



IOWA ADMINISTRATIVE BULLETIN

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NUMBER 24
Pages 2841 to 2982

CONTENTS IN THIS ISSUE

Pages 2852 to 2982 include **ARC 4438C** to **ARC 4466C**

AGENDA

Administrative rules review committee 2845

ALL AGENCIES

Agency identification numbers 2850
Citation of administrative rules 2843
Schedule for rule making 2844

HUMAN SERVICES DEPARTMENT[441]

Notice, Resolution of legal settlement disputes; mental health and disability services redesign transition fund; community mental health center waiver request, rescind chs 15, 23; ch 25, div IV **ARC 4440C** 2852
Notice, Family investment program (FIP); electronic benefits transfer cards, 40.28, 65.4 **ARC 4439C** 2853
Notice, Medicaid for employed people with disabilities program—premium amounts, 75.1(39)“b” **ARC 4442C** 2856
Notice Terminated, Health insurance premium payment (HIPP) program, 75.21 **ARC 4438C** 2858
Notice, Medicaid eligibility—removal of statewide average costs and charges and maximum Medicaid rates from rule, 75.23(3), 75.24(3)“b” **ARC 4443C** 2858
Notice, Customized wheelchairs—definition for Medicaid members and providers, amendments to ch 78 **ARC 4444C** 2860
Notice, Child support recovery forms, 97.6(5), 98.121, 99.63(1) **ARC 4441C** 2863

IOWA FINANCE AUTHORITY[265]

Filed, Local housing trust fund program allocation plan—adoption by reference, 19.1 **ARC 4452C** 2902
Filed, Water quality financing program, ch 46 **ARC 4453C** 2903

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Notice, Standards of practice—medical cannabidiol, 13.15(1) **ARC 4445C** 2864

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Notice, Vaccine administration by pharmacists, 39.10 **ARC 4450C** 2866
Filed, Universal practice standards—protection from exposure to hazardous drugs, delayed compliance, 8.5, 20.5 **ARC 4454C** 2908
Filed, Controlled substances—registration, prescription monitoring program, fees, temporary designation, exempted prescription products, disposal, amendments to ch 10 **ARC 4455C** 2910
Filed, Technician product verification programs, ch 40 **ARC 4456C** 2916

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Filed, Electronic filing; confidential information; public records, amend chs 1, 2, 6, 7, 10, 14, 16; adopt ch 12 **ARC 4457C** 2921

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

(Cont'd)

Filed, Bargaining unit determinations;
 representative certifications, amend chs
 4, 5; adopt ch 15 **ARC 4458C** 2940

Filed, State employee whistleblower
 actions, ch 17 **ARC 4459C** 2954

PUBLIC HEALTH DEPARTMENT[641]

Notice, State plumbing code—update of
 references to 2018 edition of Uniform
 Plumbing Code, 25.1, 25.3 to 25.5
ARC 4447C 2868

Notice, Radiological health
 programs—fees, 38.8, 42.5 to
 42.10, 42.12, 42.13 **ARC 4446C** 2879

Notice, State mechanical code—adoption
 of 2018 International Mechanical Code
 by reference, 61.2 **ARC 4448C** 2891

PUBLIC HEARINGS

Summarized list 2848

REVENUE DEPARTMENT[701]

Notice of Electric and Natural Gas
 Delivery Tax Rate Changes 2894

Filed, Taxable sales—services treated
 as sales of tangible personal property,
 prepaid merchandise cards, photograph
 and retouching services, 16.51, 16.52,
 26.17 **ARC 4460C** 2957

Filed, Assessor or deputy assessor
 continuing education, 124.3 **ARC 4466C** 2960

SECRETARY OF STATE[721]

Filed, Safe at home program, 6.1 **ARC 4461C** . . . 2961

Filed, Local option sales and services tax
 elections in qualified counties, 21.804
ARC 4462C 2963

TREASURER OF STATE[781]

Notice—Public funds interest rates 2896

Filed, Iowa educational savings plan
 trust, ch 16 **ARC 4463C** 2966

Filed, Iowa ABLE savings plan trust, ch
 20 **ARC 4464C** 2972

USURY

Notice 2896

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Filed, Approval of appraiser for municipal
 utilities, 32.10 **ARC 4465C** 2980

**WORKFORCE DEVELOPMENT
DEPARTMENT[871]**

Notice, Employer innovation fund, ch 16
ARC 4449C 2897

Notice, Unemployment benefits
 wage-earning limitation, 24.18 **ARC 4451C** . . . 2900

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, lettered paragraph, or numbered subparagraph).

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

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

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

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

Schedule for Rule Making 2019

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
26	Friday, May 31, 2019	June 19, 2019
1	Friday, June 14, 2019	July 3, 2019
2	Wednesday, June 26, 2019	July 17, 2019

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, June 11, 2019, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Expanded functions; fees, 10.3, 15.4, 15.8(1), 20.4 to 20.7, ch 23, 25.10(2)“f” Notice **ARC 4424C**..... 5/8/19

ENERGY AND GEOLOGICAL RESOURCES DIVISION[565]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

General; oil, gas, and metallic minerals, rescind chs 50, 51 Filed **ARC 4425C**..... 5/8/19

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

References to state geologist and geological survey; animal unit for small fish; reimbursement cap increase for land recycling program, amendments to chs 50 to 53, 65, 72, 82, 137
Filed **ARC 4426C**..... 5/8/19
NPDES General Permit No. 6 for discharge of wastewater associated with well construction activities, 64.15(6) Notice **ARC 4421C** 5/8/19

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

State historical society award programs, 21.2, 21.3 Filed **ARC 4427C**..... 5/8/19

HUMAN SERVICES DEPARTMENT[441]

Resolution of legal settlement disputes; mental health and disability services redesign transition fund; community mental health center waiver request, rescind chs 15, 23; ch 25, div IV Notice **ARC 4440C** 5/22/19
Assessment levels for nursing facilities, 36.6(2), 81.6(21)“b” Filed **ARC 4428C** 5/8/19
Family investment program (FIP); electronic benefits transfer cards, 40.28, 65.4 Notice **ARC 4439C**..... 5/22/19
Passive managed care enrollment process, 73.1, 73.3 Filed **ARC 4429C**..... 5/8/19
Medicaid for employed people with disabilities program—premium amounts, 75.1(39)“b”
Notice **ARC 4442C** 5/22/19
Health insurance premium payment (HIPP) program, 75.21 Notice of Termination **ARC 4438C** 5/22/19
Medicaid eligibility—removal of statewide average costs and charges and maximum Medicaid rates from rule, 75.23(3), 75.24(3)“b” Notice **ARC 4443C** 5/22/19
Customized wheelchairs—definition for Medicaid members and providers, amendments to ch 78 Notice **ARC 4444C** 5/22/19
HCBS waiver services—consumer choices option, amendments to chs 78, 79 Filed **ARC 4430C**..... 5/8/19
Child support recovery forms, 97.6(5), 98.121, 99.63(1) Notice **ARC 4441C**..... 5/22/19

INSPECTIONS AND APPEALS DEPARTMENT[481]

Subacute mental health care facilities, amendments to ch 71 Filed **ARC 4431C** 5/8/19

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Unfair trade practices—standards for annuity illustrations, 15.66(6) Filed **ARC 4432C**..... 5/8/19

IOWA FINANCE AUTHORITY[265]

Local housing trust fund program allocation plan—adoption by reference, 19.1 Filed **ARC 4452C** 5/22/19
Water quality financing program, ch 46 Filed **ARC 4453C** 5/22/19

MANAGEMENT DEPARTMENT[541]

Calculating net general fund revenues, ch 15 Filed **ARC 4433C** 5/8/19

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Standards of practice—medical cannabidiol, 13.15(1) Notice **ARC 4445C**..... 5/22/19

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Antlerless deer hunting—January licenses, county license quotas, 106.6 Notice **ARC 4422C** 5/8/19
Increased bag limits for bobcats, 108.7(3) Notice **ARC 4423C** 5/8/19

NATURAL RESOURCES DEPARTMENT[561]

Oil, gas, and metallic minerals, ch 17 Filed **ARC 4434C**..... 5/8/19

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Universal practice standards—protection from exposure to hazardous drugs, delayed compliance, 8.5, 20.5 Filed **ARC 4454C** 5/22/19
- Controlled substances—registration, prescription monitoring program, fees, temporary designation, exempted prescription products, disposal, amendments to ch 10 Filed **ARC 4455C** 5/22/19
- Vaccine administration by pharmacists, 39.10 Notice **ARC 4450C** 5/22/19
- Technician product verification programs, ch 40 Filed **ARC 4456C** 5/22/19

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Chiropractic physicians—continuing education hours, 41.6(2), 41.14(3) Filed **ARC 4435C** 5/8/19

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

- Electronic filing; confidential information; public records, amend chs 1, 2, 6, 7, 10, 14, 16; adopt ch 12 Filed **ARC 4457C** 5/22/19
- Bargaining unit determinations; representative certifications, amend chs 4, 5; adopt ch 15 Filed **ARC 4458C** 5/22/19
- State employee whistleblower actions, ch 17 Filed **ARC 4459C** 5/22/19

PUBLIC HEALTH DEPARTMENT[641]

- State plumbing code—update of references to 2018 edition of Uniform Plumbing Code, 25.1, 25.3 to 25.5 Notice **ARC 4447C** 5/22/19
- Radiological health programs—fees, 38.8, 42.5 to 42.10, 42.12, 42.13 Notice **ARC 4446C** 5/22/19
- State mechanical code—adoption of 2018 International Mechanical Code by reference, 61.2 Notice **ARC 4448C** 5/22/19

PUBLIC SAFETY DEPARTMENT[661]

- Ignition interlock devices, 158.2 to 158.9 Notice **ARC 4418C** 5/8/19

REVENUE DEPARTMENT[701]

- Taxable sales—services treated as sales of tangible personal property, prepaid merchandise cards, photograph and retouching services, 16.51, 16.52, 26.17 Filed **ARC 4460C** 5/22/19
- Assessor or deputy assessor continuing education, 124.3 Filed **ARC 4466C** 5/22/19

SECRETARY OF STATE[721]

- Safe at home program, 6.1 Filed **ARC 4461C** 5/22/19
- Local option sales and services tax elections in qualified counties, 21.804 Filed **ARC 4462C** 5/22/19

TRANSPORTATION DEPARTMENT[761]

- Tourist-oriented directional signing, 119.1, 119.2, 119.4(1)"a," 119.5(4), 119.6 Filed **ARC 4436C** 5/8/19
- Nonoperator's identification, 630.1(2), 630.2 Filed **ARC 4437C** 5/8/19

TREASURER OF STATE[781]

- Iowa educational savings plan trust, ch 16 Filed **ARC 4463C** 5/22/19
- Iowa ABLE savings plan trust, ch 20 Filed **ARC 4464C** 5/22/19

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Assessments, 17.1 to 17.11 Notice **ARC 4416C** 5/8/19
- Electric vehicle charging service, 20.20 Notice **ARC 4417C** 5/8/19
- Regulation of telecommunications service, ch 22 Notice **ARC 4419C** 5/8/19
- Annual reports, 23.1 to 23.3 Notice **ARC 4420C** 5/8/19
- Approval of appraiser for municipal utilities, 32.10 Filed **ARC 4465C** 5/22/19

WORKFORCE DEVELOPMENT DEPARTMENT[871]

- Employer innovation fund, ch 16 Notice **ARC 4449C** 5/22/19
- Unemployment benefits wage-earning limitation, 24.18 Notice **ARC 4451C** 5/22/19

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

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Senator Robert Hogg
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Representative Rick Olson
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Des Moines, Iowa 50317

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

ENVIRONMENTAL PROTECTION COMMISSION[567]

NPDES General Permit No. 6 for discharge of wastewater associated with well construction activities, 64.15(6) IAB 5/8/19 ARC 4421C	Conference Room 4 East and West Wallace State Office Bldg. Des Moines, Iowa	May 28, 2019 2 to 4 p.m.
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MEDICINE BOARD[653]

Standards of practice—medical cannabidiol, 13.15(1) IAB 5/22/19 ARC 4445C	Board Office, Suite C 400 S.W. Eighth St. Des Moines, Iowa	June 11, 2019 9 a.m.
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NATURAL RESOURCE COMMISSION[571]

Antlerless deer hunting—January licenses, county license quotas, 106.6 IAB 5/8/19 ARC 4422C	Conference Room 4 East Wallace State Office Bldg. Des Moines, Iowa	May 28, 2019 12 noon to 1 p.m.
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Increased bag limits for bobcats, 108.7(3) IAB 5/8/19 ARC 4423C	Conference Room 4 East Wallace State Office Bldg. Des Moines, Iowa	May 28, 2019 12 noon to 1 p.m.
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PUBLIC HEALTH DEPARTMENT[641]

State plumbing code—update of references to 2018 edition of Uniform Plumbing Code, 25.1, 25.3 to 25.5 IAB 5/22/19 ARC 4447C	Room 518 Lucas State Office Bldg. Des Moines, Iowa	June 11, 2019 3 to 4 p.m.
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Radiological health programs—fees, 38.8, 42.5 to 42.10, 42.12, 42.13 IAB 5/22/19 ARC 4446C	Room 418 Lucas State Office Bldg. Des Moines, Iowa	June 17, 2019 10 to 11 a.m.
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State mechanical code—adoption of 2018 International Mechanical Code by reference, 61.2 IAB 5/22/19 ARC 4448C	Room 518 Lucas State Office Bldg. Des Moines, Iowa	June 11, 2019 3 to 4 p.m.
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UTILITIES DIVISION[199]

Assessments, 17.1 to 17.11 IAB 5/8/19 ARC 4416C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	June 13, 2019 9 to 11 a.m.
Electric vehicle charging service, 20.20 IAB 5/8/19 ARC 4417C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	June 12, 2019 9 to 11 a.m.
Regulation of telecommunications service, ch 22 IAB 5/8/19 ARC 4419C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	June 13, 2019 1 to 3 p.m.
Annual reports, 23.1 to 23.3 IAB 5/8/19 ARC 4420C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	June 12, 2019 1 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]
ENERGY INDEPENDENCE, OFFICE OF[350]
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]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
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 4440C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to removal of obsolete mental health and disability services rules and providing an opportunity for public comment**

The Human Services Department hereby proposes to rescind Chapter 15, “Resolution of Legal Settlement Disputes,” and Chapter 23, “Mental Health and Disability Services Redesign Transition Fund,” and to amend Chapter 25, “Disability Services Management,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 225C.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 225C.6.

Purpose and Summary

These proposed amendments rescind Chapter 15. When the term “legal settlement” was replaced by the term “county of residence” in statute, the Department’s dispute resolution method changed. Also, the authorizing state law, Iowa Code section 225C.8, was repealed by 2012 Iowa Acts, chapter 1120, sections 129 and 130. As a result, Chapter 15 no longer conforms to state law.

These amendments also rescind Chapter 23. Chapter 23 provides rules for gathering information and guiding the development of recommendations to the Governor and Legislature for the mental health and disability services transition fund for state fiscal year 2013. This funding was one-time funding and is no longer applicable.

Finally, these amendments rescind rule 441—25.81(225C) and the preamble and title of Division VII in Chapter 25. Prior to 2014, counties were required to establish or affiliate with a community mental health center or complete a waiver in order to receive community services funds. The authorizing state law, Iowa Code section 225C.7, was repealed by 2014 Iowa Acts, chapter 1092, section 152. As a result, the content in Division VII of Chapter 25 no longer conforms to state law.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. These amendments eliminate obsolete rules that no longer conform to Iowa Code.

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 Human Services Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

- ITEM 1. Rescind and reserve **441—Chapter 15**.
- ITEM 2. Rescind and reserve **441—Chapter 23**.
- ITEM 3. Amend **441—Chapter 25**, Division VII title, as follows:

DIVISION VII
 COMMUNITY MENTAL HEALTH CENTER WAIVER REQUEST

- ITEM 4. Rescind **441—Chapter 25**, Division VII preamble.
- ITEM 5. Rescind and reserve rule **441—25.81(225C)**.

ARC 4439C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to FIP program and EBT cards
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 40, “Application for Aid,” and Chapter 65, “Food Assistance Program Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 234.6 and 239B.4(6).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 234.6 and 239B.4(6).

HUMAN SERVICES DEPARTMENT[441](cont'd)

Purpose and Summary

These proposed amendments remove obsolete form references from the Family Investment Program (FIP) rules in Chapter 40. The proposed amendments also remove outdated and unnecessary rules from Chapter 65 related to Electronic Benefits Transfer (EBT) for food assistance.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s 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 441—40.28(239B) as follows:

441—40.28(239B) Referral for investigation. The department may refer questionable cases to the department of inspections and appeals for further investigation. ~~Referrals shall be made using Form 470-2998, Referral for Front End Investigation.~~

This rule is intended to implement Iowa Code section 239B.5.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend rule 441—65.4(234) as follows:

441—65.4(234) Issuance. The department shall issue food assistance benefits by electronic benefits transfer (EBT) cards.

65.4(1) Schedule. Benefits for ongoing certifications shall be made available to households on a staggered basis during the first ten calendar days of each month.

65.4(2) EBT cards. EBT cards shall be mailed to clients recipients except in the event of a disaster. Disaster EBT cards will be distributed through the local office.

a. Personal identification number selection. When a client receives the EBT card, the client shall call the automated response unit to select a personal identification number. The client must provide proof of identity before selecting the personal identification number.

b. Replacement of EBT cards. EBT cards shall be replaced within five business days after the client notifies the EBT customer service help desk of the need for replacement.

65.4(3) Client training. Written client training materials may either be mailed to clients or be handed to the clients if they visit the local office. Clients will be given in-person training upon request or if they are identified as having problems using the EBT system.

65.4(4) Point of sale terminals. Point of sale terminals allow clients to access food assistance benefits and retailers to redeem food sales.

a. Redemption threshold. The department will not place point of sale terminals with any authorized retailer with less than \$100 in monthly food assistance redemptions. Those retailers may participate through a manual voucher process described in paragraph 65.4(5)“b.”

b. Shipping. Government supplied point of sale terminals may be shipped to authorized retailers along with instructions for installation of the equipment and training materials. A toll free number is available for retailers needing assistance.

c. Replacement. The department shall ensure that government supplied point of sale terminals that are not operating properly are repaired or replaced within 48 hours.

65.4(5) Voucher processing.

a. Emergency vouchers. Authorized retailers may use an emergency manual voucher if they cannot access the EBT host system.

(1) The client shall sign Form 470-2827, POS Voucher, to authorize a debit of the household's EBT account.

(2) The retailer shall clear the manual transaction as soon as the host system becomes operational.

(3) The retailer shall receive a payment of the actual amount of the voucher, up to a maximum of \$50.

b. Manual vouchers. Authorized retailers without point of sale terminals and retailers whose equipment fails may use a manual voucher. If a manual voucher is used:

(1) The client shall sign Form 470-3980, Offline Food Stamp Voucher: Non Equipped Retailer (No POS), to authorize a debit of the household's EBT account.

(2) The retailer shall obtain a telephone authorization from the EBT retailer help desk before finalizing the purchase.

(3) The retailer shall clear the manual transaction within 30 days.

(4) If there are insufficient funds in the client's account when the voucher is presented, the client's account shall be debited for the amount in the account. The remainder of the amount owed shall be deducted from benefits issued for subsequent months. If the next month's allotment is less than \$50, the deduction shall not exceed \$10.

ARC 4442C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to MEPD program premium amounts and providing an opportunity for public comment**

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

This proposed amendment adjusts the federal poverty level (FPL) increments used to assess premiums for applicants and recipients for the Medicaid for Employed People with Disabilities (MEPD) program with income over 150 percent of the FPL.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa. With the exception of premium amounts at the very high end of the income scale, MEPD premiums are not changing. Currently, there are no MEPD members with gross individual income higher than 550 percent of the FPL. For these reasons, there is no fiscal impact.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subparagraph **75.1(39)“b”(3)** as follows:

(3) Premiums shall be assessed as follows:

IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
150% of Federal Poverty Level	\$34
165% of Federal Poverty Level	\$47
180% of Federal Poverty Level	\$56
200% of Federal Poverty Level	\$66
225% of Federal Poverty Level	\$77
250% of Federal Poverty Level	\$89
300% of Federal Poverty Level	\$112
350% of Federal Poverty Level	\$137
400% of Federal Poverty Level	\$161
450% of Federal Poverty Level	\$186
550% of Federal Poverty Level	\$232
650% of Federal Poverty Level	\$280
750% of Federal Poverty Level	\$329
850% of Federal Poverty Level	\$389
1000% of Federal Poverty Level	\$467
1150% of Federal Poverty Level	\$547
1300% of Federal Poverty Level	\$631
1480% of Federal Poverty Level	\$729
1550% of Federal Poverty Level	\$768

ARC 4438C**HUMAN SERVICES DEPARTMENT[441]****Notice of Termination****Terminating rule making related to HIPP program eligibility**

The Human Services Department hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on March 27, 2019, as **ARC 4368C**, proposing to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

Legal Authority for Rule Making

The above-mentioned rule making is terminated under the authority provided in Iowa Code section 249A.4.

Purpose and Summary

The proposed amendments would have changed the start date for Health Insurance Premium Payment (HIPP) Program approval for fee-for-service and premium assistance. The earliest start date for fee-for-service and premium assistance would have been set as the first day of the month following the month of application. The proposed amendments also would have changed the estimated savings to the Department from \$60 annually to \$1,200 annually and eliminated the second cost-effective test. Finally, the proposed amendments would have provided technical changes to policy and definitions.

Reason for Termination

The Department is terminating the rule making commenced in **ARC 4368C** at this time in order to further research technical aspects of the proposed rule making.

Jobs Impact

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

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).

ARC 4443C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to statewide average charges and providing an opportunity for public comment**

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

Legal Authority for Rule Making

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

State or Federal Law Implemented

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

Purpose and Summary

These amendments propose to amend administrative rules to remove specific amounts listed for the statewide average charges for nursing facility services to private-pay residents, average pay charges for nursing facilities and psychiatric medical institutions for children, and the maximum Medicaid rate for intermediate care facilities for persons with an intellectual disability. The annually revised amounts for these charges will now be published on the Department's website.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The proposed amendments will eliminate the need for emergency rule makings each year. The process of determining the statewide average costs and maximum Medicaid rates will not change. Removing the specific amounts from rules will have no fiscal impact.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's 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:

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule 75.23(3) as follows:

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

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

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual. For disposition of trust amounts pursuant to Iowa Code sections 633C.1 to 633C.5, the average statewide charges and Medicaid rates ~~for the period from July 1, 2018, to June 30, 2019, shall be as follows:~~ are updated annually and shall be published on the department's website.

- ~~(1) The average statewide charge to a private-pay resident of a nursing facility is \$6,005 per month.~~
- ~~(2) The maximum statewide Medicaid rate for a resident of an intermediate care facility for persons with an intellectual disability is \$31,529 per month.~~
- ~~(3) The average statewide charge to a resident of a mental health institute is \$27,667 per month.~~
- ~~(4) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is \$9,088 per month.~~
- ~~(5) The average statewide charge to a home- and community-based waiver applicant or member shall be consistent with the level of care determination and correspond with the average charges and rates set forth in this paragraph.~~

ARC 4444C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

The Human Services Department hereby proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

These proposed amendments provide a definition of a customized wheelchair for all Medicaid members and providers. These amendments also align Iowa's Medicaid definition of a customized wheelchair with the definition for the Medicare program provided by the Centers for Medicare and Medicaid Services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa of less than \$100,000 annually or \$500,000 over five years. Clearly defining a customized wheelchair will allow for standardized billing and may prevent Iowa Medicaid from paying separately for items that should have been part of standard coverage. This could result in Medicaid savings, but the impact is not expected to be significant.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind subparagraph **78.10(2)“a”(4)**.

ITEM 2. Adopt the following **new** paragraph **78.10(2)“d”**:

d. Wheelchairs, wheelchair accessories, and wheelchair modifications are covered when they are medically necessary for mobility within the home, nursing facility, or intermediate care facility. Wheelchairs are defined as:

(1) Standard manual wheelchairs. Coverage of a standard manual wheelchair includes the following:

1. Complete set of tires/wheels and casters, any type;
2. Hand rims with or without projections;

HUMAN SERVICES DEPARTMENT[441](cont'd)

3. Weight-specific components required by the patient-weight capacity of the wheelchair;
 4. Elevating legrest, lower extension tube and upper hanger bracket;
 5. Armrest (detachable, nonadjustable or adjustable) with or without arm pad;
 6. Footrest (swingaway, detachable), including lower extension tube(s) and upper hanger bracket;
 7. Standard size footplates;
 8. Wheelchair bearings;
 9. Caster fork, replacement only; and
 10. All labor charges involved in the assembly of the wheelchair (including, but not limited to: front caster assembly, rear wheel assembly, ratchet assembly, wheel lock assembly, footrest assembly).
- (2) Standard manual wheelchair accessories that are separately billable and require prior authorization include the following:
1. Headrest extensions;
 2. One-arm drive attachments;
 3. Positioning accessories;
 4. Specialized skin protection seat and back cushions; and
 5. Anti-rollback devices.
- (3) Standard power wheelchair. Coverage of a standard power wheelchair requires prior authorization and includes the following:
1. Lap belt or safety belt;
 2. Battery charger, single mode;
 3. Complete set of tires/wheels and casters, any type;
 4. Legrests (fixed, swingaway, or detachable non-elevation legrests with or without calf pad);
 5. Footrests/foot platform (fixed, swingaway, detachable footrests or a foot platform without angle adjustment, single adjustable footplate);
 6. Armrests (fixed, swingaway, detachable non-adjustable height armrests with arm pad provided);
 7. Any weight-specific components (braces, bars, upholstery, brackets, motors, gears, etc.) as required by patient-weight capacity of the wheelchair;
 8. Any seat width and depth. For power wheelchairs with a sling/solid seat/back, the following may be billed separately:
 - For standard duty, seat width and/or depth greater than 20 inches.
 - For heavy duty, seat width and/or depth greater than 22 inches.
 - For very heavy duty, seat width and/or depth greater than 24 inches.
 - Exception: For extra heavy duty, there is no separate billing;
 9. Any back width. For power wheelchairs with a sling/solid seat/back, the following may be billed separately:
 - For standard duty, seat width and/or depth greater than 20 inches.
 - For heavy duty, seat width and/or depth greater than 22 inches.
 - For very heavy duty, seat width and/or depth greater than 24 inches.
 - Exception: For extra heavy duty, there is no separate billing;
 10. Non-expandable controller or standard proportional joystick (integrated or remote); and
 11. All labor charges involved in the assembly of the wheelchair (including, but not limited to: front caster assembly, rear wheel assembly, ratchet assembly, wheel lock assembly, footrest assembly).
- (4) Standard power wheelchair accessories that are billed separately and require a prior authorization include the following:
1. Shoulder harness/straps or chest straps/vest;
 2. Elevating legrest;
 3. Angle adjustable footplates;
 4. Adjustable height armrests; and
 5. Expandable controller or nonstandard joystick (i.e., non-proportional or mini, compact or short throw proportional, or other alternative control device).
- (5) Customized items are payable with a prior authorization, in accordance with 42 CFR §414.224.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Amend paragraph **78.10(5)“o”** as follows:
o. Customized wheelchairs ~~for members who are residents of nursing facilities~~, subject to the requirements of ~~78.10(2)“a”(4)~~. 78.10(2)“d.”

ITEM 4. Amend paragraph **78.28(1)“r”** as follows:
r. Customized wheelchairs ~~for members who are residents of nursing facilities~~, subject to the requirements of ~~78.10(2)“a”(4)~~. 78.10(2)“d.”

ARC 4441C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to child support recovery forms and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 97, “Collection Services Center,” Chapter 98, “Support Enforcement Services,” and Chapter 99, “Support Establishment and Adjustment Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

These amendments remove references to obsolete form numbers and names.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **97.6(5)“c”** as follows:

c. The obligee has not requested automatic deposit to a designated account of the obligee and has asserted in writing on Form 470-3972, Electronic Support Payments, that one of the exemptions listed in this paragraph applies. To claim an exemption, the obligee must return Form 470-3972 to the collection services center within ten days of the date the form was issued. An exemption granted under this paragraph is subject to periodic review by the collection services center. ~~When the collection services center reviews an exemption, it shall issue Form 470-3973, Review of Electronic Transfer Exemption, to the obligee for completion.~~ The exemptions available under this paragraph are:

(1) to (5) No change.

ITEM 2. Amend paragraph **98.121(2)“b”** as follows:

b. ~~Notification issued by the child support recovery unit.~~ When the support order under which the arrearage has accrued does not contain language regarding the statutory provisions for referral and surcharge, or was entered under a foreign jurisdiction and notification was not included in the support order or provided as a separate written notice, the child support recovery unit shall issue ~~Form 470-3412, Legal Notice of Referral and Surcharge,~~ a notice to the obligor. The notice shall be sent by regular mail to the obligor’s last-known address.

ITEM 3. Amend paragraph **98.121(5)“c”** as follows:

c. The child support recovery unit shall file ~~Form 470-3411, Notice of Surcharge,~~ a notice of the surcharge with the clerk of the district court in the county in which the underlying support order is filed.

ITEM 4. Amend subrule 99.63(1) as follows:

99.63(1) *Notice of right to request review.* The child support recovery unit shall notify each parent of the right to request review of the order and the appropriate place and manner in which the request should be made. Notification shall be provided on Form 470-0188, Application For Nonassistance Support Services, or Form 470-1981, Notice of Continued Support Services, ~~Form 470-3078, Availability of Review and Adjustment Services,~~ or through another printed or electronic format.

ARC 4445C

MEDICINE BOARD[653]

Notice of Intended Action

Proposing rule making related to medical conditions for which medical cannabidiol may be used and providing an opportunity for public comment

The Board of Medicine hereby proposes to amend Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

MEDICINE BOARD[653](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapters 124E, 147, 148 and 272C.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 124E.

Purpose and Summary

This proposed rule making amends subrule 13.15(1) by adding “corticobasal degeneration” to the list of debilitating medical conditions for which medical cannabidiol may be used.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

Kent Nebel
Iowa Board of Medicine
400 S.W. Eighth Street, Suite C
Des Moines, Iowa 50309
Phone: 515.281.7088
Fax: 515.242.5908
Email: kent.nebel@iowa.gov

Public Hearing

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

June 11, 2019
9 a.m.

Board Office, Suite C
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.

MEDICINE BOARD[653](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 **13.15(1)**, definition of "Debilitating medical condition," as follows:

"Debilitating medical condition" means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn's disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
8. Parkinson's disease.
9. Untreatable pain.
10. Ulcerative colitis.
11. Severe, intractable pediatric autism with self-injurious or aggressive behaviors.
12. Corticobasal degeneration.

ARC 4450C

PHARMACY BOARD[657]

Notice of Intended Action

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

The Board of Pharmacy hereby proposes to amend Chapter 39, "Expanded Practice Standards," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76 and 155A.44.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 155A.44 and 2019 Iowa Acts, House File 766.

PHARMACY BOARD[657](cont'd)

Purpose and Summary

During the 2019 Legislative Session, a change was made to 2018 Iowa Acts, chapter 1142, section 8, to extend the repeal date of Iowa Code section 155A.44 to July 1, 2020. This proposed rule making similarly amends rule 657—39.10(155A) to reflect the updated repeal date.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 657—39.10(155A) as follows:

657—39.10(155A) Vaccine administration by pharmacists—physician-approved protocol. Through June 30, ~~2019~~ 2020, an authorized pharmacist may administer vaccines pursuant to protocols established by the CDC in compliance with the requirements of this rule. An authorized pharmacist may only delegate the administration of a vaccine to an authorized pharmacist-intern under the direct supervision of the authorized pharmacist.

39.10(1) to 39.10(7) No change.

ARC 4447C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action****Proposing rule making related to state plumbing code
and providing an opportunity for public comment**

The Plumbing and Mechanical Systems Board of the Department of Public Health hereby proposes to amend Chapter 25, “State Plumbing Code,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 105.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 105.4.

Purpose and Summary

The proposed rule making includes the adoption by reference of the Uniform Plumbing Code, 2018 Edition. The Board previously adopted the 2015 edition of the Uniform Plumbing Code (UPC). The Board is required to adopt the most recent version of the UPC by law. In addition, the proposed amendments incorporate other clarifications to the state plumbing code that were suggested by public comment. The majority of the changes are relatively minor technical changes to better align the plumbing code with current practice. The most significant amendment is the addition of language that would eliminate engineered single stack drainage systems as provided for in Items 4 and 6.

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 the Board’s general waiver provisions contained in 641—Chapter 31.

Public Comment

Any interested person may submit 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 June 11, 2019. Comments should be directed to:

Kane Young
Plumbing and Mechanical Systems Board
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: kane.young@idph.iowa.gov

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Public Hearing

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

June 11, 2019
3 to 4 p.m.

Room 518
Lucas State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 641—25.1(105) as follows:

641—25.1(105) Adoption. Sections 101 and 102 and Chapters 2 to 17 of the Uniform Plumbing Code, ~~2015~~ 2018 Edition, as published by the International Association of Plumbing and Mechanical Officials, 4755 E. Philadelphia Street, Ontario, California 91761-2816, are hereby adopted by reference with amendments as the state plumbing code authorized by Iowa Code section 105.4. Portions of this chapter reproduce excerpts from the ~~2015~~ 2018 International Plumbing Code; Copyright ~~2014~~ 2017; Washington, D.C.: International Code Council. Such excerpts are reproduced with permission, all rights reserved. www.ICCSAFE.org

ITEM 2. Amend rule 641—25.3(105) as follows:

641—25.3(105) Fuel gas piping. Fuel gas piping shall comply with the requirements of Chapter 12 of the Uniform Plumbing Code, ~~2015~~ 2018 Edition, unless the provisions conflict with 661—Chapter 226, Liquefied Petroleum Gas, Iowa Administrative Code. Where Chapter 12 conflicts with 661—Chapter 226, the provisions of 661—Chapter 226 shall be followed.

