cont'd)

All home- and community-based services shall include case management services delivered by a case management agency. An asset disregard will be provided for all benefits used by qualified insureds to purchase “Medicaid-eligible long-term care services” as defined in ~~72.3(249G)~~ rule 191—72.3(514H).

ITEM 35. Amend paragraph **72.7(1)“i”** as follows:

i. Include a provision that benefits shall only be paid after the payment of all other benefits to which the policyholder or certificate holder is otherwise entitled, excluding Medicaid. The issuer shall make reasonable efforts to determine whether benefits are available from other policies or certificates or from Medicare. An asset disregard will only be provided for benefits the issuer can document were used to purchase Medicaid-eligible long-term care services as defined in ~~72.3(249G)~~ rule 191—72.3(514H) for a qualified insured.

ITEM 36. Amend paragraph **72.13(1)“b”** as follows:

b. The issuer shall agree to give the commissioner access to all information described in rule ~~72.10(249G)~~ 191—72.10(514H) on an aggregate basis for all policyholders or certificate holders and on an individual basis for all policyholders or certificate holders who have ever received any benefits. Access to information on persons who have not applied for Medicaid is required in order for the commissioner to determine if an issuer’s system for documenting asset protection is functioning correctly. The commissioner shall have the final decision concerning the frequency of access to the data and the size of samples for auditing or other purposes.

ITEM 37. Amend **191—Chapter 72**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement chapter 249G~~ 514H.

[Filed 4/15/21, effective 6/9/21]

[Published 5/5/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5599C

MEDICINE BOARD[653]

Adopted and Filed

Rule making related to appointment of the executive director

The Board of Medicine hereby amends Chapter 1, “Administrative and Regulatory Authority,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

During the 2019 Legislative Session, the General Assembly passed 2019 Iowa Acts, House File 766, section 59 (now codified as Iowa Code section 135.11B), which provided that the Executive Director of the Board of Medicine shall be appointed by the Director of the Department of Public Health. This rule making amends subrules 1.3(5) and 1.3(6) to reflect this change.

MEDICINE BOARD[653](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 30, 2020, as **ARC 5372C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on February 19, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making action is adopted:

Amend rule 653—1.3(17A) as follows:

653—1.3(17A) Organization of board. The board:

1.3(1) to **1.3(4)** No change.

1.3(5) Has the authority to:

a. Administer the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, ~~and the practice of acupuncture by acupuncturists,~~ and the practice of genetic counseling by genetic counselors.

b. Review or investigate, upon receipt of a complaint or upon its own initiation, based upon information or evidence received, alleged violations of statutes or rules which relate to the practice of medicine and surgery, osteopathic medicine and surgery, ~~and the practice of acupuncture by licensed acupuncturists,~~ and the practice of genetic counseling by licensed genetic counselors.

c. to m. No change.

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

o. and *p.* No change.

1.3(6) ~~Appoints~~ Guide and direct a full-time executive director who:

MEDICINE BOARD[653](cont'd)

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

1.3(7) No change.

[Filed 4/6/21, effective 6/9/21]

[Published 5/5/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5600C

MEDICINE BOARD[653]

Adopted and Filed

Rule making related to waivers

The Board of Medicine hereby amends Chapter 3, "Waivers and Variances," Chapter 8, "Fees," Chapter 9, "Permanent and Administrative Medicine Physician Licensure," Chapter 10, "Resident, Special and Temporary Physician Licensure," Chapter 11, "Continuing Education and Training Requirements," Chapter 13, "Standards of Practice and Principles of Medical Ethics," Chapter 17, "Licensure of Acupuncturists," Chapter 19, "Prescribing Psychologists," Chapter 20, "Licensure of Genetic Counselors," Chapter 21, "Physician Supervision of a Physician Assistant," and Chapter 23, "Grounds for Discipline," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 272C.3.

State or Federal Law Implemented

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

Purpose and Summary

2020 Iowa Acts, House File 2389, amended Iowa Code chapter 17A to remove the term "variance" and required that agencies' rules about waiver procedures refer only to waivers. This rule making reflects the changes required by 2020 Iowa Acts, House File 2389, by removing the word "variance" from the Board's rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 30, 2020, as **ARC 5370C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on February 19, 2021.

MEDICINE BOARD[653](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **653—Chapter 3**, title, as follows:

WAIVERS AND VARIANCES

ITEM 2. Amend rule 653—3.1(17A,147,148) as follows:

653—3.1(17A,147,148) Definition. For purposes of this chapter, a “waiver ~~or variance~~” means an action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 653—3.4(17A,147,148), introductory paragraph, as follows:

653—3.4(17A,147,148) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule ~~3.6(17A,147,148)~~ 653—3.6(17A,147,148), the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

ITEM 4. Amend rule 653—3.17(17A,147,148) as follows:

653—3.17(17A,147,148) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE BOARD OF MEDICINE

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



PETITION FOR
WAIVER/~~VARIANCE~~

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver ~~or variance~~). Also, the name, address, and telephone number of the petitioner’s legal representative,

MEDICINE BOARD[653](cont'd)

if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. to 7. No change.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the grant of the waiver ~~or variance~~.

9. and 10. No change.

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

Petitioner's signature

Date

ITEM 5. Amend rule 653—8.11(17A,147,148,272C) as follows:

653—8.11(17A,147,148,272C) Waiver ~~or variance~~ prohibited. Licensure and examination fees in this chapter are not subject to waiver ~~or variance~~ pursuant to 653—Chapter 3 or any other provision of law.

ITEM 6. Amend rule 653—9.18(17A,147,148,272C) as follows:

653—9.18(17A,147,148,272C) Waiver ~~or variance~~ requests. Waiver ~~or variance~~ requests shall be submitted in conformance with 653—Chapter 3.

ITEM 7. Amend rule 653—10.6(17A,147,148,272C) as follows:

653—10.6(17A,147,148,272C) Waiver ~~or variance~~ requests. Waiver ~~or variance~~ requests shall be submitted in conformance with 653—Chapter 3.

ITEM 8. Amend rule 653—11.6(17A,147,148E,272C) as follows:

653—11.6(17A,147,148E,272C) Waiver ~~or variance~~ requests. Waiver ~~or variance~~ requests shall be submitted in conformance with 653—Chapter 3.

