



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2016

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
26	Friday, June 3, 2016	June 22, 2016
1	Friday, June 17, 2016	July 6, 2016
2	Wednesday, June 29, 2016	July 20, 2016

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, June 14, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Office organization; public records; petitions and procedures for rule making; declaratory orders; contested cases, chs 1 to 6 Filed **ARC 2542C** 5/25/16

AGING, DEPARTMENT ON[17]

Area agencies on aging—public hearing process and procedures, options counseling services, contact information, 6.2(7), 6.5, 6.6(2)“f,” 6.12 Filed **ARC 2522C**..... 5/11/16

ECONOMIC DEVELOPMENT AUTHORITY[261]

Tax credits for investments in qualifying businesses and community-based seed capital funds, 115.1 to 115.10 Filed **ARC 2541C**..... 5/25/16

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Early childhood education—elementary endorsement, 13.26 Filed **ARC 2527C** 5/11/16
 Substitute authorization, 22.2 Filed **ARC 2528C**..... 5/11/16
 Early childhood paraeducator area of concentration, 24.4(1) Filed **ARC 2529C** 5/11/16

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Yard waste—disposal at landfills, separate collection by municipalities, 105.1, 113.8(1)“b”(13) Notice **ARC 2539C**..... 5/25/16

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Local emergency management coordinators—baseline and professional development training, 7.4(4) Notice **ARC 2534C**..... 5/11/16

HUMAN SERVICES DEPARTMENT[441]

Process for approving subacute mental health care facility licensing applications to the department of inspections and appeals, amendments to ch 25 Notice **ARC 2550C**..... 5/25/16
 Child care centers, amendments to ch 109 Notice **ARC 2554C** 5/25/16
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 Child care homes, ch 120 Notice **ARC 2552C**..... 5/25/16
 Child care assistance eligibility—in-home care, nonregistered providers, 170.4 Notice **ARC 2551C** 5/25/16

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Procedures—conflict of interest, 1.4(2) Filed **ARC 2536C** 5/11/16

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Permanent physician licensure, amendments to ch 9 Filed **ARC 2524C**..... 5/11/16
 Administrative medicine licensure, 9.20, 11.4 Filed **ARC 2523C** 5/11/16
 Pain management resources, 13.2(8) Notice **ARC 2535C**..... 5/11/16
 Specific minimum standards for appropriate supervision of a physician assistant by a physician, 21.4 to 21.8 Filed **ARC 2532C** 5/11/16

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Waterfowl and coot hunting seasons, 91.1, 91.3, 91.6 Filed **ARC 2526C** 5/11/16
 Antlerless-deer-only license quotas for 2016, 106.6(6) Notice **ARC 2533C** 5/11/16

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Specific minimum standards for appropriate supervision of a physician assistant by a physician, 327.8 Amended Notice **ARC 2531C** 5/11/16

REGENTS BOARD[681]

Iowa state university—delegation of contracting authority, 13.8 Notice **ARC 2540C**..... 5/25/16

REVENUE DEPARTMENT[701]

Tax credits for investments in qualifying businesses and community-based seed capital funds, 42.22, 52.21, 58.11 Notice **ARC 2547C**..... 5/25/16

Broadband infrastructure property tax exemption, 80.31	<u>Filed</u>	ARC 2549C	5/25/16
Inheritance tax, 86.2(1)“c,” 86.2(2)“d,” 86.5(11)“f”	<u>Notice</u>	ARC 2546C	5/25/16
Fiduciary income tax—deduction for administrative expenses not allowed on federal tax return, 89.8(8)“g”	<u>Notice</u>	ARC 2537C	5/11/16
Property assessment appeal board, amendments to ch 126	<u>Filed</u>	ARC 2545C	5/25/16

SECRETARY OF STATE[721]

Safe at home program, ch 6	<u>Filed</u>	ARC 2538C	5/25/16
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TRANSPORTATION DEPARTMENT[761]

Outdoor advertising; logo signing, amendments to chs 117, 118	<u>Notice</u>	ARC 2543C	5/25/16
Adoption by reference of federal motor carrier safety and hazardous materials regulations, 520.1(1)	<u>Filed</u>	ARC 2525C	5/11/16
Classes of driver’s licenses, amendments to ch 602	<u>Notice</u>	ARC 2544C	5/25/16
Commercial driver licensing, amendments to ch 607	<u>Filed</u>	ARC 2530C	5/11/16

VOTER REGISTRATION COMMISSION[821]

Revision of official Iowa voter registration application, 2.16	<u>Notice</u>	ARC 2548C	5/25/16
Request for voter registration list—definition of “political purpose,” 3.2	<u>Filed</u>	ARC 2521C	5/11/16

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Representative Lisa Heddens
2401 Westwind Drive
Ames, Iowa 50010

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

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

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

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

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

ENVIRONMENTAL PROTECTION COMMISSION[567]

Animal feeding operations, amendments to ch 65 IAB 4/13/16 ARC 2496C	Boardroom Clay County Administration Bldg. 300 W. 4th St. Spencer, Iowa	May 25, 2016 10 a.m.
	Muse-Norris Conference Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	May 26, 2016 10 a.m.
	Education Center, Marr Park Washington County Conservation Board 2943 Highway 92 Ainsworth, Iowa	May 31, 2016 10 a.m.
	Room 115, Dairy Center Northeast Iowa Community College 1527 Highway 150 South Calmar, Iowa	June 3, 2016 10 a.m.
Yard waste—disposal at landfills, separate collection by municipalities, 105.1, 113.8(1)“b”(13) IAB 5/25/16 ARC 2539C	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 14, 2016 10 a.m.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Local emergency management coordinators—baseline and professional development training, 7.4(4) IAB 5/11/16 ARC 2534C	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	May 31, 2016 11 a.m.
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MEDICINE BOARD[653]

Pain management resources, 13.2(8) IAB 5/11/16 ARC 2535C	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	May 31, 2016 11 a.m.
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NATURAL RESOURCE COMMISSION[571]

Antlerless-deer-only license quotas for 2016, 106.6(6) IAB 5/11/16 ARC 2533C	Fourth Floor West Conference Room Wallace State Office Building Des Moines, Iowa	June 1, 2016 2 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Specific minimum standards for appropriate supervision of a physician assistant by a physician, 327.8 IAB 5/11/16 ARC 2531C	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	June 3, 2016 9 a.m.
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TRANSPORTATION DEPARTMENT[761]

Outdoor advertising: logo signing, amendments to chs 117, 118 IAB 5/25/16 ARC 2543C	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	June 16, 2016 1 p.m. (If requested)
Classes of driver's licenses, amendments to ch 602 IAB 5/25/16 ARC 2544C	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	June 16, 2016 10 a.m. (If requested)

The following list will be updated as changes occur.