ITEM 3. Adopt the following **new** subrule 25.4(1):

25.4(1) The following amendment shall apply to UPC Chapter 1: Section 101.2 Scope. Modify the section by adding the following sentence to the end of the section: “Local jurisdictions may administer the permit, inspection, testing, and enforcement provisions contained in this code. Permit, inspection, testing, and enforcement provisions contained in this code shall not be administered by the Plumbing and Mechanical Systems Board or the state.”

ITEM 4. Amend subrule 25.4(2) as follows:

25.4(2) The following amendments shall apply to UPC Chapter 3:

a. ~~Subsection 301.5.1 Permit Application. Delete the subsection.~~ Section 301.5 Alternative Engineered Design. Modify the section by adding the following sentence to the end of the section: “No engineered single stack drainage system shall be installed.”

b. No change.

ITEM 5. Rescind subrule 25.4(3) and adopt the following **new** subrule in lieu thereof:

25.4(3) The following amendments shall apply to UPC Chapter 4:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- a.* Section 402.5 Setting. Modify the section by adding the following sentence to the end of the section that begins “Exception:”: “Sanitary napkin receptors are not dispensers and shall not be within the clear space of the water closet.”
- b.* Section 407.3 Limitation of Hot Water Temperature for Public Lavatories. Modify the section by adding the following sentence to the end of the section: “These devices shall be installed at or as close as possible to the point of use.”
- c.* Section 408.4 Waste Outlet. Modify the section by adding the following exception to the end of the section: “Exception: In a residential dwelling unit where a 2-inch waste pipe is not readily available and approval of the Authority Having Jurisdiction has been granted, the waste outlet, fixture tailpiece, trap and trap arm may be 1½ inches when an existing tub is being replaced by a shower sized per Section 408.6(2). This exception only applies where one shower head rated at 2.5 gpm is installed.”
- d.* Section 409.4 Limitation of Hot Water in Bathtubs and Whirlpool Bathtubs. Modify the section by adding the following sentence to the end of the section: “These devices shall be installed at or as close as possible to the point of use.”
- e.* Section 410.3 Limitation of Water Temperature in Bidets. Modify the section by adding the following sentence to the end of the section: “These devices shall be installed at or as close as possible to the point of use.”
- f.* Section 416.5 Drain. Modify the section by deleting the last sentence, which states: “Where a drain is provided, the discharge shall be in accordance with Section 811.0.”
- g.* Section 418.3 Location of Floor Drains. Modify the section by adding the following to the end of the section: “(5) Rooms equipped with a water heater.”
- h.* Section 422.1 Fixture Count. Modify the section by deleting the first paragraph and inserting the following in lieu thereof: “Plumbing fixtures shall be provided in each building for the type of building occupancy and in the minimum number shown in Table 403.1 of the International Plumbing Code, reprinted here as Table 422.1. The design occupant load and occupancy classification shall be determined in accordance with Section 1004 of the 2015 International Building Code. Required public facilities shall be designated by a legible sign for each sex. Signs shall be readily visible and located near the entrance to each toilet facility.”
- i.* Subsection 422.1.1 Family or Assisted-Use Toilet and Bathing Facilities. Modify the subsection by adding the following sentence to the end of the subsection: “Required family or assisted-use fixtures are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.”
- j.* Table 422.1 Minimum Plumbing Facilities. Delete the table and insert the following table in lieu thereof. Exception: Projects under the jurisdiction of the state building code may use fixture counts from the 2015 International Building Code.

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a									
(See Sections 403.1.1 and 403.2)									
(Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)									
NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
1	Assembly	Theaters and other buildings for the performing arts and motion pictures ^d	1 per 125	1 per 65	1 per 200		—	1 per 500	1 service sink
		Nightclubs, bars, taverns, dance halls and buildings for similar purposes ^d	1 per 40	1 per 40	1 per 75		—	1 per 500	1 service sink
		Restaurants, banquet halls and food courts ^d	1 per 75	1 per 75	1 per 200		—	1 per 500	1 service sink
		Gaming areas	1 per 100 for the first 400 and 1 per 250 for the remainder exceeding 400	1 per 50 for the first 400 and 1 per 150 for the remainder exceeding 400	1 per 250 for the first 750 and 1 per 500 for the remainder exceeding 750		—	1 per 1,000	1 service sink
		Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums ^d	1 per 125	1 per 65	1 per 200		—	1 per 500	1 service sink
		Passenger terminals and transportation facilities ^d	1 per 500	1 per 500	1 per 750		—	1 per 1,000	1 service sink
		Places of worship and other religious services ^d	1 per 150	1 per 75	1 per 200		—	1 per 1,000	1 service sink

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a									
(See Sections 403.1.1 and 403.2)									
(Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)									
NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
1	Assembly (cont'd)	Coliseums, arenas, skating rinks, pools and tennis courts for indoor sporting events and activities	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200	1 per 150	—	1 per 1,000	1 service sink
		Stadiums, amusement parks, bleachers and grandstands for outdoor sporting events and activities ^f	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200	1 per 150	—	1 per 1,000	1 service sink
2	Business	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80		—	1 per 100	1 service sink ^e
3	Educational	Educational facilities	1 per 50		1 per 50		—	1 per 100	1 service sink
4	Factory and Industrial	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials	1 per 100		1 per 100		—	1 per 400	1 service sink

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a (See Sections 403.1.1 and 403.2) (Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)									
NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
5	Institutional	Custodial care facilities	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
		Medical care recipients in hospitals and nursing homes	1 per room ^c		1 per room ^c		1 per 15	1 per 100	1 service sink per floor
		Employees in hospitals and nursing homes ^b	1 per 25		1 per 35		—	1 per 100	—
		Visitors in hospitals and nursing homes	1 per 75		1 per 100		—	1 per 500	—
		Prisons ^b	1 per cell		1 per cell		1 per 15	1 per 100	1 service sink
		Reformatories, detention centers, and correctional centers ^b	1 per 15		1 per 15		1 per 15	1 per 100	1 service sink
		Employees in reformatories, detention centers and correctional centers ^b	1 per 25		1 per 35		—	1 per 100	—
		Adult day care and child day care	1 per 15		1 per 15		1	1 per 100	1 service sink
6	Mercantile	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500		1 per 750		—	1 per 1,000	1 service sink ^e

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a (See Sections 403.1.1 and 403.2) (Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)									
NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
7	Residential	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit	—	1 service sink
		Dormitories, fraternities, sororities and boarding houses (not transient)	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
		Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit	—	1 kitchen sink per dwelling unit; 1 automatic clothes washer connection per 20 dwelling units

TABLE 422.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a (See Sections 403.1.1 and 403.2) (Reprinted with permission,* from the 2018 International Plumbing Code, excerpt from IPC Table 403.1)									
NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS (URINALS: SEE SECTION 422.7)		LAVATORIES		BATHTUBS/ SHOWERS	DRINKING FOUNTAIN (SEE SECTION 415.0)	OTHER
			MALE	FEMALE	MALE	FEMALE			
7	Residential (cont'd)	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
		One- and two-family dwellings and lodging houses with five or fewer guestrooms	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit	—	1 kitchen sink per dwelling unit; 1 automatic clothes washer connection per dwelling unit
		Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8	1 per 100	1 service sink
8	Storage	Structures for the storage of goods, warehouses, storehouse and freight depots. Low and Moderate Hazard.	1 per 100		1 per 100		—	1 per 1,000	1 service sink

PUBLIC HEALTH DEPARTMENT[641](cont'd)

a The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the International Building Code.

b Toilet facilities for employees shall be separate from facilities for inmates or care recipients.

c A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted provided that each patient sleeping unit has direct access to the toilet room and provision for privacy for the toilet room user is provided.

d The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.

e For business and mercantile classifications with an occupant load of 15 or fewer, service sinks shall not be required.

f The required number and type of plumbing fixtures for outdoor public swimming pools shall be in accordance with Section 609 of the International Swimming Pool and Spa Code.

*Excerpted (with modifications) from Table 403.1 of the 2018 International Plumbing Code; Copyright 2017; Washington, D.C.: International Code Council. Reproduced with permission. All rights reserved. www.ICCSAFE.org

k. Subsection 422.2.2 Family or Assisted-Use Toilet and Bathing Facilities. Modify the subsection by adding the following sentence to the end of the subsection: “Required family or assisted-use fixtures are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.”

l. Insert the following text at the end of Chapter 4:

“422.6 Substitution for Water Closets. In each bathroom or toilet room, urinals shall not be substituted for more than 67 percent of the required water closets in assembly and educational occupancies. Urinals shall not be substituted for more than 50 percent of the required water closets in all other occupancies. (Reprinted from the 2018 International Plumbing Code section 424.2)”

ITEM 6. Amend subrules 25.4(4) to 25.4(14) as follows:

~~25.4(4)~~ The following amendment shall apply to UPC Chapter 5:

~~Sections 503.0 through 503.2 Inspection. Delete the sections.~~

~~25.4(5)~~ **25.4(4)** The following amendments shall apply to UPC Chapter 6:

a. Section 603.4.8 Drain Lines. Modify the section by adding the following language to the end of the ~~section~~ last sentence in the section: “or in accordance with the manufacturer’s drain-sizing chart for installation.”

b. Section 609.1 Installation. Delete Section 609.1 and insert the following in lieu thereof:

Section 609.1 Installation. Water piping shall be adequately supported in accordance with Table 313.3. Burred ends shall be reamed to the full bore of the pipe or tube. Changes in direction shall be made by the appropriate use of fittings, except that changes in direction in copper or copper alloy tubing shall be permitted to be made with bends, provided that such bends are made with bending equipment that does not deform or create a loss in the cross-sectional area of the tubing. Changes in direction are allowed with flexible pipe and tubing without fittings in accordance with the manufacturer’s instructions. Provisions shall be made for expansion in hot-water piping. Piping, equipment, appurtenances, and devices shall be installed in a workmanlike manner in accordance with the provisions and intent of the code. Building supply yard piping shall be not less than 60 inches below earth cover.

~~b. c.~~ Section 609.11 Pipe Insulation. Delete sections 609.11 through 609.11.2 and insert the following in lieu thereof:

Section 609.11 Pipe Insulation. Insulation of domestic hot water piping shall be in accordance with the applicable energy conservation code.

~~e. d.~~ Section 611.4 Sizing of Residential Softeners. Modify the section by adding the following to the end of the last sentence in the section: “or as specified in the manufacturer’s installation instructions.”

~~d. e.~~ Section 612 Residential Fire Sprinkler Systems. Delete sections 612.0 through 612.7.2.

~~25.4(6)~~ **25.4(5)** The following ~~amendment~~ amendments shall apply to UPC Chapter 7:

a. Section 710.1 Backflow Protection. Modify the section by adding the following sentences to the end of the section: “The requirement for the installation of a backwater valve shall apply only when determined necessary by the ~~authority having jurisdiction~~ Authority Having Jurisdiction based on local conditions. When a valve is required by the ~~authority having jurisdiction~~ Authority Having Jurisdiction,

PUBLIC HEALTH DEPARTMENT[641](cont'd)

it shall be a manually operated gate valve or fullway ball valve. An automatic backwater valve may also be installed but is not required.”

b. Section 717.1 General. Modify the section by adding the following language to the end of the section: “No building sewer shall be smaller than 4 inches in diameter.”

~~25.4(7)~~ **25.4(6)** The following ~~amendment~~ amendments shall apply to UPC Chapter 8:

a. Section 807.3 Domestic Dishwashing Machine. Modify the section by deleting the section and inserting the following language in lieu thereof: “No domestic dishwashing machine shall be directly connected to a drainage system or food waste disposer without the use of an approved dishwasher air gap fitting on the discharge side of the dishwashing machine, or by looping the discharge line of the dishwasher as high as possible near the flood level of the kitchen sink where the waste disposer is connected. Listed air gap fittings shall be installed with the flood level (FL) marking at or above the flood level of the sink or drainboard, whichever is higher.”

b. Section 814.5 Point of Discharge. Delete Section 814.5 and insert the following in lieu thereof:
Section 814.5 Point of Discharge. Air-conditioning condensate waste pipes shall connect indirectly to a properly trapped fixture, floor drain, or open sight drain, or where permitted in Section 814.6, to the drainage system through an air gap or air break to trapped and vented receptors, dry wells, leach pits, sump pump, the tailpiece of plumbing fixtures or indirectly to the building storm sewer through a roof drain. A condensate drain shall be trapped in accordance with appliance manufacturer’s instructions or as approved.

~~25.4(8)~~ **25.4(7)** The following ~~amendment~~ amendments shall apply to UPC Chapter 9:

a. Section 901.1 Applicability. Modify the section by adding the following sentence to the end of the section: “No engineered single stack drainage systems shall be installed.”

b. Section 906.1 Roof Termination. Modify the section by deleting the last sentence.

~~*c.*~~ *c.* Section 906.7 Frost or Snow Closure. Modify the section by deleting “two (2) inches (50.8 mm)” in the first sentence and inserting “three (3) inches (76.2 mm)” in lieu thereof.

~~*b. d.*~~ *d.* Section 908.2.2 Size. Delete the second sentence in this section and insert the following new sentence in lieu thereof: “The wet vent shall be not less than 2 inches (50 mm) in diameter for 6 drainage fixture units (dfu) or less, and not less than 3 inches (80 mm) in diameter for 7 dfu or more.”

~~25.4(9)~~ **25.4(8)** The following ~~amendment~~ amendments shall apply to UPC Chapter 10:

a. Table 1002.2 Horizontal Lengths of Trap Arms. Delete the table and insert the following table in lieu thereof:

TABLE 1002.2
Horizontal Lengths of Trap Arms
(Except for Water Closets and Similar Features)^{1,2}

Trap Arm Diameter (inches)	Distance Trap to Vent Minimum (inches)	Length Maximum (feet)
1¼	2½	5
1½	3	6
2	4	8
3	6	12
4	8	12
Exceeding 4	2 × Diameter	12

For SI units: 1 inch = 25.4 mm

Notes:

¹Maintain ¼ inch per foot slope (20.8 mm/m).

²The developed length between the trap of a water closet or similar fixture (measured from the top of the closet flange to the inner edge of the vent) and its vent shall not exceed 6 feet (1829 mm).

b. Section 1014.1.3 Food Waste Disposers and Dishwashers. Modify the section by deleting the second sentence and inserting the following in lieu thereof: “Commercial food waste disposers shall discharge into the building’s drainage system in accordance with the requirements of the Authority Having Jurisdiction.”

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~25.4(10)~~ **25.4(9)** The following amendments shall apply to UPC Chapter 12:

~~a.~~ Sections 1203.0 through 1203.4 Inspection. Delete the sections.

~~b.~~ Sections 1204.0 through 1204.3 Certificate of Inspection. Delete the sections.

~~c.~~ ~~a.~~ Sections 1205.0 through 1205.2 Authority to Render Gas Service. Delete the sections.

~~d.~~ ~~b.~~ Sections 1207.0 and 1207.1 Temporary Use of Gas. Delete the sections.

~~c.~~ Subsection 1208.6.4.4 Corrugated Stainless Steel Tubing. Delete subsection 1208.6.4.4 and insert the following in lieu thereof:

Subsection 1208.6.4.4 Corrugated Stainless Steel Tubing. Only CSST with an arc resistant jacket or covering system listed in accordance with ANSI LC-1 (Optional Section 5.16)/CSA 6.26-2016 shall be installed, in accordance with the terms of its approval, the conditions of listing, the manufacturer's instructions and this code, including electrical bonding requirements in Section 1211.2. CSST shall not be used for through-wall penetrations from the point of delivery of the gas supply to the inside of the structure. CSST shall not be installed in locations where subject to physical damage unless protected in an approved manner.

~~25.4(11)~~ **25.4(10)** The following amendments amendment shall apply to UPC Chapter 13:

~~a.~~ Sections 1304.5 through 1304.5.3 Construction Documents. Delete the sections.

~~b.~~ Section 1320.3 1319.3 Report Items. Modify the section by deleting "Authority Having Jurisdiction" and inserting "responsible facility authority" in lieu thereof.

25.4(12) The following amendment shall apply to UPC Chapter 14:

~~Sections 1406.0 through 1406.4 Required Inspection. Delete the sections.~~

25.4(13) The following amendments shall apply to UPC Chapter 15:

~~a.~~ Section 1501.3 Permit. Delete the section.

~~b.~~ Section 1501.6 Operation and Maintenance Manual. Modify the section by deleting "required to have a permit in accordance with Section 1501.3" from the first sentence.

~~c.~~ Subsection 1501.11.2.1 Visual System Inspection. Modify the subsection by deleting "by the Authority Having Jurisdiction and other authorities having jurisdiction" from the first sentence.

~~d.~~ Subsection 1501.11.2.2 Cross-Connection Test. Modify the subsection by deleting "by the applicant in the presence of the Authority Having Jurisdiction and other authorities having jurisdiction" from the first sentence.

~~e.~~ Subsection 1501.11.2.3 Discovery of Cross-Connection. Modify the subsection by deleting "in the presence of the Authority Having Jurisdiction."

~~f.~~ Section 1503.2 Permit. Delete the section.

~~g.~~ Section 1504.2 Plumbing Plan Submission. Delete the section.

~~h.~~ Section 1504.5 Initial Cross-Connection Test. Modify the section by deleting "by the applicant in the presence of the Authority Having Jurisdiction and other authorities having jurisdiction," and by deleting the final sentence ("The test shall be ruled successful by the Authority Having Jurisdiction before final approval is granted.").

25.4(14) The following amendments shall apply to UPC Chapter 16:

~~a.~~ Section 1602.2 Plumbing Plan Submission. Delete the section.

~~b.~~ Section 1602.5 Initial Cross-Connection Test. Modify the section by deleting the second and third sentences ("Before the building is occupied or the system is activated, the installer shall perform the initial cross-connection test in the presence of the Authority Having Jurisdiction and other authorities having jurisdiction. The test shall be ruled successful by the Authority Having Jurisdiction before final approval is granted.").

~~c.~~ Subsection 1602.11.2.1 Visual System Inspection. Modify the subsection by deleting "by the Authority Having Jurisdiction and other authorities having jurisdiction."

~~d.~~ Subsection 1602.11.2.2 Cross-Connection Test. Modify the subsection by deleting "by the applicant in the presence of the Authority Having Jurisdiction and other authorities having jurisdiction."

~~e.~~ Subsection 1602.11.2.3 Discovery of Cross-Connection. Modify the subsection by deleting "in the presence of the Authority Having Jurisdiction."

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 7. Amend rule 641—25.5(105), introductory paragraph, as follows:

641—25.5(105) Backflow prevention with containment. Cities with populations of 15,000 or greater as determined by the 2010 census or any subsequent regular or special census shall have a backflow prevention program with containment. The minimum requirements for a program are given in subrules 25.5(1) through 25.5(5). These requirements are in addition to the applicable requirements of Section 603 of the Uniform Plumbing Code, ~~2015~~ 2018 Edition.

ITEM 8. Amend subrule 25.5(1), introductory paragraph, as follows:

25.5(1) Definitions. The following definitions are added to those in Chapter 2 and Section 603 of the Uniform Plumbing Code, ~~2015~~ 2018 Edition, or are modified from those definitions for the purposes of rule 641—25.5(105) only.

ITEM 9. Amend paragraph **25.5(1)“b”** as follows:

b. Approved backflow prevention assembly for containment. Approved backflow prevention assembly for containment means a backflow prevention assembly which is approved by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research. The approval listing shall include the limitations of use based on the degree of hazard. The backflow prevention assembly shall also be listed by the International Association of Plumbing and Mechanical Officials (IAPMO) or by the American Society of Sanitary Engineering (ASSE) as having met the requirements of one of the standards listed below.

Standard	Product Covered
ANSI [□] /ASSE* 1013-2009	Reduced Pressure Principle Backflow Preventers
ANSI [□] /ASSE* 1015-2009	Double Check Backflow Prevention Assembly
ANSI [□] /ASSE* 1047-2009	Reduced Pressure Detector Backflow Preventer
ANSI [□] /ASSE* 1048-2009	Double Check Detector Assembly Backflow Preventer
ANSI [□] /AWWA [†] C510-07	Double Check Valve Backflow Prevention Assembly
ANSI [□] /AWWA [†] C511-07	Reduced-Pressure Principle Backflow Prevention Assembly

[□]American National Standards Institute, 1819 1899 L Street NW, 11th Floor, Washington, DC 20036

*American Society of Sanitary Engineering, 901 Canterbury Road, Suite A, Westlake, OH 44145 18927 Hickory Creek Drive #220, Mokena, IL 60448

[†]American Water Works Association, 6666 West Quincy Avenue, Denver, CO 80235

ARC 4446C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rule making related to fees for radiological health programs and providing an opportunity for public comment

The Public Health Department hereby proposes to amend Chapter 38, “General Provisions for Radiation Machines and Radioactive Materials,” and Chapter 42, “Permit to Operate Ionizing Radiation Producing Machines or Administer Radioactive Materials,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 136C.3 and 136C.10.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 136C.

Purpose and Summary

This rule making consists of several proposed amendments providing for fee adjustments to align with program costs.

Adjustment of fees is necessary to defray the costs of Bureau of Radiological Health programs for licensing, registration and inspection related to radiation machines and radioactive materials. The Bureau is authorized by Iowa Code chapter 136C, which states that fees shall be established to defray the cost of administering the program, to keep and retain these fees to support program activities. The majority of the fees to administer Bureau programs have not been raised for at least 20 years. More specifically:

- The radiation machine fees have not been changed since before 1998.
- The permit to practice fees have not been increased since 2007 when a \$15 fee increase was implemented.
- The mammography fees have not been raised since 2006, and the accreditation fees are no longer applicable because the Department is transitioning away from accreditation activities and requiring facilities to use the national accrediting body.
- The radioactive materials fees were last updated in 2010, but that update was a reorganization of the fee structure to create initial and annual fees rather than separate inspection, renewal and initial fees. The fee change in 2010 did not result in an increase in overall fees, and radioactive materials (RAM) fees overall have not been increased since before 2007.
- The industrial radiography fees were last increased in 2007.

Although the fees have not significantly changed over the last 10 to 20 years or more, salaries and costs for programs continue to increase in line with inflation costs, which were represented by an approximately 55 percent increase from 1998 to 2018.

The fee increases proposed herein are not designed to add to the regulatory burden or to expand the programs but rather only to reset the fee structure to support existing staff and systems for licensing, registration and inspection activities already authorized and in place. Current program activities are in line with national practices established across all 50 states and led by the Conference for Radiation Control Program Directors. Further, the radioactive materials and mammography programs are delegated by federal agencies to states to regulate the states' respective licensees and are required to remain adequate and compatible with the national programs. Projections show that these proposed fee increases will address needs for projected expenses for the Bureau's programs when accounting for assumed inflation through FY 22, so additional solutions for funding the Acute Disease Prevention, Emergency Response, and Environmental Health Division's divisionwide database and adjusting for estimated increases in existing resources will also continue to be explored prior to FY 23.

NEED FOR INCREASE AND PROJECTED IMPACTS

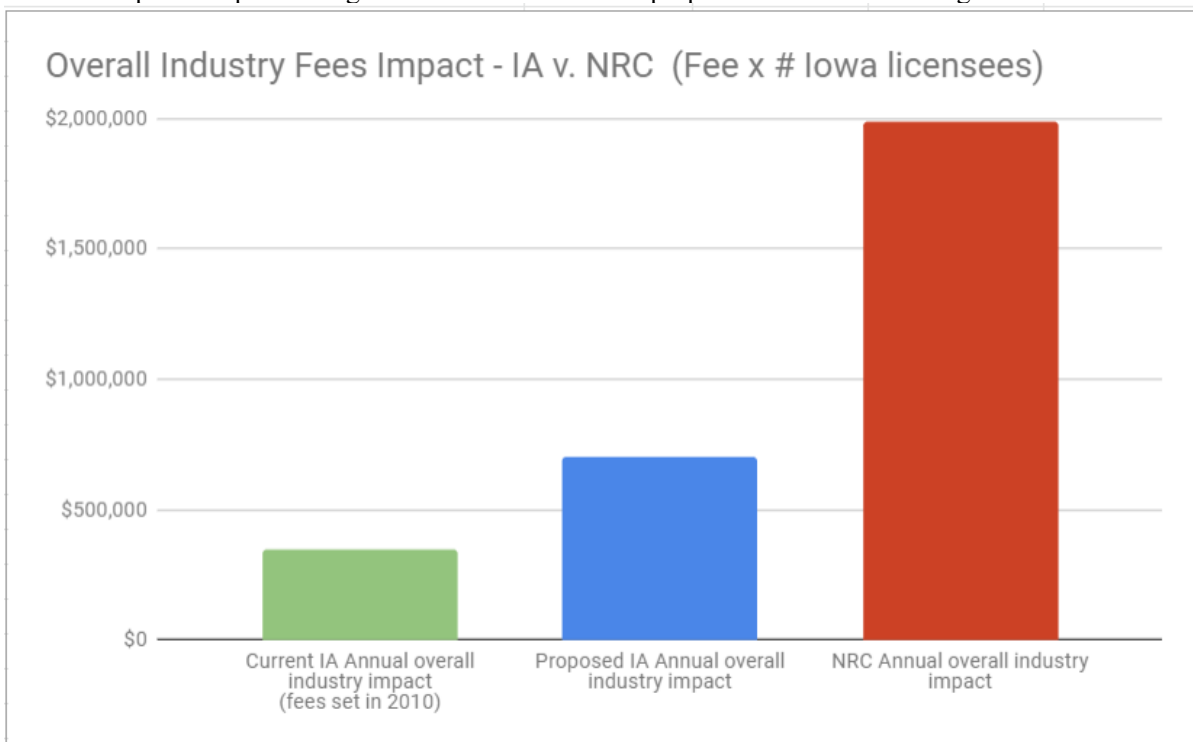
The Department has delayed the implementation of fee increases for as long as possible through, in large part, the spenddown of an emergency reserve of funding that was generated over time. The intent of the emergency reserve funding was to set aside and maintain a funding source to pay for cleanup of abandoned or dispersed radioactive material. Cleanup of this nature could cost millions of dollars. While the risk of such an emergency cleanup is small, the impact and cost of such a cleanup would be significant, and the Department chose to delay fee increases as long as possible by pulling from the emergency reserve funding. The proposed fee increases do not include an adjustment to replace this emergency reserve funding; rather, the focus of the fee increases is to maintain a revenue versus program expenditure balance.

The fees must be aligned to cover program costs at this time, or the Department, through staff reductions and reduced oversight of the use of radiation machines and radioactive materials in Iowa, will be forced to reduce the Bureau's ability to adequately protect the public from ionizing radiation. If the current fees are not changed, the Bureau's expenses will continue to outpace the income from fees by more than \$600,000 per year and result in a nearly \$800,000 shortfall by FY 20. The only

PUBLIC HEALTH DEPARTMENT[641](cont'd)

other options for rectifying this deficit are to stop the use of the online licensing system/database or to reduce staff. Neither of those options alone will completely address the shortfall or allow the Bureau's programs to continue to operate to protect public health and safety.

Reducing staffing costs by \$800,000 would result in the loss of nearly all of the Bureau's ten staff (currently, staffing accounts for about \$950,000 annually), which would severely restrict the work that could be performed by the programs. Most concerning is that this reduction of staff would limit the Bureau's ability to maintain adequate staffing to meet the requirements for program capacity as defined by the federal agreements in the radioactive materials and mammography programs. Registrations and audits for all programs would be greatly delayed, and inspections would not be able to be performed. The radioactive materials and mammography programs are delegations of federal regulations, so if the Bureau were unable to carry out activities for those programs, the federal agencies would resume regulation of the Iowa facilities. In that case, Iowa facilities would be forced to pay the federally established fees, which are up to 175 percent higher than the fee increases proposed in this rule making.



If fees are not aligned with current costs, the Division could also be forced to consider discontinuing the online licensing system, which would be an unfortunate waste of the investment of resources and funds used to create a more efficient divisionwide licensing system. This licensing database is poised to integrate with other Department licensing systems, which will allow for more efficiencies and potential cost savings for the majority of Department licensing. Without the database system, the processes for registration, licensing, and inspection would return to paper and mailing and the Division would be left without a database to manage the billing for online fee collection. This would require more staff time to be allocated to administrative functions, and staff would not be able to perform the audit and inspection processes required to ensure the proper use of radiation machines and radioactive materials to keep Iowans safe. In addition, the reduction of the licensing database costs alone would not close the entire \$800,000 gap, so Bureau staff would also have to be reduced by more than one-fourth and reduced staff would be faced with a significant influx of paperwork to manage without a database.

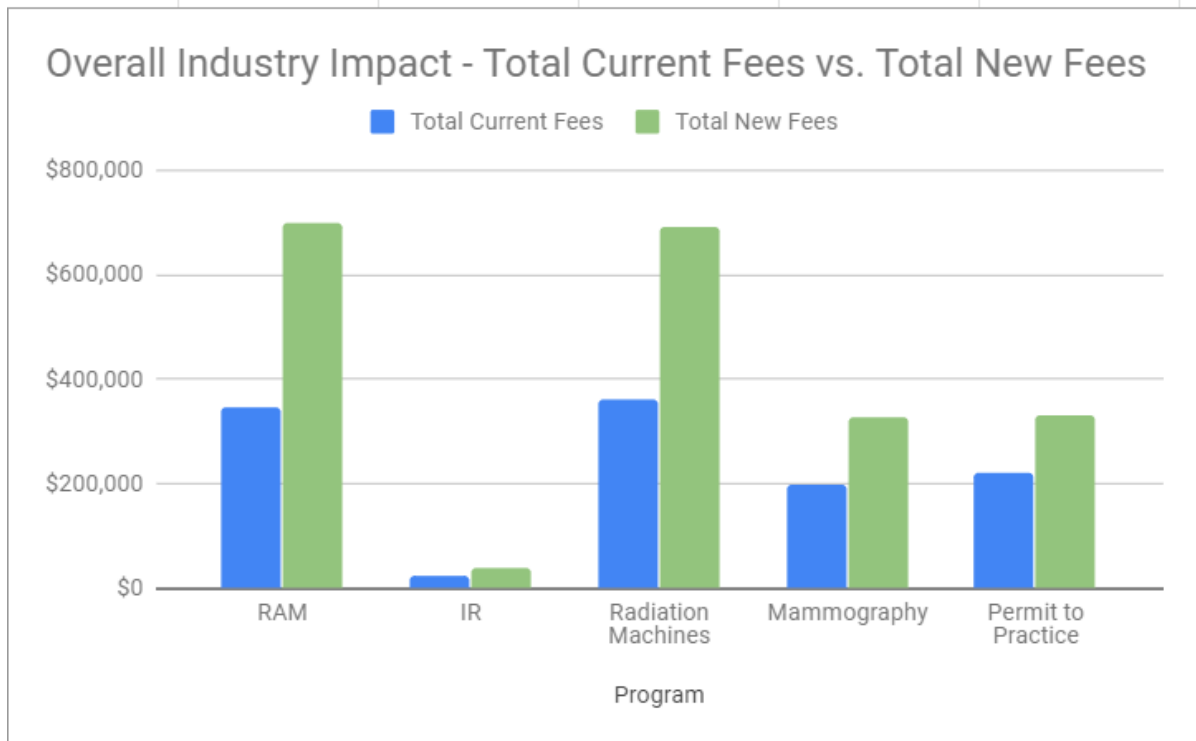
PROCESS FOR FEE REVIEW AND PROPOSED INCREASES

The fees across all Bureau programs were evaluated and compared to fees from surrounding states and federal agencies that regulate the same radiation programs. As a result, some fees were removed, and other fees were increased in a range from 0 to 100 percent compared to existing levels, with an

PUBLIC HEALTH DEPARTMENT[641](cont'd)

average increase of 81 percent across all programs, which will provide funding levels to cover expected inflation through FY 22. These new proposed fees are on average the same as surrounding states' fees and are 175 percent below Nuclear Regulatory Commission (NRC) fees for radioactive materials specifically. Overall, the industry impacts from these proposed fee increases for the programs are weighted as indicated in the following chart and graph and vary by registrant/licensee type within each program. For example, within the radiation machine program, the proposed fee increase for dental radiography machines is 55 percent (from \$39 to \$60) while the proposed fee increase for medical radiography machines is 135 percent (from \$51 to \$120), with the actual amount of the fee change as \$21 and \$69, respectively. In some cases, such as the \$500 reduction in the registration fee for food sterilization, fees were reduced to bring the fee more in line with the other accelerator fees.

Program	Total Current Fees	Total New Fees	% Increase	Overall # Registrants/Licensees
RAM	\$348,200	\$699,415	101%	337
Ionizing Radiation (IR)	\$25,800	\$40,314	56%	184
Radiation Machines	\$362,775	\$690,057	90%	8186
Mammography	\$198,419	\$328,346	65%	144
Permit to Practice	\$221,100	\$331,650	50%	4422
TOTAL INCOME (renewals/annual fees only)	\$1,156,294	\$2,089,782	81%	



PUBLIC HEALTH DEPARTMENT[641](cont'd)

Fiscal Impact

This rule making has a fiscal impact to the state of Iowa. There are no potential costs to the Department, but there is an overall increase of 81 percent in annual costs to the regulated radiation community (approx. \$930,000). Overall, increased fees will positively impact the Bureau's ability to maintain operations to protect public health and safety through regulation of the operation and use of radiation machines and radioactive materials. The public will be positively impacted by continued assurance that the use of radiation equipment and radioactive materials continues to be safe. Registrants and licensees may be adversely impacted by the increase in costs to their industry through the fee increases, but there would be a greater adverse impact if this modest fee increase were not approved and the federal fee structures and oversight were imposed on their industry. Specifically, for radioactive materials licensees, the fiscal note for this rule making indicates the impact to the overall radioactive materials industry in Iowa if the NRC took back authority as compared to the proposed new fees for Iowa's radioactive materials program.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board of Health for a waiver of the discretionary provisions, if any, pursuant to the Department's variance and waiver provisions contained in 641—Chapter 178.