ITEM 9. Amend rule 653—13.21(17A,147,148,272C) as follows:

653—13.21(17A,147,148,272C) Waiver ~~or variance~~ prohibited. Rules in this chapter are not subject to waiver ~~or variance~~ pursuant to 653—Chapter 3 or any other provision of law.

ITEM 10. Amend subrule 17.4(2) as follows:

17.4(2) Waiver ~~or variance~~ prohibited. Provisions of this rule are not subject to waiver ~~or variance~~ pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 11. Amend subrule 17.5(13) as follows:

17.5(13) Waiver ~~or variance~~ prohibited. Provisions of this rule are not subject to waiver ~~or variance~~ pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 12. Amend rule 653—17.11(147,148E,272C), introductory paragraph, as follows:

653—17.11(147,148E,272C) General disciplinary provisions. The board is authorized to take disciplinary action against any licensee who violates the provisions set forth in state law and administrative rules pertaining to the safe and healthful practice of acupuncture. This rule is not subject to waiver ~~or variance~~ pursuant to IAC 653—Chapter 3 or any other provision of law.

ITEM 13. Amend rule 653—17.30(147,148E,272C) as follows:

653—17.30(147,148E,272C) Waiver ~~or variance~~ prohibited. Fees in this chapter are not subject to waiver ~~or variance~~ pursuant to 653—Chapter 3 or any other provision of law.

MEDICINE BOARD[653](cont'd)

ITEM 14. Amend **653—Chapter 17**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 148E and sections 17A.10 to 17A.20, 147.55, 272C.3 to 272C.6, 272C.8 and 272C.9 and Iowa Code chapter 148E as amended by 2000 Iowa Acts, chapter 1053.

ITEM 15. Amend rule 653—19.8(148,154B) as follows:

653—19.8(148,154B) Joint waiver or variance—joint rule. Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

ITEM 16. Amend subrule 20.8(12) as follows:

20.8(12) Waiver or variance prohibited. Provisions of this rule are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

ITEM 17. Amend rule 653—20.20(147,148H,272C), introductory paragraph, as follows:

653—20.20(147,148H,272C) Grounds for discipline of genetic counselors. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148H, or 272C or the rules promulgated thereunder. These grounds for discipline apply to genetic counselors. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1); when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 18. Amend rule 653—20.25(147,148H,272C) as follows:

653—20.25(147,148H,272C) Waiver or variance prohibited. Fees in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

ITEM 19. Amend rule 653—21.8(17A,147,148,272C) as follows:

653—21.8(17A,147,148,272C) Waiver or variance requests. Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

ITEM 20. Amend rule 653—23.1(272C), introductory paragraph, as follows:

653—23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 252J, or 272C or 2008 Iowa Acts, Senate File 2428, division H, or 272D or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

[Filed 4/6/21, effective 6/9/21]

[Published 5/5/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5601C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rule making related to firearms legal for deer hunting

The Natural Resource Commission (Commission) hereby amends Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455A.5(7), 481A.38(1)“a” and 481A.48.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 481A.48.

Purpose and Summary

Chapter 106 contains the regulations for the resident deer hunting seasons and includes licensing requirements, season dates, shooting hours, bag limits, possession limits, tagging requirements, and methods of take.

This rule making aligns Chapter 106 with Iowa Code section 481A.48 as amended by 2020 Iowa Acts, House File 716 (signed by Governor Reynolds on June 18, 2020), which makes certain firearms legal for deer hunting. Specifically, the following amendments:

1. Adopt in full the statute’s technical parameters for the handguns and rifles that are now legal for deer hunting during the regular gun seasons and the youth/severely disabled season; and
2. Adopt the statute’s requirement that youth who are hunting deer with a handgun must do so under the direct supervision of a licensed responsible adult.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 10, 2021, as **ARC 5435C**. A virtual public hearing was held on March 2, 2021, at 12 noon. No one attended the public hearing.

Seven written comments were received during the public comment period. Five comments were in favor of the proposed changes to allow rifles (including .45-70 and .444 calibers) for deer hunting. The remaining two comments were against the use of large-caliber rifles and “necked-down” cartridges.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on April 8, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

NATURAL RESOURCE COMMISSION[571](cont'd)

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Rescind subrule 106.7(2) and adopt the following new subrule in lieu thereof:

106.7(2) Regular gun seasons. Only the following shall be used in the regular gun season: 10-, 12-, 16-, and 20-gauge shotguns shooting single slugs; any handgun or rifle as described in Iowa Code section 481A.48; and any muzzleloaders as described in subrule 106.7(3).

ITEM 2. Amend subrule 106.7(3) as follows:

106.7(3) Muzzleloader seasons. Only muzzleloading rifles ~~and, muzzleloading muskets, muzzleloading pistols, and muzzleloading revolvers~~ will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloading rifle, muzzleloading musket, muzzleloading pistol, centerfire muzzleloading revolver, any handgun as defined in 106.7(2), crossbow as described in 106.7(1) "b," or bow as described in 106.7(1). All muzzleloaders as described in this subrule shall only shoot a single projectile between .44 and .775 of an inch.

~~a.—Muzzleloading rifles are defined as flintlock or percussion cap lock muzzleloaded rifles and muskets of not less than .44 caliber and not larger than .775 caliber, shooting single projectiles only.~~

~~b.—Muzzleloading pistols must be .44 caliber or larger, shoot single projectiles only, and have a 4-inch minimum barrel length.~~

ITEM 3. Amend subrule 106.7(5) as follows:

106.7(5) January antlerless-deer-only season. Bows, crossbows, shotguns, muzzleloaders, rifles, and handguns as described in this rule, ~~and centerfire rifles .24 caliber or larger,~~ may be used during the January antlerless-deer-only season.