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

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

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

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ARC 2539C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455D.7, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 105, “Organic Materials Composting Facilities,” and Chapter 113, “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Nonhazardous Wastes,” Iowa Administrative Code.

“Yard waste” is defined in 567—105.1(1) as “vegetative matter such as grass clippings, leaves, garden waste, brush and trees, and any clean wood waste which is necessary as bulking agent and which is free of coatings and preservatives.” The proposed amendments will allow yard waste to be disposed of in a sanitary landfill when the following circumstances occur:

- When yard waste is collected for disposal as a result of a severe storm and the yard waste originates in an area declared to be a disaster area.
- When yard waste is collected for disposal to control, eradicate or prevent the spread of insect pests, tree and plant diseases, or invasive plant species.
- When yard waste is disposed of in a sanitary landfill that operates a methane collection system that produces energy.

The proposed amendments will also remove the requirement for municipalities that provide for the collection of solid waste to also provide for separate collection of yard waste.

The exemptions to the prohibition of yard waste disposal were added to Iowa Code section 455D.9(1) in 2014 Iowa Acts, Senate File 2212, signed by Governor Branstad on April 3, 2014, and 2015 Iowa Acts, House File 266, signed by Governor Branstad on March 31, 2015. The requirement for municipalities to provide separate collection of yard waste was removed from Iowa Code section 455D.9(2) in 2013 Iowa Acts, House File 225, signed by Governor Branstad on March 28, 2013. The proposed amendments are needed to make changes to existing administrative rules so that they are consistent with the above legislation and the Iowa Code.

Any interested person may submit written comments on the proposed amendments on or before June 14, 2016. Written comments or questions regarding the proposed amendments should be directed to Theresa Stiner, Iowa Department of Natural Resources, 502 East Ninth Street, Des Moines, Iowa 50309-0034; via fax at (515)725-8202; or via e-mail at theresa.stiner@dnr.iowa.gov.

A public hearing will be held on June 14, 2016, at 10 a.m. in the Fifth Floor East Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa.

Persons attending the public hearing may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

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

These amendments are intended to implement Iowa Code section 455D.9.

The following amendments are proposed.

ITEM 1. Amend subrule 105.1(3) as follows:

105.1(3) Burial of yard waste at a sanitary landfill is prohibited. ~~Acceptance of yard waste by a hauling firm or at a transfer station for burial at a sanitary landfill is also prohibited. However, yard waste~~

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~that has been separated at its source from other solid waste may be accepted by a sanitary landfill for the purposes of soil conditioning or composting. Yard waste accepted by a sanitary landfill for the purposes of soil conditioning shall be used only on finished areas of the landfill that have received the final earthen cover, developed areas with intermediate cover, and restoration of soil borrow areas. Burning of yard waste at a sanitary disposal project is prohibited, except in the following circumstances:~~

a. When the yard waste is collected for disposal as a result of a severe storm and the yard waste originates in an area declared to be a disaster area in a declaration issued by the President of the United States or the governor.

b. When the yard waste is collected for disposal to control, eradicate, or prevent the spread of insect pests, tree and plant diseases, or invasive plant species.

c. When the yard waste is disposed of in a sanitary landfill that operates a methane collection system that produces energy. A methane collection system that burns landfill gas without using the energy for a purpose other than reducing the amount of methane released is not considered to be a system that produces energy.

ITEM 2. Amend subrule 105.1(4) as follows:

105.1(4) Each city and county shall, by ordinance, require persons within the city or county to separate yard waste from other solid waste generated. ~~Municipalities which provide for collection of solid waste shall also provide for separate collection of yard waste.~~

ITEM 3. Renumber subrule **105.1(5)** as **105.1(6)**.

ITEM 4. Adopt the following **new** subrule 105.1(5):

105.1(5) Yard waste that has been separated at its source from other solid waste may be accepted by a sanitary landfill for the purposes of soil conditioning or composting. Yard waste accepted by a sanitary landfill for the purposes of soil conditioning shall be used only on finished areas of the landfill that have received the final earthen cover, developed areas with intermediate cover, and restoration of soil borrow areas. Burning of yard waste at a sanitary disposal project is prohibited.

ITEM 5. Amend subparagraph **113.8(1)“b”(13)** as follows:

(13) Yard waste, ~~except in the following circumstances:~~

1. When the yard waste is collected for disposal as a result of a severe storm and the yard waste originates in an area declared to be a disaster area in a declaration issued by the President of the United States or the governor.

2. When the yard waste is collected for disposal to control, eradicate, or prevent the spread of insect pests, tree and plant diseases, or invasive plant species.

3. When the yard waste is disposed of in a sanitary landfill that operates a methane collection system that produces energy. A methane collection system that burns landfill gas without using the energy for a purpose other than reducing the amount of methane released is not considered to be a system that produces energy.

ARC 2550C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 25, “Disability Services Management,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments establish the process by which the Department of Human Services will approve licensing applications to the Department of Inspections and Appeals (DIA) for subacute mental health care facilities. These amendments also establish the process to determine the disbursement of 75 beds to the most qualified providers.