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 June 11, 2019. Comments should be directed to:

Angela Leek
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: radhealthia@idph.iowa.gov

Public Hearing

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

June 17, 2019
10 to 11 a.m.

Room 418
Lucas State Office Building
Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the 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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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

The following rule-making actions are proposed:

ITEM 1. Amend subrules 38.8(1) to 38.8(3) as follows:

38.8(1) Radiation machines.

a. Each registrant shall, at the time of registration and the anniversary date thereafter, as long as the registrant owns the radiation machine, remit to the agency a nonrefundable fee sufficient to defray the cost of registering the equipment with the department. All fees shall be paid annually ~~in the form of a~~ by credit card or by check or money order made payable to the Iowa Department of Public Health. The fees to be paid shall be in the amount computed by the following schedule:

ANNUAL FEE SCHEDULE

Type of X-ray machine	Fee per tube	Maximum fee
1. Medical	\$51 <u>\$120</u>	\$1500 <u>\$3,000</u>
2. Osteopathy	\$51 <u>\$120</u>	\$1500 <u>\$3,000</u>
3. Chiropractic	\$51 <u>\$120</u>	\$1500 <u>\$3,000</u>
4. Dentistry	\$39 <u>\$60</u>	\$1000 <u>\$1,550</u>
5. Podiatry	\$39 <u>\$75</u>	\$1000 <u>\$2,000</u>
6. Veterinary Medicine	\$25 <u>\$60</u>	—
7. (Industrial/Nonmedical Use)	\$50 <u>\$100</u>	—
8. Food Sterilization	\$1000 <u>\$500</u>	—
9. Accelerators and Electronic Brachytherapy Units	\$100 <u>\$275</u>	—
10. Electron Microscope	\$20 <u>\$40</u>	—
11. Bone Densitometry	\$25 <u>\$55</u>	—

Fees for radiation machines not listed in the above schedule shall not be less than ~~\$50~~ \$120 per unit/tube.

b. Each registrant shall, where appropriate, pay the following special inspections/interpretation fee at the written request of the department:

(1) Mammography unit inspections fees:

~~1.~~ 1. ~~\$900~~ \$1,575 for the first unit and, if the facility has additional units at the address of the first unit, a fee of ~~\$325~~ \$375 for each additional unit; or

~~2.~~ 2. ~~\$900~~ \$1,575 per portable unit for each site where the unit is off-loaded and used and where the processing and patient films are stored; or

~~3.~~ 3. Dollar amount to be determined and justified by the department on a case-by-case basis for facilities which do not meet the above criteria; or

~~4.~~ 4. ~~\$450~~ \$675 for the second facility follow-up visit to review or determine the corrective action taken to address noncompliances; or

~~5.~~ 5. ~~\$900~~ \$1,575 for each stereotactic breast biopsy unit.

(2) Mammography interpretation fees of \$100 per mammography examination provided to the department for the purpose of determining film diagnostic quality.

(3) Industrial and oncology accelerator registrants and electronic brachytherapy registrants shall pay for each inspection a fee of ~~\$400~~ \$900 for the first unit and ~~\$100~~ \$225 for each additional unit.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(4) Industrial radiography X-ray units/walk-in cabinet radiography X-ray unit registrants shall pay for each inspection a fee of ~~\$250~~ \$450 for the first unit and ~~\$75~~ \$130 for each additional unit.

c. Each person who is engaged in the business of installing or offering to furnish radiation machines or is engaged in the business of furnishing or offering to furnish radiation machine servicing or service in the state shall apply for registration of such service with the agency prior to furnishing or offering to furnish any such service. Application shall be on a form provided by the department and include an annual nonrefundable fee of ~~\$100~~ \$200.

d. Each person engaged in providing health physics services in mammography in Iowa; who meets the requirements of 641—paragraph 41.6(3)“c” and is deemed qualified by this agency; must submit a ~~\$40~~ \$100 annual listing fee to this agency.

e. All mammography facilities providing services in Iowa must submit a ~~\$50~~ \$150 annual authorization certification fee.

f. All Iowa-accredited facilities providing mammography services in Iowa must submit a \$200 accreditation fee for initial accreditation and each reaccreditation.

38.8(2) Radioactive material fee schedule. Fees associated with the possession and use of radioactive materials in Iowa shall not exceed those specified in 10 CFR 170.31 and 10 CFR 171.16. The following fee schedule shall apply.

	Program Code	Category	Type	New License Fee	Inspection Priority	Annual Fee
(3.L.)	01100	AAB	Academic Type A Broad	\$5,000 <u>\$5,400</u>	1	\$10,500 <u>\$14,600</u>
(8.A.)	03710	CD	Civil Defense	\$1,000 <u>\$2,500</u>	5	\$1,000 <u>\$2,000</u>
(3.E.)	03510	I1	Irradiators, Self-Shielding <10,000 Curies	\$2,000 <u>\$3,200</u>	5	\$650 <u>\$2,600</u>
(3.O.)	03320	IR1	Industrial Radiography – Temporary Job Sites	\$4,500 <u>\$3,100</u>	1	\$4,300 <u>\$8,000</u>
(3.P.)	03120	FG	Measuring Systems – Fixed Gauge	\$1,300 <u>\$3,400</u>	5	\$650 <u>\$2,000</u>
(3.P.)	03121	PG	Measuring Systems – Portable Gauge	\$1,300 <u>\$3,400</u>	5	\$650 <u>\$2,000</u>
(3.P.)	02410	IVL	<i>In-Vitro</i> Testing Laboratory	\$1,300 <u>\$3,400</u>	5	\$650 <u>\$2,000</u>
(7.C.)	02230	HDR	High Dose Rate Afterloader	\$2,300 <u>\$5,500</u>	1	\$3,400 <u>\$5,100</u>
(7.C.)	02120	M1	Medical – Diagnostic & Therapy	\$2,300 <u>\$5,500</u>	3	\$1,500 <u>\$4,500</u>
(7.C.)	02121	M2	Medical – Diagnostic Only	\$2,300 <u>\$5,500</u>	4	\$1,200 <u>\$3,600</u>
(7.C.)	02240	MET	Medical – Diagnostic, Therapeutic, Emerging Technologies	\$2,300 <u>\$5,500</u>	2	\$2,000 <u>\$4,000</u>
(3.S.)	03210	PET	Accelerator-Produced RAM	\$3,000 <u>\$7,500</u>	1	\$4,300 <u>\$5,375</u>
(3.C.)	02500	NP	Nuclear Pharmacy	\$3,000 <u>\$5,100</u>	1	\$3,500 <u>\$7,700</u>
(7.C.)	02231	NV1	Nuclear Medical Van	\$2,300 <u>\$4,140</u>	2	\$1,800 <u>\$4,000</u>
(7.C.)	22160	PMM	Pacemaker – By-Product and/or SNM	\$2,300 <u>\$2,600</u>	T	Note 5
(3.M.)	03620	RD2	Research & Development – Other	\$2,500 <u>\$4,375</u>	3	\$1,350 <u>\$4,000</u>

PUBLIC HEALTH DEPARTMENT[641](cont'd)

	Program Code	Category	Type	New License Fee	Inspection Priority	Annual Fee
(2.C.)	11300	SM1	Source Material, Other, >150 Kilograms	\$6,000 <u>\$2,600</u>	3	\$2,250 <u>\$4,000</u>
(1.D.)	22120	SNM2	SNM Plutonium – Neutron Source	\$1,500 <u>\$2,600</u>	5	\$500 <u>\$3,750</u>
(3.P.)	03221	CAL	Calibration and W/L Tests	\$1,300 <u>\$2,275</u>	5	\$650 <u>\$3,900</u>
(3.P.)	03122	XRF	X-Ray Fluorescent Analyzer	\$1,300 <u>\$2,275</u>	7	\$650 <u>\$1,860</u>
(3.P.)	02400	VMT	Veterinary Medicine – Therapy	\$1,300 <u>\$3,250</u>	3	\$650 <u>\$3,900</u>
(3.B.)	03214	MD	Manufacturing/Distribution	\$3,500	3	\$1,800 <u>\$3,980</u>

Notes:

1. Reciprocity fee is \$1,800 annually (180 days).
2. Inspection priorities are based on NRC inspection manual chapter 2800. Priority “T” is a telephonic contact and is not considered an inspection.
3. License amendment fee for all categories is ~~\$400~~ \$600.
4. Annual fees are due no later than September 1 of each year. A 10% late charge will be assessed per month for late payments. Licensees with more than two authorized locations of use will be charged an additional 10% of the annual fee per location.
5. Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses with the agency.
6. General license registration fee is ~~\$250~~ \$700 annually on registration anniversary.

38.8(3) Industrial radiography testing and certification.

a. A nonrefundable fee of ~~\$175~~ \$275 shall be submitted with each application for taking an industrial radiography examination to become certified by the agency.

b. ~~A fee of \$25 shall be submitted in order to replace lost identification cards issued to industrial radiographers by the agency pursuant to 641—subrule 45.1(10).~~

e. b. A nonrefundable fee of ~~\$75~~ \$120 shall be submitted with each application, not associated with an agency-administered industrial radiography examination, for a trainee or trainer card issued to a radiographer’s assistant or an industrial radiographer.

ITEM 2. Amend subrule 38.8(8) as follows:

38.8(8) Reciprocity. Fees paid for reciprocal recognition of out-of-state persons wishing to utilize radiation machines or radioactive materials in Iowa shall allow the out-of-state person to operate for a total of 180 days during the 365-day reciprocity period starting the date the fee is received by the agency.

a. Radiation machines. Any out-of-state person who wishes to bring an X-ray machine or linear accelerators into the state to perform work or services shall pay a reciprocity fee of ~~\$100 for each source of radiation~~ \$500.

b. Radioactive materials. Out-of-state persons wishing to bring sources of radioactive material into Iowa for business purposes may be subject to a reciprocity fee depending on the type of activity to be performed and the type of radioactive materials license possessed (refer to 641—subrule 39.4(90)). If a reciprocity fee is applicable, it shall be assessed at the rate for reciprocity specified in the radioactive materials fee schedule available through the agency for each 365-day reciprocity period.

e. ~~Industrial radiographers wishing to operate in Iowa under an identification card from a jurisdiction recognized by Iowa that charges Iowa card holders a fee will be assessed and must pay a \$100 fee prior to conducting industrial radiography in Iowa.~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 3. Amend rule 641—42.5(136C) as follows:

641—42.5(136C) Permit to practice as a general radiologic technologist.

42.5(1) An individual applying for an initial permit shall:

- a. Be at least 18 years of age.
- b. Submit the appropriate completed application.
- c. Submit a nonrefundable ~~\$60~~ \$100 application fee.
- d. Submit proof of a passing score on the ARRT general radiography examination.

42.5(2) An individual renewing a current permit shall:

- a. Renew annually by submitting a renewal application and a nonrefundable ~~\$50~~ \$75 renewal fee.
- b. Report 24.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

42.5(3) An individual reinstating an expired permit shall submit the following:

- a. Application to reinstate and nonrefundable ~~\$60~~ \$150 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.5(1).
- b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 24.0 hours of continuing education obtained within the previous 24 months must be submitted.
- c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

ITEM 4. Amend rule 641—42.6(136C) as follows:

641—42.6(136C) Permit to practice as a general nuclear medicine technologist.

42.6(1) An individual applying for an initial permit shall:

- a. Be at least 18 years of age.
- b. Submit the appropriate completed application.
- c. Submit a nonrefundable ~~\$60~~ \$100 application fee.
- d. Submit proof of a passing score on ARRT's nuclear medicine examination or the NMTCB nuclear medicine examination.

42.6(2) An individual renewing a current permit shall:

- a. Renew annually by submitting a renewal application and a nonrefundable ~~\$50~~ \$75 renewal fee.
- b. Report 24.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

42.6(3) An individual reinstating an expired permit shall submit the following:

- a. Application to reinstate and nonrefundable ~~\$60~~ \$150 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.6(1).
- b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 24.0 hours of continuing education obtained within the previous 24 months must be submitted.
- c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

42.6(4) An individual applying for a nuclear medicine diagnostic computed tomography endorsement shall:

- a. Maintain an active permit to practice as a general nuclear medicine technologist. Endorsements may not be held without an active permit.
- b. Submit proof of a passing score on the ARRT or NMTCB computed tomography examination.

ITEM 5. Amend rule 641—42.7(136C) as follows:

641—42.7(136C) Permit to practice as a radiation therapist.

42.7(1) An individual applying for an initial permit shall:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- a. Be at least 18 years of age.
- b. Submit the appropriate completed application.
- c. Submit a nonrefundable ~~\$60~~ \$100 application fee.
- d. Submit proof of a passing score on the ARRT's radiation therapy examination.

42.7(2) An individual renewing a current permit shall:

- a. Renew annually by submitting a renewal application and a nonrefundable ~~\$50~~ \$75 renewal fee.
- b. Report 24.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

42.7(3) An individual reinstating an expired permit shall submit the following:

- a. Application to reinstate and nonrefundable ~~\$60~~ \$150 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.7(1).
- b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 24.0 hours of continuing education obtained within the previous 24 months must be submitted.
- c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

ITEM 6. Amend rule 641—42.8(136C) as follows:

641—42.8(136C) Permit to practice as a radiologist assistant.**42.8(1)** An individual applying for an initial permit shall:

- a. Submit the appropriate completed application.
- b. Submit a nonrefundable ~~\$60~~ \$100 application fee.
- c. Submit proof of completion of formal education for a radiologist assistant.
- d. Submit proof of one year of experience as a general radiologic technologist.
- e. Submit proof of passing score on the ARRT radiologist assistant examination or another examination that is recognized by the department.

42.8(2) An individual renewing a current permit shall:

- a. Renew annually by submitting a renewal application and a nonrefundable ~~\$50~~ \$75 renewal fee.
- b. Report 50.0 hours of continuing education obtained within the biennium indicated on the individual's permit. Radiologist assistant permit holders must obtain at least one-half of the required continuing education in subject areas specific to radiography. The remainder may be earned as physician credit hours.

42.8(3) An individual reinstating an expired permit shall submit the following:

- a. Application to reinstate and nonrefundable ~~\$60~~ \$150 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.8(1).
- b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 50.0 hours of continuing education obtained within the previous 24 months must be submitted.
- c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

ITEM 7. Amend subrules 42.9(2) to 42.9(4) as follows:

42.9(2) An individual applying for an initial permit shall:

- a. Be at least 18 years of age.
- b. Submit the appropriate completed application.
- c. Submit a nonrefundable ~~\$60~~ \$100 application fee.
- d. Submit proof of completion of formal education in all limited diagnostic radiography categories for which the individual is applying. In order to apply for the shoulder category, the individual must also apply for the chest or extremity category. In order to apply for the pediatric category, the individual must also apply for the chest or extremity category. Each individual making application to attend a formal

PUBLIC HEALTH DEPARTMENT[641](cont'd)

education course provided by the department to fulfill the requirements of 42.9(2) "d" must submit an application and nonrefundable fee of \$200 to the department each time the individual attends a course.

e. Submit proof of completion of testing as applicable for each permit category for which the individual is applying on the limited radiologic technologist permit. No examination is required for the categories of shoulder or pediatric.

(1) The following are passing scores:

1. A score of at least 70 percent on the ARRT limited scope of practice in radiography examination core section and at least 70 percent on each category; or

2. A score of at least 70 percent on the American Chiropractic Registry of Radiologic Technologists Limited Radiography examination; or

3. A score of at least 70 percent on a department-approved examination.

(2) Three failed attempts on the examination in 42.9(2) "e"(1) "1" or "3" will require the individual to repeat the formal education or complete a department-approved review program.

(3) Each individual making application to take an examination as a limited radiologic technologist in 42.9(2) "e"(1) "1" or "3" must submit an application and nonrefundable fee of ~~\$135~~ \$200 to the department each time the individual takes the examination.

f. Submit proof of completion of formal education and examination in the category to be added and a nonrefundable ~~\$25~~ \$40 amendment fee to add chest, extremity or spine category to an existing limited radiologic technologist permit. A score of at least 70 percent on each category is required.

g. Submit proof of completion of formal education and a nonrefundable ~~\$25~~ \$40 amendment fee to add shoulder or pediatric category to an existing limited radiologic technologist permit. No examination is required.

42.9(3) An individual renewing a current permit shall:

a. Renew annually by submitting a renewal application and a nonrefundable ~~\$50~~ \$75 renewal fee.

b. Report 12.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

42.9(4) An individual reinstating an expired permit shall submit the following:

a. Application to reinstate and nonrefundable ~~\$60~~ \$150 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of rule 641—42.9(136C).

b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 12.0 hours of continuing education obtained within the previous 24 months must be submitted.

c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

ITEM 8. Amend subrules 42.10(1) to 42.10(3) as follows:

42.10(1) An individual applying for an initial permit shall:

a. Be at least 18 years of age.

b. Submit the completed application.

c. Submit a nonrefundable ~~\$25~~ \$40 application fee.

d. Submit proof of completion of a formal education that meets the department minimum training standards. Each individual making application to attend an X-ray equipment operator formal education course provided by the department to fulfill the requirement of 42.10(1) "d" must submit an application and nonrefundable fee of \$150 to the department each time the individual attends the course.

e. Submit proof of at least a 70 percent score on a department-approved examination.

(1) All podiatric X-ray equipment operators must pass the examination with a 70 percent score. After January 1, 2015, all bone densitometry equipment operators must submit proof of at least a 70 percent score on a department-approved examination.

(2) Three failed attempts on the examination in 42.10(1) "e"(1) will require the individual to repeat the formal education or complete a department-approved review program.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(3) Each individual making application to take an examination as an X-ray equipment operator to meet the requirements of 42.10 "e"(1) must submit an application and nonrefundable fee of \$100 to the department each time the individual takes the examination.

42.10(2) An individual renewing a current permit shall:

a. Renew annually by submitting a renewal application and a nonrefundable ~~\$25~~ \$40 renewal fee.
b. Report 4.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

42.10(3) An individual reinstating an expired permit shall submit the following:

a. Application to reinstate and nonrefundable ~~\$25~~ \$75 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.10(1).

b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 4.0 hours of continuing education obtained within the previous 24 months must be submitted.

c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

ITEM 9. Amend rule 641—42.12(136C) as follows:

641—42.12(136C) Closed classification or category permits.

42.12(1) The following classifications or categories are closed to new applicants. Permits in the following classifications or categories that are expired for more than six months are not eligible to be reinstated, and individuals shall maintain current permits as outlined below:

a. Limited in-hospital radiologic technologist shall:

(1) Perform diagnostic radiography procedures, excluding CT and fluoroscopy, in a hospital setting only for specific body parts for which the individual is qualified.

(2) Renew annually by submitting a renewal application and a nonrefundable ~~\$50~~ \$75 renewal fee.

(3) Report 24.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

b. Limited nuclear medicine technologist shall:

(1) Perform nuclear medicine procedures for which the individual is qualified and has been authorized by the department.

(2) Renew annually by submitting a renewal application and a nonrefundable ~~\$50~~ \$75 renewal fee.

(3) Report 12.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

c. Limited radiologic technologist paranasal sinus shall:

(1) Perform diagnostic radiography procedures, excluding CT and fluoroscopy, specific to paranasal sinus.

(2) Renew annually by submitting a renewal application and a nonrefundable ~~\$50~~ \$75 renewal fee.

(3) Report 6.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

42.12(2) An individual renewing a permit expired less than six months shall submit the following:

a. Application to reinstate and nonrefundable ~~\$60~~ \$150 application fee.

b. Any continuing education hours due at time of renewal.

c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

ITEM 10. Amend rule 641—42.13(136C) as follows:

641—42.13(136C) Combining permits for an individual qualifying for permits in more than one classification.

42.13(1) An individual applying for an initial permit in more than one classification at the same time shall combine classifications on one permit by:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

a. Indicating each classification on the appropriate completed application;
 b. Submitting the required documentation for each classification as outlined in each classification section; and

c. Submitting a nonrefundable ~~\$100~~ \$150 application fee.

42.13(2) Permit holders shall add a classification to an existing permit by:

a. Completing the appropriate application;

b. Submitting the required documentation as outlined in the section specific to the classification to be added; and

c. Submitting a nonrefundable ~~\$25~~ \$40 fee.

42.13(3) An individual renewing a combined classification permit must submit the appropriately completed renewal application and submit a nonrefundable ~~\$75~~ \$110 renewal fee.

42.13(4) An individual shall submit a total of 24.0 hours of continuing education obtained within the biennium indicated on the individual's permit. If the permit includes the radiologist assistant classification, then the individual must submit a total of 50.0 hours of continuing education obtained within the biennium indicated on the individual's permit.

ARC 4448C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rule making related to the state mechanical code and providing an opportunity for public comment

The Plumbing and Mechanical Systems Board of the Department of Public Health hereby proposes to amend Chapter 61, "State Mechanical Code," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 105.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 105.4.

Purpose and Summary

The proposed amendments include the adoption by reference of the International Mechanical Code, 2018 Edition. The Board previously adopted the 2015 edition of the International Mechanical Code (IMC). The Board is required to adopt the most recent version of the IMC by law. In addition, the proposed amendments incorporate other clarifications to the state mechanical code that were suggested by public comment. These changes are relatively minor technical changes to better align the IMC with current practice.

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 the Board's general waiver provisions contained in 641—Chapter 31.

PUBLIC HEALTH DEPARTMENT[641](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 Board no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

Kane Young
 Department of Public Health
 Lucas State Office Building
 321 East 12th Street
 Des Moines, Iowa 50319
 Email: kane.young@idph.iowa.gov

Public Hearing

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

June 11, 2019
 3 to 4 p.m.

Room 518
 Lucas State Office Building
 Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the 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 action is proposed:

Amend rule 641—61.2(105) as follows:

641—61.2(105) Adoption by reference. The provisions of the International Mechanical Code, ~~2015~~ 2018 edition, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, are hereby adopted by reference as the requirements for the design, installation, maintenance, alteration, and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings, with the following amendments:

61.2(1) Delete section 101.1.

61.2(2) In section 101.2, delete the phrase “International Fuel Gas Code” and insert in lieu thereof “NFPA 54, National Fuel Gas Code, 2015 edition; NFPA 58, Liquefied Petroleum Gas Code, 2014 edition; the provisions of 661—Chapter 226; and the state plumbing code.”

61.2(3) Delete ~~sections 103, 104, 105, 106, 107, 108, 109, and 110 and sections therein.~~ section 103 and insert in lieu thereof the following new section 103.1:

103.1 Local authority. Local jurisdictions may administer the permit, inspection, testing, and enforcement provisions contained in this code. Permit, inspection, testing, and enforcement provisions contained in this code shall not be administered by the Plumbing and Mechanical Systems Board or the state.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

61.2(4) Amend section 304.11 by deleting the last sentence and inserting in lieu thereof the following new exception:

Exception: Guards are not required where permanent fall arrest/restraint anchorage connector devices that comply with ANSI/ASSE Z 359.1 are affixed for use during the entire lifetime of the roof covering. The devices shall be evaluated for possible replacement when the entire roof covering is replaced. The devices shall be placed not more than 10 feet (3048 mm) on center along hip and ridge lines and placed not less than 10 feet (3048 mm) from roof edges and the open sides of walking surfaces.

61.2(5) Delete section 306.2 and insert in lieu thereof the following new section:

306.2 Appliances in rooms and closets. Rooms and closets containing appliances shall be provided with a door and an unobstructed passageway measuring not less than 36 inches wide and 80 inches high. A level service space not less than 30 inches deep and 30 inches wide shall be present at the front service side of the appliance with the door open.

61.2(4) 61.2(6) Delete section 401.1 and insert in lieu thereof the following new section:

401.1 Scope. This chapter shall govern the ventilation of spaces within a building intended to be occupied. These buildings shall meet either the requirements of ASHRAE Standard 62.1, "Ventilation for Acceptable Indoor Air Quality," 2013 2016 edition, published by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers, 1791 Tullie Circle N.E., Atlanta, GA 30329, or the requirements contained in this chapter. Mechanical exhaust systems, including exhaust systems serving clothes dryers and cooking appliances; hazardous exhaust systems; dust, stock, and refuse conveyor systems; subslab soil exhaust systems; smoke control systems; energy recovery ventilation systems; and other systems specified in Section 502 shall comply with Chapter 5.

61.2(5) 61.2(7) Add the following footnote "i" related to the gym, stadium, arena (play area) category of the sports and amusement occupancy classification in Table 403.3 403.3.1.1, Minimum Ventilation Rates:

i. When combustion equipment is intended to be used on the playing surface, additional dilution ventilation and/or source control shall be provided.

61.2(8) Add the following footnote "j" to Table 403.3.1.1 anywhere the term "smoking lounges" appears:

j. For ventilation purposes, "smoking" includes both combustible tobacco products and accessories and electronic smoking devices and accessories.

61.2(6) 61.2(9) Delete section 504.8.2 and insert in lieu thereof the following new section:

504.8.2 Duct Installation installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined by screws or similar fasteners that protrude into the inside of the duct.

61.2(10) Delete subsection 506.3.13.3 and insert in lieu thereof the following new subsection:

506.3.13.3 Termination location. Exhaust outlets shall be located not less than 10 feet (3048 mm) horizontally from parts of the same or contiguous buildings, adjacent buildings and adjacent property lines and shall be located not less than 10 feet (3048 mm) above the adjoining grade level. Exhaust outlets shall be located not less than 20 feet horizontally/vertically from or not less than 5 feet above air intake openings and operable doors and windows into any building.

61.2(11) Delete section 508.1.1 and insert in lieu thereof the following new section:

508.1.1 Makeup air temperature. All kitchen makeup air systems shall be verified by a certified TAB (testing and balance) contractor to heat makeup air to within 10 degrees of room temperature set point. The TAB contractor shall be certified by NEBB, TABB, or other certifying organization as approved by the Authority Having Jurisdiction.

61.2(12) Amend section 601.5 by adopting new paragraphs "9" through "11" as follows:

9. A central return shall not be placed within a bedroom.

10. An undercut door shall not constitute a return air path.

11. Return air openings shall be located at least 18 inches from supply air openings. Air throw shall be directed away from return air openings to reduce short cycling of air. Exception: Factory-made concentric duct terminations.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

61.2(13) Delete subsection 603.6.1.1 and insert in lieu thereof the following new subsection:

603.6.1.1 Duct length. Flexible air ducts shall only be used at the final connection to the air terminal device and shall be limited to 8 feet.

61.2(14) Delete section 603.12 and insert in lieu thereof the following new section:

603.12 Condensation. Provisions shall be made to prevent the formation of condensation on the exterior of any duct. Bathroom, domestic kitchen and dryer exhaust vents ducted to an outside wall shall be insulated at least 10 feet back from the outside wall. However, if the duct is in an unconditioned space, the entire duct shall be insulated.

61.2(15) Delete section 604.3 and insert in lieu thereof the following new section:

604.3 Coverings and linings. Covering and linings, including adhesives where used, shall have a flame spread index of not more than 25 and a smoke-development index of not more than 50, when tested in accordance with ASTM E84 or UL 723, using the specimen preparation and mounting procedures of ASTM E2231. Duct coverings and linings shall not flame, glow, smolder or smoke when tested in accordance with ASTM C411 at the temperature to which they are exposed in service. The testing temperature shall not fall below 250°F (121°C). Coverings and linings shall be listed and labeled. The use of an air gap to meet R-value requirements for duct insulation shall be prohibited.

~~61.2(7)~~ **61.2(16)** Delete appendices A and appendix B.

~~61.2(8)~~ **61.2(17)** Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rate Changes

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the changes to the electric and natural gas delivery tax rates. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2018 by each taxpayer, for replacement taxes payable in the 2019-2020 fiscal year.

2018 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA RATE CHANGES ONLY

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3347	West Point Municipal Utility System	0.00012115
3327	Story City Municipal Electric Utility	0.00010916
3226	Akron Municipal Utilities	0.00005016
3209	Atlantic Municipal Utilities	0.00019156
3297	New Hampton Municipal Light Plant	0.00009487
3326	State Center Municipal Light Plant	0.00027766
3216	Buffalo Municipal Electric System	0.00000203
3332	Traer Municipal Utilities	0.00057746
3245	Denver Municipal Electric Utility	0.00005700
3342	Webster City Municipal Utilities	0.00042187
3324	Spencer Municipal Utilities	0.00012596
3074	Aurelia Mun. Electric Utility	0.00007365
3228	Bigelow Municipal Electric Utility	0.00219770

REVENUE DEPARTMENT(cont'd)

CO. #	IOUs—ELECTRIC	DELIVERY TAX RATE
7289	MidAmerican Energy	0.00254101
7305	Omaha Public Power District	0.00124531

CO. #	RECs	DELIVERY TAX RATE
4319	Access Energy Coop	0.00040564
4219	Calhoun County Electric Coop	0.00112974
4235	Clarke Electric Coop	0.00230886
4287	Consumers Energy	0.00125819
4250	Farmers Electric Coop - Greenfield	0.00280330
4254	Freeborn-Mower Cooperative	0.00171972
4262	Hancock County REC	0.00098343
4223	Heartland Power Coop	0.00033885
4279	Linn County REC	0.00133993
4280	Lyon Rural Electric Coop	0.00051847
4290	Midland Power Cooperative	0.00110248
4308	Osceola Electric Coop	0.00029411
4310	Pella Cooperative Electric	0.00182080
4316	Rideta Electric Coop	0.00261433
4333	Tri-County Electric Coop	0.00090205
4353	Wright County REC	0.00046231

**2018 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA
RATE CHANGES ONLY**

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5241	Corning Municipal Utilities	0.00000603
5344	West Bend Municipal Utilities	0.00002049
5204	Allerton Gas	0.02459997
5283	Manning Municipal Natural Gas	0.00012060
5317	Rock Rapids Municipal Gas	0.00011616
5281	Manilla Municipal Gas	0.00039489

CO. #	IOUs—GAS	DELIVERY TAX RATE
5289	MidAmerican Energy Gas	0.00585745
5335	United Cities Gas	0.00825340

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Ronald L. Hansen, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for May is 4.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective May 9, 2019, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .40%
32-89 days	Minimum .40%
90-179 days	Minimum .50%
180-364 days	Minimum .70%
One year to 397 days	Minimum .90%
More than 397 days	Minimum 1.00%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

USURY(cont'd)

June 1, 2018 — June 30, 2018	4.50%
July 1, 2018 — July 31, 2018	5.00%
August 1, 2018 — August 31, 2018	5.00%
September 1, 2018 — September 30, 2018	5.00%
October 1, 2018 — October 31, 2018	5.00%
November 1, 2018 — November 30, 2018	5.00%
December 1, 2018 — December 31, 2018	5.25%
January 1, 2019 — January 31, 2019	5.00%
February 1, 2019 — February 28, 2019	4.75%
March 1, 2019 — March 31, 2019	4.75%
April 1, 2019 — April 30, 2019	4.75%
May 1, 2019 — May 31, 2019	4.50%
June 1, 2019 — June 30, 2019	4.50%

ARC 4449C**WORKFORCE DEVELOPMENT DEPARTMENT[871]****Notice of Intended Action****Proposing rule making related to employer innovation fund
and providing an opportunity for public comment**

The Director of the Workforce Development Department hereby proposes to adopt new Chapter 16, “Employer Innovation Fund,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 96 and 2018 Iowa Acts, chapter 1067.

Purpose and Summary

This proposed new chapter establishes rules and procedures for implementation and administration of the new Employer Innovation Fund, as enacted by the Future Ready Iowa Act.

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.

WORKFORCE DEVELOPMENT DEPARTMENT[871](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 June 11, 2019. Comments should be directed to:

David Steen
Department of Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: david.steen@iwd.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** 871—Chapter 16:

CHAPTER 16
EMPLOYER INNOVATION FUND

871—16.1(96,87GA,ch1067) Purpose. The Iowa department of workforce development shall implement and administer the employer innovation fund. The purpose of the employer innovation fund is to expand opportunities for credit and noncredit education and training for residents of Iowa, leading to high-demand jobs, and to encourage Iowa employers, community leaders, and others to provide leadership and support for regional workforce talent pools throughout the state. The state of Iowa seeks to encourage employers and foster new and creative initiatives toward the objectives of increasing employers’ access to the workforce and assisting workers in finding long-term opportunities in high-demand sectors of the Iowa economy.

871—16.2(96,87GA,ch1067) Definitions. As used in this chapter:

“*High-demand job*” means a job identified by the workforce development board or by a community college pursuant to 2018 Iowa Acts, chapter 1067.

“*Internship*” means temporary employment of a student that focuses on providing the student with work experience in the student’s field of study.

871—16.3(96,87GA,ch1067) Administration.

16.3(1) The employer innovation fund shall be managed and administered by the Iowa department of workforce development after consultation with the workforce development board.

16.3(2) An employer with its principal place of business in the state of Iowa, an employer consortium, a community organization, or another entity seeking matching funds may submit

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

innovative, dynamic proposals for initiatives that expand opportunities for residents of Iowa to access training and education opportunities leading to high-demand jobs.

16.3(3) The Iowa department of workforce development shall promulgate a policy for the application process for the employer innovation fund.

a. Proposals shall be submitted directly to the director of the department of workforce development for consideration.

b. Proposals are to be submitted on an annual basis by June 1 of each calendar year, except calendar year 2019, in which proposals are to be submitted by August 1.

c. Proposals shall contain a written, detailed plan, to include a narrative outlining the initiative to be pursued, the manner in which the initiative would be implemented, the costs involved, the number of participants to be served, whether the initiative will offer academic credit, and the outcomes expected to be achieved.

d. Any funds remaining after the initial awards are designated will be made available in additional application rounds.