ITEM 4. Amend subrule 106.7(6) as follows:

106.7(6) Prohibited weapons and devices. The use of dogs, domestic animals, bait, ~~rifles other than muzzleloaded or straight wall cartridge as provided in 106.7(2), 106.7(3), 106.7(5), and 106.10(5), handguns except as provided in 106.7(2) and 106.7(5) firearms except as provided for in this chapter, crossbows except as provided in 106.7(1) and 106.7(3), automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle except as provided in 106.7(2), or 106.7(3), 106.7(5), and 106.10(5). A person in possession of a valid permit to carry weapons may carry a handgun while hunting. However, only handguns as described in 106.7(2) may be used to hunt deer and only when a handgun is a lawful method of take.~~

ITEM 5. Amend subrule 106.10(5) as follows:

106.10(5) Method of take and other regulations. Deer may be taken with ~~shotgun shotguns, bow bows, handguns, straight wall cartridge rifles, or muzzleloaded rifles~~ muzzleloaders as permitted in 571—106.7(481A). Youth hunters using a handgun must be accompanied and under direct supervision throughout the hunt by a responsible person with a valid hunting license who is at least 21 years of age, with the consent of a parent or guardian. The responsible person with a valid hunting license who is at least 21 years of age shall be responsible for the conveyance of the pistol or revolver while the pistol or

NATURAL RESOURCE COMMISSION[571](cont'd)

revolver is not actively being used for hunting. “Direct supervision” means the same as defined in Iowa Code section 483A.27A(4). All participants must meet the deer hunters’ orange apparel requirement in Iowa Code section 481A.122. All other regulations for obtaining licenses or hunting deer shall apply.

[Filed 4/8/21, effective 6/9/21]

[Published 5/5/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5603C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to fire service training bureau

The State Fire Marshal Division hereby amends Chapter 53, “Fire Service Training Bureau,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 80.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 80.5.

Purpose and Summary

These amendments correct an outdated Iowa Code reference and update the submission process for course and conference registration fees.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5501C**. A public hearing was held on April 9, 2021. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Division on April 14, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Review by Administrative Rules Review Committee

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

PUBLIC SAFETY DEPARTMENT[661](cont'd)

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 661—53.2(80) as follows:

661—53.2(80) Programs, services, and fees.

53.2(1) *Courses and ~~tuition~~ registration fees.* Current course offerings and associated registration and other related course fees of the fire service training bureau are available in ~~the document Catalog of Courses, Conferences and Services,~~ available from electronic format via the fire service training bureau web page, and hard copy upon request. Current course ~~tuition~~ registration fees and any other fees related to participation in courses shall be listed in ~~the document Catalog of Courses, Conferences and Services~~ electronic format via the fire service training bureau web page, and hard copy upon request, and shall be effective until superseded by publication of a later edition of the web page and document. Prospective students should inquire of the fire service training bureau as to the date of most recent publication of ~~the Catalog of Courses, Conferences and Services~~ any courses, services, and fees prior to submitting the ~~tuition fee registration and other fees~~ for a course.

53.2(2) *Conferences and fees.* Upcoming conferences offered by the fire service training bureau are listed in ~~the document Catalog of Courses, Conferences and Services,~~ available from electronic format via the fire service training bureau web page, and hard copy upon request. Conference registration fees and any other fees related to attendance at conferences shall be listed in ~~the document Catalog of Courses, Conferences and Services~~ electronic format via the fire service training bureau web page, and hard copy upon request, and shall be effective until superseded by publication of a later edition of the web page and document. Prospective students should inquire of the fire service training bureau as to the date of most recent publication of ~~the Catalog of Courses, Conferences and Services~~ any conferences and associated fees prior to submitting registration fees or any other fees related to attendance at a conference.

53.2(3) *Publications and materials; fees.* All publications and materials currently offered for sale by the fire service training bureau are listed in ~~the document Catalog of Publications and Materials,~~ available from electronic format via the fire service training bureau web page, and hard copy upon request. Current prices of publications shall be listed in ~~the document Catalog of Publications and Materials~~ electronic format via the fire service training bureau web page, and hard copy upon request, and shall be effective until superseded by publication of a later edition of the web page and document. Persons wishing to purchase publications or materials should inquire of the fire service training bureau as to the date of most recent publication of ~~the Catalog of Publications and Materials~~ and associated fees prior to submitting payment for publications or materials.

53.2(4) *Other services and tuition fees.* Services other than courses, conferences, and firefighter certification offered by the fire service training bureau are listed in ~~the document Catalog of Courses, Conferences and Services,~~ available from electronic format via the fire service training bureau web page, and hard copy upon request. Current fees for these services shall be listed in ~~the document Catalog of Courses, Conferences and Services~~ electronic format via the fire service training bureau web page, and hard copy upon request, and shall be effective until superseded by publication of a later edition of the web page and document. Prospective clients for these services should inquire of the fire service training bureau as to the date of most recent publication of ~~the Catalog of Courses, Conferences and Services~~ services and fees prior to submitting a request for or payment for any service.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 2. Amend **661—Chapter 53**, implementation sentence, as follows:
These rules are intended to implement Iowa Code section ~~80.9~~ 80.5.

[Filed 4/14/21, effective 6/9/21]

[Published 5/5/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5604C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to firefighter training and certification

The State Fire Marshal Division hereby amends Chapter 251, “Fire Fighter Training and Certification,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 100B.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 100B.

Purpose and Summary

The purpose of these amendments to Chapter 251 is to make changes to spelling and style issues and enumerate the conditions in which a firefighter's certification may be revoked in the event of a felony-level conviction.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5502C**. A public hearing was held on April 9, 2021. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Division on April 14, 2021.

Fiscal Impact

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

Jobs Impact

Firefighters whose employment requires active certification may have their jobs impacted if their certifications are revoked due to certain felony-level convictions.

Waivers

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

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **661—Chapter 251**, title, as follows:

FIRE FIGHTER FIREFIGHTER TRAINING AND CERTIFICATION

ITEM 2. Amend rule 661—251.1(100B) as follows:

661—251.1(100B) Definitions. The following definitions apply to rules 661—251.1(100B) to 661—251.204(100B):

“*Emergency incident*” means any incident involving a fire or other hazardous situation to which personnel of a fire department respond.

“*NFPA*” means the National Fire Protection Association.

“*Structural ~~fire fighting~~ firefighting*” means ~~fire fighting~~ firefighting in a hazardous environment which requires the use of self-contained breathing apparatus.