Iowa Code chapter 135G establishes the law for subacute care facilities. DIA is responsible for licensing subacute care facilities, and the Department must approve the licensing application based on the established process, which must identify the most qualified providers and geographically disburse no more than 75 beds.

Subacute services are one of the additional core services to be provided by Mental Health and Disability Services (MHDS) regions when public funds become available. Some MHDS regions and providers are interested in developing subacute services provided in a subacute care facility. These amendments will provide another option to provide short-term, intensive mental health services to the citizens of Iowa.

Any interested person may make written comments on the proposed amendments on or before June 14, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

After analysis and review of this rule making, it has been determined that there may be a need for more mental health professionals and other qualified staff to support licensed subacute care facilities.

These amendments are intended to implement Iowa Code section 135G.6.

The following amendments are proposed.

ITEM 1. Reserve rules **441—25.108** to **441—25.116**.

ITEM 2. Adopt the following **new** 441—Chapter 25, division title, as follows:

DIVISION XI

PROCESS FOR APPROVING SUBACUTE MENTAL HEALTH CARE FACILITY LICENSING APPLICATIONS TO
THE DEPARTMENT OF INSPECTIONS AND APPEALS

ITEM 3. Adopt the following **new** 441—Chapter 25, Division XI, preamble:

PREAMBLE

This division establishes the process that the department of human services will use in approving licensing applications to the department of inspections and appeals for subacute care facilities as defined in Iowa Code chapter 135G and 481—Chapter 71.

ITEM 4. Adopt the following **new** rules 441—25.117(135G) and 441—25.118(135G):

441—25.117(135G) Definitions.

“Department” means the department of human services.

“Governing board” means the board that directs the operations of the mental health and disability services region.

“Mental health and disability services region” means counties that have formed through an agreement to administer the mental health and disability services for its member counties.

“Subacute care facility” means the same as defined in Iowa Code chapter 135G.

441—25.118(135G) Approval process for subacute care facility applications to be licensed by the department of inspections and appeals. The department will use the following process for approving licensing applications to the department of inspections and appeals for subacute care facilities described in 481—Chapter 71.

25.118(1) Applications for licensure of subacute care facilities must be submitted to the department of inspections and appeals in the form and manner established by the department of inspections and appeals in 481—Chapter 71.

HUMAN SERVICES DEPARTMENT[441](cont'd)

25.118(2) The department of inspections and appeals may review the application and ascertain whether or not the applicant's facility and staff are adequate to provide the care and services required of a subacute care facility.

25.118(3) The department of inspections and appeals shall provide to the department:

- a. The completed licensure application;
- b. The date and time the department of inspections and appeals received the completed application;
- c. The number of beds proposed by the applicant for the subacute care facility; and
- d. The results of any review the department of inspections and appeals made of the adequacy of the applicant's facilities and staff.

25.118(4) The department will review subacute care facility applications as follows:

- a. Applications will be reviewed and acted upon in the order the completed application is received by the department of inspections and appeals.
- b. The department will review and act on applications until the department has approved applications for 75 subacute care facility beds.
- c. The department will review additional applications for a number of beds above that specified in paragraph 25.118(4) "b" if the department of inspections and appeals denies or revokes a license to any subacute care facility approved by the department such that the number of publicly funded subacute care facility beds is less than 75.
- d. The department will not review applications for subacute care facilities that will not access public funding.

25.118(5) The department will determine that the application for a subacute care facility is geographically dispersed from other subacute care facilities and provide notice to the mental health and disability services regions as follows:

a. Geographic dispersion of subacute care facility beds.

(1) The department will allocate a share of the statewide total of 75 subacute care facility beds to each mental health and disability services region by dividing the number of residents of the mental health and disability services region's member county or counties by the total state population using the most recent available federal estimate of Iowa population multiplied by 75.

(2) The department will take under consideration the number of beds identified in the application and the number of beds allocated to mental health and disability services regions to ensure that the subacute care facility is geographically dispersed.

b. The department will notify the mental health and disability services regional chief executive officer when the department receives an application for subacute care facility licensure within 60 miles of one of the mental health and disability services region's member counties. The notice will include:

- (1) The name of the facility;
- (2) The location of the facility;
- (3) The department of inspection and appeals' facility application;
- (4) The number of beds requested in the facility application; and
- (5) The names of all mental health and disability services regions notified.

c. The governing boards of the mental health and disability services regions notified by the department may provide comment in writing to the department on the subacute care facility application. A governing board may comment on the number of beds in the subacute care facility consistent with the allocation made in paragraph 25.118(5) "a."

25.118(6) The department will evaluate the subacute care facility's qualifications based on the following:

- a. Comments received within 21 days from the governing boards of the mental health and disability services region in which the subacute care facility will be located;
- b. The department of inspections and appeals' determination of the adequacy of the facility and staff;
- c. Information contained in the subacute care facility's application that describes the resources and staff needed to provide each of the services as required in 481—subrule 71.3(1), including the following:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) The name and résumé of the facility administrator and description of how the administrator meets the qualifications described in 481—subrule 71.10(2);

(2) The names and résumés of the psychiatrist or advanced registered nurse practitioner, registered nurse, mental health professional, and social services staff and a description of how these staff meet the requirements of 481—subrule 71.12(2); and

(3) The description of how the facility will coordinate with human services agencies to identify unnecessary duplication of services and plan for development and coordination of needed services.

d. Information related to adverse findings or founded complaints against the applicant in the provision of any service. The department will make reasonable efforts to obtain this information through a review of the following:

(1) The Iowa Medicaid providers sanction list;

(2) The Office of Inspector General's List of Excluded Individuals and Entities; and

(3) The department of inspections and appeals health facilities division's public reports and final findings of complaint investigations.

25.118(7) All decisions made by the department related to this process are subject to administrative review in accordance with 441—Chapter 7.

These rules are intended to implement Iowa Code section 135G.6.

ARC 2554C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 109, “Child Care Centers,” Iowa Administrative Code.