16.3(4) The employer innovation fund can be used for credit and noncredit programs; for wrap-around support programs in areas such as child care, transportation, books, equipment, and fees; or for other innovative ideas and proposals that can assist Iowa residents in completing training and education.

a. Initiatives which qualify for the employer innovation fund must be tied to outcomes in employment and training in high-demand jobs or in jobs that are needed in the local area as identified with supporting data.

b. Initiatives do not have to be 15 weeks long or Pell Grant-eligible in order to qualify for the employer innovation fund.

c. Housing expenses, such as rent, do not qualify for consideration for matching funds under the employer innovation fund.

16.3(5) Employers must prove the existence and security of the original funds in order to qualify for a match from the employer innovation fund.

a. Proof may be provided by an official statement from a Federal Deposit Insurance Corporation (FDIC)-insured financial institution holding the funds.

b. In the absence of a statement from a financial institution, an affidavit from a certified public accountant can be used to certify the existence and security of the funds to be matched pursuant to this chapter.

16.3(6) Funds matched, along with the original funds provided by the employer, must be kept in a separate, FDIC-insured account.

16.3(7) Employer recipients must provide a detailed report of the use of the funds by December 31 of each calendar year. The detailed report shall be submitted to the director of the department of workforce development and include:

- a.* The date of funds received.
- b.* The amount of funds received.
- c.* The amount of funds provided by the employer.
- d.* The number of individuals, agencies, businesses, and others who received the funds.
- e.* The balance of available funds remaining as of December 31 of the reporting year.
- f.* A description of the activities paid for by the funds, along with amounts disbursed for each activity, and the number of participants served.
- g.* The completion rate for individuals supported by the award, including the specific credit or noncredit program completed.
- h.* Employment and wage outcomes.

These rules are intended to implement Iowa Code chapter 96 and 2018 Iowa Acts, chapter 1067.

ARC 4451C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

**Proposing rule making related to wage-earnings limitation
and providing an opportunity for public comment**

The Director of the Workforce Development Department hereby proposes to amend Chapter 24, "Claims and Benefits," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

The proposed amendment aligns the administrative rule relating to wage-earnings limitation with the Iowa Code so they are not in conflict.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 11, 2019. Comments should be directed to:

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

WORKFORCE DEVELOPMENT DEPARTMENT[871](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 871—24.18(96) as follows:

871—24.18(96) Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

ARC 4452C

IOWA FINANCE AUTHORITY[265]**Adopted and Filed****Rule making related to trust fund allocation plans**

The Iowa Finance Authority hereby amends Chapter 19, "State Housing Trust Fund," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 16.181(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 16.181.

Purpose and Summary

The purpose of the amendment is to update the rules in Chapter 19, which have not been revised for approximately ten years. The amendment updates the trust fund allocation plan for the Local Housing Trust Fund Program from the June 2009 version to the March 2019 version of the plan. This update allows the final four counties that are not part of an Iowa Council of Governments region, with the Iowa Finance Authority Board's consent, to form a new Local Housing Trust Fund together even though the counties do not serve geographically contiguous areas.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 27, 2019, as **ARC 4371C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Authority on May 1, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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).

IOWA FINANCE AUTHORITY[265](cont'd)

Effective Date

This rule making will become effective on June 26, 2019.

The following rule-making action is adopted:

Amend rule 265—19.1(16) as follows:

265—19.1(16) Trust fund allocation plans. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Local Housing Trust Fund Program dated ~~June 2009~~ March 2019 shall be the allocation plan for the award, pursuant to the local housing trust fund program, of funds held within the state housing trust fund established in Iowa Code section 16.181. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Project-Based Housing Program dated June 2009 shall be the allocation plan for the distribution, pursuant to the project-based housing program, of funds held within the state housing trust fund. The trust fund allocation plans for the local housing trust fund program and the project-based housing program include the plans, applications, and application instructions. The trust fund allocation plans for the local housing trust fund program and the project-based housing program are incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

[Filed 5/2/19, effective 6/26/19]

[Published 5/22/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4453C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Rule making related to water quality financing program

The Iowa Finance Authority hereby adopts new Chapter 46, "Water Quality Financing Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 16.152(4).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 16.134A and 16.151 through 16.154.

Purpose and Summary

These rules are intended to implement the Water Quality Financing Program created by 2018 Iowa Acts, Senate File 512, and codified at Iowa Code sections 16.134A and 16.151 through 16.154.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 27, 2019, as **ARC 4372C**. A public hearing was held on April 16, 2019, at 9 a.m. at the Authority offices, 1963 Bell Avenue, Suite 200, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

IOWA FINANCE AUTHORITY[265](cont'd)

Adoption of Rule Making

This rule making was adopted by the Authority on May 1, 2019.

Fiscal Impact

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

Jobs Impact

The program is likely to have a positive impact on jobs in Iowa by financing projects that will involve construction, engineering, and related occupations.

Waivers

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

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 26, 2019.

The following rule-making action is adopted:

Adopt the following **new** 265—Chapter 46:

CHAPTER 46
WATER QUALITY FINANCING PROGRAM

265—46.1(16) Overview.

46.1(1) Source of funds. The water quality financing program shall consist of moneys transferred to the fund, loan interest and earnings, and moneys from other funds as provided by law.

46.1(2) Purpose. The purpose of the program shall be to provide financial assistance to enhance the quality of surface water and groundwater, particularly by providing financial assistance for projects designed to improve water quality by addressing point and nonpoint sources, with a higher prioritization provided to collaborative efforts.

265—46.2(16) Definitions.

“*Authority*” means the Iowa finance authority.

“*Cost*” means all costs, charges, expenses, or other indebtedness incurred by a loan recipient and determined by the authority as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.

“*Eligible entity*” means a municipality or a landowner, as determined by the authority, a public utility as defined in Iowa Code section 476.1, a specified industry, or a rural water district or rural water association as defined in Iowa Code section 357A.1.

“*Fund*” means the water quality financing program fund created pursuant to Iowa Code section 16.153.

“*Iowa nutrient reduction strategy*” means the same as defined in Iowa Code section 455B.171.

IOWA FINANCE AUTHORITY[265](cont'd)

“Loan recipient” means an eligible entity that has received a loan under the program.

“Municipality” means a governmental body such as a state agency or a political subdivision of the state. Municipality includes but is not limited to a city, city utility, county, soil and water conservation district, sanitary district, a subdistrict of any of the foregoing districts, a state agency, or other governmental body or corporation empowered to provide sewage collection and treatment services or drinking water, or any entity jointly exercising governmental powers pursuant to Iowa Code chapter 28E or 28F, or any other combination of two or more governmental bodies or corporations acting jointly under the laws of this state in connection with a project.

“Program” means the water quality financing program created in Iowa Code chapter 16, subchapter X, part 4.

“Project” means any combination of improvements, structures, developments, tasks, actions, constructions, modifications, operations, or practices designed to improve water quality that are proposed by an eligible entity and approved by the authority. “Project” includes but is not limited to any of the following:

1. In the context of water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, including treatment works as defined in Section 212 of the federal Clean Water Act, or the implementation and development of management programs established under Sections 319 and 320 of the federal Clean Water Act, including construction and undertaking of nonpoint source water pollution control projects and related development activities authorized under those sections.

2. In the context of drinking water facilities, the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, or equipping of waterworks, water mains, extensions, or treatment facilities useful for providing potable water to residents served by a water system, including the acquisition of real property needed for any of the foregoing purposes, and such other purposes and programs as may be authorized under the federal Safe Drinking Water Act.

3. A project, operation, or practice undertaken or carried out to address watershed protection, flood prevention, or water quality improvement.

4. A project meeting the requirements of a water resource restoration sponsor project under Iowa Code section 455B.199.

“Specified industry” means either of the following:

1. An entity engaged in an industry identified in the Iowa nutrient reduction strategy, as determined by the authority, which industry is or will be required pursuant to the Iowa nutrient reduction strategy to collect data on the source, concentration and mass of total nitrogen or total phosphorus in its effluent, and to evaluate alternatives for reducing the amount of nutrients in its discharge; or

2. An entity implementing technology or operational improvements to reduce nutrients in its discharge.

265—46.3(16) Program administration.

46.3(1) *Cooperating agencies.* The fund shall be administered by the authority in cooperation with the department of natural resources and the department of agriculture and land stewardship.

46.3(2) *Interest rates and terms.* Interest rates and repayment terms shall be determined by the authority in cooperation with the department of natural resources and the department of agriculture and land stewardship. The interest rate shall be specified in the application. Loan and grant terms shall be negotiated with each loan recipient and grant recipient, as the case may be, but no loan shall have a term more than 20 years. Loans may be prepaid at any time with no penalty.

46.3(3) *Parts of project eligible for funding.* Only the part of the project that has a water quality protection or improvement component may be funded.

46.3(4) *Funding guidelines.* The fund shall be administered in such a manner as to provide a permanent source of water quality project financial assistance to eligible entities. Financial assistance shall be provided in the form deemed by the authority to be most convenient for the efficient financing of projects, including loans, forgivable loans, or grants.

IOWA FINANCE AUTHORITY[265](cont'd)

265—46.4(16) Project funding.

46.4(1) Annual applications. Applications shall be taken annually.

46.4(2) Plan requirements. Each application shall include a plan that meets the following requirements:

a. The plan shall include one or more projects that improve water quality in the local area or watershed. Projects shall use practices identified in the Iowa nutrient reduction strategy.

b. The plan shall describe in detail the manner in which the project will be financed and undertaken, including, as applicable, the sources of revenue directed to financing the improvements as well as the eligible entities that will be receiving the revenues and how such revenues will be spent on the project.

46.4(3) Project agreements. The financial assistance shall be provided to the project pursuant to a written agreement between the recipient and the authority, which shall include standard terms for the receipt of program moneys and any other terms the authority deems necessary or convenient for the efficient administration of the program.

265—46.5(16) Financial agreements.

46.5(1) Project requirements. All projects financed under the program shall meet the following requirements:

a. The project owner shall be responsible for obtaining all necessary permits;

b. All eligible costs shall be documented to the satisfaction of the authority before proceeds may be disbursed;

c. The recipient shall maintain records that document all costs associated with the project. The recipient shall provide access to these records to the authority upon request. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final disbursement of funds; and

d. The recipient shall agree to provide the authority, the department of natural resources, and the department of agriculture and land stewardship or their agents access to the project site at all times during the construction process to verify that the funds are being used for the purpose intended and that the construction work meets applicable state and federal requirements.

46.5(2) Loan requirements. All loans made by the authority to finance projects under the program shall meet the following requirements:

a. The loan shall be accompanied by an enforceability opinion of counsel in a form acceptable to the authority;

b. Repayment must begin within 30 days after project completion or by the date specified in the loan agreement; and

c. The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations or, with the approval of the executive director of the authority, may be subordinate in right of payment to one or more of the recipient's other outstanding revenue obligations.

265—46.6(16) Project scoring. The provision of financial assistance under the program shall take into account, as applicable, the number of municipalities, landowners, public utilities, specified industries, rural water districts, or rural water associations that constitute an eligible entity, and the eligible entity's financing capacity. The authority shall only provide financial assistance to eligible entities that have sufficient financing capacity and that submit an appropriate plan designed to improve water quality.

265—46.7(16) Scoring criteria.

46.7(1) Financial feasibility. Thirty-five percent of the total possible points shall be based on financial feasibility of the proposed project. Elements considered under financial feasibility shall include but not be limited to:

a. Experience of the eligible entity in financial management;

b. A detailed project budget detailing all sources of funds as well as expected project costs. This would include information on whether other funding has been received, applied for or just identified;

IOWA FINANCE AUTHORITY[265](cont'd)

c. A project timeline, including information on the development of plans and specifications for the project, needed approvals and permits, and project construction start and completion dates;

d. A maintenance plan for the project, including information on the likely useful life of the project, the party or parties responsible for maintaining the project, the cost of maintenance, and how those costs will be paid; and

e. In the case of loans, the source(s) of funds for loan repayment.

46.7(2) *Project collaboration.* Thirty percent of the total possible points shall be based on project collaboration. Elements considered under project collaboration shall include but not be limited to:

a. A description of all parties involved in the project, including the roles, responsibilities, qualifications and experience of each party;

b. A description of any formal agreements among the parties and the status of those agreements;

c. A statement of the financial commitments of each party in the entity with respect to the project, including contributions of cash, gifts, or loans; and

d. A description of whether the project is part of a larger coordinated effort to improve water quality.

46.7(3) *Water quality benefit.* Thirty-five percent of the total possible points shall be based on water quality benefit. Elements considered under the water quality benefit of the project shall include but not be limited to:

a. The identification of the specific watershed where the project will be located;

b. Whether a comprehensive watershed plan has been completed and water quality impairments have been identified for the watershed;

c. Whether the goals of the project are targeted to impact the identified impairments in the watershed, including a description of methods used to determine practices and the location of practices to reach those goals;

d. Information on how results of the project will be measured (e.g., by quantity of pollution being reduced or the percentage of pollution being reduced); and

e. A description of how the project will use practices identified in the Iowa nutrient reduction strategy.

265—46.8(16) Termination; rectification of deficiencies; disputes.

46.8(1) *Termination.* The authority shall have the right to terminate and recapture any grant or loan proceeds when terms of the financial agreement have been violated. The executive director shall establish a repayment schedule for funds already disbursed to the recipient. All terminations shall be in writing.

46.8(2) *Rectification of deficiencies.* Failure of the recipient to implement the approved project or to comply with the applicable requirements constitutes grounds for the authority to recapture or withhold funds. The recipient is responsible for ensuring that the identified deficiency is rectified. Once the deficiency is corrected, the funds may be released.

46.8(3) *Disputes.* A recipient that disagrees with the authority's withholding of funds may request a formal review of the action. The recipient must submit a request in writing to the executive director within 30 days of notification by the authority of its planned action.

These rules are intended to implement Iowa Code sections 16.134A and 16.151 through 16.154.

[Filed 5/2/19, effective 6/26/19]

[Published 5/22/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4454C**PHARMACY BOARD[657]****Adopted and Filed****Rule making related to USP general chapter 800**

The Board of Pharmacy hereby amends Chapter 8, “Universal Practice Standards,” and Chapter 20, “Compounding Practices,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76, 155A.2 and 155A.13.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 155A.2 and 155A.13.

Purpose and Summary

The United States Pharmacopeial Convention establishes national minimum standards for a number of health care-related topics. United States Pharmacopeia (USP) General Chapter 800, enforceable by the federal Food and Drug Administration, provides the national minimum standard for the proper handling of hazardous drugs to protect health care workers, patients, and the environment and will become effective (enforceable) December 1, 2019. This rule making establishes the Board’s expectation that pharmacies handling hazardous drugs will be compliant with the standards identified in USP General Chapter 800. This rule making also provides an opportunity for pharmacies engaged in compounding to seek approval for delayed compliance to applicable USP General Chapters for no more than 18 months and authorizes the Board to establish a committee to grant or deny requests for delayed compliance.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 29, 2018, as **ARC 3978C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on December 19, 2018, as **ARC 4172C**.

The Board received numerous comments from the public, health care associations, and the Administrative Rules Review Committee seeking either an 18-month delay of enforcement of USP General Chapter 800 or an opportunity for entities to seek approval from the Board for delayed compliance.

Since publication of the Notice, changes have been made in response to the comments received. These adopted rules provide an opportunity for pharmacies engaged in the compounding of hazardous drugs to seek approval for delayed compliance of applicable USP General Chapters and allow the Board to establish a committee to review such delayed compliance requests.

Adoption of Rule Making

This rule making was adopted by the Board on May 2, 2019.

Fiscal Impact

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

PHARMACY BOARD[657](cont'd)

Jobs Impact

After analysis and review of this rule making, no impact on jobs is anticipated or can be determined. It is unknown to what extent each individual pharmacy will need to implement protective measures to protect its personnel who handle hazardous drugs.

Waivers

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

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 26, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 657—8.5(155A) as follows:

657—8.5(155A) Environment and equipment requirements. There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy pursuant to rule 657—8.3(155A). Space and equipment shall be available in an amount and type to provide secure, environmentally controlled storage of drugs ~~shall be available~~.

8.5(1) to **8.5(10)** No change.

8.5(11) Hazardous drugs. The pharmacy shall ensure pharmacy personnel and patients are adequately protected from unnecessary exposure to hazardous drugs. As of December 1, 2019, the pharmacy shall be in compliance with United States Pharmacopeia (USP) General Chapter 800 for handling hazardous drugs. A pharmacy engaged in compounding of hazardous drugs may request delayed compliance for specific requirements in USP General Chapter 800 pertaining to compounding, in accordance with rule 657—20.5(126,155A).

ITEM 2. Amend rule 657—20.5(126,155A) as follows:

657—20.5(126,155A) Delayed compliance. A pharmacy that cannot meet the requirements for full compliance with these rules, including applicable USP chapters, and that has not obtained from the board a waiver of the specific requirement or requirements by the enforcement date established by USP shall not engage in compounding until the pharmacy is in full compliance with all requirements or the board has approved a waiver of delayed compliance for the specific requirement or requirements requested. The board may establish a committee to grant or deny requests for delayed compliance. The board or committee may grant a request for delayed compliance only if the pharmacy can demonstrate progress toward full compliance and adequate protection of the public health, safety, and welfare during the period of delayed compliance. The board or committee may only grant a request for delayed compliance of specific requirements in applicable USP chapters for a maximum of 18 months.

[Filed 5/3/19, effective 6/26/19]

[Published 5/22/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4455C**PHARMACY BOARD[657]****Adopted and Filed****Rule making related to controlled substances**

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

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 124.201, 124.203 and 124.301.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 124.203, 124.301 to 124.305, 124.551A, 124.557 and 147.80.

Purpose and Summary

During the 2018 Legislative Session, changes were made to the Iowa Code that require prescribing practitioners to register for the Iowa Prescription Monitoring Program (PMP) at the same time as the prescribing practitioners apply for Iowa Uniform Controlled Substances Act (CSA) registration; allow the Board to assess a surcharge of up to 25 percent of a registration fee to be deposited into the PMP fund; and align language relating to disciplinary action against CSA registrants with disciplinary actions against other licensees and registrants. The amendments reflect these changes. The amendments also:

- Temporarily place into Schedule I of the CSA six substances so scheduled by the federal Drug Enforcement Administration (DEA),
- Add a late penalty fee for applications for registration modification which are submitted untimely,
- Add a \$15 fee for written verification of a registration,
- Add a certified paramedic to the list of individuals who may dispose of a controlled substance as a result of administrative waste,
- Provide a correction to a referenced rule,
- Carve out butalbital products from the current list of “exempted prescription products” so that such products are not exempted from the CSA for purposes of reporting to the PMP, and
- Allow for the disposal of controlled substances of a hospice patient by employees of a qualified hospice program, pursuant to the 2018-enacted federal SUPPORT Act.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4290C**. 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 May 2, 2019.

Fiscal Impact

While the rules impose a late penalty fee on untimely registration change applications and a fee for written verification of a registration, the Board anticipates that registrants will timely apply for registration changes and utilize the Board’s online verification system at no charge. Further, the Board does not intend to implement the surcharge at this time due to adequate grant funding secured.

PHARMACY BOARD[657](cont'd)

Jobs Impact

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

Waivers

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

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 26, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following new definition of “Prescription monitoring program” in rule **657—10.2(124)**:

“*Prescription monitoring program,*” “*PMP,*” or “*program*” means the program established pursuant to 657—Chapter 37 for the collection and maintenance of PMP information and for the provision of PMP information to authorized individuals.

ITEM 2. Amend rule 657—10.5(124) as follows:

657—10.5(124) Application. Applicants for initial registration, registration renewal pursuant to rule 657—10.6(124), or modifications pursuant to rule 657—10.9(124) shall complete the appropriate application and shall include all required information and attachments. ~~Each registration application shall require submission of a \$90 registration fee except as provided in subrule 10.5(3).~~

10.5(1) Signature requirements. Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

a. No change.

b. If the applicant is a business, the application and supporting documents shall be signed by the person ultimately responsible for the security and maintenance of controlled substances at the registered location. If the applicant is a pharmacy, the responsible individual shall be the pharmacist in charge, unless the applicant petitions the board for an alternate responsible individual.

~~**10.5(2) Submission of multiple applications** Prescribing practitioner PMP registration required. Any person or business required to obtain more than one registration pursuant to rule 657—10.7(124) or 657—10.8(124) may submit all applications in one package. Each application shall be complete and shall not refer to any accompanying application or any attachment to an accompanying application for required information. A prescribing practitioner, except for a licensed veterinarian, shall register for the PMP at the same time the prescribing practitioner applies for registration.~~

10.5(3) No change.

10.5(4) Fees. Each application shall include a nonrefundable registration fee, except as provided in subrule 10.5(3), of \$90 per biennium, which may be prorated to the expiration date of the applicant's underlying professional license or other board license if applicable, and may include a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

PHARMACY BOARD[657](cont'd)

ITEM 3. Amend rule 657—10.6(124) as follows:

657—10.6(124) Registration renewal. Each registration shall be renewed prior to its ~~biennial~~ expiration. A registrant may renew its registration up to 60 days prior to the registration expiration. The nonrefundable fee for registration renewal shall be \$90 per biennium and may include a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

10.6(1) Delinquent registration grace period. A registration renewal application that is ~~not renewed prior to the first day of the month following expiration~~ submitted after expiration but within 30 days following expiration shall be considered delinquent and shall require the nonrefundable payment of the application fee plus a nonrefundable late penalty fee of \$90 and may require payment of a surcharge of not more than 25 percent of the applicable fees for deposit into the program fund. ~~A registrant may continue operations within the first 30 days following expiration while the license is delinquent if the registrant is in the process of renewing the registration. Failure to renew a registration prior to the first day of the month following expiration, but when submitting a completed renewal application within the 30 days following expiration, shall require payment of the renewal fee and a penalty fee of \$90. A registrant that submits a completed registration renewal application, nonrefundable late application fee, and nonrefundable late penalty fee within 30 days following expiration shall not be subject to disciplinary action for continuing to operate in the 30 days following expiration.~~

10.6(2) Delinquent registration reactivation beyond grace period. If a registration renewal application is not postmarked or hand-delivered to the board office within 30 days following ~~its~~ the registration's expiration date, the registrant may not conduct operations that involve controlled substances until the registrant reactivates the registration. A registrant may apply for reactivation by submitting a registration application for reactivation ~~and a \$360 fee~~. The nonrefundable fee for reactivation shall be \$360 and may include a nonrefundable surcharge of not more than 25 percent of the applicable fee for deposit into the program fund. As part of the reactivation application, the registrant shall disclose the activities conducted with respect to controlled substances while the registration was expired. A registrant that continues to conduct activities with respect to controlled substances without an active registration may be subject to disciplinary sanctions.

ITEM 4. Amend rule 657—10.9(124) as follows:

657—10.9(124) Modification or termination of registration. A registered individual or business shall apply to modify a current registration as provided by this rule. When submission of an application and fee is required, such application and fee shall be timely submitted pursuant to rule 657—10.5(124). A registrant which has timely submitted an application for registration modification and fee may continue to service Iowa patients while the registration modification is pending final approval. A registrant which has submitted an application for registration modification after the required date of submission pursuant to this rule but within 30 days of the required date of submission shall be assessed a nonrefundable late penalty fee of \$90 in addition to the application fee. A registrant which has submitted an application for registration modification 31 days or later following the required date of submission pursuant to this rule shall be assessed a nonrefundable late penalty fee of \$360.

10.9(1) No change.

10.9(2) Change of address of registered location.

a. No change.

b. *Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter.* An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the address of the registered location by submitting a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a

PHARMACY BOARD[657](cont'd)

simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of address.

10.9(3) Change of registrant's name.

a. No change.

b. *Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter.* An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the registrant name by submitting a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of registrant's name.

10.9(4) Change of ownership of registered business entity. A change of immediate ownership of a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the submission of a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of registrant's ownership.

10.9(5) Change of responsible individual. Any registrant, except an individual practitioner or researcher or a pharmacy or hospital, shall apply to change the responsible individual authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, and telephone number; the name and title of the current responsible individual and of the new responsible individual; the effective date of the change; and the registration number and shall be signed by the new responsible individual. No fee shall be required for the modification.

a. No change.

b. ~~*Pharmacies and hospitals Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter.*~~ The responsible pharmacist may execute a power of attorney for DEA order forms to change responsibility under the registration issued to the pharmacy or hospital. The power of attorney shall include the name, address, DEA registration number, and CSA registration number of the registrant. The power of attorney shall identify the current and new responsible individuals and shall authorize the new responsible individual to execute applications and official DEA order forms to requisition Schedule II controlled substances. The power of attorney shall be signed by both individuals, shall be witnessed by two adults, and shall be maintained by the registrant and available for inspection or copying by representatives of the board or other state or federal authorities. The responsible individual may be changed on the CSA registration by submission of a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration within 10 days of the identification of a new responsible individual.

10.9(6) No change.

ITEM 5. Rescind rule 657—10.10(124) and adopt the following **new** rule in lieu thereof:

657—10.10(124) Denial of application or discipline of registration.

10.10(1) Grounds for denial or discipline. The board may deny any application or discipline any registration upon a finding that the applicant or registrant:

a. Has furnished false or fraudulent material information.

PHARMACY BOARD[657](cont'd)

b. Has had the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended, revoked, or otherwise sanctioned.

c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even if entry of the judgment or sentence has been withheld and the applicant or registrant has been placed on probation.

d. Has committed such acts as would render the applicant's or registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section.

e. Has been subject to discipline by the applicant's or registrant's respective professional licensing board and the discipline revokes or suspends the applicant's or registrant's professional license or otherwise disciplines the applicant's or registrant's professional license in a way that restricts the applicant's or registrant's authority to handle or prescribe controlled substances. A copy of the record of licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.

f. Has failed to obtain or maintain active registration while engaged in activities which require registration.

10.10(2) Considerations in denial of application or discipline of registration. In determining the public interest, the board shall consider all the following factors:

a. Maintenance of effective controls against diversion of controlled substances into channels other than legitimate medical, scientific, or industrial channels.

b. Compliance with applicable state and local law.

c. Any convictions of the applicant or registrant under any federal and state laws relating to any controlled substance.

d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's or registrant's establishment of effective controls against diversion.

e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.

f. Suspension or revocation of the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.

g. Any other factors relevant to and consistent with the public health and safety.

h. Failure of a prescribing practitioner, except a licensed veterinarian, to register with the PMP pursuant to subrule 10.5(2).

10.10(3) Proceedings.

a. Prior to denying an application for registration, the board shall serve upon the applicant a notice of intent to deny the application. An applicant has 30 days to appeal a notice of intent to deny the application. If the notice of intent to deny the application is timely appealed, a notice of hearing shall be issued, initiating a contested case proceeding governed by 657—Chapter 35. Proceedings to refuse renewal of a registration shall not abate the existing registration, which shall remain in effect pending the outcome of the contested case proceeding. A registration may be disciplined in accordance with 657—Chapters 35 and 36.

b. Prior to sanctioning a registration, the board shall serve upon the registrant a notice of hearing and statement of charges. The notice shall contain a statement of the basis therefore and shall call upon the registrant to appear before an administrative law judge or the board at a time and place not less than 30 days after the date of service of the notice. The notice shall also contain a statement of the legal basis for such hearing and for the sanction of registration and a summary of the matters of fact and law asserted. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing unless the board issues an order of immediate suspension. A registration may be disciplined in accordance with 657—Chapters 35 and 36.

10.10(4) Disposition of controlled substances. Upon service of an order of the board suspending or revoking a registration, the registrant shall deliver all affected controlled substances in the registrant's

PHARMACY BOARD[657](cont'd)

possession to the board or authorized agent of the board. Upon receiving the affected controlled substances from the registrant, the board or its authorized agent shall place all such substances under seal and retain the sealed controlled substances pending final resolution of any appeals or until a court of competent jurisdiction directs otherwise. No disposition may be made of the substances under seal until the time for filing an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of proceeds of the sale with the court. Upon a revocation order's becoming final, all such controlled substances may be forfeited to the state.

ITEM 6. Adopt the following new rule 657—10.11(124,147,155A):

657—10.11(124,147,155A) Registration verification. The board may require a nonrefundable fee of \$15 for completion of a request for written verification of any registration.

ITEM 7. Amend subrule 10.22(2) as follows:

10.22(2) Waste resulting from administration or compounding. Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant, a certified paramedic, or a pharmacist in witness of one other licensed health care provider or a registered pharmacy technician 18 years of age or older pursuant to this subrule. A written record of the wastage shall be made and maintained by the registrant for a minimum of two years following the wastage. The record shall include the following:

a. to f. No change.

ITEM 8. Amend rule 657—10.23(124) as follows:

657—10.23(124) Disposal of previously dispensed controlled substances.

10.23(1) Registrant disposal. Except as provided in 657—Chapter 23 for care facilities, a registrant may not dispose of previously dispensed controlled substances unless the registrant has modified its registration with DEA to administer an authorized collection program. A registrant shall not take possession of a previously dispensed controlled substance except for reuse for the same patient: or except as provided in paragraph 10.23(2) "b."

10.23(2) Hospice disposal.

a. An employee of a hospice program, acting within the scope of employment, may dispose of a controlled substance of a hospice program patient following the death of the patient or the expiration of the controlled substance pursuant to and in compliance with federal law.

b. A physician of a hospice program patient may dispose of a patient's controlled substance which is no longer required due to a change in the patient's care plan.

ITEM 9. Amend subrule 10.27(2) as follows:

10.27(2) Long-term care or terminally ill patient. A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units as provided by this subrule.

a. to c. No change.

d. Information pertaining to current Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system pursuant to rule 657—21.4(124,155A) 657—21.5(124,155A).

ITEM 10. Adopt the following new paragraphs **10.39(2) "ao"** to **"as"**:

ao. Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate. Other names: NM2201 or CBL2201.

ap. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide. Other name: 5F-AB-PINACA.

PHARMACY BOARD[657](cont'd)

aq. 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide. Other names: 4-CN-CUMYL-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, or SGT-78.

ar. Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate. Other names: MMB-CHMICA or AMB-CHMICA.

as. 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide. Other name: 5F-CUMYL-P7AICA.

ITEM 11. Adopt the following **new** subrule 10.39(5):

10.39(5) Amend Iowa Code section 124.204(6) “i” by adding the following new subparagraph:

(27) 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one. Other names: *N*-ethylpentylone or ephylone.

ITEM 12. Amend rule 657—10.40(124) as follows:

657—10.40(124) Excluded and exempt substances. The Iowa board of pharmacy hereby excludes from all schedules the current list of “Excluded Nonnarcotic Products” identified in Title 21, CFR Part 1308, Section 22, ~~and~~. With the exception of listed butalbital products, the board hereby excludes from all schedules the current list of “Exempted Prescription Products” described in Title 21, CFR Part 1308, Section 32. Copies of such lists may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

[Filed 5/3/19, effective 6/26/19]

[Published 5/22/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4456C

PHARMACY BOARD[657]

Adopted and Filed

Rule making related to technician product verification programs

The Board of Pharmacy hereby rescinds Chapter 40, “Tech-Check-Tech Programs,” and adopts new Chapter 40, “Technology-Assisted Technician Product Verification Programs,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 155A.33A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 155A.6A, 155A.33 and 155A.33A.

Purpose and Summary

During the 2018 Legislative Session, changes were made to the Iowa Code which amended a program by which a certified pharmacy technician may be authorized to provide the final product verification of a prescription filled by another pharmacy employee. What were formerly known as “tech-check-tech” programs are now “technician product verification” (TPV) programs. The adopted chapter reflects this change. The Board also completed an overall review of the chapter of administrative rules relating to “tech-check-tech” programs as required by Iowa Code section 17A.7(2) and incorporated the changes made to the Iowa Code to create a new chapter relating to TPV programs.

PHARMACY BOARD[657](cont'd)

The adopted rules:

- Establish the minimum standards for a pharmacy to initiate a TPV program, including a pharmacist-to-technician ratio and program quality assurance;
- Set requirements for a certified pharmacy technician to be authorized to participate in product verification activities;
- Identify the minimum scanning technology required in a TPV program;
- Set requirements for policies and procedures; and
- Set requirements for record-keeping.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4291C**.

The Board received numerous comments on this rule making. Approximately half of the comments received related to the proposed 1:2 pharmacist-to-technician ratio to be utilized at all times in a pharmacy intending to implement a TPV program. Several alternatives were proposed, one of which from the National Association of Chain Drug Stores was acceptable to the Board. The other half of the comments provided suggestions relating to the training requirements, clarifying language to address TPV programs in institutional settings, the grandfathering of existing tech-check-tech programs and the commenters' overall opinions about TPV programs.

Based on comments or suggestions that the Board accepted, the following changes have been made since publication of the Notice:

- Change of the phrase “clinical pharmaceutical services” to “clinical pharmacy services”;
- Revision of the pharmacist-to-technician ratio to be no more than three checking technicians per pharmacist within the prescription-filling process; and
- Addition of clarifying language to address TPV programs in institutional settings.

Adoption of Rule Making

This rule making was adopted by the Board on May 2, 2019.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, no impact on jobs can be determined.

Waivers

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

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 26, 2019.