ITEM 3. Amend rule 661—251.101(100B) as follows:

661—251.101(100B) Minimum training standard. Any member of a fire department shall have completed the training requirements identified in the job performance requirements for the fire fighter I classification in NFPA 1001, Standard for Fire Fighter Professional Qualifications, based on the current edition adopted by the fire service training bureau, prior to the member's engaging in structural ~~fire fighting~~ firefighting. Each fire department shall identify its members who are or will be engaged in structural ~~fire fighting~~ firefighting and shall ensure that any member engaged in structural ~~fire fighting~~ firefighting has completed the training requirements specified in this rule prior to the member's engaging in structural ~~fire fighting~~ firefighting.

NOTE: A ~~fire fighter~~ firefighter is not required to be certified to meet this requirement. Training to meet this requirement may be provided by the fire service training bureau, a community college, a regional fire training facility, a local fire department, or any combination thereof.

EXCEPTION 1: A ~~fire fighter~~ firefighter who received training which complied with the job performance requirements for the fire fighter I classification contained in an earlier edition of NFPA 1001 shall be deemed to have met this requirement, provided that records documenting the training are maintained in accordance with rule 661—251.104(100B).

EXCEPTION 2: The chief or the training officer of any fire department may apply to the state fire marshal by June 1 of any year for an extension of the deadline to meet the training requirement for members of the department engaged in structural ~~fire fighting~~ firefighting. Any such extension shall be for one year and may be renewed annually upon application. An extension shall be granted only if the department has requested training required under this rule, with training costs to be offset through funding from the ~~fire fighting~~ firefighting training and equipment fund, pursuant to 661—Chapter 259, and funds to offset the cost of the training have not been available or have been inadequate to fully offset the cost of the training. The extension may be for all or some of the ~~fire fighters~~ firefighters in the department. The application shall be in a form specified by the state fire marshal and shall list by name each ~~fire fighter~~ firefighter for whom an extension is requested. The extension, if granted, shall list by name the ~~fire fighters~~ firefighters to whom the extension applies and shall apply only to those listed.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 4. Amend rule 661—251.102(100B) as follows:

661—251.102(100B) Other training. Any member of a fire department who serves in a capacity other than structural ~~fire fighting~~ firefighting at an emergency incident shall have received training based on the duties the member might perform at an emergency incident. Training to meet this requirement may be provided by the fire service training bureau, a community college, a regional fire training facility, or a local fire department, or any combination thereof.

ITEM 5. Amend rule 661—251.103(100B) as follows:

661—251.103(100B) Continuing training. Fire department members shall participate in at least 24 hours of continuing training annually, which ~~shall be selected from~~ may include, but is not limited to, the following subject matter areas:

1. No change.
2. Structural ~~fire fighting~~ firefighting techniques, including standard operating policies and procedures or standard operating guidelines.
3. to 7. No change.
8. ~~Fire fighter~~ Firefighter safety.
9. National Incident ~~management system~~ Management System or ~~incident command system~~ Incident Command System.
10. to 12. No change.
13. Additional training based on standard operating policies and procedures or standard operating guidelines.
14. ~~Other~~ Occupational Safety and Health Administration (OSHA)-related training, such as blood-borne pathogen protection.
15. Specialty training such as confined space entry, vehicle extrication, rescue techniques, wildland or agricultural ~~fire fighting~~ firefighting techniques.
16. and 17. No change.

NOTE: Training to meet this requirement may be provided by the fire service training bureau, a community college, a regional fire training facility, or a local fire department, or any combination thereof.

ITEM 6. Amend rule 661—251.104(100B) as follows:

661—251.104(100B) Record keeping. Each fire department shall maintain training records for each individual member of the department who participates in emergency incidents. These training records shall identify, for all training completed by the individual ~~fire fighter~~ firefighter, the person or persons who provided the training, the dates during which the training was completed, the location or locations where the training was delivered, and a description of the content of the training.

ITEM 7. Amend **661—Chapter 251**, division heading, as follows:

~~FIRE-FIGHTER~~ FIREFIGHTER CERTIFICATION

ITEM 8. Amend rule 661—251.201(100B) as follows:

661—251.201(100B) ~~Fire fighter~~ Firefighter certification and accreditation program. There is established within the fire service training bureau of the state fire marshal division a ~~fire fighter~~ firefighter certification program for the state of Iowa, which shall be known as the certification and accreditation program. The certification and accreditation program is accredited by the National Board on Fire Service Professional Qualifications (PROBOARD) and the International Fire Service Accreditation Congress (IFSAC) to certify fire service personnel to accepted national standards. All certifications issued by the certification and accreditation program shall be based upon nationally accepted standards.

NOTE 1: Participation in the certification and accreditation program is voluntary, and state law does not require certification to work or volunteer as a ~~fire fighter~~ firefighter in Iowa. However, some fire

PUBLIC SAFETY DEPARTMENT[661](cont'd)

departments within the state require certification for continued employment or promotion. Inquiries regarding such requirements should be directed to the hiring or employing department.

NOTE 2: Inquiries and requests regarding the certification and accreditation program should be directed to the fire service training bureau.

251.201(1) No change.

251.201(2) Application. Application forms for each level of ~~fire fighter~~ firefighter certification may be obtained from the fire service training bureau. In order to enter the certification and accreditation program, an applicant shall submit a completed application, accompanied by the required fee, to the fire service training bureau. The fee must accompany the application form, although a purchase order from a public agency or private organization may be accepted in lieu of prior payment. The application and fee shall be submitted no less than two weeks prior to the date of any examination in which the applicant wishes to participate.

ITEM 9. Amend subrule 251.202(1) as follows:

251.202(1) ~~Fire fighter~~ Firefighter.

a. and b. No change.

ITEM 10. Amend rule 661—251.203(100B) as follows:

661—251.203(100B) Fees. Current certification application fees and any other fees related to participation in the certification process shall be listed ~~in~~ on the fire service training bureau's web page and also within the publication Certification Procedures Guide for each level of certification, published by the fire service training bureau ~~and available on request from the fire service training bureau~~. The information in each guide shall be effective upon publication until superseded by publication of a later edition. Prospective candidates who are considering application for a particular level of certification should contact the fire service training bureau for the latest date of publication of the Certification Procedures Guide.

Fees may be paid by personal check made payable to Iowa Department of Public Safety—Fire Service Training Bureau, credit card, purchase order from a public agency or private organization, check or draft from a public agency or private organization, or money order. The check, credit card information, purchase order, money order or draft shall be submitted with the application.