The federal Child Care and Development Block Grant (CCDBG) was reauthorized in November 2014. As a result, there are new federal laws outlining state requirements for child care providers that receive child care assistance dollars.

Some of these proposed amendments are the result of the changes to CCDBG. The amendments implement an orientation training in health and safety content areas required for all staff within three months of employment and enhance emergency planning requirements. The amendments also implement safe sleep practice requirements.

These amendments also provide for enhancements to current regulations, including a requirement for the regulatory fee to be a part of a sufficient application. Including the fee with the application is a current practice but is not found in administrative rule. The amendments also limit the need for separate group and self-study training, add another approved training organization, require child care centers to implement a policy to protect child confidentiality, and require the same number of training hours for all staff, whether or not staff are employed for less than 20 hours per week as identified in the current rule.

These amendments also provide for technical cleanup of the administrative rules, such as removing form numbers, removing unnecessary citations to other agencies' rules, and removing references to years no longer applicable.

In addition, the amendments remove the requirement to “fully” comply with all standards to avoid downgrading to a provisional license. The amendments allow for being “imperfect.” The Department does not require a provisional license if a provider is not 100 percent compliant at the time of annual inspection at the licensed child care facility.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Finally, these amendments update the education table to include postbachelor education, clarify expectations for sole providers in a child care center, and amend the definition of “child care” to be compliant with language found in Iowa Code chapter 237A.

Any interested person may make written comments on the proposed amendments on or before June 14, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 237A.12.

The following amendments are proposed.

ITEM 1. Amend rule **441—109.1(237A)**, definition of “Child care,” as follows:

“*Child care*” means the care, supervision, or guidance of a child by a person other than the parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis in a place other than the child’s home, but does not include care, supervision, or guidance of a child by any of the following:

1. An instructional program for children attending prekindergarten as defined by the state board of education under Iowa Code section 256.11 or a higher level and are at least four years of age and administered by a public or nonpublic school system accredited by the department of education or the state board of regents or a nonpublic school system which is not accredited by the department of education or the state board of regents.

2. to 5. No change.

~~6. A nationally accredited camp.~~

~~7. 6.~~ A program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.

~~8. An instructional program for children at least four years of age who are attending prekindergarten, as defined by the state board of education, or a higher grade level, administered by a nonpublic school system which is not accredited by the department of education or the state board of regents.~~

~~9. 7.~~ An after-school program continuously offered throughout the school year to children who are at least five years of age and enrolled in school and attend the program intermittently, or a summer-only program for such children. The program must be provided through a nominal membership fee or at no cost.

~~10. 8.~~ A special activity program which meets less than four hours per day for the sole purpose of the special activity. Special activity programs include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.

~~9. A nationally accredited camp.~~

~~11. 10.~~ A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:

- A purchase of service or managed care contract with the department.
- A contract approved by a local decategorization governance board.
- An arrangement approved by a juvenile court order.

~~12. 11.~~ Care provided on site to children of parents residing in an emergency, homeless, or domestic violence shelter.

~~13. 12.~~ A child care facility providing respite care to a licensed foster family home for a period of 24 hours or more to a child who is placed with that licensed foster family home.

HUMAN SERVICES DEPARTMENT[441](cont'd)

14. ~~13.~~ A program offered to a child whose parent, guardian, or custodian is engaged solely in a recreational or social activity, remains immediately available and accessible on the physical premises on which the child's care is provided, and does not engage in employment while the care is provided. However, if the recreational or social activity is provided in a fitness center or on the premises of a nonprofit organization, the parent, guardian, or custodian of the child may be employed to teach or lead the activity.

ITEM 2. Amend subrule 109.2(1) as follows:

109.2(1) Application for license.

a. Any adult or agency has the right to apply for a license. The application for a license shall be made to the department on ~~Form 470-0722, Application for a License to Operate a Child Care Center, provided by the department~~ a department-provided application for a license to operate a child care center.

b. Requested reports including the fire marshal's report and other information relevant to the licensing determination shall be furnished to the department upon application and renewal. A building owned or leased by a school district or accredited nonpublic school that complies with rules adopted by the state fire marshal for school buildings ~~under 661—Chapter 5~~ is considered appropriate for use by a child care facility.

c. When a center makes a sufficient application for an initial license, ~~it the center may operate for a period of up to 120 calendar days from the date of issuance of Form 470-4690, Permission to Open Without a License~~ the form granting permission to open without a license, pending a final licensing decision. A center has made a sufficient application when it has submitted the following to the department:

- (1) An application for a license.
- (2) An approved fire marshal's report.
- (3) A floor plan indicating room descriptions and dimensions, including location of windows and doors.
- (4) Information sufficient to determine that the center director meets minimum personnel qualifications.

(5) The regulatory fee as specified in subrule 109.2(7), and the fee is received by the department's division of fiscal management.

d. Applicants shall be notified of approval or denial of initial applications within 120 days from the date the application is submitted.

(1) If the applicant has been issued ~~Form 470-4690, Permission to Open Without a License~~ a form granting permission to open without a license, the applicant shall be notified of approval or denial within 120 calendar days of the date of issuance of ~~Form 470-4690~~ the form.

(2) No change.

e. and f. No change.

ITEM 3. Amend paragraph **109.2(2)“a”** as follows:

a. An applicant showing ~~full~~ compliance with center licensing laws and these rules, including department approval of center plans and procedures and submission of the regulatory fee as specified in subrule 109.2(7) to the department by the date due, shall be issued a license for 24 months. In determining whether or not a center is in compliance with the intent of a licensing standard outlined in this chapter, the department shall make the final decision.

ITEM 4. Amend paragraph **109.2(3)“c”** as follows:

c. When the center submits documentation or it can otherwise be verified that the center ~~fully~~ complies with ~~all~~ standards imposed by law or these rules, the license shall be upgraded to a full license.