PHARMACY BOARD[657](cont'd)

The following rule-making action is adopted:

Rescind 657—Chapter 40 and adopt the following **new** chapter in lieu thereof:

CHAPTER 40

TECHNOLOGY-ASSISTED TECHNICIAN PRODUCT VERIFICATION PROGRAMS

657—40.1(155A) Purpose and scope. A pharmacy located in Iowa which provides clinical pharmacy services may, but shall not be required to, develop and implement a technician product verification (TPV) program in accordance with these rules. For the purpose of this chapter, clinical pharmacy services shall mean services that exceed the minimum requirements of the practice of pharmacy. Clinical pharmacy services include, but are not limited to, medication therapy management, collaborative practice, statewide protocols, and immunizations. In a TPV program, certified pharmacy technicians provide technology-assisted final drug product verification during the prescription-filling or medication distribution process. The pharmacist shall still be responsible for verification of the accuracy of data entry, drug utilization review, ensuring rational drug therapy, and counseling. The onsite practice hours for a pharmacist shall not be reduced but shall be redistributed directly to clinical pharmacy services to improve patient care and health outcomes.

657—40.2(155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Board*” means the board of pharmacy.

“*Certified pharmacy technician*” means an individual who holds a valid current national certification and who has registered with the board as a certified pharmacy technician pursuant to 657—Chapter 3.

“*Checking technician*” means a certified pharmacy technician who has been authorized pursuant to rule 657—40.4(155A) by the responsible pharmacist to provide drug product verification in a TPV program.

“*Representative sample*” means a subset of prescriptions that must be verified by a pharmacist for each checking technician involved in a TPV program. A subset consists of a minimum of 1 percent of prescriptions verified by each checking technician or 25 prescriptions per checking technician, whichever is greater.

“*Responsible pharmacist*” means the pharmacist who is designated by the pharmacy or pharmacist in charge to oversee a TPV program and who is responsible for ensuring the TPV program complies with these rules.

“*Technician product verification program*” or “*TPV*” means a program formally established and implemented pursuant to these rules which permits a checking technician to provide technology-assisted drug product verification during the prescription-filling or medication distribution process. “TPV” includes programs previously approved by the board as “tech-check-tech” or “TCT” programs.

657—40.3(155A) TPV program requirements.

40.3(1) Site-specific. A TPV program shall be specific to the site at which technician product verification is utilized.

40.3(2) TPV program oversight. A pharmacy shall, at all times, have one designated responsible pharmacist who is responsible for meeting TPV program requirements. The responsible pharmacist is not required to be on duty at all times when the TPV program is in use and may designate one or more pharmacists on duty to supervise the activities of checking technicians.

40.3(3) Checking technician qualifications. Prior to authorizing a technician to conduct TPV program checking technician activities, the responsible pharmacist shall ensure the certified pharmacy technician has met the minimum requirements of rule 657—40.4(155A).

40.3(4) Staff responsibilities. Within a TPV program, each pharmacist shall optimize clinical pharmacy services and ensure consistent and safe implementation of the program. A pharmacist shall be on site and available to checking technicians during any period when TPV is utilized. Each individual involved in the TPV program shall be responsible for the activities performed by that individual, ensuring the activities adhere to TPV program policies and procedures and board rules.

PHARMACY BOARD[657](cont'd)

40.3(5) *Technology required.* The pharmacy's prescription processing system shall have appropriate scanning technology to ensure each product is accurately filled and verified. Scanning technology shall include barcode scanning or superior electronic scanning to verify that the National Drug Code (NDC) of the container of product being used to fill the prescription or medication order matches the NDC of the product entered into the pharmacy's prescription processing system to fill the prescription or medication order. Only a pharmacist shall be authorized to override a scanning technology error or exception. When scanning technology does not function properly, only a pharmacist shall be authorized to visually verify the product or manually enter the drug product into the pharmacy's prescription processing system. The pharmacy's prescription processing system shall be capable of documenting each step of the dispensing or medication distribution process and identifying which pharmacy employee was responsible for each step of the dispensing or distribution process.

40.3(6) *Pharmacy responsibility.* Except in an institutional setting, a pharmacy utilizing a TPV program shall ensure that no more than three checking technicians per pharmacist are engaged in TPV activities within the prescription-filling process at any time. The pharmacy shall ensure that onsite pharmacist practice hours are not reduced but are redistributed directly to clinical pharmacy services.

40.3(7) *Board notification and inspection.* Prior to implementing a TPV program, a pharmacy shall provide advance notice to the board, on forms provided by the board, of its intention to implement a TPV program. The board may require an onsite inspection prior to program commencement.

40.3(8) *Program discontinuation.* A pharmacy shall provide notice to the board when it discontinues a TPV program. A pharmacy intending to implement a previously discontinued TPV program shall provide advance notice to the board, on forms provided by the board, of its intent to implement a TPV program pursuant to subrule 40.3(7).

657—40.4(155A) Checking technician requirements. A certified pharmacy technician shall comply with the requirements of this rule prior to being authorized to engage in checking technician activities in a TPV program. Prior to authorizing the technician to engage in TPV activities, the responsible pharmacist shall ensure the technician is proficient in all aspects of the TPV program and the responsibilities of a checking technician.

40.4(1) *Minimum qualifications.*

a. National certification. The certified pharmacy technician's national certification as required pursuant to rule 657—3.5(155A) shall be current.

b. Iowa registration. The certified pharmacy technician's registration with the board as required pursuant to rule 657—3.3(155A) shall be current and not currently subject to disciplinary charges or sanctions.

c. Prior experience. The certified pharmacy technician shall have completed a minimum of 2,000 hours as a technician and be trained pursuant to subrule 40.4(2).

40.4(2) *Training.* Pursuant to the pharmacy's policies and procedures, the technician shall satisfactorily complete a training program prior to being authorized to engage in TPV activities. The elements of the pharmacy's training program shall be described in the advance notice provided to the board pursuant to subrule 40.3(7).

657—40.5 and 40.6 Reserved.

657—40.7(155A) Policies and procedures. Policies and procedures shall be developed and adhered to in a TPV program. Policies and procedures for a TPV program shall include, at a minimum, the following:

1. A program to train certified pharmacy technicians to be checking technicians pursuant to subrule 40.4(2), including but not limited to training in the scanning technology to be utilized in the TPV program, limitations of the scanning technology, and strategies to compensate for these limitations.

2. A procedure to identify a representative sample to complete a quarterly quality assurance double check of prescriptions verified by each checking technician.

3. Redirection of pharmacist hours to clinical pharmacy services.

PHARMACY BOARD[657](cont'd)

4. Identification of drug products for which authorized checking technicians will be prohibited from performing final drug product verification during the prescription-filling or medication distribution process.

657—40.8(155A) TPV program quality assurance.

40.8(1) *Quality assurance program—quarterly verification.* The responsible pharmacist shall establish and implement a quality assurance program to evaluate TPV program activities. Each quarter, a pharmacist shall verify a representative sample of prescriptions verified by each checking technician. The quarterly verification shall be documented, and such documentation shall be maintained pursuant to subrule 40.11(2).

40.8(2) *Review of errors.* Any error resulting from TPV shall be documented and evaluated via the pharmacy's continuous quality improvement program (CQI) pursuant to rule 657—8.26(155A) and shall require the technician responsible for the error to be retrained through the pharmacy's established training program.

40.8(3) *Quarterly reports.* The responsible pharmacist shall ensure the completion of a quarterly report on forms provided by the board. The quarterly report shall be maintained in the pharmacy pursuant to subrule 40.11(3).

657—40.9 and 40.10 Reserved.

657—40.11(155A) TPV program records. The records required in this rule, in addition to any other required records of the pharmacy, shall be available for inspection and copying by the board, its authorized agent, or another authorized agency for a minimum of two years following the date of the record.

40.11(1) *Checking technician training and authorization.* TPV program records shall include all records documenting the successful completion of the pharmacy's training program for each checking technician in the TPV program. The record for each checking technician shall include the following:

- a. The name of the technician.
- b. The date on which the technician completed the system-specific training for participation in the TPV program.
- c. The date on which the technician was authorized to participate in the TPV program.

40.11(2) *Quality assurance program.* TPV program records shall include all records associated with the quality assurance program to evaluate each checking technician in the TPV program, including the dates and results of each quarterly verification; the dates of and reasons for any suspension or revocation of a checking technician's TPV program authorization, identification of corrective action or retraining completed, and the date of the subsequent reinstatement of a checking technician's TPV program authorization; and the dates of and reasons for any disciplinary action taken against a checking technician in connection with the TPV program.

40.11(3) *Quarterly reports.* TPV program records shall include quarterly reports as required pursuant to subrule 40.8(3).

These rules are intended to implement Iowa Code sections 155A.6A, 155A.33, and 155A.33A.

[Filed 5/3/19, effective 6/26/19]

[Published 5/22/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4457C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Rule making related to electronic filing, confidential information, and public records

The Public Employment Relations Board hereby amends Chapter 1, “General Provisions,” Chapter 2, “General Practice and Hearing Procedures,” Chapter 6, “Negotiations and Negotiability Disputes,” Chapter 7, “Impasse Procedures,” and Chapter 10, “Declaratory Orders”; rescinds Chapter 12, “Public Records and Fair Information Practices,” and adopts a new Chapter 12 with the same title; and amends Chapter 14, “Arbitrators,” and Chapter 16, “Electronic Document Management System,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 20 and 22.

Purpose and Summary

The following amendments are adopted after feedback and internal review. The adopted amendments update filing requirements with the agency due to the use of electronic filing through the agency’s electronic document management system, clarify provisions relating to confidential information due to the use of electronic filing, and eliminate outdated provisions and language.

Items 1 and 3 require electronic filing of petitions for rule making and petitions requesting a waiver.

Item 2 modifies the definition of “protected information” for consistency with Chapter 16.

Items 4 through 9, 14, 16, 17, and 33 amend outdated Iowa Code, Iowa Acts, and Iowa Administrative Code references. Item 10 provides an updated reference to the rule on fees of neutrals.

Items 11 and 12 require persons to email requests for impasse services to the agency rather than personally delivering or mailing the requests. Item 13 requires the agency to email the arbitrator list to the parties, which is consistent with current agency practice. Item 13 also removes an outdated Iowa Acts reference.

Item 15 clarifies that a petition for a declaratory order shall be electronically filed with the agency.

Item 18 rescinds and replaces Chapter 12, related to public records and fair information practices, due to the agency’s use of the electronic document management system for storage of records. The format and language of the chapter was chosen after internal consideration and review of other Iowa Administrative Code chapters regarding public records.

Items 19 through 22 amend outdated Iowa Code and Iowa Acts references and procedures relating to teacher termination adjudication.

Items 23 through 32 address the agency’s electronic document management system. The adopted amendments clarify rules regarding confidential documents or records and protected information. The adopted amendments also address the obligations of filers using the electronic document management system.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 27, 2019, as **ARC 4365C**. The agency requested that comments be received by April 17, 2019. A public hearing was held on April 17, 2019, at 10 a.m. in the Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa. The agency received written formal comment seeking clarification on Chapter 12, relating to requests for access to records, in light of the statutory requirements of Iowa Code chapter

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

22. The agency discussed the comment at the public hearing. As a result of the comment, the language in rule 621—12.3(17A,20,22), which is in Item 18, was clarified to ensure consistency with Iowa Code chapter 22.

Adoption of Rule Making

This rule making was adopted by the Board on May 2, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

These rules do not provide for a waiver of their terms, but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

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 26, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 621—1.5(20) as follows:

621—1.5(20) Petition for rule making. Any person may file a petition with the board pursuant to 621—Chapter 16 for the adoption, amendment or repeal of a rule. Such petition ~~shall be in writing~~ and shall include:

1.5(1) The name and address of the person requesting the adoption, amendment or repeal of the rule.

1.5(2) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

1.5(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

1.5(4) A brief summary of any data supporting the action urged in the petition.

1.5(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition. Within 60 days after the filing of a petition, the board shall either deny the petition ~~in writing~~, stating its reasons for the denial, or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

ITEM 2. Amend subrules 1.6(11), 1.6(13) and 1.6(14) as follows:

1.6(11) "*Protected information*" means personal information, the nature of which warrants protection from unlimited public access, including:

- a. Social security numbers.
- b. Financial account numbers.
- c. Dates of birth.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

- d. Names of minor children.
- e. Individual taxpayer identification numbers.
- f. Personal identification numbers.
- g. Other unique identifying numbers.
- h. Confidential information.

1.6(13) "*Public safety unit*" means a bargaining unit with at least 30 percent of employees in the unit who are public safety employees or as required by ~~2017 Iowa Acts, House File 291, section 18,~~ Iowa Code section 20.32 for certain transit employees.

1.6(14) "*Supplemental pay*" means a payment of moneys or other thing of value that is in addition to compensation received pursuant to any other permitted subject of negotiation specified in Iowa Code section 20.9 as ~~amended by 2017 Iowa Acts, House File 291, section 6,~~ and is related to the employment relationship.

ITEM 3. Amend subrules 1.9(5) and 1.9(17) as follows:

1.9(5) *Filing of petition.* All petitions requesting a waiver must be filed ~~personally or by mail with the board at its offices at 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319~~ with the agency pursuant to 621—Chapter 16. If the petition relates to a pending contested case proceeding or a proceeding pending before the agency which could culminate in a contested case proceeding, the petition shall be filed in the case docketed in the agency's electronic document management system (EDMS) and bear the caption of that proceeding. ~~The board shall acknowledge the filing of a petition by providing the petitioner with a file stamped copy.~~

1.9(17) *Service of ruling.* Within seven days of its issuance, the board's ruling on the petition shall be served by the board by ordinary mail upon ~~the petitioner,~~ any entity or individual to whom the ruling pertains and any other individuals or entities entitled to notice pursuant to any other provision of law if the individuals or entity representatives have not filed appearances in the case to receive service by EDMS.

ITEM 4. Amend **621—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.9A and ~~chapters~~ chapter 20 and 279.

ITEM 5. Amend subrule 2.3(2) as follows:

2.3(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 2.3(3) is filed and served on all parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision to the board on the merits is filed within the time provided by rule ~~621—9.2(20)~~ 621—9.2(17A,20) or, in cases brought pursuant to Iowa Code section ~~19A.14~~ 8A.415, a petition for review by the board on the merits is filed within the time provided by rule ~~621—11.8(19A,20)~~ 621—11.8(8A,20).

ITEM 6. Amend paragraph **2.15(1)“g”** as follows:

g. Upon an employee organization, by serving the person designated by the employee organization to receive service pursuant to ~~621—subrule 8.2(2)~~ 8.4(2) or by service upon the president or secretary of the employee organization.

ITEM 7. Amend subrule 2.20(1) as follows:

2.20(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case, or in proceedings on a petition for declaratory order in which there are two or more parties, shall not communicate directly or indirectly with any party, representative of any party or any other person with a direct or indirect interest in such case, nor shall any such party, representative or person communicate directly or indirectly with the presiding officer concerning any issues of fact or law in that case, except upon notice and opportunity for all parties to participate. Nothing in this provision precludes the presiding officer, without such notice and opportunity for all parties to participate, from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

in personally investigating, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish or modify the evidence in the record. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another’s investigative work product in the course of determining whether to initiate a proceeding or exposure to factual information while performing other agency functions, including fact-gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as a presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 ~~as amended by 1998 Iowa Acts, chapter 1202.~~

ITEM 8. Amend subrule 6.4(1) as follows:

6.4(1) Applicability. This rule applies only to bargaining units which include at least one public safety employee, as defined in 621—subrule 1.6(12) or as required by ~~2017 Iowa Acts, House File 291, section 18,~~ Iowa Code section 20.32 concerning certain transit employees.

ITEM 9. Amend rule 621—7.1(20) as follows:

621—7.1(20) General. Except as provided in ~~the second paragraph of subrule 7.5(6), 7.5(6) “b,”~~ the rules set forth in this chapter are applicable only in the absence of an impasse agreement between the parties or the failure of either to utilize its procedures. Nothing in these rules shall be deemed to prohibit the parties, by mutual agreement, from proceeding directly to binding arbitration at any time after impasse.

ITEM 10. Adopt the following new rule 621—7.2(20):

621—7.2(20) Fees of neutrals. See rule 621—14.4(20).

ITEM 11. Amend subrule 7.3(1) as follows:

7.3(1) Request for mediation. Either party to an impasse may email to the agency a request ~~the board in writing~~ to appoint a mediator to the impasse.

An original and one A copy of the request for mediation shall be ~~filed with the board~~ emailed to the agency and shall, in addition to the request for mediation, contain:

a. The name, address, and telephone number of the requesting party, and the name, address, telephone number, and email address of its bargaining representative or of the chairperson of its bargaining team.

b. The name, address, and telephone number of the opposing party to the impasse, and the name, address, telephone number, and email address of its bargaining representative or of the chairperson of its bargaining team.

c. A description of the collective bargaining unit involved and the approximate number of employees in the unit.

d. A statement indicating whether the public employer of the unit involved is subject to the budget certification requirements of Iowa Code section 24.17 and, if the public employer is not subject to those requirements, a statement of the date upon which the public employer’s next fiscal or budget year commences.

e. A statement indicating whether the bargaining unit is a public safety or non-public safety unit as specified by Iowa Code section 20.3 ~~as amended by 2017 Iowa Acts, House File 291, section 1,~~ and rule 621—6.4(20).

f. A concise and specific listing of the negotiated items upon which the parties have reached impasse.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

ITEM 12. Amend subrule 7.5(2) as follows:

7.5(2) Form and contents of request. The request for arbitration shall be ~~in writing~~ emailed to the agency and shall include the name, address, email address, and signature of the requesting party and the capacity in which the requesting party is acting.

ITEM 13. Amend subrule 7.5(5) as follows:

7.5(5) Selection of arbitrator. Upon the filing of a timely request for arbitration, the board shall ~~serve email~~ a list of five arbitrators ~~upon~~ to the parties. Within five days of ~~service of the list from when that email is sent~~, the parties shall select their arbitrator from the list in the manner specified in Iowa Code section 20.22(4) ~~as amended by 2010 Iowa Acts, House File 2485, section 26.~~

ITEM 14. Amend paragraph 7.5(6)“c” as follows:

c. The arbitration hearing shall be limited to those factors listed in Iowa Code section 20.22 ~~as amended by 2017 Iowa Acts, House File 291, sections 12 and 13~~, and subrules 7.5(7) and 7.5(8), and such other relevant factors as may enable the arbitrator to select the most reasonable offer, in the arbitrator’s judgment, of the final offers submitted by the parties on each impasse item. Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider these same factors.

During the hearing, the parties shall not introduce, and the arbitrator shall not accept or consider, any direct or indirect evidence regarding any subject excluded from negotiations pursuant to Iowa Code section 20.9 ~~as amended by 2017 Iowa Acts, House File 291, section 6~~, except as required for purposes of the consideration of the factors specified in subrule 7.5(7) and paragraph 7.5(8) “a.”

ITEM 15. Amend rule 621—10.1(17A,20) as follows:

621—10.1(17A,20) Who may petition. Any person, public employer or employee organization may file a petition with the board pursuant to 621—Chapter 16 for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency.

ITEM 16. Amend rule 621—10.8(17A,20) as follows:

621—10.8(17A,20) Action on petition. Within the time allowed by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board or its designee shall take action on the petition as required by that section.

ITEM 17. Amend subrule 10.9(1), introductory paragraph, as follows:

10.9(1) The board shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13(1)~~, Iowa Code section 17A.9(1) “b”(2) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

ITEM 18. Rescind 621—Chapter 12 and adopt the following new chapter in lieu thereof:

CHAPTER 12
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

621—12.1(17A,20,22) Definitions. As used in this chapter:

“Agency” means the public employment relations board or PERB.

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the board or a person lawfully delegated authority to act for the agency in implementing Iowa Code chapter 22.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means the whole or a part of a public record as defined in Iowa Code section 22.1.

“*Record system*” means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

“*Routine use*” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected or is maintained. “*Routine use*” includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

621—12.2(17A,20,22) Statement of policy. This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

621—12.3(17A,20,22) Requests for access to records.

12.3(1) Location of record. A request for access to a record should be directed to the Chair, Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.

12.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

12.3(3) Request for access. Requests for access to open records may be made in writing or in person. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, email or telephone requests shall include the name, address, email address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

12.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the agency shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 621—12.4(17A,20,22) and other applicable provisions of law.

12.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

12.3(6) Copying. A reasonable number of copies of an open record may be made in the agency’s office.

12.3(7) Fees.

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined by the custodian,

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

based upon the actual costs of the copying. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records. The hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all allowable costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

621—12.4(17A,20,22) Procedures for access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 621—12.3(17A,20,22).

12.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

12.4(2) Requests. The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

12.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address, email address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

12.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

12.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

621—12.5(17A,20,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7,

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

12.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

12.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be electronically filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, email address and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person submitting such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

12.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

12.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is submitted, or when the custodian receives a request for access to the record by a member of the public.

12.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

12.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record need not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

621—12.6(17A,20,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

621—12.7(17A,20,22) Disclosures without the consent of the subject.

12.7(1) Open records are routinely disclosed without the consent of the subject.

12.7(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 621—12.1(17A,20,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

621—12.8(17A,20,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of agency records:

12.8(1) Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

12.8(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

12.8(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

12.8(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

12.8(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

12.8(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

621—12.9(17A,20,22) Consensual disclosure of confidential records.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

12.9(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 621—12.6(17A,20,22).

12.9(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

621—12.10(17A,20,22) Release to subject.

12.10(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 621—12.9(17A,20,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or records otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. As otherwise authorized by law.

12.10(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

621—12.11(17A,20,22) Availability of records.

12.11(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

12.11(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Records which are exempt from disclosure pursuant to Iowa Code section 22.7.

b. Minutes of closed meetings of a government body pursuant to Iowa Code section 21.5(5).

c. Mediators' documents, including proposals, notes, memoranda, or other paperwork product, relating to mediation of agency cases and collective bargaining negotiations pursuant to Iowa Code section 20.31.

d. A show of interest contained in representation and decertification case files, in which public employees indicate by original signature whether they wish to be represented by or decertify a certified employee organization for representation or decertification election pursuant to Iowa Code section 22.7(69).

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by the agency when disclosure of these statements would:

(1) Enable law violators to avoid detection.

(2) Facilitate disregard of requirements imposed by law.

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3.)

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential pursuant to Iowa Code sections 22.7(4), 622.10, and 622.11; Iowa R. Civ. P. 1.503; Fed. R. Civ. P. 26(b); and case law. Attorney-client communications are confidential pursuant to Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

h. Individual financial records pursuant to Iowa Code sections 422.20 and 422.72.

i. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy pursuant to Iowa Code section 17A.3(1) "e."

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

- j.* Criminal investigative reports or investigative data pursuant to Iowa Code section 22.7(5).
- k.* Criminal history and intelligence data pursuant to Iowa Code sections 22.7(9), 692.3, and 692.18.
- l.* Minutes of testimony pursuant to Iowa Rules of Criminal Procedure 2.4(6)(a) and 2.5(3).
- m.* Information which is confidential under the law governing the agency providing information to this agency.
- n.* Biographical or identifying information about a child victim pursuant to Iowa Code chapter 915.
- o.* Victim registration pursuant to Iowa Code chapter 915.
- p.* Any other records made confidential by law.

12.11(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 621—12.4(17A,20,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested persons and withhold the records from inspection as provided in subrule 12.4(3).

621—12.12(17A,20,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 621—12.1(17A,20,22). Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 20, the statutes governing the subject matter of the record, and the enabling statutes of the agency, where applicable. The record systems maintained by the agency are:

12.12(1) Prohibited practice complaint case files. These files contain information which pertains to the alleged violation of Iowa Code chapter 20. A person, employee organization or public employer may file the documents contained in this type of case. Case files may include pleadings, briefs, notices, rulings, decisions, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, settlement offers, memoranda, and research materials. Cases contain personal information of the representatives and may contain personal information if the complainant or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product or contain settlement offers and mediators' documents. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(2) Bargaining unit determination and representative certification case files. These files contain information which pertains to the establishment of appropriate bargaining units, conduct of secret ballot elections and monitoring of the merger, and affiliation and disaffiliation of certified employee organizations. A person, employee organization or public employer may file the documents contained in these types of cases. Case files may include pleadings, briefs, tally of ballots, notices, rulings, decisions, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, settlement offers, memoranda, research materials, and investigation materials. Cases contain personal information of the representatives and may contain personal information if the petitioner or respondent is an individual. Further personal information may be included in transcript testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. Further personal information may be included in testimony and exhibits. The files may

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

contain materials which are confidential as attorney work product, shows of interest, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(3) Retention and recertification election case files. These files contain information which pertains to the conduct of a retention and recertification election. A person, employee organization or public employer may file the documents contained in this type of case. Case files include pleadings, notices, voter lists, tally of ballots, orders, challenges, and objections. Cases contain personal information of the representatives. Further personal information may be included in testimony, exhibits, and other documents. The public employer is required to send to the agency a listing of employees eligible to vote in the recertification elections, and the representatives are emailed eligible employees' personal information. Cases are contained within the agency's electronic document management system and the agency's network. The files located on the agency's network may contain materials which are confidential as attorney work product, shows of interest, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(4) Negotiability dispute case files. These files contain information which pertains to specific contract proposals and whether a specific contract proposal is a mandatory, permissive or excluded subject of bargaining under Iowa Code section 20.9. An employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of the negotiability question. The records may include pleadings, briefs, notices, rulings, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives. Cases filed prior to January 1, 2015, are contained on the agency's network. The files may contain materials which are confidential as attorney work product and contain settlement offers and mediators' documents. Some materials are confidential under other applicable provisions of law. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(5) Declaratory order case files. These files contain information which pertains to applicability of a statute, rule or order within the primary jurisdiction of the agency. A person, employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of that question. The records may include pleadings, notices, rulings, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of the petitioner or respondent if the petitioner or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. The files are maintained by the agency and are indexed by the case number. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(6) Contract negotiation impasse files. These files contain information which pertains to the public employer and certified employee organization's negotiations. An employee organization or public employer may file the documents contained in the file. The records may include the request for impasse services, assignment of a mediator, interest arbitration list, selection letters, and correspondence regarding mediation and interest arbitration hearings. Mediators may maintain assigned impasse files

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

which contain confidential documents related to the mediation. Files contain personal information of the representatives. The case files are paper, and each impasse is recorded in an agency database. The files are maintained by the agency and are indexed by the bargaining unit number. Copies of the documents contained in the files may be obtained through the agency.

12.12(7) Neutral files. The agency maintains biographical data on qualified mediators and arbitrators. A mediator's file contains an application, an acceptance letter, and the yearly mediator contract. An arbitrator's file contains an application, an acceptance letter, renewal applications, biographical sketches, letters of recommendation, a résumé, and decisions. Neutral files may also contain concerns expressed by employees or employer and employee organization representatives, material related to agency-conducted investigations, and information on hearings and decisions issued by the agency. Cases contain personal information of the representatives and may contain personal information of the petitioner or respondent if the petitioner or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Neutral files contain personal information of the neutral and may contain personal information of employees and employer and employee organization representatives if they provide written comments regarding a neutral. The neutral files are paper. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. The files are maintained by the agency and are commonly indexed by the neutral's last name. Biographical sketches of neutrals are located on the agency's website. Copies of documents contained in these files may be obtained through the agency.

12.12(8) Employee organization files. Employee organizations are required to file certain documents with the agency prior to certification and annually. An employee organization's representative files the documents contained in the file. The records include the certified employee organization's constitution and bylaws, amended constitution and bylaws, registration reports, annual reports, correspondence, bargaining unit description and subsequent amendments. The employee organization files contain personal information of the representatives. Further personal information may be included in testimony and exhibits. The employee organization files are both on paper and contained within the agency's electronic document management system. The files are maintained by the agency and are indexed by the certified employee organization in paper files and by certified employee organization number if the files are on the agency's electronic document management system. Copies of the documents contained in these files may be obtained through the agency or the agency's electronic document management system.

12.12(9) State employee appeals of grievance decisions and disciplinary action case files. These files contain appeals from a response from the Iowa department of administrative services regarding an employee's grievance or appeal of a disciplinary action. A person or representative may file the documents contained in this type of case. These files contain information which pertains to the appeal. The records may include the appeal form and attachments, pleadings, briefs, notices, rulings, decisions, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, settlement offers, memoranda, and research materials. Cases contain personal information of the representative and the employee. Further personal information may be included in testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product and contain settlement offers and mediators' documents. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(10) Public safety unit determination case files. These files contain information which pertains to whether a bargaining unit is a public safety unit. An employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of that question. The records may include pleadings, notices, orders, exhibits,

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of employees. Further personal information may be included in testimony, exhibits, and other documents. Cases are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(11) Other Iowa Code chapter 20 case files. These files contain information which pertains to objections which an employer or employee organization may make when impasse procedures are not completed prior to the applicable deadline for completion of impasse procedures, challenges which an employee organization or employer may make when the voter eligibility is challenged, and challenges which an employee organization may make postelection in retention and recertification elections. An employee organization or public employer may file the documents contained in this type of case. Further personal information may be included in testimony, exhibits, and other documents. Such files contain documents concerning the agency's determination of the question. The records may include pleadings, notices, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of employees. Cases are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(12) Grievance, fact-finding and interest arbitration decisions. The agency maintains decisions issued by neutrals. Grievance arbitration decisions prior to the year 2000 are maintained on the agency's database, and copies of a decision may be obtained through the agency. Grievance arbitration decisions after the year 2000 which the parties agreed could be made public can be obtained through the agency's searchable database system. All fact-finding and interest arbitration decisions can be obtained through the agency's searchable database system.

12.12(13) Collective bargaining agreements. The agency maintains collective bargaining agreements negotiated between the public employer and the certified employee organization. Collective bargaining agreements negotiated prior to the year 2000 are maintained on the agency's database, and copies of these collective bargaining agreements may be obtained through the agency. Collective bargaining agreements negotiated after the year 2000 can be obtained through the agency's searchable database system.

12.12(14) Personnel files. The agency maintains files containing information about agency employees and applicants for positions with the agency. The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information may be confidential under Iowa Code sections 22.7(11) and 22.7(18). Personnel files are paper files.

12.12(15) Litigation files. These files or records contain information regarding litigation or anticipated litigation which involves the agency. The records include pleadings, briefs, docket sheets, documents, general correspondence, attorneys' notes, memoranda, research materials, and investigation materials. Litigation files are paper files. The files are indexed by the name of the opposing party

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

or case number. The files contain materials which are confidential as attorney work product. Some materials are confidential under other applicable provisions of law. Persons who wish to obtain copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

621—12.13(17A,20,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 621—12.1(17A,20,22). The records listed may contain information about individuals. Unless otherwise designated, the authority for this agency to maintain the record is provided by Iowa Code chapter 20, the statutes governing the subject matter of the record, and the enabling statutes of the agency, where applicable. All records are stored both on paper and in automated data processing systems unless otherwise noted.

12.13(1) Citizen inquiry and response files. Individuals and representatives write or email this agency on a variety of legal issues with regard to Iowa Code chapter 20. The agency does not generally provide legal advice to individuals but may provide general information.

12.13(2) Internal agency records. These records include agendas, minutes and materials presented during meetings.

12.13(3) Administrative records. These records include documents concerning budgets, property inventory, purchasing, yearly reports, office policies for employees, time sheets, and printing and supply requisitions.

12.13(4) Rule-making records. Official documents executed during the promulgation of agency rules and public comments are available for public inspection.

621—12.14(17A,20,22) Data processing systems. None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

621—12.15(17A,20,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by an individual's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.
5. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations.

These rules are intended to implement Iowa Code chapters 17A, 20, and 22.

ITEM 19. Amend rule 621—14.2(20) as follows:

621—14.2(20) Definitions.

“Advocate” means a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, negotiations, mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. *“Advocate”* includes representatives of employers or employees in individual cases or controversies involving workers' compensation, occupational health or safety, minimum wage, or other labor standards matters. *“Advocate”* also includes persons directly or indirectly associated with

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

“*Arbitrator*” means a person serving as a neutral decision-maker in interest arbitrations; or grievance arbitrations; ~~or teacher termination adjudications.~~

“*Grievance arbitration*” means the proceedings on an alleged contract violation as provided in a collective bargaining agreement entered into pursuant to Iowa Code chapter 20.

“*Grievance arbitrator*” means a person serving as a neutral decision-maker in a grievance arbitration.

“*Interest arbitration*” means the binding arbitration contemplated by Iowa Code section 20.22 or by an impasse agreement entered into pursuant to Iowa Code section 20.19.

“*Interest arbitrator*” means a person serving as a neutral decision-maker in an interest arbitration.

“*Qualified-arbitrator roster*” or “*roster*” means the agency-maintained list of arbitrators who have met the criteria set forth in this chapter.

~~“*Teacher termination adjudication*” means the proceedings contemplated by Iowa Code section 279.17.~~

~~“*Teacher termination adjudicator*” means a person serving as a neutral decision-maker in a teacher termination adjudication.~~

ITEM 20. Amend subrules 14.5(1), 14.5(3) and 14.5(4) as follows:

14.5(1) *Categories of arbitrators.* The roster shall consist of ~~three~~ two categories of arbitrators:

- a. Interest arbitrators; and
- b. Grievance arbitrators; ~~and,~~
- c. ~~Teacher termination adjudicators.~~

Persons may be listed on the roster in each category in which they meet the criteria.

14.5(3) *Knowledge and abilities.* Applicants must establish requisite knowledge and abilities as follows:

- a. For listing on the roster as an interest arbitrator:
 - (1) Good verbal and written communication skills;
 - (2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
 - (3) Knowledge of Iowa Code chapter 20, the agency’s rules, and principles and practices of contracts, public finance, and labor relations; and
 - (4) The ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, “timely” means within 15 days after the interest arbitration hearing pursuant to Iowa Code section ~~20.22(9)~~ 20.22(10) “a” or in a time frame established by an impasse agreement entered into pursuant to Iowa Code section 20.19.

- b. For listing on the roster as a grievance arbitrator:
 - (1) Good verbal and written communication skills;
 - (2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
 - (3) Knowledge of arbitral principles and practices, contracts, and labor relations; and
 - (4) The ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, “timely” means within the time frame established by the parties’ collective bargaining agreement entered into pursuant to Iowa Code chapter 20.