ITEM 11. Amend subrule 251.204(3) as follows:

251.204(3) Revocation. The fire service training bureau may revoke the certification of any individual who is found to have knowingly provided false information to the fire service training bureau during the certification process or to have engaged in fraudulent activity during the certification process. In addition, certification may be revoked by the fire service training bureau if an individual was found to have engaged in and been convicted of a felony-level crime, including but not limited to murder, arson, sexual assault, physical assault, embezzlement, and crimes committed against a fire department or its respective association.

[Filed 4/14/21, effective 6/9/21]

[Published 5/5/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5606C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rule making related to broadband infrastructure grant exemption**

The Revenue Department hereby amends Chapter 40, "Determination of Net Income," Chapter 53, "Determination of Net Income," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 422.7, 422.35 and 422.61.

Purpose and Summary

This rule making implements new income tax exemptions created by 2020 Iowa Acts, House File 2641, for certain broadband grants provided to qualified service providers by providing definitions necessary to implement those exemptions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 27, 2021, as **ARC 5399C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5503C**.

A public hearing was held virtually via videoconference call on March 30, 2021, at 10 a.m.

One commenter spoke at the hearing. The commenter primarily objected to state incentives being provided to wireless companies. The commenter's objections were based mainly on possible health effects of radiation from wireless infrastructure. The commenter provided several online sources to support the commenter's position that installing 5G wireless infrastructure poses a public health risk, and the commenter ultimately requested that the Department consider whether it has the authority to exclude wireless infrastructure from the exemption through a definition that could be included in these rules.

The Department received several requests for a public hearing on the original Notice for these rules (**ARC 5399C**). Several of those requests appeared to object to the rules, but did not specify the commenters' objections.

No substantive changes from the Notice have been made. Upon review of the Iowa Code, the Department determined that wireless infrastructure is included in the statutory definition of "broadband infrastructure" for purposes of this exemption. Therefore, the Department has no authority to exclude wireless infrastructure from the exemption by rule as requested by the commenter at the hearing. The implementation sentences at the end of each rule were amended slightly to remove unnecessary information.

Adoption of Rule Making

This rule making was adopted by the Department on April 14, 2021.

Fiscal Impact

These rules have no fiscal impact beyond that of the legislation they are intended to implement.

REVENUE DEPARTMENT[701](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 701—7.28(17A).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** rule 701—40.84(422):

701—40.84(422) Broadband infrastructure grant exemption.

40.84(1) *Broadband infrastructure grant exemption, generally.* For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.7.

40.84(2) *Definitions.*

“Facilitate” shall have the same meaning as defined in Iowa Code section 8B.1.

“Grant” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

40.84(3) *Limitation on certain refund claims.* For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.7.

ITEM 2. Adopt the following **new** rule 701—53.28(422):

701—53.28(422) Broadband infrastructure grant exemption.

REVENUE DEPARTMENT[701](cont'd)

53.28(1) *Broadband infrastructure grant exemption, generally.* For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.35.

53.28(2) *Definitions.*

“*Facilitate*” shall have the same meaning as defined in Iowa Code section 8B.1.

“*Grant*” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

53.28(3) *Limitation on certain refund claims.* For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.35.

ITEM 3. Adopt the following **new** rule 701—59.30(422):

701—59.30(422) *Broadband infrastructure grant exemption.*

59.30(1) *Broadband infrastructure grant exemption, generally.* For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.35.

59.30(2) *Definitions.*

“*Facilitate*” shall have the same meaning as defined in Iowa Code section 8B.1.

“*Grant*” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

REVENUE DEPARTMENT[701](cont'd)

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

59.30(3) Limitation on certain refund claims. For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.35.

[Filed 4/14/21, effective 6/9/21]

[Published 5/5/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5605C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to bundled transactions

The Revenue Department hereby adopts a new Chapter 216, “Bundled Transactions,” and amends Chapter 231, “Exemptions Primarily of Benefit to Consumers,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 423.2 and 423.3; 2018 Iowa Acts, Senate File 2417; and 2020 Iowa Acts, House File 2641.

Purpose and Summary

This rule making adopts new Chapter 216 on bundled transactions to implement the adoption of language by the General Assembly in 2018 Iowa Acts, Senate File 2417, to fully incorporate the definition of “bundled transaction” to be used by members of the Streamlined Sales and Use Tax Agreement, including Iowa. This rule making also incorporates the addition of “specified digital products” into the bundled transaction provision in the Iowa Code, pursuant to changes to the Iowa Code made by 2020 Iowa Acts, House File 2641. Additionally, this rule making amends the Department’s existing rule on sales of candy to remove outdated language pertaining to bundled transactions.

Currently, outdated bundled transaction language is incorporated throughout the Department’s sales and use tax rules. This rule making creates a single, centralized chapter for rules that implement the current law pertaining to bundled transactions. While the Department removes some of this language from Chapter 231 in this rule making, the Department will pursue additional rule making in the near future to clean up the outdated bundled transaction language throughout its administrative rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5504C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on April 14, 2021.

REVENUE DEPARTMENT[701](cont'd)

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The Legislative Services Agency estimates for 2018 Iowa Acts, Senate File 2417, and 2020 Iowa Acts, House File 2641, did not address the impact to the General Fund from sales tax collections due to these bundled transaction changes.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 701—7.28(17A).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** 701—Chapter 216:

CHAPTER 216
BUNDLED TRANSACTIONS

701—216.1(423) Taxability of bundled transactions. The sales price of a bundled transaction is subject to tax if any product included in the bundled transaction would be taxable if sold separately. For purposes of this rule, products include tangible personal property, services, and specified digital products and exclude real property and services to real property.

701—216.2(423) Bundled transaction. A “bundled transaction” is the retail sale of two or more products where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price.

216.2(1) Distinct and identifiable product. “Distinct and identifiable product” does not include any of the following:

a. Packaging or other materials that accompany the retail sale of the products and are incidental or immaterial to the retail sales of the products. Packaging or other materials include, but are not limited to, containers, boxes, sacks, bags, bottles, envelopes, wrapping, labels, tags, twine, garment hangers, and instruction guides.