ITEM 5. Amend subrule 109.2(4) as follows:

109.2(4) Denial. Initial applications or renewals shall be denied when:

a. to d. No change.

e. The center is not able to obtain an approved fire marshal's certificate as prescribed by the state fire marshal ~~in 661—Chapter 5 or Iowa Code chapter 100~~ or fails to comply in correcting or repairing

HUMAN SERVICES DEPARTMENT[441](cont'd)

any deficiencies in the time determined by the fire marshal or the fire marshal determines the facility is not safe for occupancy.

f. The regulatory fee as specified in subrule 109.2(7) is not received by the department's division of fiscal management by the due date indicated on ~~Form 470-4834, Child Care Center Licensing Fee Invoice~~ the child care center licensing fee invoice.

ITEM 6. Amend paragraph **109.2(5)“e”** as follows:

e. The facility is not able to obtain an approved fire marshal's certificate as prescribed by the state fire marshal in ~~661—Chapter 5 or Iowa Code chapter 100~~ or fails to comply in correcting or repairing any deficiencies in the time determined by the fire marshal or the fire marshal determines the facility is not safe for occupancy.

ITEM 7. Amend subrule 109.2(7) as follows:

109.2(7) Regulatory fees. ~~For relicensures with an effective date on or after August 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after June 1, 2010, a~~ A fee based upon center capacity is due to the department before the issuance of the license in accordance with this subrule.

a. and *b.* No change.

c. Notification. Upon final determination of center capacity by the licensing consultant, the licensing consultant or designee shall sign and provide ~~Form 470-4834, Child Care Center Licensing Fee Invoice,~~ the child care center licensing fee invoice to the center.

d. Payment. The center shall return ~~Form 470-4834~~ the child care center licensing fee invoice to the department with the licensing fee payment within 30 calendar days from the date of the licensing consultant's or designee's signature on ~~Form 470-4834~~ the invoice. Payment may be in the form of cash, check, money order, or cashier's check.

(1) Payment must be received before the department will issue a full or provisional license.

(2) Regulatory fees are nonrefundable and ~~nontransferable~~ nontransferable.

ITEM 8. Adopt the following **new** paragraph in subrule **109.4(2)**:

i. Develop and implement a policy for protection of each child's confidentiality.

ITEM 9. Amend paragraph **109.4(3)“a”** as follows:

a. Postings are required for the certificate of license, notice of exposure of children to a communicable disease, and notice of ~~action~~ decision to deny, suspend, or revoke the center's license or reduce the center's license to a provisional status. The center's license, reflecting current regulatory status, and all other required postings shall be conspicuously placed at the main entrance to the center. If the center is located in a building used for additional purposes and shares the main entrance to the building, the required postings shall be conspicuously placed in the center in an area that is frequented daily by parents or the public.

ITEM 10. Amend subrule 109.4(5) as follows:

109.4(5) Handbook. A copy of ~~Form SS-0711, “Child Care Centers and Preschools Licensing Standards and Procedures,”~~ shall be available in the child care center, and a notice stating that a copy is available for review upon request from the center director shall be conspicuously posted. The name, office mailing address and telephone number of the child care consultant shall be included in the notice.

ITEM 11. Amend subrule 109.5(2) as follows:

109.5(2) Parental evaluation. If requested by the department, centers shall assist the department in conducting an annual survey of parents being served by their center ~~by providing to parents Form 470-3409, Parent Survey: Child Care Centers.~~ The department shall notify centers of the time frames for distribution and completion of the survey and the procedures for returning the survey to the department. The purpose of the survey shall be to increase parents' understanding of developmentally appropriate and safe practice, solicit statewide information regarding parental satisfaction with the quality of care being provided to children and obtain the parents' perspective regarding the center's compliance with licensing requirements.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 12. Amend paragraph **109.6(1)“e”** as follows:

e. Has achieved a total of 100 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT-RELATED TRAINING
Bachelor’s or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	20	One point per contact hour of training
Associate’s degree in child development or bachelor’s degree in a child-related field	50	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	40	Full-time (20 hours or more per week) child development-related experience	10	
Bachelor’s or higher degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate’s degree in a non-child-related field or completion of at least two years of a four-year degree	20	Registered child development home provider	10	
		Nonregistered family home provider	5	

(1) to (4) No change.

ITEM 13. Amend paragraph **109.6(2)“d”** as follows:

d. Has achieved a total of 75 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT-RELATED TRAINING
Bachelor’s or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	20	One point per contact hour of training
Associate’s degree in child development or bachelor’s degree in a child-related field	50	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	40	Full-time (20 hours or more per week) child development-related experience	10	
Bachelor’s or higher degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate’s degree in a non-child-related field or completion of at least two years of a four-year degree	20	Registered child development home provider	10	
		Nonregistered family home provider	5	

(1) to (4) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 14. Rescind and reserve subrule **109.6(4)**.

ITEM 15. Amend subparagraph **109.6(6)“c”(2)** as follows:

(2) Unless a record check has already been conducted in accordance with subparagraph (1), the department shall conduct a criminal and child abuse record check in Iowa for a person who is subject to a record check. When the department conducts the records check, the fee shall be ~~\$25 for each record check through June 30, 2010, and \$35 effective July 1, 2010~~ for each record check. The center shall submit the fee before the department initiates the record check process. Payment must be in the form of cash, check, money order, or cashier's check. The department may access SING to conduct the records check. The department may also conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa for a person who is subject to a record check.