~~c. For listing on the roster as a teacher termination adjudicator:~~

- ~~(1) Good verbal and written communication skills;~~
- ~~(2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;~~
- ~~(3) Knowledge of Iowa Code section 279.17; and~~
- ~~(4) The ability to review adjudicatory records developed by another body, hear legal arguments in a fair and impartial manner, and prepare and issue clear, reasoned and timely decisions. For purposes of this subparagraph, “timely” means within 15 days after the teacher termination adjudication hearing pursuant to Iowa Code section 279.17(7).~~

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

14.5(4) Experience.

~~a.~~ Applicants must demonstrate requisite experience in labor relations or arbitration in the category in which the applicant seeks listing on the roster in one of the following ways:

~~(1) a.~~ For listing on the roster as an interest arbitrator:

~~1. (1)~~ Issuance of at least four fact-finding or interest arbitration decisions or a combination thereof;

~~2. (2)~~ At least three years' experience as a mediator in collective bargaining interest disputes, with training and experience in conducting hearings and issuing reasoned awards; or

~~3. (3)~~ At least five years' experience in labor relations or labor law, with training and experience in conducting hearings and issuing reasoned awards.

~~(2) b.~~ For listing on the roster as a grievance arbitrator:

~~1. (1)~~ Issuance of at least four grievance awards; or

~~2. (2)~~ At least five years' experience in labor relations or labor law, with training and experience in conducting hearings and issuing reasoned awards.

~~(3) For listing on the roster as a teacher termination adjudicator:~~

~~1. Issuance of at least four decisions rendered in an appellate capacity; or~~

~~2. At least five years' experience in the field of education, with training and experience in reviewing adjudicatory records and issuing reasoned decisions.~~

~~b.—The board may give credit against the years of experience requirement to a candidate who has received a master's or equivalent degree in a related area or who has adjudicatory experience in a field or fields other than labor relations.~~

ITEM 21. Amend paragraph **14.6(4)“b”** as follows:

~~b.~~ Successful completion of the program will result in the participant's inclusion on the roster as an interest arbitrator. Participants must satisfy the criteria for grievance arbitrators ~~and teacher termination adjudicators~~ outlined in subrules 14.5(3) and 14.5(4) prior to inclusion on the roster under those categories ~~that category~~.

ITEM 22. Amend **621—Chapter 14**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 20.1, 20.6, and 20.22 ~~and 279.17~~.

ITEM 23. Amend rule 621—16.1(20) as follows:

621—16.1(20) Effective date and scope. This chapter governs the filing of ~~all~~ documents in ~~adjudicatory~~ all proceedings before the agency that are filed on or after September 24, 2014, or those proceedings converted to electronic proceedings upon the board's order. This chapter also governs the filing of all documents ~~in adjudicatory proceedings converted to electronic proceedings upon the board's order~~ required to be filed by employee organizations pursuant to 621—Chapter 8. To the extent the rules in this chapter are inconsistent with any other administrative rule of the board, the rules in this chapter shall govern.

ITEM 24. Amend rule 621—16.2(20) as follows:

621—16.2(20) Definitions.

“Agency record” means for all cases the electronic files maintained in EDMS, filings the agency maintains in paper form when permitted by these rules, and exhibits and other materials filed with or delivered to and maintained by the agency.

“Confidential” means agency files, documents, or information excluded from public access by federal or state law or administrative rule, court rule, court order, or case law.

“EDMS” means the electronic document management system, the agency's electronic filing and case management system.

“Electronic filing” means the electronic transmission of a document to the electronic document management system together with the production and transmission of a notice of electronic filing.

“Electronic record” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

“Electronic service” means the electronic transmission of a link where the registered users who are entitled to receive notice of the filing may view and download filed documents.

“Nonelectronic filing” means a process by which a paper document or other nonelectronic item is filed with the agency.

“Notice of electronic filing” means a document generated by the electronic document management system when a document is electronically filed.

“PDF” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

“Protected information” means personal information, the nature of which warrants protection from unlimited public access, including:

1. Social security numbers.
2. Financial account numbers.
3. Dates of birth.
4. Names of minor children.
5. Individual taxpayer identification numbers.
6. Personal identification numbers.
7. Other unique identifying numbers.
8. Confidential information.

“Public” refers to agency files, documents, or information that is not confidential or protected.

“Public access terminal” means a computer located at the agency’s office where the public may view, print, and electronically file documents.

“Registered user” means an individual who has registered for an e-filing account through the agency’s EDMS. A registered user can electronically file documents and electronically view and download files through the use of a username and password. In cases in which the registered user has entered an appearance or filed an answer, the registered user will electronically serve and receive notice of electronic filing in cases in which the registered user has appeared.

“Remote access” means a registered user’s ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the agency’s office.

“Signature” means a the following:

1. For a registered user electronically filing a document in EDMS, “signature” means the registered user’s username and password accompanied by one of the following:

1. “Digitized signature” means an embeddable image of a person’s handwritten signature;
2. “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or
3. “Nonelectronic signature” means a handwritten signature applied to an original document that is then scanned and electronically filed.

- “Digitized signature” means an embeddable image of a person’s handwritten signature;
- “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or

- “Nonelectronic signature” means a handwritten signature applied to an original document that is then scanned and electronically filed.

2. For a party signing a document that another registered user will electronically file, “signature” means the signatory’s name affixed to the document as a digitized or nonelectronic signature.

ITEM 25. Amend paragraph **16.3(1)“a”** as follows:

a. *Registration required.* Every individual filing documents or viewing or downloading filed documents ~~filed in an adjudicatory proceeding~~ must register as a registered user of the electronic document management system.

ITEM 26. Adopt the following **new** paragraph **16.3(1)“h”**:

h. *Agency-initiated registration.* The agency may complete the registration process on behalf of an individual in certain instances and email the username and password to the user. When the agency completes the registration process, the user is required to promptly log in and change the password.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

Following initial notification regarding account registration, the user is required to promptly update and maintain accurate contact information for the EDMS account.

ITEM 27. Amend subrule 16.4(1) as follows:

16.4(1) *Electronic filing mandatory.* Unless otherwise required or authorized by these rules, ~~all documents in adjudicatory~~ all proceedings commenced on or after January 1, 2015, and documents required to be filed pursuant to 621—Chapter 8 must be filed using the agency's electronic document management system.

ITEM 28. Adopt the following **new** subrule 16.6(3):

16.6(3) *Returned filing.* A rejected filing is not filed. In such instances, the date and time of filing will be when the filer submits a corrected document and it is approved.

ITEM 29. Amend rule 621—16.8(20) as follows:

621—16.8(20) ~~Format and redaction~~ **Redaction of electronic documents.** ~~All documents must be converted to a PDF format before they are filed in the electronic document management system.~~

16.8(1) *Responsibilities of filers generally.*

a. Prior to filing any document, the registered user shall ensure that the document is certified as confidential or the confidential information is omitted or redacted in accordance with 621—subrule 2.13(2), and that protected information is omitted or redacted in accordance with 621—subrule 2.13(3). This responsibility exists even when the filer did not create the document.

b. The agency will not review filings to determine whether appropriate omissions or redactions have been made. The agency will not, on the agency's own initiative, redact or restrict access to documents containing protected information.

16.8(2) *Omission and redaction requirements.*

a. Protected information that is not material to the proceedings. A filer may redact protected information from documents filed with the agency when the information is not material to the proceedings.

b. Protected information that is material to the proceedings. When protected information is material to the proceedings, a filer must certify the document as confidential when submitting the filing to the agency.

16.8(3) *Information that may be redacted.* A filer may redact the following information from documents available to the public unless the information is material to the proceedings:

a. Driver's license numbers.

b. Information concerning medical treatment or diagnosis.

c. Personal financial information.

d. Sensitive security information.

e. Home addresses.

16.8(4) *Improperly included protected information.* A party may ask the agency to restrict access to improperly included protected information from a filed document. The agency may order a properly redacted document to be filed.

ITEM 30. Rescind rule 621—16.9(20) and adopt the following **new** rule in lieu thereof:

621—16.9(20) *General requirements when filing documents.*

16.9(1) *Format.* All documents must be converted to a PDF before they are filed in EDMS. Documents submitted must be properly scanned, which includes having the pages in the correct order and facing right-side up and having the scanned content of the document be legible.

16.9(2) *Separating documents.* Each document must be separated and uploaded with the correct document type selection on the document upload page. Any attachments to a document shall be uploaded as such and linked to the correct document prior to submission.

16.9(3) *Selecting document types.* For each electronically filed document, a filer must choose an accurate document type from the options listed on the document upload page. Once a document is submitted into EDMS, only the agency may make corrections to the document type the filer has chosen.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

16.9(4) Correcting errors. If a filer discovers an error in the electronic filing or docketing of a document, the filer must contact the agency as soon as possible. When contacting the agency, the filer must have available the case number of the document that was filed or docketed erroneously. If the agency discovers an error in the filing or docketing of a document, the agency will ordinarily notify the filer of the error and advise the filer of what further action the filer must take, if any, to address the error.

ITEM 31. Amend rule 621—16.12(20) as follows:

621—16.12(20) Transcripts, briefs and exhibits.

16.12(1) Transcripts. If a hearing or oral argument is transcribed, the transcript shall be made available to registered users electronically after final agency action.

16.12(2) Briefs. Briefs and memoranda shall be electronically filed. Page numbers should be located at the bottom center of each page and numbered consecutively using Arabic whole numbers. The cover page should be numbered one.

16.12(3) Exhibits. Prior to offering an exhibit, the submitting party must redact the exhibit pursuant to rule 621—16.8(20). A party's exhibits admitted into evidence at a hearing shall be electronically filed by the party not later than the date ordered by the presiding officer or board. All exhibits shall be marked with an identifying number or letter, whichever is applicable. For each exhibit, the pages must be numbered consecutively with the first page numbered one.

ITEM 32. Adopt the following new rule 621—16.13(20):

621—16.13(20) Public access with exceptions for closed hearings.

16.13(1) General rule. All filings with the agency are public unless system-restricted or filed with restricted access. Electronic filing does not affect public access to agency files.

16.13(2) Closed hearings. For proceedings in which a party has elected the right to a closed hearing, all initial pleadings must be filed without restriction. All briefs, exhibits, and transcripts must be filed as “confidential.” The decision constituting final agency action will be filed with unrestricted access.

ITEM 33. Amend **621—Chapter 16**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 20.24 ~~as amended by 2014 Iowa Acts, House File 2172.~~

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4458C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Rule making related to bargaining unit determinations and representative certifications

The Public Employment Relations Board hereby amends Chapter 4, “Bargaining Unit and Bargaining Representative Determination,” and Chapter 5, “Elections,” and adopts a new Chapter 15, “Retention and Recertification Elections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 20.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

Purpose and Summary

This rule making affects rules relating to bargaining unit determination and representative certifications. The adopted amendments establish a procedure for bargaining units to merge; transfer retention and recertification election procedures into their own chapter for ease of use to the reader; and update and clarify provisions related to electronic filing requirements. The agency adopts these amendments after feedback and internal review.

Items 1, 3, and 4 are conforming amendments due to the transfer of retention and recertification election procedures from Chapter 5 to new Chapter 15.

Items 2 and 5 require electronic filing of objections to bargaining unit determination and representative certification case files. These amendments are adopted due to feedback and to provide consistent requirements for filing documents with the agency.

Items 6 and 7 establish a procedure for the merger of units. Item 6 relates to the merger of two bargaining units represented by the same certified employee organization. Item 7 relates to the merger of two bargaining units represented by affiliated certified employee organizations. Under current agency rules, merging two units requires the filing of two amendment of unit petitions and, in some cases, an amendment of certification petition. The adopted amendments will reach the same result and allow the agency to assess the appropriateness of the merger while streamlining the process.

Item 8 increases the election fee assessed to certified employee organizations for certification and decertification elections. The fee increases from \$1 per eligible voter with a \$10 minimum to \$1.50 per eligible voter with a \$15 minimum. Item 8 also removes language relating to retention and recertification election procedures as that language is transferred to new Chapter 15; specifies the electronic filing requirements; adds an explanation for the term "election period"; and contains conforming amendments.

Item 9 removes language relating to retention and recertification election procedures as that language is transferred to new Chapter 15. Item 9 also requires submission of voter eligibility challenges by electronic filing due to feedback and to provide consistent requirements for filing documents with the agency.

Item 10 rescinds the rule relating to retention and recertification election procedures as that language is transferred to new Chapter 15. Item 11 renumbers the remainder of the rules in Chapter 5 due to the transfer of retention and recertification election procedures into the new chapter.

Item 12 provides consistency with the statute in allowing the agency to dismiss a decertification election petition if the petition is not filed within a time frame that will allow the agency to complete the election by the statutory deadlines.

Items 13 and 14 clarify the method for certification of results of amendment of unit elections and professional/nonprofessional elections in accordance with the agency's practices and Iowa Code chapter 20.

Item 15 updates the implementation language of Chapter 5.

Item 16 adopts new Chapter 15, which relates exclusively to retention and recertification election procedures to provide for ease of use for the reader. The retention and recertification election procedures are currently contained in Chapter 5. This item, in effect, transfers the provisions to new Chapter 15, with reorganization of some provisions and revisions to some provisions. In particular, the rules relating to voter eligibility challenges and postelection challenges are reorganized but are not substantively revised. In addition to the transfer and reorganization, a new provision is adopted to require that employer and certified employee organization representatives have an agent for service or a representative, for purposes of the bargaining unit case files, listed on the agency's electronic document management system, and keep the listing up to date.

Similar to the increase in election fees for certification and decertification elections, new Chapter 15 provides for increases in the election fee assessed to certified employee organizations for retention and recertification elections. The fee increases from \$1 per eligible voter with a \$10 minimum to \$1.50 per eligible voter with a \$15 minimum. This fee increase is necessary due to a change in the election services vendor that provides election services for retention and recertification elections.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

The adopted rule making amends provisions regarding the timing of election periods to reflect current agency policy and Iowa Code section 20.15(2). The adopted language also clarifies statutory requirements and election procedures to provide that the agency will not conduct a retention and recertification election if the agency does not receive the collective bargaining agreement in a timely manner. Additionally, existing provisions relating to notice to the agency when the agency has not initiated a retention and recertification election and an entity believes the election is required pursuant to statute are reorganized. The adopted language changes the notification deadline to seven days after the notice of the intent to conduct the election should have been filed.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 27, 2019, as **ARC 4366C**. The agency requested that comments be received by April 17, 2019. A public hearing was held on April 17, 2019, at 10 a.m. in the Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa.

The agency discussed formal and informal comments at the public hearing. The agency received formal comment concerning certification of election results in professional/nonprofessional elections. The agency also responded to informal questions and comments about the certification of elections and the merger process. One change from the Notice has been made. A sentence in Item 12 was restructured to clarify the decertification petition dismissal process.

Adoption of Rule Making

This rule making was adopted by the Board on May 2, 2019.

Fiscal Impact

Although the implementation of Iowa Code section 20.6(7) and the subsequent increase in the fee in these rules will cause an increase in the expenditure of funds by the agency and affected persons, due primarily to the contract with a new vendor to conduct elections on the agency's behalf and the requirement that election costs be paid by the employee organizations involved, the agency does not anticipate expenditures by the agency to exceed \$100,000 per year or \$500,000 within five years.

Jobs Impact

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

Waivers

These rules do not provide for a waiver of their terms, but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

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 26, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 4.1(2) as follows:

4.1(2) Representation elections.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

a. Initial certification, retention and recertification, and decertification elections. The initial certification, retention and recertification, and decertification of an employee organization require elections in accordance with ~~621—Chapter 5~~ 621—Chapters 5 and 15. The three types of elections affecting the bargaining representative determination or an employee organization's certification status are as follows:

(1) A certification election, which is initiated by the filing of a petition by the employee organization or the public employer, for the initial certification of an employee organization to be the exclusive bargaining representative for a bargaining unit of public employees;

(2) A retention and recertification election, which is initiated by the filing of notice by the agency, for the retention and recertification of a certified employee organization; and

(3) A decertification election, which is initiated by a public employee of a bargaining unit, for the decertification of an existing certified employee organization that represents the unit.

b. Other elections—professional/nonprofessional unit and amendment of unit. When a bargaining unit is determined or amended, an election may be required as provided in 621—Chapter 5. The two types of other elections are as follows:

(1) A professional and nonprofessional election occurs when the agency files an order directing the election after determining that professional and nonprofessional employees are appropriately included in the same bargaining unit.

(2) An amendment of unit election occurs when the agency files an order directing the election after determining that a job classification or classifications are appropriately amended into a bargaining unit, but a question of representation exists. A question of representation exists when the ~~amended classifications existed at the time the bargaining unit was originally determined and those classifications would separately constitute an appropriate unit~~ job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

ITEM 2. Amend paragraph **4.2(6)“c”** as follows:

c. Objections to the proposed decision must be electronically filed with the agency, ~~electronically, by ordinary mail or by personal delivery,~~ by the date posted in the notice of proposed decision. Objections ~~shall be in writing and~~ shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, telephone number, and email address, if available. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the agency deems the objections to be of substance, the parties may, with agency approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the agency of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

ITEM 3. Amend subrule 4.4(7) as follows:

4.4(7) Professional and nonprofessional elections. See subrule 4.2(5) and rule ~~621—5.8(20)~~ 621—5.7(20).

ITEM 4. Amend subrule 4.6(3) as follows:

4.6(3) Elections; when required. When a question of representation exists, the agency will conduct an amendment of unit election pursuant to rule ~~621—5.9(20)~~ 621—5.8(20). A question of representation exists when the job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

ITEM 5. Amend paragraph **4.8(5)“b”** as follows:

b. Objections to the proposed decision must be electronically filed with the agency, ~~electronically, by ordinary mail or by personal delivery,~~ by the date specified in the notice. Objections ~~shall be in writing and~~ shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, telephone number and email address. The agency shall promptly advise the parties of

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

the objections and make any investigation deemed appropriate. When an objection is raised, the agency may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

ITEM 6. Adopt the following new rule 621—4.9(20):

621—4.9(20) Merger of units represented by the same certified employee organization. A certified employee organization may petition the agency to merge two of the bargaining units the organization represents into one successive unit. This proceeding does not apply to school districts' and area education agencies' reorganizations and mergers pursuant to Iowa Code chapter 273 or 275.

4.9(1) Petition. A petition to amend a bargaining unit may be filed by a certified employee organization to reflect a merger of two agency-determined bargaining units which have the same public employer and are represented by the same certified employee organization. The petition shall contain:

- a. The names, addresses, telephone numbers, and email addresses of the public employer and the employee organization or their respective representatives.
- b. A listing of all PERB cases relevant to the first unit and its certification history followed by a current description of the unit.
- c. A listing of all PERB cases relevant to the second unit and its certification history followed by a current description of the unit.
- d. An identification and description of the proposed amended unit.
- e. The names and addresses of any other employee organizations which claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.
- f. A statement identifying the current status of the units as either public safety units or non-public safety units and the change, if any, to the status of the unit, which would result from the requested merger.
- g. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant factors.

4.9(2) Accompanying documents. The successive employee organization must file its petition with an affidavit(s) that establishes the following for each unit:

- a. The act or occurrence (merger), which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and
- b. Substantial continuity of representation has been maintained.

4.9(3) Notice. Upon the filing of a petition, the agency shall file a notice to employees, giving notice that a petition for the merger of two units has been filed and setting forth the rights of employees under Iowa Code chapter 20. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.9(4) Procedure—decision. Insofar as applicable, rule 621—4.2(20) shall apply.

ITEM 7. Adopt the following new rule 621—4.10(20):

621—4.10(20) Merger of two units represented by affiliated certified employee organizations. A certified employee organization may petition the agency to amend a bargaining unit the organization represents to merge another bargaining unit of employees into the successive unit. The unit of employees added must be represented by an affiliated certified employee organization. This proceeding does not apply to school districts' and area education agencies' reorganizations and mergers pursuant to Iowa Code chapter 273 or 275.

4.10(1) Petition. A combined petition to amend a bargaining unit and an employee organization's certification may be filed by a successive employee organization to reflect a merger of two agency-determined bargaining units that have the same public employer and are represented by affiliated certified employee organizations. The combined petition shall contain:

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

- a. The names, addresses, telephone numbers, and email addresses of the public employer and the employee organization or their respective representatives.
- b. A listing of all PERB cases relevant to the first unit and its certification history followed by a current description of the unit.
- c. A listing of all PERB cases relevant to the second unit and its certification history followed by a current description of the unit.
- d. An identification and description of the proposed amended unit.
- e. The names and addresses of any other employee organizations which claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.
- f. A statement identifying the current status of the units as either public safety units or non-public safety units and the change, if any, to the status of the unit, which would result from the requested merger.
- g. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant factors.

4.10(2) *Accompanying documents.* The successive employee organization must file its petition with the following:

- a. An affidavit(s) that establishes the following:
 - (1) The act or occurrence, which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and
 - (2) Substantial continuity of representation has been maintained.
- b. Updated agency reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports shall include the following:
 - (1) An updated PERB annual report that covers the time period from the last annual report to the time of the filing of the petition.
 - (2) An updated PERB registration report.
 - (3) An updated constitution and bylaws.
- c. Final agency reports for dissolved organizations resulting from a merger. The final agency report shall include a PERB annual report that covers the time period from the last annual report to the time of the merger and shall reflect the closing of the books and accounts of the dissolved employee organization. The certified employee organization may wait and submit its final agency reports following the board's tentative approval of the amendment of certification.

4.10(3) *Notice.* The agency shall file a notice to employees, giving notice that a petition to merge two units and amend the certification of the successive employee organization has been filed and setting forth the rights of employees under Iowa Code chapter 20. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.10(4) *Procedure—decision.* Insofar as applicable, rules 621—4.2(20) and 621—4.8(20) shall apply.

4.10(5) *Elections.* Should the agency determine, in any case, it is appropriate to merge one unit into the successive unit, the agency shall file an order directing that an election be conducted to determine whether the employees of the unit getting merged into the successive unit wish to be represented by the successive certified employee organization. The election shall be conducted in accordance with rule 621—5.8(20).

ITEM 8. Amend rule 621—5.1(20) as follows:

621—5.1(20) *General procedures.* The agency shall determine the date of the election or election period, and the place, method, and other procedural aspects of conducting an election held pursuant to Iowa Code chapter 20. Elections shall be conducted under the direction and supervision of the agency or its election agent and shall be by secret ballot. Parties shall electronically file all documents in the

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

applicable adjudicatory case file in the agency's electronic document management system (EDMS) unless the rules specify otherwise.

5.1(1) Election types. There are five types of elections:

- a. Certification election.
- b. Retention and recertification election. Specific rules addressing retention and recertification elections are contained in 621—Chapter 15.
- c. Decertification election.
- d. Professional and nonprofessional election.
- e. Amendment of unit election.

5.1(2) Election fees.

a. For certification, ~~retention and recertification~~, and decertification elections, the employee organization is responsible for and shall prepay the election fees in accordance with this chapter and rules relevant to the specific election. Employee organizations intervening in a certification election shall pay a proportionate share of the election fees.

b. A certified employee organization may file a written request with the agency for an extension of time in which to pay its election fees. The employee organization may file the request after the filing of a certification or decertification petition, but no later than 7 seven days after the agency's filing of an order directing an election. ~~For a retention and recertification election, a certified employee organization may file a request after the agency's filing of its intent to conduct an election, but shall file the request no later than the date the election fee is due as provided in the notice of intent to conduct an election.~~ In no event will the agency conduct an election prior to an employee organization's payment of election fees.

c. A certified employee organization may file notice of nonpayment to indicate that it will not pay the election fees for a decertification ~~or retention and recertification~~ election. The notice of nonpayment may be filed at any time, but must be filed no later than 7 seven days after the agency's filing of an order for a decertification election ~~or no later than 30 days prior to the commencement of a retention and recertification election period.~~ The notice shall be signed by an authorized representative of the organization, state that the organization will not pay the election fees, and acknowledge that the agency will not conduct the applicable election and the employee organization's certification will be revoked.

d. ~~For retention and recertification elections, the applicable election fee is based upon the number of employees on the voter eligibility list submitted to the agency pursuant to subrule 5.2(2).~~ For certification and decertification elections, the applicable election fee is based upon the list provided pursuant to 621—subrule 4.3(3) to verify the showing of interest.

(1) When the list contains ~~40 ten~~ or fewer eligible voters, the election fee is ~~\$10~~ \$15. When the list contains more than ~~40 ten~~ eligible voters, the election fee is ~~\$4~~ \$1.50 per eligible voter. When the number of eligible voters on the list contains more than 50 eligible voters and subsequent for determining fees increases or decreases as contemplated by subparagraph 5.2(2)“a”(2) or 5.2(2)“b”(2) or due to successful challenges pursuant to subrule 5.2(3) and the increases or decreases alter the number of eligible voters by 5 percent ten or more, the employee organization shall make an additional payment to reflect the increased number of eligible voters or, in the case of a decrease, the agency shall reimburse the employee organization for its overpayment.

(2) ~~The agency will not request additional payment and will not reimburse the employee organization for an amount less than \$10.~~ The agency will not refund the election fee in the event the election fee is paid and the agency has performed duties to conduct the election but the election does not occur.

5.1(3) Date of election. For purposes of this chapter, the date of an election shall be the date on which the ballots were tallied.

5.1(4) Election period. For purposes of this chapter, an election period begins at the time and on the date the agency sets for when eligible voters may first cast a ballot and ends at the time and on the date the agency sets for the tally of ballots.

ITEM 9. Amend rule 621—5.2(20) as follows:

621—5.2(20) Eligibility—voter eligibility lists.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

5.2(1) Eligible voters.

~~a. Certification, decertification, professional/nonprofessional, amendment of unit elections.~~ For certification, decertification, professional/nonprofessional, or amendment of unit elections, eligible voters are those employees who:

~~(1) a.~~ Were employed and included in the bargaining unit on the date of the order directing an election unless another date is agreed upon by the parties and the agency, and

~~(2) b.~~ Are employed in the bargaining unit on the date of the election.

~~b. Retention and recertification elections.~~

~~(1) For retention and recertification elections, eligible voters are those employees who were employed and included in the bargaining unit on the date of the order directing the election, or were employed on another date or dates agreed upon by the parties and the agency.~~

~~(2) In addition to voter eligibility challenges made pursuant to subrule 5.2(3), employee organizations may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections.~~

~~1. The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.~~

~~2. The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization whenever an eligible voter leaves employment and is no longer in the bargaining unit prior to the close of the election or election period.~~

5.2(2) Eligible Certification, decertification, professional/nonprofessional, and amendment of unit elections—eligible voter list.

~~a. Certification, decertification, professional/nonprofessional, and unit amendment elections—eligible voter list.~~

~~(1) a.~~ List for determining fees. The agency will determine the election fee based on the initial employer-provided list of employees used to verify the showing of interest pursuant to 621—subrule 4.3(3).

~~(2) b.~~ Voter eligibility list.

~~1. (1) When the agency files an order that an election, other than a retention and recertification election, be conducted, the employer shall, within seven days of the notice or order, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency.~~

~~2. (2) The agency shall file the list of eligible voters' names and job classifications. This list shall become the official voting list for the election to be conducted. The agency shall provide to the employee organization the voter list with containing the employees' contact information. The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information, or other eligible voter changes to the agency and to the other party. The parties may further amend the list by agreement.~~

~~b. Retention and recertification elections—eligible voter list.~~

~~(1) List for determining fees.~~

~~1. The agency will determine the election fee based on the following initial employer-provided list of employees. When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within seven days of the notice, email to the agency an alphabetical list of the names;~~

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list.

2.—The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the employee organization the voter list with the employees' contact information.

(2) ~~Voter eligibility list.~~

1.—~~When the agency files an order that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the original list the employer provided for determining fees is unchanged, the employer does not need to email this second list. The original list, if unchanged, or this second list will become the final list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voter list for the election to be conducted. The agency shall provide to the employee organization the voter list with the employees' contact information.~~

2.—~~The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.~~

5.2(3) Challenges.

a. Types of challenges. Voter eligibility challenge.

(1) A party may challenge, for good cause, the eligibility of any voter. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and conducted. After the conclusion of the hearing, the board may, if necessary, order a new election, and the cost may be taxed to the nonprevailing party.

(2) ~~In addition to voter eligibility challenges made pursuant to this subrule, employee organizations may make postelection challenges to the total number of bargaining unit employees for the employee organizations' respective retention and recertification elections in accordance with paragraph 5.2(1)“b.”~~

b. Methods and timing of voter eligibility challenges. A party may challenge the eligibility of a voter as follows by electronically filing a completed voter eligibility form in the case file and in accordance with the following:

(1) In-person elections. A party shall challenge a voter's eligibility prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the challenged voter may mark the ballot in secret, and the election agent shall segregate the ballot by causing it to be placed in a challenged-ballot envelope with appropriate markings and depositing it in the ballot box.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility ~~in writing to the agency with a copy to the other interested party. For retention and recertification elections, a party shall challenge that voter's eligibility at least seven days prior to the commencement of the election period~~

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

for telephonic/web-based elections. For all other elections utilizing this method, a party shall challenge that voter's eligibility prior to the end of the election period.

ITEM 10. Rescind rule **621—5.6(20)**.

ITEM 11. Renumber rules **621—5.7(20)** to **621—5.10(20)** as **621—5.6(20)** to **621—5.9(20)**.

ITEM 12. Amend renumbered subrule 5.6(1) as follows:

5.6(1) Eligible voter list. Upon the agency's determination that a decertification petition is supported by an adequate showing of interest in accordance with rule 621—4.3(20), the agency shall file an order directing that an election be conducted in a specified manner not less than 150 days before the expiration date of the bargaining unit's collective bargaining agreement and that the employer submit a list of eligible voters pursuant to rule 621—5.2(20), unless the election is barred by subrule ~~5.7(6)~~ **5.6(6)**. The agency may, at the agency's discretion, dismiss a decertification petition if the agency determines that an election cannot be conducted at least 150 days before the expiration date of the bargaining unit's collective bargaining agreement.

ITEM 13. Amend renumbered subrule 5.7(6) as follows:

5.7(6) Certification of results.

a. Upon completion of a valid professional/nonprofessional election in which separate majorities of ~~the eligible voters~~ employees voting in both the professional and nonprofessional categories voted in favor of their inclusion in the same bargaining unit, the agency shall define a bargaining unit which includes both professional and nonprofessional employees.

b. Upon completion of a valid professional/nonprofessional election in which separate majorities of ~~the eligible voters~~ employees voting in one or both of the professional and nonprofessional categories did not vote in favor of employees' inclusion in the same bargaining unit, the agency shall not define a bargaining unit which includes both professional and nonprofessional employees.

ITEM 14. Amend renumbered subrule 5.8(6) as follows:

5.8(6) Certification of results.

a. Upon completion of a valid amendment of unit election in which a majority of ~~the eligible voters~~ employees voting cast ballots in favor of representation by the certified employee organization, the agency shall file an order amending the unit as previously determined to be appropriate by the agency.

b. Upon completion of a valid amendment of unit election in which a majority of ~~the eligible voters~~ employees voting did not cast ballots in favor of representation by the certified employee organization, the agency shall file an order dismissing the amendment of unit petition.

ITEM 15. Amend **621—Chapter 5**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291.

ITEM 16. Adopt the following new 621—Chapter 15:

CHAPTER 15 RETENTION AND RECERTIFICATION ELECTIONS

621—15.1(20) General procedures. The agency shall determine the date of the election or election period, and the place, method, and other procedural aspects of conducting a retention and recertification election held pursuant to Iowa Code chapter 20. Elections shall be conducted under the direction and supervision of the agency or its election agent and shall be by secret ballot.

Each election will be assigned a "BU" case number in the agency's electronic document management system (EDMS). A party shall electronically file all documents in its respective BU case file unless the rules specify otherwise.

Employers and certified employee organizations shall have a representative or agent for service listed in the applicable BU case file in EDMS. Employers and certified employee organizations have a continuing duty to update the representative or agent for service in the BU case file in EDMS.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

15.1(1) Election fees.

a. The employee organization is responsible for and shall prepay the election fees in accordance with this chapter.

b. A certified employee organization may file a written request with the agency for an extension of time in which to pay its election fees. A certified employee organization may file a request after the agency's filing of its intent to conduct an election, but shall file the request no later than the date the election fee is due as provided in the notice of intent to conduct an election. In no event will the agency conduct an election prior to an employee organization's payment of election fees.

c. A certified employee organization may file notice of nonpayment to indicate that it will not pay the election fees. The notice of nonpayment may be filed at any time, but must be filed no later than 30 days prior to the commencement of the election period. The notice shall be signed by an authorized representative of the organization, state that the organization will not pay the election fees, and acknowledge that the agency will not conduct the applicable election and the employee organization's certification will be revoked.

d. The applicable election fee is based upon the number of employees on the voter eligibility list submitted to the agency pursuant to subrule 15.2(2).

(1) When the list contains ten or fewer eligible voters, the election fee is \$15. When the list contains more than ten eligible voters, the election fee is \$1.50 per eligible voter. When the number of eligible voters on the list for determining fees increases or decreases as contemplated by paragraph 15.2(2) "b" or due to successful challenges pursuant to subrule 15.2(3) and the increases or decreases alter the number of eligible voters by ten or more, the employee organization shall make an additional payment to reflect the increased number of eligible voters or, in the case of a decrease, the agency shall reimburse the employee organization for its overpayment.

(2) The agency will not refund the election fee in the event the election fee is paid and the agency has performed duties to conduct the election but the election does not occur.

15.1(2) Date of election. For purposes of this chapter, the date of an election shall be the date on which the ballots were tallied.