EXAMPLE 1: Seller Z provides paper and plastic bags for purchasers to use to carry away their purchased items. The bags are incidental or immaterial to the retail sales of the products and are not distinct and identifiable products. Seller Z's retail sale of purchased items in the provided bags does not constitute a bundled transaction.

EXAMPLE 2: Seller X sells brownies and offers purchasers the option of adding a premium box for an increased price. The sales price of the brownies is the same whether they are sold on their own or with a standard box, but the total sales price increases if the purchasers select a premium box. The premium

REVENUE DEPARTMENT[701](cont'd)

box is distinct and identifiable from the food product because it requires separate shopping preferences and product selection by the purchaser and is not standard with every order of food product. The retail sale of the brownies and the premium box may constitute a bundled transaction if the other requirements pursuant to Iowa Code section 423.2(8) are satisfied.

EXAMPLE 3: Seller A offers purchasers the option to buy reusable, long-lasting grocery bags to use to carry away purchased grocery items. If the reusable grocery bags are purchased with other items and separately itemized, they are taxable and the sale does not constitute a bundled transaction.

b. A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction. Examples include a free car wash with the purchase of gasoline or free dinnerware with the purchase of groceries.

c. Items specified in the definition of “sales price” in Iowa Code section 423.1.

216.2(2) One nonitemized price. “One nonitemized price” does not include the following:

a. A price that is separately identified by product on a binding sales document, or other sales-related documentation, that is made available to the customer in paper or electronic form, including but not limited to an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card or a price list.

b. A price for which the sales price varies or is negotiable based on the purchaser’s selection of the products included in the transaction even if the seller only provides one price on its invoice to the purchaser.

EXAMPLE 1: Seller A sells a bakery item as part of a meal which consists of taxable prepared food. The purchaser selects items from a list of options of prepared food to be included in the meal. The individual items of the meal are not itemized on the receipt and the meal is always the same price, notwithstanding the items selected by the purchaser. The meal is sold for one nonitemized price, and the sales price of the meal is subject to tax as a bundled transaction.

EXAMPLE 2: Seller B enters into a contract with buyer D to provide various information technology services. Buyer D selects the information technology services it wants from seller B. Through negotiation, buyer D and seller B agree on a price based on the services selected and seller B bills buyer D one price for all of the services, some of which are taxable and some of which are not taxable. Although the invoice from seller B to buyer D only contains one price for all of the services, since the price was based on the products selected by buyer D, the price is not one nonitemized price and the sale does not constitute a bundled transaction.

701—216.3(423) Transactions not taxable as bundled transactions. Generally, the entire sales price from a bundled transaction is subject to sales tax. However, the transactions described in this rule are not taxable as bundled transactions:

216.3(1) Sales involving mixed tangible personal property and services. The retail sale of tangible personal property or specified digital product and a service, if the tangible personal property or specified digital product is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service.

EXAMPLE: Seller A charges customer B for computer programming services where customer B is also given a backup disk and instruction manual. The true object of the transaction is the provision of the programming services. Seller A is selling nontaxable services and is not making a sale of a bundled transaction. Iowa sales tax is not due on the programmer’s charge for services; sales tax is due on seller A’s purchases of tangible personal property used to fulfill the service.

216.3(2) Sales involving services. The retail sale of services, if one of the services is essential to the use or receipt of a second service, and provided exclusively in connection with the second service, and if the true object of the transaction is the second service. If the transaction is not a bundled transaction as a result of this exclusion, then the true object of the transaction will be the retail sale of the second service and should be taxed accordingly.

216.3(3) True object test. The true object of a transaction is the main product that is the subject of the transaction. Determining the true object of a transaction is a fact-based inquiry and shall be made

REVENUE DEPARTMENT[701](cont'd)

on a case-by-case basis. Factors that may be considered in determining the true object of a transaction include, but are not limited to, the nature of the seller's business and purchaser's reason for making the purchase.

216.3(4) Sales involving “de minimis” taxable products. A transaction that includes taxable and nontaxable products and the seller's purchase price or sales price of the taxable products is de minimis. “De minimis” means the seller's purchase price or sales price of the taxable products is 10 percent or less of the total purchase price or sales price of the bundled products. A seller shall use either the seller's purchase price or seller's sales price of the products to determine if the taxable products are de minimis. A seller may not use a combination of the seller's purchase price and seller's sales price of the products to determine if the taxable products are de minimis.

EXAMPLE 1: Seller H sells a coupon book that includes a packet of stickers for one nonitemized price of \$75. The packet of stickers is not provided free of charge. Seller H purchased the stickers, a taxable product, for \$2 per packet, which does not exceed 10 percent of the total purchase price of the coupon book and stickers. Seller H's sale of the coupon book and stickers is not a bundled transaction, and the sales price of \$75 is not subject to tax.

EXAMPLE 2: Technology Company F (company F) sells access to a day-long live webinar about the latest trends occurring in the technology industry for one nonitemized price of \$200. The webinar, which does not allow people viewing the presentation to submit questions, is not subject to Iowa sales tax. The customer also receives a smartwatch that is included in the payment of the webinar but is not provided free of charge. Company F's sales price of the smartwatch is \$50, which exceeds 10 percent of the total sales price of the fee. The watch is subject to sales tax by the customer. Because company F's purchase price of the watch is not de minimis, the \$200 transaction is a bundled transaction and is subject to tax.

216.3(5) Sales involving taxable and exempt food or medical products. The retail sale of exempt tangible personal property and taxable tangible personal property where all of the following apply:

- a. The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or medical supplies; and
- b. The seller's purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

EXAMPLE: Seller F offers its customers a package containing two prepared hot dogs and five frozen hot dogs. The sales price for the two prepared hot dogs is \$5, and the sales price of the five frozen hot dogs is \$10. The package is sold for one nonitemized price of \$15. The sales price of the package is not taxable because the sales price of the taxable items (the two prepared hot dogs) is 50 percent or less of the total sales price of the package.

These rules are intended to implement Iowa Code section 423.2(8).

ITEM 2. Amend rule 701—231.4(423) as follows:

701—231.4(423) Sales of candy.