ITEM 16. Amend subparagraph **109.6(6)“d”(8)** as follows:

(8) A center shall submit all required fingerprints to the department of public safety before the issuance or renewal of the center's license ~~on or after June 1, 2010~~. ~~EXCEPTION: Centers that have an initial or renewal licensure date of June 1, 2010, shall have until July 1, 2010, to submit the fingerprints to the department of public safety.~~

ITEM 17. Amend rule 441—109.7(237A) as follows:

441—109.7(237A) Professional growth and development. The center director, on-site supervisor, and staff counted as part of the staff ratio shall meet the following minimum staff training requirements:

109.7(1) Required training within the first ~~six~~ three months of employment. During their first ~~six~~ three months of employment, all staff shall receive the following training:

a. Two hours of Iowa's training for mandatory reporting of child abuse.
b. At least one hour of training regarding universal precautions and infectious disease control.
c. Certification in American Red Cross or American Heart Association infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

d. Certification in infant, child, and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization including the American Red Cross, American Heart Association, the National Safety Council, and Emergency Medical Planning (Medic First Aid) or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

e. Minimum health and safety trainings, approved by the department, in the following areas and every five years thereafter:

- (1) Prevention and control of infectious disease, including immunizations.
- (2) Prevention of sudden infant death syndrome and use of safe sleep practices.
- (3) Administration of medication, consistent with standards for parental consent.
- (4) Prevention of and response to emergencies due to food and allergic reactions.
- (5) Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.
- (6) Prevention of shaken baby syndrome and abusive head trauma.
- (7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.
- (8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.
- (9) Precautions in transporting children.

109.7(2) Center directors and all staff employed 20 hours or more per week. The requirements of this subrule apply to all center directors, regardless of whether the director works on a full-time or part-time basis.

a. During their first year of employment, all center directors and all staff ~~employed 20 hours or more per week~~ shall receive the following training:

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(1) Certification in American Red Cross or American Heart Association infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.~~

~~(2) Certification in infant, child, and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization including the American Red Cross, American Heart Association, the National Safety Council, and Emergency Medical Planning (Medic First Aid) or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.~~

~~(3) (1) Ten contact hours of training from one or more of the following content areas:~~

- ~~1. Planning a safe, healthy learning environment (includes nutrition).~~
- ~~2. Steps to advance children's physical and intellectual development.~~
- ~~3. Positive ways to support children's social and emotional development (includes guidance and discipline).~~
- ~~4. Strategies to establish productive relationships with families (includes communication skills and cross-cultural competence).~~

~~5. Strategies to manage an effective program operation (includes business practices).~~

~~6. Maintaining a commitment to professionalism.~~

~~7. Observing and recording children's behavior.~~

~~8. Principles of child growth and development.~~

~~(4) (2) At least four hours of the ten contact hours of training shall be received in a group setting as defined in subrule 109.7(7). Six hours may be received in self-study using a training package approved by the department as defined in subrule 109.7(8). Training received for cardiopulmonary resuscitation (CPR), first aid, mandatory reporting of child abuse, and universal precautions shall not count toward the ten contact hours. A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.~~

~~(5) Center directors and on-site supervisors shall receive all ten hours of training in a group setting as defined in subrule 109.7(7).~~

~~(6) (3) Staff who have completed a comprehensive training package of at least ten contact hours offered through a child care resource and referral agency or community college within six months prior to initial employment shall have the first year's ten contact hours of training waived.~~

~~b. Following their first year of employment, all center directors and all staff who are employed 20 hours or more a week shall:~~

~~(1) Maintain current certification for Iowa's training for the mandatory reporting of child abuse; infant, child and adult CPR; and infant, child and adult first aid.~~

~~(2) Receive six contact hours of training annually from one or more of the content areas listed in subparagraph 109.7(2) "a" ~~(3)~~(1). A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.~~

~~(3) Center directors and on-site supervisors shall receive eight contact hours of training annually from one or more of the content areas listed in subparagraph 109.7(2) "a" ~~(3)~~(1). At least four of the eight contact hours shall be in a group setting as defined in subrule 109.7(7).~~

~~c. Initial training obtained as identified in paragraph 109.7(1) "e" may be counted toward annual training hours during the year of employment in which the training is taken.~~

~~d. Training identified in paragraph 109.7(1) "e" shall not count towards annual professional development more than once.~~

~~**109.7(3) Staff employed less than 20 hours per week.**~~

~~a. During their first year of employment, all staff who are employed less than 20 hours a week shall receive the following training:~~

~~(1) Five contact hours of training from one or more of the following topical areas: child development, guidance and discipline, developmentally appropriate practices, nutrition, health and safety, communication skills, professionalism, business practices, and cross-cultural competence.~~

~~(2) At least two of the five contact hours shall be in a sponsored group setting.~~

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~~(3) Staff who have completed a comprehensive training package of at least ten contact hours offered through a child care resource and referral agency or community college within six months prior to initial employment shall have the five contact hours required in the first year waived.~~

~~b. Following their first year of employment, all staff who are employed less than 20 hours a week shall:~~

~~(1) Maintain current certification for Iowa's training for mandatory reporting of child abuse.~~

~~(2) Receive four contact hours of training annually from one or more of the following topical areas: child development, guidance and discipline, developmentally appropriate practices, nutrition, health and safety, communication skills, professionalism, business practices, and cross-cultural competence. At least two of the four contact hours shall be in a sponsored group setting.~~

~~109.7(4) 109.7(3) Staff employed in centers that operate summer-only programs. Staff who are employed in centers that operate only in the summer months when school is not in session shall receive the following training~~ During their first three months of employment, all staff shall receive the following training:

~~a. Two hours of Iowa's training for mandatory reporting of child abuse.~~

~~b. At least one hour of training regarding universal precautions and infectious disease control.~~

~~c. At least one staff person on duty in the center and outdoor play area when children are present and on field trips shall have certification~~ Certification in American Red Cross or American Heart Association infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

~~d. At least one staff person on duty in the center and outdoor play area when children are present and on field trips shall receive certification~~ Certification in infant, child, and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization including the American Red Cross, American Heart Association, the National Safety Council, and Emergency Medical Planning (Medic First Aid) or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

~~e. Minimum health and safety trainings, approved by the department, in the following areas:~~

~~(1) Prevention and control of infectious disease, including immunizations.~~

~~(2) Prevention of sudden infant death syndrome and use of safe sleep practices.~~

~~(3) Administration of medication, consistent with standards for parental consent.~~

~~(4) Prevention of and response to emergencies due to food and allergic reactions.~~

~~(5) Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic.~~

~~(6) Prevention of shaken baby syndrome and abusive head trauma.~~

~~(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.~~

~~(8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.~~

~~(9) Precautions in transporting children.~~

~~109.7(5) 109.7(4) Training plans.~~ Training shall supplement the educational and experience requirements in rule 441—109.6(237A) and shall enhance the staff's skill in working with the developmental and cultural characteristics of the children served.