15.1(3) Election period. For purposes of this chapter, an election period begins at the time and on the date the agency sets for when eligible voters may first cast a ballot and ends at the time and on the date the agency sets for the tally of ballots.

621—15.2(20) Eligibility—voter eligibility lists.**15.2(1) Eligible voters.**

a. Eligible voters are those employees who were employed and included in the bargaining unit on the date of the order directing the election, or were employed on another date or dates agreed upon by the parties and the agency.

b. The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization whenever an eligible voter leaves employment and is no longer in the bargaining unit prior to the close of the election or election period.

15.2(2) Initial eligible voter list.*a. List for determining fees.*

(1) The agency will determine the election fee based on the following initial employer-provided list of employees. When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within seven days of the notice, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

(2) The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the employee organization the voter list containing the employees' contact information.

b. Final voter eligibility list.

(1) When the agency files an order that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the original list the employer provided for determining fees is unchanged, the employer does not need to email this second list. The original list, if unchanged, or this second list will become the final list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voter list for the election to be conducted. The agency shall provide to the employee organization the voter list containing the employees' contact information.

(2) The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

15.2(3) Voter eligibility challenges.

a. General. A party may challenge, for good cause, the eligibility of any voter. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and conducted. After the conclusion of the hearing, the board may, if necessary, order a new election, and the cost may be taxed to the nonprevailing party.

b. Methods and timing of voter eligibility challenges. A party may challenge the eligibility of a voter by electronically filing a completed voter eligibility form in the BU case file and in accordance with the following:

(1) In-person elections. A party shall challenge a voter's eligibility prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the challenged voter may mark the ballot in secret, and the election agent shall segregate the ballot by causing it to be placed in a challenged-ballot envelope with appropriate markings and depositing it in the ballot box.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility at least seven days prior to the commencement of the election period for telephonic/web-based elections.

15.2(4) Postelection challenges. A certified employee organization may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections. The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.

621—15.3(20) Methods of voting—general procedures. See rule 621—5.3(20).

621—15.4(20) Objections to an election. See rule 621—5.4(20).

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

621—15.5(20) Retention and recertification election process.**15.5(1) Timing of election periods.**

a. When an employer and certified employee organization are parties to a collective bargaining agreement, the agency shall conduct an election, prior to the expiration of a collective bargaining agreement between an employer and a certified employee organization, to determine if the employees in a represented bargaining unit wish to retain and recertify the unit's certified representative.

b. For a certified employee organization that is a party to a collective bargaining agreement with a June 30 expiration date, the organization's retention and recertification election shall occur not earlier than June 1 nor later than November 1 in the year prior to the expiration of the agreement.

c. For a certified employee organization that is a party to a collective bargaining agreement with an expiration date other than June 30, the organization's retention and recertification election shall occur not earlier than 365 days nor later than 270 days prior to the expiration of the agreement, except as provided in subrule 15.5(9).

d. If the certified employee organization has paid the applicable election fee in a timely manner as provided in subrule 15.5(5), the organization's status shall not be adversely affected if the election is not concluded in compliance with this rule.

e. The public employer shall email to the agency a collective bargaining agreement within ten days of the date on which the agreement was entered into, as required by Iowa Code section 20.29. However, for purposes of scheduling retention and recertification elections, all collective bargaining agreements must be submitted to the agency at least 50 days prior to the commencement of the retention and recertification election period. The agency shall not conduct an election if the employer and certified employee organization are not parties to a collective bargaining agreement or if the collective bargaining agreement is submitted to the agency fewer than 50 days before the commencement of the retention and recertification election period.

When scheduling a retention and recertification election, if a collective bargaining agreement indicates the agreement is for a term of one year but does not clearly specify the effective commencement and termination dates, the agency will presume the collective bargaining agreement is for a term of one year commencing July 1 and ending June 30 unless the agreement clearly states an alternate term and effective dates.

f. An extension of a collective bargaining agreement will alter the timing of the retention and recertification election only if the parties have reached agreement on the extension and have notified the agency in writing prior to the date the fee is due as set forth in the notice of intent to conduct the election. Should the parties' collective bargaining agreement inclusive of any extensions exceed five years, the agency will, for purposes of scheduling the election, presume a maximum duration of five years pursuant to Iowa Code section 20.9 or two years pursuant to Iowa Code section 20.15, whichever is applicable.

15.5(2) General procedure.

a. Upon determining that a retention and recertification election is required, the agency shall file a notice of intent to conduct an election which shall contain the dates of the election period; the place, method, and purpose of the election; the date the voter list for determining fees is due; and the date upon which the employee organization shall pay the applicable election fee. The agency shall order the public employer's submission of the voter eligibility list in accordance with rule 621—15.2(20) and subrule 15.5(4).

b. Following the public employer's submission of the list of eligible voters as provided in subrule 15.5(4) and the agency's receipt of the applicable election fee from the certified employee organization, the agency will file an order directing a retention and recertification election and a notice of election, copies of which shall be promptly posted by the employer in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means. Such notices shall contain a sample ballot or script and shall set forth the dates of the election period; the time, place, method, and purpose of the election; and such additional information as the agency may deem appropriate.

15.5(3) Objection and notice regarding notice of intent to conduct an election.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

a. The certified employee organization or public employer may file an objection asserting that the election should not be conducted for reasons set forth in the objection. The objection shall be in writing and electronically filed no later than seven days following the date of the notice of intent to conduct an election. The agency may conduct a preliminary investigation of the objection and determine if the objection has merit. The agency may informally resolve objections and will dismiss objections without merit. The agency will schedule hearings for all other objections. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

b. If the agency fails to file a notice of intent to conduct an election, the public employer or certified employee organization may file with the agency a notice asserting the election should be conducted for reasons set forth in the notice. The notice shall be in writing and electronically filed no later than seven days following the date the notice of intent to conduct an election should have been filed pursuant to the retention and recertification election schedule as set forth by the agency. The parties shall submit to the agency all relevant information requested. The agency shall conduct an investigation to determine whether the election is required by statute and rule.

15.5(4) *Eligible voter list for determining election fee.*

a. The public employer shall email to the agency a list of the employees in the bargaining unit in question within seven days of the filing of the notice of intent to conduct an election. This list shall be organized alphabetically and contain the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list. The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the certified employee organization the list with the employees' contact information. The certified employee organization shall use this list to determine the election fee as provided in subrule 15.5(5).

b. If the public employer fails to submit the list of eligible voters to the agency by the deadline set in the notice, the agency will not conduct the election and will file an order recertifying the employee organization.

15.5(5) *Payment of election fee.* A certified employee organization shall pay the applicable election fee as set forth in the notice of intent to conduct the election, except as otherwise authorized by this subrule. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed. The agency may grant a certified employee organization's written request for an extension of time to pay the fee for good cause if the request is filed as set forth in the notice of intent to conduct the election. The agency will not conduct an election prior to receiving the applicable election fee. The certified employee organization's failure to pay the applicable election fee by the deadline set in the notice shall result in revocation of the organization's certification.

15.5(6) *Final voter eligibility list.*

a. When the agency files an order directing that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the list the employer previously provided pursuant to subrule 15.5(4) is unchanged, the employer does not need to email a subsequent list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voting list for the election to be conducted. The agency shall provide to the certified employee organization the voter list containing the employees' contact information.

b. The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

15.5(7) Ballots. Ballots shall contain the question “Do you want [name of certified employee organization] to be retained and recertified and continue to be your exclusive bargaining representative?” followed by the choices “Yes” or “No.”

15.5(8) Certification of results.

a. Upon completion of a valid retention and recertification election in which an employee organization received the votes of a majority of employees in the bargaining unit, the agency shall file an order recertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid retention and recertification election in which an employee organization did not receive the votes of a majority of employees in the bargaining unit, the agency shall file an order decertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

15.5(9) Elections for employee organizations that represent employees of school districts, area education agencies, and community colleges. If certified employee organizations representing employees of a school district, area education agency, or community college would otherwise be scheduled for a retention and recertification election to be held between May 1 and September 30, the agency will postpone those elections until October of that calendar year and the timelines of subrules 15.5(2), 15.5(4), and 15.5(5) will apply.

These rules are intended to implement Iowa Code chapter 20.

[Filed 5/2/19, effective 6/26/19]

[Published 5/22/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4459C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Rule making related to whistleblower actions

The Public Employment Relations Board hereby adopts new Chapter 17, “State Employee Whistleblower Actions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 70A.28.

Purpose and Summary

Iowa Code section 70A.28 tasks the Public Employment Relations Board with hearing appeals of certain state employees for adverse employment action taken as a result of an employee’s disclosure of information protected by that section. This adopted chapter provides the procedural framework for such an appeal by a state Executive Branch employee. The procedure is similar to that used when a state employee appeals a grievance decision or disciplinary action pursuant to Iowa Code chapter 8A.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](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 March 27, 2019, as **ARC 4364C**. The agency requested that comments be submitted by April 17, 2019. The agency also held a public hearing on April 17, 2019, at 10 a.m. in the Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa. The agency received no formal comments at the public hearing. The agency received no written formal comments. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on May 2, 2019.

Fiscal Impact

State employee whistleblower actions involve state Executive Branch employees who allege the State has violated whistleblower provisions and that the violation has resulted in an adverse employment action. If these allegations are proven, the State may have remedial obligations. Any fiscal impact would arise from enforcement of Iowa Code section 70A.28. The adopted rules herein provide the procedure to enforce the statute.

Jobs Impact

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

Waivers

These rules do not provide for a waiver of their terms, but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

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 26, 2019.

The following rule-making action is adopted:

Adopt the following **new** 621—Chapter 17:

CHAPTER 17
STATE EMPLOYEE WHISTLEBLOWER ACTIONS

621—17.1(20,70A) Notice of appeal rights. A state executive branch employee, except a merit system employee or an employee covered by a collective bargaining agreement, may file an appeal with the public employment relations board for adverse employment action taken as a result of the employee's disclosure of information protected by Iowa Code section 70A.28.

621—17.2(20,70A) Filing of appeal.

17.2(1) Timeline. The employee must file the appeal within 30 calendar days following the later of the effective date of the action or the date a finding is issued to the employee by the office of ombudsman pursuant to Iowa Code section 2C.11A.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

17.2(2) Method of filing. Appeals shall be electronically filed pursuant to 621—Chapter 16.

621—17.3(20,70A) Service of appeal. The agency shall serve a copy of the appeal upon the Iowa department of administrative services director (hereinafter referred to as the director) by ordinary mail in the manner specified in rules 621—2.15(20) and 621—16.10(20).

621—17.4(20,70A) Content of appeal.

17.4(1) The appeal shall contain the following:

- a. Name, address, telephone number, and email address of the appealing employee;
- b. Name of agency/department by which the appealing employee is/was employed;
- c. A brief statement of the reasons for the employee's appeal;
- d. A statement of the requested remedy;
- e. The name, address, telephone number, and email address of the appealing employee's representative, if any;
- f. The signature of the appealing employee or employee's representative;
- g. A statement of whether the employee requests a hearing open to the public; and
- h. A statement of whether the employee filed a complaint with the office of ombudsman and the date of the filing, if applicable.

17.4(2) Completion of the State Employee Whistleblower Action Appeal Form shall constitute compliance with all of the requirements in subrule 17.4(1).

621—17.5(20,70A) Content of director's response to the appeal.

17.5(1) The director shall have 15 days from the date of service of the employee's appeal in which to file a motion or answer with the agency.

17.5(2) The motion or answer shall contain the following:

- a. The names of the appealing employee and the employing agency/department;
- b. The name, address, telephone number, and email address of the employing agency's/department's representative;
- c. The response or answer to the employee's appeal, which shall specifically admit or deny each allegation of the appeal and may set forth additional facts deemed to constitute a defense. If the appellee is without knowledge sufficient to make an admission or denial concerning an allegation, the answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the substance of the allegation. Additional facts set forth in the answer shall be deemed denied by the appellant;
- d. The signature of the employing agency's/department's representative.

17.5(3) The director's motion or answer shall be electronically filed pursuant to 621—Chapter 16.

621—17.6(20,70A) Right to a hearing. An employee appealing adverse employment action pursuant to Iowa Code section 70A.28 has a right to a hearing which is closed to the public unless the employee requests a hearing open to the public. Hearings will otherwise be conducted in accordance with 621—Chapter 2.

621—17.7(20,70A) Final decisions.

17.7(1) When a majority of the board presides at the reception of the evidence in a state employee whistleblower action proceeding, the decision of the board is the final decision of the agency.

17.7(2) When a majority of the board does not preside at the reception of the evidence in a state employee whistleblower action proceeding, the presiding officer shall make a proposed decision that becomes the final decision of the agency without further proceedings unless:

- a. There is an appeal to the board filed within 20 days of the filing of the proposed decision, or
- b. The board, within 20 days of the filing of the proposed decision, determines to review the decision on its own motion.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

621—17.8(20,70A) Review by board. Proceedings on the board's review of the proposed decision shall be in accordance with 621—Chapter 9.

621—17.9(20,70A) Other rules. Any matters not specifically addressed by the rules contained in this chapter shall be governed by the general provisions of the rules of the agency.

These rules are intended to implement Iowa Code chapters 20 and 70A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4460C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to photography and retouching services

The Revenue Department hereby amends Chapter 16, "Taxable Sales," and Chapter 26, "Sales and Use Tax on Services," 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 section 423.2.

Purpose and Summary

Item 1 removes photography and retouching services from the category of services treated as tangible personal property, pursuant to 2018 Iowa Acts, Senate File 2417, section 169, by amending rule 701—16.51(422,423). Item 1 also removes some duplicative language relating to vulcanization and includes other organizational, nonsubstantive edits.

Item 2 rescinds outdated rule 701—16.52(422,423), the content of which was previously updated and adopted as rule 701—214.2(423).

Item 3 adopts rule 701—26.17(423), whose language is substantially similar to that in current rule 701—16.51(422,423) but includes photography and retouching services, which were added to the list of taxable enumerated services by 2018 Iowa Acts, Senate File 2417, section 170. Also, the definitions of "photography" and "retouching" in rule 701—26.17(423), unlike those in current rule 701—16.51(422,423), reflect that photography and retouching services are no longer tied to the production of tangible personal property and that the definitions include digital photography and digital retouching. Finally, the new rule provides examples of general taxable photography and retouching services.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 27, 2019, as **ARC 4316C**. 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 26, 2019.

REVENUE DEPARTMENT[701](cont'd)

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 2417.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 26, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—16.51(423) as follows:

701—16.51(422,423) Sales of services treated as sales of tangible personal property.

16.51(1) Generally. Effective July 1, 1984, For purposes of the imposition of Iowa sales and use tax, the sale of the following services are treated as the sale of tangible personal property: engraving, photography, retouching, printing, and binding services is no longer the sale of enumerated services but the sale of tangible personal property, vulcanizing, recapping, and retreading. For the purposes of this subrule these services will be referred to as “property.”

~~a.~~ **16.51(2)** Definitions and characterizations.

(1) “Binding.” Persons engaged in the business of binding any printed matter, other than for the purpose of ultimate sale at retail, are engaged in the sale of property, the gross receipts of which are subject to tax.

(2) “Engraving” includes the business of engraving on wood, metal, stone, or any other material.

~~(3) “Photography” is the art or process of producing images or objects upon a photosensitive surface by the chemical action of light or other radiant energy.~~

(4) “Printing” includes, but is not limited to, any type of printing, lithographing, mimeographing, photocopying and similar reproduction. The following activities are nonexclusive examples of property which are subject to tax: printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.

“Vulcanizing” means the act or process of treating crude rubber, synthetic rubber, or other rubberlike material with a chemical and subjecting it to heat in order to increase its strength and elasticity.

~~(5) “Retouching” includes the renovation or retouching of an existing likeness or design.~~

~~b.~~ Reserved.

~~**16.51(2)** Effective May 18, 1984, the sale of vulcanizing, recapping and retreading services is no longer the sale of enumerated services, but is the sale of tangible personal property. For the purposes of this subrule these services will also be referred to as “property.”~~

REVENUE DEPARTMENT[701](cont'd)

a.—“Vulcanizing” means the act or process of treating crude rubber, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity.

b.—The effective date of the statute mandating change in the treatment of vulcanizing, recapping and retreading is May 18, 1984. However, the change in the treatment of this property is retroactive to January 1, 1979. The statute provides that no tax may be assessed for a retailer’s treatment of the sale of this property as the sale of tangible personal property between the dates January 1, 1979, and May 17, 1984, inclusive. However, no refund may be claimed on any tax collected prior to May 18, 1984, if the basis for the refund claim is the argument that the sale of vulcanizing, recapping and retreading services is the sale of tangible personal property.

16.51(3) *Prepaid calling cards and wireless calling services.* Effective July 1, 1997, sales ~~of~~ Sales of prepaid telephone calling cards and prepaid authorization numbers which furnish the holder with communication service are taxable as sales of tangible personal property. See rule ~~16.52(422,423) below~~ 701—214.2(423) for an explanation of the sales tax treatment of other types of prepaid merchandise cards.

This rule is intended to implement Iowa Code sections ~~422.43 and 423.1~~ 423.2(1)“a”(1) to 423.2(1)“a”(3).

ITEM 2. Rescind and reserve rule **701—16.52(422,423)**.

ITEM 3. Rescind rule 701—26.17(422) and adopt the following **new** rule in lieu thereof:

701—26.17(423) Photography and retouching.

26.17(1) *Definitions.*

“*Photography*” means the art or process of capturing or producing still or moving images, films, or videos using any device designed to record or capture images, film, or video. Taxable sales associated with photography services include but are not limited to sitting or photoshoot fees and fees relating to taking or producing photographs or videos, including editing.

“*Retouching*” means the alteration, restoration, or renovation of a picture, film, video, image, artwork, likeness, or design.

26.17(2) *Taxation generally.* Beginning July 1, 2018, the sales price of photography services and retouching services are taxable regardless of whether the service results in the production of tangible personal property or specified digital products.

EXAMPLE 1: Standalone photography service. X operates a photography business where customers can purchase a half-hour photoshoot session for \$50 and may purchase physical or electronic copies of any photographs taken during the photoshoot for \$10 each. Y purchases a half-hour photoshoot from X for \$50; however, after viewing the images, Y decides not to purchase any copies of any of the photographs. X must collect and remit sales tax and any applicable local option tax on \$50, the cost of the photography service, even though Y decided not to purchase any of the resulting photographs.

EXAMPLE 2: Photography service and sale of photographs. Same facts as Example 1, except that Y decides to purchase ten photographs for \$10 each. X must collect and remit sales tax and any applicable local option tax on \$150, the total cost of the \$50 photography service and the \$100 cost of the ten photographs. Here, the photography service is taxable and the photographs are taxable as the sale of tangible personal property if they are delivered in hard copy or as the sale of specified digital products if they are delivered electronically.

This rule is intended to implement Iowa Code sections 423.2(6) “*bo*” and 423.2(6) “*bp*.”

[Filed 4/26/19, effective 6/26/19]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4466C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rule making related to assessor or deputy assessor continuing education**

The Revenue Department hereby amends Chapter 124, “Courses,” 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 section 441.8.

Purpose and Summary

The purpose of this rule making is to clarify that a one-hour course for continuing education for an assessor or deputy assessor is intended to be 60 minutes in length.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 27, 2019, as **ARC 4352C**. 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 May 1, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 26, 2019.

The following rule-making action is adopted:

REVENUE DEPARTMENT[701](cont'd)

Amend rule 701—124.3(441) as follows:

701—124.3(441) Petitioning to add, delete or modify courses. The director accepts and encourages the public to provide input into the development of the assessor education program. Any person or group may petition to add, delete or modify all or part of the program by submitting a written request for the committee's consideration.

The overriding consideration in determining whether a specific course is acceptable as continuing education is that it be a formal program of learning which contributes directly to the professional competence of an assessor or deputy assessor.

A continuing education course will qualify only if:

1. An outline of the course content and a description or copy of the final examination are prepared and filed with the director. In addition, any course changes are required to be filed with the director.
2. The course is at least one hour (~~50-minute~~ 60-minute period) in length.
3. The course is conducted by a qualified instructor, discussion leader, or lecturer. A qualified instructor, discussion leader, or lecturer is any individual whose background, training, education or experience makes it appropriate for that person to lead a discussion on the subject matter of the particular course.
4. Certificates of attendance must be sent to the director and the student.
5. An organization or person desiring accreditation of a course shall apply to the director for accreditation at least 60 days in advance of the commencement of the course on an application provided by the director (Form 51-002 "Application for Course Certification"). The director shall approve or deny the application. The application shall state the dates; subjects offered; total hours of instruction; names and qualifications of the instructor, discussion leader, or lecturer; a statement of the objectives of the course and how the objectives will be attained; an outline of the course content; a copy of the final examination; and any other pertinent information.

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[Published 5/22/19]

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ARC 4461C

SECRETARY OF STATE[721]

Adopted and Filed

Rule making related to safe at home program

The Secretary of State hereby amends Chapter 6, "Safe at Home Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 9E.3 and 17A.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 9E.2.

Purpose and Summary

This amendment facilitates the administration of the Safe at Home Program, an address confidentiality program, in accordance with Iowa Code chapter 9E. The amendment is based on a recommendation from the Legislative Services Agency following the passage of 2018 Iowa Acts, House File 2252.

SECRETARY OF STATE[721](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 March 27, 2019, as **ARC 4356C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Secretary of State on May 1, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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 26, 2019.

The following rule-making action is adopted:

Amend rule 721—6.1(9E) as follows:

721—6.1(9E) Definitions. For purposes of this chapter, the terms defined in this rule have the meanings given them.

“*Address*” means a residential street address, school address, or work address of an individual, as specified on the individual’s application to be a program participant.

“*Applicant*” means an adult, a parent or guardian acting on behalf of an eligible minor, or a guardian acting on behalf of an incapacitated person as defined in Iowa Code section 633.701.

“*Designated address*” means the mailing address assigned to a program participant by the secretary.

“*Domestic abuse*” means the same as defined in Iowa Code section 236.2.

“*Domestic abuse assault*” means the same as defined in Iowa Code section 708.2A.

“*Eligible person*” means a person who is all of the following:

1. A resident of this state.
2. An adult, a minor, or an incapacitated person as defined in Iowa Code section 633.701.
3. A victim of domestic abuse, domestic abuse assault, sexual abuse, stalking, or human trafficking as evidenced by the filing of a petition pursuant to Iowa Code section 236.3 or a criminal complaint or information pursuant to Iowa Code section 708.2A, 708.11, or 710A.2, or any violation contained in Iowa Code chapter 709.

SECRETARY OF STATE[721](cont'd)

For purposes of this definition, a person determined to be a sexually violent predator pursuant to Iowa Code section 229A.7, ~~or a person required to register as a sex offender under Iowa Code chapter 692A, or a person determined to be a sexually violent predator or required to register as a sex offender pursuant to similar law~~ laws of another state is not an eligible person.

“Human trafficking” means a crime described in Iowa Code section 710A.2.

“Mail” means first-class letters and flats delivered via the United States Postal Service, including priority, express, and certified mail, and excluding packages, parcels, periodicals, and catalogues, unless they are clearly identifiable as pharmaceuticals or clearly indicate that they are sent by a state or county government agency.

“Program” means the address confidentiality program established in Iowa Code chapter 9E.

“Program participant” means an individual certified by the secretary as a program participant under Iowa Code section 9E.3.

“Safe at home card” means the official participation card that is issued by the secretary of state to each program participant, that must state the program participant’s name, designated address, and certification expiration date, and that must include a space for the signature of the program participant.

“Safe at home program” means the program authorized by Iowa Code chapter 9E.

“Secretary” means the secretary of state.

“Sexual abuse” means a violation of any provision of Iowa Code chapter 709.

“Stalking” means the same as defined in Iowa Code section 708.11.

[Filed 5/1/19, effective 6/26/19]

[Published 5/22/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4462C

SECRETARY OF STATE[721]

Adopted and Filed

Rule making related to election forms and instructions

The Secretary of State hereby amends Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 47.1.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423B.1.

Purpose and Summary

The Secretary of State has determined that as a result of 2018 Iowa Acts, Senate File 2417, an amendment to rule 721—21.804(423B) is necessary to keep the administrative rule in compliance with the Iowa Code. By defining “qualified counties,” Senate File 2417 added a new category of counties and provided for a new method of initiating a local option sales and services tax election. This rule making allows for the new method of initiating a local option sales and services tax election, provided for in Iowa Code section 423B.1(4)“b” as amended by 2018 Iowa Acts, Senate File 2417, section 233, to be utilized for elections held after March 5, 2019.

SECRETARY OF STATE[721](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 March 27, 2019, as **ARC 4357C**. No public comments were received. No changes from the Notice have been made except for the correction of cross references in paragraph “c” of renumbered subrule 21.804(3).

Adoption of Rule Making

This rule making was adopted by the Secretary of State on May 1, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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 26, 2019.

The following rule-making action is adopted:

Amend rule 721—21.804(423B) as follows:

721—21.804(423B) Local option sales and services tax elections in qualified counties. ~~This rule applies to local option sales and services tax elections held in qualified counties on March 5, 2019, and shall not apply to any local option sales and services tax election held in qualified counties after March 5, 2019. For local option sales and services tax elections held in qualified counties after March 5, 2019, rule 721—21.800(423B) shall control.~~

21.804(1) For purposes of this rule, “qualified county” means a county with a population in excess of 400,000, a county with a population of at least 130,000 but not more than 131,000, or a county with a population of at least 60,000 but not more than 70,000, according to the 2010 federal decennial census. The treatment of contiguous cities as one incorporated area for the purpose of determining whether a majority of those voting favors imposition does not apply to elections on the question of imposition of a local sales and services tax in all or a portion of a county that is a qualified county if the election occurs on or after January 1, 2019.

~~**21.804(2)** Petitions requesting imposition, rate change, use change, or repeal of local sales and services taxes shall be filed with the county board of supervisors.~~

~~a.— Each person signing the petition shall include the person’s address (including street number, if any) and the date that the person signed the petition.~~

SECRETARY OF STATE[721](cont'd)

~~b. Within 30 days after receipt of the petition, the county board of supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition, rate change, use change, or repeal of a local option sales and services tax. In the notice the supervisors shall include the date of the election.~~

~~c. The local option sales and services tax election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) "a" but no sooner than 84 days after the date upon which notice is given to the county commissioner of elections.~~

~~**21.804(3)** As an alternative to the method of initiating a local option tax election described in subrule 21.804(2), governing bodies of cities and the county may initiate a local option tax election by filing motions with the county commissioner of elections pursuant to Iowa Code section 423B.1(4) "b" as amended by 2018 Iowa Acts, Senate File 2417, section 232, requesting submission of a local option tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a sufficient number of motions, the county commissioner of elections shall notify affected jurisdictions of the local option tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) "a" but no sooner than 84 days after the date upon which the commissioner received the motion triggering the election.~~

~~**21.804(4) 21.804(2)** As an alternative to the methods of initiating a local option sales and services tax election described in subrules 21.804(2) and 21.804(3) rule 721—21.800(423B), the governing body of a city located in a county that is a qualified county, or the governing body of a qualified county for the unincorporated area of the qualified county, may initiate a local option sales and services tax election by filing a motion with the county commissioner of elections pursuant to Iowa Code section 423B.1(4) "b" as amended by 2018 Iowa Acts, Senate File 2417, section 232, requesting submission of a local option sales and services tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a motion, the county commissioner shall notify affected jurisdictions of the local option sales and services tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) "a" but no sooner than 62 84 days after the date upon which the commissioner received the motion triggering the election. This subrule applies to motions received by the county commissioner of elections on or after January 1, 2019.~~

~~**21.804(5) 21.804(3)** Notice of local option sales and services tax election.~~

~~a. Not less than 60 days before the date that a local option sales and services tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include sample ballots but shall include all of the information that will appear on the ballot for each city and for the voters in the unincorporated areas of the county.~~

~~b. The city councils and the county supervisors, as applicable, shall provide to the county commissioner the following information to be included in the notice and on the ballots for imposition elections:~~

~~(1) The rate of the tax.~~

~~(2) The date the tax will be imposed, which shall be the next implementation date provided in Iowa Code section 423B.6 following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option sales and services tax on a date immediately following the scheduled repeal date of an existing similar tax may be held at any time that otherwise complies with the requirements of Iowa Code chapter 423B. The imposition date shall be uniform in all areas of the county voting on the tax at the same election.~~

~~(3) The approximate amount of local option sales and services tax revenues that will be used for property tax relief in the jurisdiction.~~

~~(4) A statement of the specific purposes other than property tax relief for which revenues will be expended in the jurisdiction.~~

~~c. If either of the methods of initiating a local option sales and services tax election described in subrules 21.804(2) and 21.804(3) is utilized, the information to be included in the notice shall be provided to the commissioner by the city councils of each city in the county not later than 67 days before the date of the election. If the method of initiating a local option sales and services tax election described in subrule 21.804(4) is utilized, then the The information to be included in the notice shall be provided to the county~~

SECRETARY OF STATE[721](cont'd)

commissioner of elections by the governing body of the city or the county for the unincorporated area of the county, as applicable, not later than ~~62~~ 67 days before the date of the election. If a jurisdiction fails to provide the information in subparagraphs 21.804(5)“b”(1), 21.804(5)“b”(3), and 21.804(5)“b”(4) 21.804(3)“b”(1), 21.804(3)“b”(3), and 21.804(3)“b”(4), the following information shall be substituted in the notice and on the ballot:

- (1) One percent (1%) for the rate of the tax.
- (2) Fifty percent (50%) for property tax relief.
- (3) The specific purpose for which the revenues will otherwise be expended is: Any lawful purpose of the city (or county).

d. The notice of election provided for in Iowa Code section 49.53 shall also be published at the time and in the manner specified in that section.

This rule is intended to implement Iowa Code section 423B.1.

[Filed 5/2/19, effective 6/26/19]

[Published 5/22/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4463C

TREASURER OF STATE[781]

Adopted and Filed

Rule making related to Iowa educational savings plan trust

The Treasurer of State hereby rescinds Chapter 16, “Iowa Educational Savings Plan Trust,” Iowa Administrative Code, and adopts a new Chapter 16 with the same title.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 12D.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 12D.

Purpose and Summary

This rule making adopts rules on the administration of the Iowa educational savings plan trust.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 21, 2018, as **ARC 4124C**. A public hearing was held on December 13, 2018, at 1 p.m. in the Lucas State Office Building, First Floor, 321 East 12th Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. One change from the Notice has been made. The word “final” was added to the first sentence of subrule 16.15(6).

Adoption of Rule Making

This rule making was adopted by the Treasurer of State on April 26, 2019.

Fiscal Impact

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

TREASURER OF STATE[781](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 Treasurer of State for a waiver of the discretionary provisions, if any, pursuant to 781—Chapter 19.

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 26, 2019.

The following rule-making action is adopted:

Rescind 781—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
IOWA EDUCATIONAL SAVINGS PLAN TRUST

781—16.1(12D) Purpose. The purpose of these rules is to provide for the administration and operation of the Iowa educational savings plan trust.

781—16.2(12D) Definitions. In addition to the terms defined in Iowa Code section 12D.1, the following terms apply to this chapter:

“*Account*” means an account established and maintained under the Iowa educational savings plan trust for a beneficiary.

“*Account balance*” means the fair market value of an account.

“*Account balance limit*” means the amount determined periodically by the program administrator as necessary to provide for the qualified higher education expenses of a beneficiary in accordance with Section 529. The account balance limit shall apply to the total of all accounts in the plans for the benefit of a beneficiary.

“*Account owner*” means the participant or other owner of an account.

“*Adjusted maximum annual amount*” means the amount that a participant may annually contribute to an account for a beneficiary and deduct from Iowa income taxes pursuant to Iowa Code chapter 422.

“*Beneficiary*” means the individual designated as the beneficiary of an account.

“*College savings Iowa*” means the name and logo registered under Iowa law to represent the direct-sold plan under the Iowa educational savings plan trust.

“*Contractor*” means any party retained by the program administrator to assist in the day-to-day operations of a plan, including record-keeping, investment advisory and administrative services. The program administrator may delegate any responsibilities with respect to day-to-day operations of a plan to one or more contractors.

“*Contribution*” means an amount contributed to an account in accordance with the Internal Revenue Code, these rules and the applicable program description.

“*Eligible educational institution*” means an eligible educational institution as defined in Section 529.

TREASURER OF STATE[781](cont'd)

“Iowa advisor 529 plan” means the name and logo registered to represent the advisor-sold plan under the Iowa educational savings plan trust.

“K-12 institution” means any elementary or secondary public, private, or religious school.

“Member of the family” means a member of the family as defined in Section 529, except that for a qualified rollover to a Section 529A ABLER account, “member of the family” shall mean as defined in Section 529A of the Internal Revenue Code.

“Nonqualified withdrawal” means a withdrawal from an account that is not a qualified withdrawal or a qualified rollover.

“Participant” means the owner of an account.

“Participation agreement” means the form that the participant submits to the plan to identify the participant, beneficiary, plan, and other information that may be requested by the plan.

“Plan” means either (1) college savings Iowa, (2) Iowa advisor 529 plan, or (3) any other college savings plan established by the program administrator under the Iowa educational savings plan trust.

“Program administrator” means the treasurer of state.

“Program description” means the description of each plan provided to participants setting forth information with respect to the plan.

“Qualified higher education expenses” means qualified higher education expenses as defined in Section 529. Any reference to qualified higher education expenses includes a reference to expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private or religious school.

“Qualified rollover” means a distribution of amounts from a plan which, within 60 days of such distribution, is transferred: (1) to another qualified tuition program for the benefit of the same beneficiary, provided that it has been at least 12 months from the date of a previous transfer to a qualified tuition program for that beneficiary; (2) to another qualified tuition program (or an account in another plan) for the benefit of a member of the family of the beneficiary; or (3) to a Section 529A ABLER account for the beneficiary or member of the family of the beneficiary, subject to ABLER account contribution limits.