231.4(1) Definitions. ~~Sales of candy were excluded from exemption prior to July 1, 2004; however, the definition of “candy” applicable to the exclusion was slightly different from the definition set out in this rule. Reference rule 701—20.1(422,423). This rule and the following definitions apply to sales of candy on or after July 1, 2004.~~

a. to g. No change.

231.4(2) No change.

231.4(3) Bundled transaction including candy. ~~“Bundled transaction” is defined as the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable and (2) the products are sold for one non-itemized price.~~

a. *Candy and food.* Products that are a combination of items that are defined as “candy” under this rule and items that are defined as “food and food ingredients” under rule 701—231.3(423) are “bundled transactions” when the items are distinct and identifiable and are sold for one ~~non-itemized~~ nonitemized

REVENUE DEPARTMENT[701](cont'd)

price, unless the seller's sales price or purchase price of the candy accounts for 50 percent or less of the seller's sales price or purchase price of the bundled transaction as provided under Iowa Code section 423.2(8) "d"(4). For example, a bag of multiple types of individually wrapped bars that is sold for one price is two or more distinct and identifiable products sold for one ~~non-itemized~~ nonitemized price. For purposes of determining whether such a bag of individually wrapped bars is a "bundled transaction," the following criteria apply:

(1) Ingredients listed separately.

1. If a package contains individually wrapped bars, drops, or pieces and the product label on the package separately lists the ingredients for each type of bar, drop, or piece included in the package, those bars, drops, or pieces that have "flour" listed as an ingredient are "food and food ingredients" and those bars, drops, or pieces which do not have "flour" listed as an ingredient are "candy." The determination of whether the package as a whole meets the definition of "bundled transaction" is based on the percentage of bars, drops, or pieces that meet the definition of "food and food ingredient" as compared to the percentage of bars, drops, or pieces that meet the definition of "candy."

2. Determining the percentage. For purposes of determining the percentage of the sales price or purchase price of the bars, drops, or pieces that meet the definition of "candy" as compared to all of the bars, drops, or pieces contained in the package, the retailer may presume that each bar, drop, or piece contained in the package has the same value.

3. Presumption of product amount. A retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

~~EXAMPLE 1: Retailer A sells a package that contains 100 total pieces of food and food ingredients. There are ten different types of foods and food ingredients in the package. Eight of the types of food and food ingredients included in the package meet the definition of "candy," while two of the types included do not meet the definition of "candy." It is a reasonable presumption that 20 (2/10 times 100) of the pieces are not "candy" and 80 (8/10 times 100) of the pieces are "candy." Therefore, since 80 percent of the product is "candy," the retailer shall treat the entire package as a bundled transaction containing primarily "candy." Sales tax is due on the sales price of the entire package. See Iowa Code section 423.2(8).~~

EXAMPLE 2: Retailer B sells bulk food and food ingredients by the pound. Each food and food ingredient is in a separate bin or container. Some of the food and food ingredients are "candy" and some of them are not because they contain flour. However, regardless of the items chosen, the retailer charges the customer \$3.49/lb. Customer C selects some items that are "candy" and some that are not and puts them in a bag. Since some of the items in the bag are "candy," the retailer shall treat the entire package as a bundled transaction containing primarily "candy," unless the retailer ascertains that 50 percent or less of the items in the bag are "candy." Even if the retailer ascertains that 50 percent or less of the items in the bag are "candy," sales tax is due on the sales price of the entire package the sales price or purchase price of the candy in the bag is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

(2) Ingredients listed together. If a package contains individually wrapped bars, drops, or pieces and all of the ingredients for each of the products included in the package are listed together, as opposed to being listed separately by each product included as explained in subparagraph (1) above, and even if the ingredient lists "flour" as an ingredient, the product will be treated as "candy," unless the retailer is able to ascertain that 50 percent or less of the products are "candy." Even if the retailer ascertains that 50 percent or less of the items in the bag are "candy," sales tax is due on the sales price of the entire package the sales price or purchase price of the candy in the package is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

The retailer may presume that each bar, drop, or piece contained in the package has the same value. The retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

b. Combination of ingredients. Products whose ingredients are a combination of various unwrapped food ingredients that alone are not "candy," along with unwrapped food ingredients that alone are "candy," such as breakfast cereal and trail mix with candy pieces, are considered "food and food ingredients," ~~but~~ and are not "candy." Sales of these products are not "bundled transactions"

REVENUE DEPARTMENT[701](cont'd)

because there are not two or more distinct and identifiable products being sold. The combination of the ingredients results in a single product.

This rule is intended to implement ~~2011~~ Iowa Code ~~subsection~~ sections 423.2(8) and 423.3(57).

[Filed 4/14/21, effective 6/9/21]

[Published 5/5/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5607C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to holiday rest stops and promoting Iowa agricultural products at interstate rest areas

The Department of Transportation hereby amends Chapter 105, "Holiday Rest Stops," and Chapter 106, "Promotion of Iowa Agricultural Products at Rest Areas," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 314.27 and 1995 Iowa Acts, Chapter 18, section 2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 314.27 and 1995 Iowa Acts, Chapter 18, section 2.

Purpose and Summary

These amendments to Chapters 105 and 106 correct the name of the Maintenance Bureau and remove district offices from the list of locations from which a form may be requested to sponsor a holiday rest stop or promote an Iowa agricultural product at an interstate rest area. These forms are still available on the Department's website and from the Maintenance Bureau.

This rule making also requires that any requests be submitted to the Maintenance Bureau. The Maintenance Bureau will approve or deny the requests. The district offices are no longer involved in the administration of these programs.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 10, 2021, as **ARC 5410C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on April 13, 2021.

Fiscal Impact

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

Jobs Impact

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

TRANSPORTATION DEPARTMENT[761](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 105.2(4) as follows:

105.2(4) Information. General information regarding holiday rest stops is available from the ~~Office of Maintenance Bureau~~, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or the department's website at www.iowadot.gov.

ITEM 2. Amend subrule 105.4(3) as follows:

105.4(3) Request. A request to sponsor a holiday rest stop in an interstate rest area shall be made on Form 810023. This form is available from the ~~department's district offices, the office of maintenance bureau~~ or the department's website.

a. No change.

b. The request shall be submitted to the ~~office of maintenance bureau~~.

c. No change.