~~109.7(6) 109.7(5) Substitution.~~ A provider who submits documentation from a child care resource and referral agency that the provider has completed the Iowa Program for Infant/Toddler Care (IA PITC), ChildNet, or Beyond Business Basics training series may use those hours to fulfill a maximum of two years' training requirements, not including first-aid and mandatory reporter training.

~~109.7(7) 109.7(6) Group Approved training.~~ Training received in a group setting is not self-study, but is training received with other adults, either in or out of the child care center.

~~a. The training must be conducted by a trainer who is employed by or under contract with one of the following entities or who uses curriculum or training materials developed or obtained with the written permission of one of the following entities:~~

~~(1) to (13) No change.~~

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(14) Organizations that are certified by the International Association for Continuing Education and Training (IACET).

b. to f. No change.

g. A training organization not approved by the department may submit ~~training for approval review~~ to the department ~~on Form 470-4528, Request for Child Care Training Approval~~ a request for child care training approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

~~109.7(8) Self-study training.~~

a. ~~Self-study training packages approved by the department include curriculum developed and materials distributed by:~~

~~(1) Department child care licensing consultants,~~

~~(2) Iowa State University Extension, or~~

~~(3) A child care resource and referral agency.~~

b. ~~Self-study training materials not distributed by these entities may be submitted by the training organization to the department for approval on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.~~

~~109.7(9) 109.7(7) Approved Elements of training.~~ Training provided to Iowa child care providers shall offer:

a. and b. No change.

c. An opportunity for ongoing interaction and timely feedback, including questions and answers within the contact hours ~~if training is delivered in a group setting.~~

d. A certificate of training for each participant that includes:

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

~~(8) An indication of whether the training was delivered through self-study or in a group setting.~~

~~109.7(8) Training for supervisors and designees.~~ The director, on-site supervisor, and any person designated a lead in the absence of supervisory staff shall have completed all preservice/orientation training outlined in subrule 109.7(1).

ITEM 18. Amend paragraph ~~109.8(2)“h”~~ as follows:

h. For a period of two hours or less at the beginning or end of the center's hours of operation, one staff may care for six ~~or fewer children or less,~~ provided no more than two of the children are under the age of two years and there are no more than six children in the center.

ITEM 19. Amend subparagraph ~~109.9(1)“b”(1)~~ as follows:

(1) A copy of ~~Form 595-1396, a DHS Criminal History Record Check Form B,~~ criminal history record check form or any other permission form approved by the department of public safety for conducting an Iowa or national criminal history record check.

ITEM 20. Amend subparagraph ~~109.9(1)“b”(2)~~ as follows:

(2) A copy of ~~Form 470-0643, Request for Child Abuse Information~~ a request for child abuse information form, when applicable.

ITEM 21. Amend subrule 109.10(15) as follows:

~~109.10(15) Emergency plans.~~

a. The center shall have written emergency plans and diagrams for responding to fire, tornado, and flood (if area is susceptible to flood), and plans for responding to intruders within the center, intoxicated parents, and lost or abducted children. In addition, the center shall have guidelines for responding or evacuating in case of blizzards, power failures, bomb threats, chemical spills, earthquakes, or other disasters that could create structural damage to the center or pose health hazards. If the center is located within a ten-mile radius of a nuclear power plant or research facility, the center shall also have plans for nuclear evacuations. Emergency plans shall include written procedures including plans for ~~transporting children and notifying parents,~~ emergency telephone numbers, diagrams, and specific considerations for ~~immobile children.~~ the following:

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- (1) Evacuation to safely leave the facility.
- (2) Relocation to a common, safe location after evacuation.
- (3) Shelter-in-place to take immediate shelter when the current location is unsafe to leave due to the emergency issue.
- (4) Lockdown to protect children and providers from an external situation.
- (5) Communication and reunification with parents or other adults responsible for the children which shall include emergency telephone numbers.
- (6) Continuity of operations.
- (7) To address the needs of individual children, including those with functional or access needs.
 - b. Emergency instructions, telephone numbers, and diagrams for fire, tornado, and flood (if area is susceptible to floods) shall be visibly posted by all program and outdoor exits. Emergency plan procedures shall be practiced and documented at least once a month for fire and for tornado. Records on the practice of fire and tornado drills shall be maintained for the current and previous year.
 - c. The center shall develop procedures for annual staff and volunteer training on these emergency plans and shall include information on responding to fire, tornadoes, intruders, intoxicated parents, and lost or abducted children in the orientation provided to new employees and volunteers.
 - d. The center shall conduct a daily check to ensure that all exits are unobstructed.