“Qualified withdrawal” means a withdrawal from an account used to pay qualified higher education expenses.

“Section 529” means Section 529 of the Internal Revenue Code.

“Successor participant” means a successor to the ownership of an account designated as such in accordance with rule 781—16.10(12D) and the applicable program description.

781—16.3(12D) Participation agreement and program description. The following material shall be used to administer the Iowa educational savings plan trust.

16.3(1) Each participant shall submit a participation agreement in order to open an account. The participation agreement shall be signed and dated by the participant to verify that the participant agrees to the terms and conditions of the program. For online applications, participants must confirm that they have read the terms and conditions prior to submitting the application.

16.3(2) Each plan will have a program description setting forth the terms of the plan and describing the investments, procedures and fees applicable to that plan. Each program description shall also set forth the privacy policy adopted by the program administrator for that plan. Persons interested in a plan should consult the program description. A program description may be changed at any time by the program administrator, and any such change may impact the rights of participants and beneficiaries under the plan.

781—16.4(12D) Forms.

16.4(1) Appropriate forms must be completed on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions listed below. Current forms are available online at www.collegesavingsiowa.com for college savings Iowa and at www.iowaadvisor529.com for the Iowa advisor 529 plan. Actions which require the completion of an appropriate form include the following:

- a. Participation.

TREASURER OF STATE[781](cont'd)

- (1) Open or close an account.
- (2) Reserved.
- b.* Account changes.
 - (1) Update the participant or beneficiary contact information.
 - (2) Change the beneficiary.
 - (3) Add, change or remove a successor or interested party.
 - (4) Transfer ownership rights of an account to another person.
- c.* Investment changes.
 - (1) Exchange existing investments.
 - (2) Change the direction of future contributions.
- d.* Contribution changes.
 - (1) Establish, delete or change automatic investments or payroll deduction.
 - (2) Establish, delete or change banking information.
 - (3) Establish or make an electronic bank transfer or an additional purchase by check.
 - (4) Transfer funds from a qualified U.S. savings bond, education savings account or another 529 plan (directly or indirectly).
- e.* Withdrawals.
 - (1) Request a full or partial withdrawal.
 - (2) Request a qualified rollover.
- f.* Authorization.
 - (1) Establish, delete or change an authorized agent, limited power of attorney or power of attorney on an account.
 - (2) Authorize or change a financial advisor or agent who can obtain information regarding the account.
 - (3) Identify the current trustee of a trust.
 - (4) Identify officers of an organization who can act upon an account.

16.4(2) The contractor may from time to time provide additional forms for use by participants and beneficiaries in connection with actions involving a plan and will make those forms available online and in paper format and may authorize substitute forms for a plan or a process in lieu of existing forms.

781—16.5(12D) Participant eligibility. Participants must meet the following requirements:

16.5(1) The participant must be an individual, individual's legal representative, trust, estate, or an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of the Internal Revenue Code.

16.5(2) An individual participant must be at least 18 years old and a United States citizen or resident alien with a valid social security number or tax identification number.

16.5(3) A participant shall execute a participation agreement that specifies the plan selected by the participant and the terms and conditions under which the participant shall participate in the trust.

16.5(4) A participant shall, on signing a participation agreement, provide the plan with the participant's social security number or tax identification number and the other information required on the participant agreement.

16.5(5) Participants which are trusts must submit evidence that the individual trustee is so authorized and agrees to the terms and conditions of the participation agreement and must provide the information requested by the program administrator. Participants which are described in Section 501(c)(3) of the Internal Revenue Code must provide their tax identification number and any other information requested by the program administrator.

781—16.6(12D) Beneficiary eligibility. A beneficiary of a participation agreement may be designated at any time after birth and assignment of a social security number. This rule establishes the eligibility criteria for a beneficiary.

16.6(1) A beneficiary may be a resident of any state.

TREASURER OF STATE[781](cont'd)

16.6(2) A participant shall, on signing a participation agreement, provide the contractor a valid social security number for the beneficiary.

781—16.7(12D) Program administrator rights and responsibilities.

16.7(1) The program administrator reserves the right to:

a. Freeze an account or suspend account services or do both when a plan has received reasonable notice of a dispute regarding the assets in an account, including notice of a dispute in account ownership or when the plan reasonably believes a fraudulent transaction may occur or has occurred;

b. Freeze an account or suspend account services or do both upon the notification to the plan of the death of a participant until the plan receives required documentation in good order and reasonably believes that it is lawful to transfer the account ownership to the successor participant;

c. Redeem an account, without the participant's permission, in cases of threatening conduct or suspicious, fraudulent, or illegal activity; and

d. Reject a contribution for any reason, including contributions that the plan believes are not in the best interests of the plan, a portfolio, or the participants.

16.7(2) The risk of market loss, tax implications, penalties, and any other expenses, as a result of such an account freeze, account redemption, or contribution rejection, will be solely the participant's responsibility.

16.7(3) The contractor will provide each participant a fourth-quarter statement. In addition, the program administrator will provide each participant that had an account with either contributions or withdrawals in the first, second, or third quarter with a quarterly statement for that account.

781—16.8(12D) Contributions. Contributions are deductible in accordance with Iowa income tax laws and administrative rules of the department of revenue. Participation agreements shall be for the benefit of a specific beneficiary. This rule provides for implementation of this provision.

16.8(1) Participants are allowed to make contributions at any time during the calendar year provided that each contribution is made in accordance with the minimum contribution and other requirements set forth in the program description.

16.8(2) The program administrator shall actuarially determine the account balance limit. No additional contributions may be made on behalf of a beneficiary if the total of the account balances of all accounts held for the beneficiary exceeds the applicable account balance limit.

16.8(3) The program administrator shall determine the adjusted maximum annual amount that a participant may contribute and deduct from Iowa income taxes pursuant to Iowa Code chapter 422 on behalf of a beneficiary for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum amount shall be communicated to participants in the plans and to the public in any reasonable manner determined by the program administrator.

781—16.9(12D) Substitution or change of beneficiary. Beneficiaries may be changed subject to the rules and regulations of the program administrator. This rule establishes the criteria for substituting one beneficiary for another. Beneficiary changes shall also be subject to the procedures set forth in the applicable program description.

16.9(1) At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—16.6(12D) and must be a member of the family of the beneficiary being replaced.

16.9(2) A participant may request that a beneficiary be substituted by submitting the appropriate form to the contractor.

781—16.10(12D) Change of participant or account owner. The participant is the owner of the account and, as such, has the exclusive right to cancel the participation agreement or change the designated beneficiary in accordance with these rules and the applicable program description.

16.10(1) A participant may transfer the participant's current ownership rights in an account to another eligible individual, an individual's legal representative, a trust, an estate, or an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section

TREASURER OF STATE[781](cont'd)

501(a) of the Internal Revenue Code or to a beneficiary. To do so, the participant shall complete the appropriate form.

16.10(2) A participant may also designate a successor on the participation agreement. A participant may change the designated successor by completing the appropriate form. The designated successor shall succeed to the ownership of the account in the event of the death of the participant. Upon the death of the participant, the successor participant must notify the plan by submitting a completed participant agreement form and a certified copy of the death certificate. The change in ownership of the account will become effective for the successor participant once this paperwork has been received and processed.

16.10(3) In the event a participant or other account owner dies and has not designated a successor to the account, the following criteria will be used.

a. The designated beneficiary, if 18 years of age or older, shall become the owner of the account as well as remain the beneficiary upon filing the appropriate forms.

b. If the designated beneficiary is under the age of 18, account ownership will be transferred to a surviving parent or other legal guardian of the beneficiary upon the filing of the appropriate forms.

16.10(4) The participant may name a successor to the account even though the successor may already have established or may have plans to establish a plan account.

781—16.11(12D) Qualified withdrawals. This rule establishes the procedures for the payment of qualified withdrawals.

16.11(1) The participant must initiate a withdrawal for qualified or nonqualified withdrawals. The participant must file the appropriate form with the contractor.

16.11(2) Qualified withdrawals will be paid in one of three ways once the form has been received by the contractor:

a. Directly to the eligible educational institution or K-12 institution only.

b. Directly to the participant.

c. Directly to the beneficiary at eligible educational institutions only.

16.11(3) Withdrawals for the payment of tuition in connection with enrollment or attendance at a K-12 institution may not exceed a maximum of \$10,000 per taxable year per beneficiary from all 529 plans.

16.11(4) Each qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the participant's account at the time of the withdrawal.

16.11(5) Funds that are distributed to a participant pursuant to this rule shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The participant will receive the 1099-Q for any withdrawal paid to the participant. The beneficiary will receive the 1099-Q for any withdrawal paid to the beneficiary or institution of higher education. The individual receiving the 1099-Q must determine whether the withdrawal was qualified or nonqualified.

16.11(6) A participant may transfer any remaining balance in one account to an existing or new account for another designated beneficiary by completing a new participation agreement with the contractor.

16.11(7) The Iowa state income tax treatment of contributions to and withdrawals from an account shall be as set forth in Iowa Code chapter 422.

781—16.12(12D) Nonqualified withdrawals and cancellation. Iowa Code section 12D.5 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for nonqualified withdrawals from an account or for the cancellation of a participation agreement.

16.12(1) A nonqualified withdrawal is one in which the funds are used for a purpose other than the payment of or reimbursement for qualified educational expenses. A participant may at any time make a nonqualified withdrawal of a portion of the amount in an account or cancel a participation agreement, without cause, by submitting to the contractor the appropriate form. A nonqualified withdrawal will be paid only to the participant.

TREASURER OF STATE[781](cont'd)

16.12(2) If the participation agreement is canceled, the participant is entitled to the amount in the account, subject to any applicable fees and expenses. The balance shall be mailed or otherwise sent to the participant after receipt by the contractor of the appropriate form.

16.12(3) Funds that are distributed to a participant in a nonqualified withdrawal pursuant to this rule shall be reported to the IRS on a 1099-Q in the tax year in which such withdrawal is made. The participant will receive the 1099-Q for any nonqualified withdrawals. The individual receiving the 1099-Q must determine whether the withdrawal was qualified or nonqualified. Nonqualified withdrawals may be subject to state and federal taxes and penalties.

781—16.13(12D) Rollover. The Iowa state income tax treatment of a qualified rollover from an account shall be as set forth in Iowa Code chapter 422. A rollover which is not a qualified rollover shall be treated as a nonqualified withdrawal.

781—16.14(12D) Garnishment. Pursuant to Iowa Code section 642.2, funds held by the program administrator under the trust are not subject to garnishment.

781—16.15(12D) Appeal of decisions. An account owner may appeal any decision of the program administrator under these rules and with respect to the plan.

16.15(1) An account owner may utilize the appeals process after receipt of the decision from the program administrator.

16.15(2) Failure to submit the appeal request within 30 calendar days of receipt of the decision from the program administrator shall constitute an acceptance of the decision.

16.15(3) The account owner shall submit to the program administrator a written request for an appeal along with all supporting documentation.

16.15(4) The program administrator shall contact the account owner and schedule an appeal meeting within 30 calendar days of receipt of the account owner's appeal request.

16.15(5) An appeal review shall be conducted at which time the account owner shall present evidence supporting the account owner's basis for the appeal.

16.15(6) Based on the evidence and additional information presented during the appeal, the program administrator will render a final decision. Such final decision will be written and sent to the account owner within 30 calendar days of the appeal meeting.

These rules are intended to implement Iowa Code chapter 12D.

[Filed 4/29/19, effective 6/26/19]

[Published 5/22/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4464C

TREASURER OF STATE[781]

Adopted and Filed

Rule making related to Iowa ABLE savings plan trust

The Treasurer of State hereby adopts new Chapter 20, "Iowa ABLE Savings Plan Trust," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 12I.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 12I.

TREASURER OF STATE[781](cont'd)

Purpose and Summary

This rule making adopts rules on the administration of the Iowa ABLE savings plan trust.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 21, 2018, as **ARC 4123C**. A public hearing was held on December 12, 2018, at 1 p.m. in the Lucas State Office Building, First Floor, 321 East 12th Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. One change from the Notice has been made. The word “final” was added to the first sentence of subrule 20.21(6).

Adoption of Rule Making

This rule making was adopted by the Treasurer of State on April 26, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Treasurer of State for a waiver of the discretionary provisions, if any, pursuant to 781—Chapter 19.

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 26, 2019.

The following rule-making action is adopted:

Adopt the following **new** 781—Chapter 20:

CHAPTER 20
IOWA ABLE SAVINGS PLAN TRUST

781—20.1(12I) Purpose. The purpose of these rules is to provide for the administration and operation of the Iowa ABLE savings plan trust.

781—20.2(12I) Definitions. In addition to the terms defined in Iowa Code section 12I.1, the following terms apply to this chapter:

“*Account*” means an account in the plan opened by the account owner or authorized individual on behalf of the account owner to receive contributions and to provide funds for qualified disability expenses.

“*Account balance*” means the fair market value of an account.

TREASURER OF STATE[781](cont'd)

“Account balance limit” means the amount set as such by the plan as set forth in the plan addendum. When the fair market value of an account reaches the account balance limit, no additional contributions will be accepted by the plan. Assets in an account can continue to accrue earnings beyond the account balance limit.

“Account owner” means the account owner and designated beneficiary of the account. An account owner must be an eligible individual. References herein to an account owner include an authorized individual or an authorized agent acting on behalf of an account owner.

“Annual contribution limit” means the annual limit on contributions from all sources to an account in a qualified ABLE program under Section 529A.

“Authorized agent” means a person granted permission, which is revocable, by the account owner or authorized individual to access information about the account or to take specified actions on the account or to do both of those things.

“Authorized individual” means an individual authorized to act on the account owner’s behalf with respect to the account. The authorized individual may neither have nor acquire any beneficial interest in the account during the account owner’s lifetime and must administer the account for the benefit of the account owner.

“Beneficiary” or *“designated beneficiary”* means the eligible individual who is the owner of the account.

“Contractor” means any party retained by the plan administrator to assist in the day-to-day operations of the plan, including record-keeping, investment advisory and administrative services. The plan administrator may delegate any responsibilities with respect to day-to-day operations of the plan to one or more contractors.

“Contribution” means an amount contributed to an account in accordance with the Internal Revenue Code, these rules and the plan disclosure documents.

“Eligible individual” means an eligible individual as defined in Section 529A.

“Federal penalty tax” means a 10 percent additional federal tax imposed on the earnings portion of certain nonqualified withdrawals.

“Fund” means the underlying investments that are mutual funds or exchange-traded funds.

“IAble” means the name and logo registered under Iowa law to represent the Iowa ABLE savings plan trust.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, and regulations promulgated or proposed thereunder.

“Investment managers” means the managers of the underlying investments.

“Investment options” means the investment choices offered by the plan. Account owners can choose to invest in any number of investment options.

“IRS” means the Internal Revenue Service.

“Member of the family” means a sibling of the eligible individual, whether by blood or by adoption, including a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

“Nonqualified withdrawal” means any withdrawal that does not meet the requirements of being a qualified withdrawal or a rollover. Expenses will not be qualified disability expenses if they are incurred at a time when an account owner is not an eligible individual.

“NYSE” means the New York Stock Exchange, Inc.

“Participation agreement” means the agreement between the account owner and the plan that governs the account owner’s use of the plan.

“Plan” means the Iowa ABLE savings plan trust.

“Plan addendum” means the plan-specific disclosure document which contains substantive disclosure of the terms and conditions of an investment in the plan. The plan addendum is intended to be read with the plan disclosure statement.

“Plan administrator” means the treasurer of state as trustee and administrator of the plan.

“Plan disclosure documents” means the plan disclosure statement and the plan addendum applicable to the plan, including any supplements or amendments thereto.

TREASURER OF STATE[781](cont'd)

“*Plan disclosure statement*” means the document adopted by the plan administrator which is intended to provide a description of the program and disclosure of the terms and conditions of an investment in the plan, including any supplements thereto distributed from time to time.

“*Qualified disability expenses*” means qualified disability expenses as defined in Section 529A.

“*Qualified withdrawal*” means any withdrawal from an account used to pay for qualified disability expenses of the account owner.

“*Rollover*” means a contribution to an account of an account owner (or of an eligible individual who is a member of the family of the account owner) of all or a portion of an amount withdrawn from the account owner’s account, provided the contribution is made within 60 days of the date of the withdrawal and, in the case of a rollover to the account owner’s ABLE account, no rollover has been made to an ABLE account of the account owner within the prior 12 months.

“*Secretary*” means the Secretary of the Treasury of the United States.

“*Section 529A*” means Section 529A of the Internal Revenue Code.

“*Social Security Act*” means the Social Security Act of 1935, as amended.

“*State*” means the state of Iowa.

“*Treasurer*” means the treasurer of the state of Iowa.

“*Underlying investments*” means the mutual funds, exchange-traded funds, bank products and any other investments in which assets of the plan are invested through the investment options.

781—20.3(12I) Creation of Iowa ABLE savings plan trust. The plan is created as a trust pursuant to Iowa Code chapter 12I. The treasurer is the trustee of the plan and, pursuant to Iowa Code chapter 12I, has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of Iowa Code chapter 12I pertaining to the plan.

The plan provides for the establishment of accounts under the plan by eligible individuals in order to provide a means to save for qualified disability expenses. The eligible individual is the account owner. The treasurer shall segregate moneys received by the plan into two funds: the program fund and the administrative fund. Contributions to the plan made on behalf of an eligible individual may only be made in the form of cash. An account owner is not permitted to provide investment direction regarding contributions or earnings held by the plan.

781—20.4(12I) Participation agreement and plan disclosure documents. The following material shall be used to administer the plan.

20.4(1) The plan shall have a form of participation agreement which must be used to establish accounts. The participation agreement shall be signed and dated in accordance with the requirements of the plan disclosure documents by the account owner to verify that the account owner agrees to the terms and conditions of the plan.

20.4(2) The plan will have plan disclosure documents setting forth the terms of the plan and describing the investment options, procedures, fees and costs applicable to the plan. The plan disclosure documents shall also set forth the privacy policy adopted by the plan administrator for the plan. Persons interested in the plan should consult the plan disclosure documents. The plan disclosure documents may be changed at any time by the plan administrator, and any such change may impact the rights of the account owner under the plan.

781—20.5(12I) Eligible individual. An account owner must be an eligible individual. An individual is an eligible individual for a taxable year if, during that year, either (1) the individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act (“benefits eligibility”), or (2) a disability certification meeting specified requirements is filed with the Secretary in accordance with Section 529A (“certification eligibility”). In all cases, the blindness or disability must have occurred before the individual’s twenty-sixth birthday. This rule establishes the following other requirements for opening an account:

20.5(1) An account owner may be a resident of any state.

20.5(2) An account owner must be a U.S. citizen or resident alien.

TREASURER OF STATE[781](cont'd)

20.5(3) An account owner must, on signing a participation agreement, provide the plan administrator with a valid social security number or tax identification number.

20.5(4) An account owner must have a valid permanent U.S. street address.

20.5(5) No account owner may have more than one account in an ABLE plan in existence at the same time. A prior ABLE account that has been closed does not prohibit the subsequent creation of another ABLE account for the same account owner. As part of the enrollment process, the account owner will be required to certify under penalties of perjury that the account owner has no other ABLE account (except in the case of a rollover).

20.5(6) If an individual desires to open an account based on benefits eligibility, the individual must make the following certifications under penalties of perjury that:

a. The individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act and has received a benefit verification letter from the Social Security Administration and agrees to retain and provide the letter (or a genuine copy of the letter or other evidence) to the plan, the plan administrator, the IRS, or the U.S. Department of the Treasury upon request;

b. The individual's disability was present before the individual's twenty-sixth birthday.

20.5(7) If an individual desires to open an account based on certification eligibility, the individual must certify under penalties of perjury that the individual:

a. Has a medically determinable physical or mental impairment which results in marked or severe functional limitations and which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months;

b. Is blind (within the meaning of the Social Security Act); or

c. Has a condition listed in the "List of Compassionate Allowances Conditions" maintained by the Social Security Administration.

The individual must also certify that the disability, blindness, or compassionate allowances condition occurred before the date of the individual's twenty-sixth birthday and that the individual has a copy of the individual's diagnosis relating to the relevant impairment(s), signed by a physician meeting the criteria of Social Security Act Section 1861(r)(1). The individual must also agree to retain and provide a copy of the diagnosis and related information to the plan upon request.

20.5(8) By maintaining an account, the account owner is making a continuing certification that the account owner is an eligible individual. It is the account owner's responsibility to notify the plan in writing if the account owner ceases to be an eligible individual. It is also the account owner's responsibility to notify the plan in writing if the account owner subsequently requalifies as an eligible individual.

781—20.6(12I) Authorized individual. An authorized individual may establish an account on behalf of the account owner and make investment decisions for the account owner. An authorized individual may neither have nor acquire any beneficial interest in the account during the account owner's lifetime and must administer the account for the benefit of the account owner. Whenever an action is required to be taken by an account owner in connection with an account, the authorized individual may take such action on behalf of the account owner.

20.6(1) A parent or legal guardian of an account owner who is a minor may be the authorized individual for that account owner. An adult account owner with legal capacity may appoint an individual as an authorized individual. In addition, a conservator legally appointed for an adult account owner who lacks legal capacity may be an authorized individual.

20.6(2) An authorized individual may be required to provide supporting documentation to the plan. The plan may freeze an account until the plan receives the required documentation and is able to verify the authorized individual's authority to open, transact and maintain an account on behalf of the account owner.

781—20.7(12I) Authorized agent. An account owner with legal capacity or an authorized individual may designate an authorized agent to act on the account. An authorized agent may be appointed with

TREASURER OF STATE[781](cont'd)

varying levels of authority in accordance with the plan disclosure documents. Certain levels of authority will require the completion of a power of attorney form.

781—20.8(12I) Forms.

20.8(1) Appropriate forms must be completed on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions set forth in and in accordance with the plan disclosure documents. Current forms are available online at IAble.gov. Among the actions which require the completion of an appropriate form are opening and closing an account, transferring ownership rights of an account to another person, changing investments, requesting a full or partial withdrawal, requesting a rollover, and assigning an authorized agent.

20.8(2) The plan administrator may from time to time provide additional forms for use by account owners in connection with actions involving the plan and will make those forms available online and in paper format and may authorize substitute forms for the plan or a process in lieu of forms except when not permitted by Iowa Code chapter 12I.

781—20.9(12I) Plan administrator rights and responsibilities.

20.9(1) The plan administrator reserves the right to:

a. Freeze an account, suspend account services or do both: (1) if the plan administrator receives notice of a dispute regarding account assets or account ownership, including notice of the death of an account owner (until appropriate documentation is received and the plan administrator reasonably believes that it is lawful to transfer account ownership); (2) if the plan administrator reasonably believes a fraudulent transaction may occur or has occurred; or (3) when a minor account owner reaches the age of majority (until appropriate documentation is received);

b. Close an account, without the account owner's permission, in cases of threatening conduct or suspicious, fraudulent or illegal activity;

c. Terminate or refuse to establish an account if the plan administrator determines that it is in the best interest of the plan or required by law;

d. Close an account if the plan administrator determines that the account owner provided false or misleading information to the plan in establishing or maintaining an account or that the account owner is restricted by law from participating in the plan; and

e. Reject a contribution for any reason, including contributions to the plan that the plan administrator believes are not in the best interests of the plan, an investment option or the account owners.

20.9(2) The risk of market loss, tax implications, penalties, and any other expenses as a result of the above will be solely the account owner's responsibility.

781—20.10(12I) Contributions. The participation agreement and plan disclosure documents will provide for limits on the annual and total contributions to an account. This rule provides for implementation of such provisions.

20.10(1) Section 529A mandates an annual contribution limit for qualified ABLE programs. The account limit is subject to adjustment as provided in Section 529A. The limit may change from time to time, and any change will be set forth in the plan disclosure documents.

20.10(2) Anyone is allowed to make a contribution at any time during the calendar year to an account provided that the total of all annual contributions may not exceed the annual contribution limit and that all contributions are in compliance with the other requirements set forth in the plan disclosure documents.

20.10(3) The plan administrator shall actuarially determine an account balance limit applicable to the account of an account owner. No additional contributions may be made to an account when the fair market value of the account exceeds the account balance limit listed in the plan addendum. Accounts that have reached the account balance limit may continue to accrue earnings, although future contributions may not be made to such accounts. If, however, the market value of an account falls below the account balance limit due to market fluctuations and not as a result of withdrawals from the account, additional contributions will be accepted.

TREASURER OF STATE[781](cont'd)

20.10(4) The plan administrator shall determine the maximum amount that an individual may contribute to an account and deduct from Iowa income taxes pursuant to Iowa Code chapter 422 on behalf of an account owner for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum shall be communicated to account owners in the plans and to the public in any reasonable manner determined by the plan administrator.

781—20.11(12I) Substitution or change of beneficiary. Iowa Code section 12I.3(3) “a” provides that beneficiaries may be changed subject to the rules and regulations of the treasurer. This rule establishes the criteria for substituting one beneficiary for another. Beneficiary changes shall also be subject to the procedures set forth in the plan disclosure documents.

20.11(1) The beneficiary must be the account owner. At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—20.5(12I) and must be a member of the family of the beneficiary being replaced.

20.11(2) An account owner has the right to change the beneficiary of an account. An account owner may request that a beneficiary be substituted by submitting the appropriate form to the plan administrator.

781—20.12(12I) Change of account owner; transfer. The account owner has the exclusive right to cancel the participation agreement or change the account owner in accordance with these rules and the plan disclosure documents.

20.12(1) An account owner may transfer the account owner’s ownership rights in an account only to another eligible individual who is a member of the family of the account owner. To do so, the account owner shall complete the appropriate form and provide any requested documentation.

20.12(2) All or a portion of an account owner’s account balance may be transferred to another account within the plan, but only during the life of the account owner. At the time of the transfer, the transferee must be an eligible individual and a member of the family of the transferor-account owner.

781—20.13(12I) Qualified withdrawals. This rule establishes the procedures for the payment of qualified withdrawals. A qualified withdrawal is a withdrawal from an account that is used to pay for any qualified disability expenses of the account owner.

20.13(1) The account owner must initiate withdrawal for qualified disability expenses. The account owner must file the appropriate form with the plan administrator.

20.13(2) Qualified withdrawals will be paid as provided in the plan disclosure documents.

20.13(3) Each qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the account owner’s account at the time of the withdrawal.

20.13(4) Funds that are distributed to an account owner shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The account owner will receive the 1099-Q for any withdrawals made to or as instructed by the account owner. The account owner receiving the 1099-Q must determine whether the withdrawal was made for a qualified disability expense or was a nonqualified withdrawal.

781—20.14(12I) Nonqualified withdrawals and participation agreement cancellation. An account owner may cancel a participation agreement at will. This rule establishes the criteria for nonqualified withdrawals from an account or for the cancellation of a participation agreement.

20.14(1) The earnings portion of a nonqualified withdrawal is subject to federal income taxation and the federal penalty tax except in certain limited circumstances.

20.14(2) An account owner may at any time make a nonqualified withdrawal of a portion of the amount in an account or cancel a participation agreement, without cause, by submitting the appropriate form to the plan administrator. A nonqualified withdrawal will be paid only to the account owner.

20.14(3) Upon cancellation of a participation agreement, an account owner shall be entitled to the return of the account owner’s account balance. If the participation agreement is canceled, the account owner is entitled to the amount in the account, subject to any applicable fees and expenses. The balance

TREASURER OF STATE[781](cont'd)

shall be mailed or otherwise sent to the account owner after receipt of the appropriate form by the plan administrator.

20.14(4) Funds that are distributed to an account owner in a nonqualified withdrawal shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The account owner will receive the 1099-Q for any withdrawal. Nonqualified withdrawals may be subject to state and federal taxes and penalties. Withdrawals may be requested online or by calling the plan. In certain instances, additional documentation may be required before a withdrawal may be processed. Only the account owner may direct withdrawals from the account. Withdrawals will be sent as provided in the plan disclosure documents.

781—20.15(12I) Account statements. Account owners will receive quarterly account statements, which will include the total value of the account and a list of transactions within the account for that quarterly period. Account owners will receive account statements, transaction confirmations, and other personal correspondence in paper format unless the account owner signs up for electronic delivery.

781—20.16(12I) State tax treatment. The maximum amount that may be deducted per year for Iowa income tax purposes by an individual who is a resident of this state for contributions to an account shall not exceed the maximum deductible amount determined for the year pursuant to Iowa Code section 12D.3(1). State inheritance tax treatment of interests in the plan shall be as provided in Iowa Code section 450.4(9).

781—20.17(12I) Security. An account owner shall not be entitled to utilize any interest in the plan as security for a loan.

781—20.18(12I) Garnishment. Pursuant to Iowa Code section 642.2, funds held by the plan administrator under the plan are not subject to garnishment.

781—20.19(12I) Reports—annual audited financial report—reports under federal law.

20.19(1) The plan administrator shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the plan by November 1 to the governor and the general assembly. The annual audit shall be made either by the auditor of state or by an independent certified public accountant designated by the auditor of state and shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

20.19(2) The annual audit shall be supplemented by any of the following information prepared by the treasurer.

- a. Any related studies or evaluations prepared in the preceding year;
- b. A summary of the benefits provided by the plan, including the number of account owners in the plan; and
- c. Any other information deemed relevant by the plan administrator in order to make a full, fair, and effective disclosure of the operations of the plan.

20.19(3) The plan administrator or contractor shall prepare and submit to the Secretary or other required party any reports, notices, or statements required under Section 529A.

781—20.20(12I) Federal tax treatment. For federal income tax purposes, the plan shall be considered a qualified ABLE program exempt from taxation pursuant to Section 529A and shall be operated so that it meets the requirements of Section 529A.

781—20.21(12I) Appeal of decisions. An account owner may appeal any decision of the plan administrator under these rules and with respect to the plan.

20.21(1) An account owner may utilize the appeals process after receipt of the decision from the plan administrator.

TREASURER OF STATE[781](cont'd)

20.21(2) Failure to submit the appeal request within 30 calendar days of receipt of the decision from the plan administrator shall constitute an acceptance of the decision.

20.21(3) The account owner shall submit to the plan administrator a written request for an appeal along with all supporting documentation.

20.21(4) The plan administrator shall contact the account owner and schedule an appeal meeting within 30 calendar days of receipt of the account owner's appeal request.

20.21(5) An appeal review shall be conducted, at which time the account owner shall present evidence supporting the account owner's basis for the appeal.

20.21(6) Based on the evidence and additional information presented during the appeal, the plan administrator will render a final decision. Such final decision will be written and sent to the account owner within 30 calendar days of the appeal meeting.

These rules are intended to implement Iowa Code chapter 12I.

[Filed 4/29/19, effective 6/26/19]

[Published 5/22/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.

ARC 4465C

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to approval of utility system appraisers

The Utilities Board hereby amends Chapter 32, "Reorganization," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 388 and section 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 388.

Purpose and Summary

Iowa Code section 388.2A(2)"a"(1) requires a city or governing body of a city to obtain two appraisals when the city is proposing to sell a city-owned utility. One appraiser is to be selected by the city, and the other appraiser is to be an independent appraiser approved by the Utilities Board. The adopted new rule establishes the procedure for a city or city governing body to request that the Utilities Board approve an appraiser.

The Board issued an order adopting a new rule on April 30, 2019. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2018-0032.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 27, 2019, as **ARC 4315C**. An oral presentation was held on April 2, 2019, at 8:30 a.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

The participants at the oral presentation supported the proposed changes to rule 199—32.10(388) that were included in joint written comments received by the Board. In response to Board questions, the participants discussed proposed legislative changes, who pays for the appraisers, and whether the payments could be recouped from the purchaser.

The Utilities Board made revisions to proposed new rule 199—32.10(388) as suggested in the joint comments.

UTILITIES DIVISION[199](cont'd)

Adoption of Rule Making

This rule making was adopted by the Utilities Board on April 30, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 199—1.3(17A,474,476).

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 26, 2019.

The following rule-making action is adopted:

Adopt the following **new** rule 199—32.10(388):

199—32.10(388) Approval of appraiser for municipal utilities. Pursuant to Iowa Code section 388.2A(2) "a"(1), in order to dispose of a city utility by sale, the governing body of a city utility shall determine the fair market value of the utility system that is being considered for sale after obtaining two appraisals from independent appraisers, one of which is to be obtained from an independent appraiser approved by the board. The appraisals must be conducted in conformance with the uniform standards of professional appraisal practice or substantially similar standards. The procedures for requesting board approval of an appraiser are as follows:

32.10(1) Making a request. To request board approval of an appraiser to appraise a city utility, the governing body of the city utility shall file a request in the board's electronic filing system. The request shall contain the following information:

- a. The name of the city and of the utility;
- b. The type of utility service provided by the utility;
- c. The total number of customers served by the utility and the number of customers served by class, if applicable;
- d. A general description of the assets owned by the utility, including any equipment, buildings, or other facilities used in providing the utility service; and
- e. The name and contact information for the city or utility.

32.10(2) Consideration of request. When a request for approval of an appraiser is received by the board, board staff shall review the request and provide the board with a recommendation or a list of appraisers for the board to consider approving. The board may delegate approval authority to the board chair.

32.10(3) Notice of approved appraiser. Within 30 calendar days following the city's or city utility's filing to request board approval of an appraiser, the board shall notify the city and governing body of the

UTILITIES DIVISION[199](cont'd)

city utility of an approved appraiser. If the city and governing body of the city utility are unable to agree to terms with an approved appraiser, the city and governing body of the city utility may file a letter with the board requesting approval of another appraiser. In support of the request for another appraiser, the city and governing body of the city utility shall identify the reasons why they are requesting the board to approve another appraiser.

This rule is intended to implement Iowa Code section 388.2A(2)“a”(1).

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