ITEM 3. Amend subrule 105.4(4), introductory paragraph, as follows:

105.4(4) Approval of request. The request is subject to the approval of the ~~office of maintenance bureau~~.

ITEM 4. Amend subrule 105.5(3) as follows:

105.5(3) Request. A request to sponsor a holiday rest stop along a noninterstate primary highway shall be made on Form 810023. This form is available from the ~~department's district offices, the office of maintenance bureau~~ or the department's website.

a. No change.

b. The request shall be submitted to the ~~district office or the office of maintenance bureau~~.

c. No change.

ITEM 5. Amend subrule 105.5(4), introductory paragraph, as follows:

105.5(4) Approval of request. The request is subject to the approval of the ~~district engineer maintenance bureau~~.

ITEM 6. Amend rule 761—106.3(307) as follows:

761—106.3(307) Information. General information regarding agricultural promotions at interstate rest areas is available from the ~~Office of Maintenance Bureau~~, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or the department's website at www.iowadot.gov.

ITEM 7. Amend subrule 106.4(1) as follows:

106.4(1) A request to promote an Iowa agricultural product at an interstate rest area shall be made on Form 810059. This form is available from the ~~department's district offices, the office of maintenance bureau~~ or the department's website.

TRANSPORTATION DEPARTMENT[761](cont'd)

- a. and b. No change.
- c. The request shall be submitted to the ~~office of maintenance~~ bureau.
- d. No change.

ITEM 8. Amend subrule 106.4(2), introductory paragraph, as follows:

106.4(2) Approval of request. The request is subject to the approval of the ~~office of maintenance~~ bureau.

[Filed 4/13/21, effective 6/9/21]

[Published 5/5/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

ARC 5608C

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to electric vehicle charging service

The Utilities Board hereby amends Chapter 20, "Service Supplied by Electric Utilities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 476.1 and 476.26.

Purpose and Summary

On November 12, 2019, the Iowa Administrative Rules Review Committee (ARRC) considered the Board's adoption of rule 199—20.20(476) as published in **ARC 4720C** (IAB 10/23/19). By a vote of six to three, the ARRC voted to object to rule 199—20.20(476).

The Board initiated this rule making with the intent of adopting an electric vehicle charging services rule that does not contain the defects identified by the ARRC. On April 7, 2021, the Board issued an order adopting amendments. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2020-2020.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 4, 2020, as **ARC 5267C**. The Board conducted an oral presentation on December 21, 2020, at 1 p.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa. MidAmerican Energy Company, Interstate Power and Light Company, the Iowa Association of Municipal Utilities, and the Iowa Association of Electric Cooperatives spoke in favor of the rule as published in the Notice. Iowa 80 Truckstop, Inc., stood by its written comments, in which it stated it does not object to the adoption of the rule as published in the Notice. The Sierra Club, Iowa Chapter, expressed support for current rule 199—20.20(476) and requested the Board terminate this rule making. The Office of the Consumer Advocate, a division of the Iowa Department of Justice; ChargePoint, Inc.; the Iowa Business for Clean Energy; the Environmental Law & Policy Center; and the Iowa Environmental Council each spoke in favor of changes to the version of rule 199—20.20(476) as published in the Notice.

In addition to the written comment deadline contained in the Notice, the Board allowed the public to file additional written comments following the oral presentation. MidAmerican Energy Company, Interstate Power and Light Company, the Iowa Association of Municipal Utilities, and the Iowa

UTILITIES DIVISION[199](cont'd)

Association of Electric Cooperatives submitted comments in favor of the rule as published in the Notice. Iowa 80 Truckstop, Inc., submitted a written comment stating it does not object to the adoption of the rule as published in the Notice. The Sierra Club, Iowa Chapter, and the Winneshiek Energy District submitted comments in support of the current rule 199—20.20(476). The Office of the Consumer Advocate, a division of the Iowa Department of Justice; ChargePoint, Inc.; the Iowa Business for Clean Energy; the Environmental Law & Policy Center; the Iowa Environmental Council; and the Linn Clean Energy District each filed comments in which they requested changes to the version of rule 199—20.20(476) as published in the Notice.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on April 7, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

No waiver provision is included in these amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 9, 2021.

The following rule-making action is adopted:

Rescind rule 199—20.20(476) and adopt the following **new** rule in lieu thereof:

199—20.20(476) Electric vehicle charging service.

20.20(1) A commercial or public electric vehicle charging station is not a public utility under Iowa Code section 476.1 if the charging station receives all electric power from the electric utility in whose service area the charging station is located. If an electric vehicle charging station obtains electric power from a source other than the electric utility, the determination of whether the commercial or public electric vehicle charging station is a public utility shall be resolved by the board.

20.20(2) A person, partnership, business association, or corporation, foreign or domestic, furnishing electricity to a commercial or public electric vehicle charging station shall comply with Iowa Code section 476.25 and, if applicable, with the terms and conditions of the public utility's tariffs or service rules.

20.20(3) A rate-regulated public utility shall not, through its filed tariff, prohibit electric vehicle charging or restrict the method of sale of electric vehicle charging at a commercial or public electric vehicle charging station.

UTILITIES DIVISION[199](cont'd)

20.20(4) Electric utilities and entities providing commercial or public electric vehicle charging service shall comply with all applicable statutes and regulations governing the provision of electric vehicle charging service, including but not limited to all taxing requirements, and shall, if necessary, file all appropriate tariffs.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/5/21.

PUBLIC HEARINGS: POSSIBLE USE OF TELEPHONIC OR ELECTRONIC FORMAT DUE TO COVID-19

To protect public health and promote efficient government operations during the COVID-19 outbreak, the format of a public hearing on a Notice of Intended Action (NOIA) scheduled and published in the Iowa Administrative Bulletin (IAB) may be changed, without further publication in the IAB, from an in-person hearing at a physical location to a hearing conducted solely via telephonic or electronic means. For information on whether the format of a public hearing as published in the IAB has changed and how to participate telephonically or electronically in such a hearing, see the Internet site of the relevant agency or contact the agency directly using the contact information published in the NOIA. See also section 108 of the Governor's proclamation of disaster emergency issued April 2, 2021: governor.iowa.gov/sites/default/files/documents/PH%20Proclamation%20-%202021.04.02.pdf.