ITEM 22. Amend paragraph **109.12(5)“e”** as follows:

~~e. Children under the age of one year shall be placed on their backs when sleeping unless otherwise authorized by a parent or physician. A crib or criblike furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards or recommendations from the Consumer Product Safety Commission or the American Society for Testing and Materials for juvenile products shall be provided for each child under two years of age if developmentally appropriate. Crib railings shall be fully raised and secured when the child is in the crib. A crib or criblike furniture shall be provided for the number of children present at any one time. The center shall develop procedures for maintaining all cribs or criblike furniture and bedding in a clean and sanitary manner. There shall be no restraining devices of any type used in cribs. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Requirements are as follows:~~

- ~~(1) Infants shall always be placed on their backs for sleep.~~
- ~~(2) Infants shall be placed on a firm mattress with a tight fitted sheet that meets U.S. Consumer Product Safety Commission federal standards.~~
- ~~(3) Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in an infant seat, car seat, swing, bouncy seat, or any item not designed for sleeping.~~
- ~~(4) No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.~~
- ~~(5) No co-sleeping shall be allowed.~~
- ~~(6) Sleeping infants shall be actively observed by sight and sound.~~
- ~~(7) If an alternate sleeping position is needed, a signed physician authorization with statement of medical reason is required.~~

ITEM 23. Amend paragraph **109.12(5)“f”** as follows:

~~f. When playpens are provided, no more than one child shall be placed in one at any time. A crib or criblike furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards or recommendations from the Consumer Product Safety Commission or ASTM International for juvenile products shall be provided for each child under two years of age if developmentally appropriate. Crib railings shall be fully raised and secured when the child is in the crib. A crib or criblike furniture shall be provided for the number of children present at any one time. The center shall develop procedures for maintaining all cribs or criblike furniture and bedding in a clean and sanitary manner. There shall be no restraining devices of any type used in cribs.~~

ARC 2553C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby gives Notice of Intended Action to rescind Chapter 110, “Child Development Homes,” Iowa Administrative Code, and to adopt a new Chapter 110 with the same title.

The federal Child Care and Development Block Grant (CCDBG) was reauthorized in November 2014. As a result, there are new federal laws outlining state requirements for child care providers that receive child care assistance dollars. A new chapter of administrative rules has also been proposed, Chapter 120 (see **ARC 2552C** herein), to outline the requirements for child care providers that receive subsidy dollars but are not required by state law to register. In an effort to mirror requirements within Chapter 120 and other related chapters, existing Chapter 110 is rescinded and a new Chapter 110 is proposed herein. New Chapter 110 reflects a number of changes that have been made to be in compliance with federal requirements. In addition, technical changes have been incorporated to improve clarity and compliance with federal and state regulations and current departmental practice.

New Chapter 110 reflects the following changes as the result of federal legislation:

- Compliance checks for health, safety, and fire standards will be required prior to registration. Annual unannounced visits shall be conducted.
- Medications will not be administered without completion of preservice/orientation training.
- Emergency plans will include evacuation, relocation, shelter-in-place, lockdown, communication and reunification with families, continuity of operations, procedures to address needs of individual children, including those with functional or access needs.
- Safe sleep standards as recommended by the American Academy of Pediatrics are included.
- Certification or documentation that minimum health and safety training has been completed must be maintained.
- A grace period is included for a child’s file documentation required when a child meets the definition of homelessness as defined by the McKinney-Vento Homeless Education Assistance Act.
- Preservice/orientation training requirements and content areas are included.

New chapter 110 contains the following provisions to enhance the safety of children in care:

- Provider requirements to abstain from use of illegal drugs, alcohol, or drugs that could impair ability to provide safe supervision. There is currently a similar rule expectation in Chapter 109, “Child Care Centers.”
- Child transportation requirements and the requirement of a driver’s license and insurance, as well as appropriate use of child restraint devices.
- A requirement that drinking water be accessible throughout the day. Similar language is already in Chapter 109.
- A provision allowing for a midmorning or afternoon snack, but no longer requiring both.
- Limiting the need for separate group and self-study training and allowing training to be completed throughout the registration period and no longer limiting providers to only annual training hours.
- The addition of another approved training organization.

The following provisions in new Chapter 110 provide improvement to technical compliance and clarity to the rules:

- Sewer system requirements and compliance with discharge restrictions.
- Use of the same language for fencing requirements for aboveground pools and in-ground pools.

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- Modified requirements of file contents for the child care provider's own children residing in the household.
- Clarification that signed medical consent authorizing treatment is for both medical and dental treatment.
- Clarification that the immunization certificate must be from Iowa, which aligns with Iowa Department of Public Health rules.

Any interested person may make written comments on the proposed amendment on or before June 14, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 237A.12.

The following amendment is proposed.

Rescind 441—Chapter 110 and adopt the following **new** chapter in lieu thereof:

CHAPTER 110
CHILD DEVELOPMENT HOMES

PREAMBLE

This chapter establishes registration procedures for child development homes. Included are application and renewal procedures, standards for providers, and procedures for compliance checks and complaint investigations.

441—110.1(237A) Definitions.

“Adult” means a person 18 years of age or older.

“Assistant” means a responsible person 14 years of age or older. The assistant may never be left alone with children. Ultimate responsibility for supervision is with the child care provider.

“Child” means either of the following:

1. A person 12 years of age or younger.
2. A person 13 years of age or older but younger than 19 years of age who has a developmental disability, as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law No. 106-402, codified in 42 U.S.C. 15002(8).

“Child care” means the care, supervision, or guidance of a child by a person other than the child's parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis. *“Child care”* shall not mean special activity programs that meet on a regular basis such as music or dance classes, organized athletics or sports programs, scouting programs, or hobby or craft classes or clubs.

“Child care facility” or *“facility”* means a child care center, a preschool, or a registered child development home.

“Child care home” means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.

“Child development home” means a person or program registered under this chapter that may provide child care to six or more children at any one time.

“Department” means the department of human services.

“Involvement with child care” means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

“Parent” means parent or legal guardian.

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“Part-time hours” means the hours that child development homes in categories B and C are allowed to exceed their maximum preschool- or school-age capacity. A provider may use a total of up to 180 hours per month as part-time hours. No more than two children using part-time hours may be in the child development home at any one time.

“Person subject to an evaluation” means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for registration or is registered.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.
5. The person will reside or resides in a child care home that is not registered but that receives public funding for providing child care.

“Provider” means the person or program that applies for registration to provide child care and is approved as a child development home.

“Registration” means the process by which child care providers certify that they comply with rules adopted by the department.

“Registration certificate” means the written document issued by the department to publicly state that the provider has certified in writing compliance with the minimum requirements for registration of a child development home.

“School” means kindergarten or a higher grade level.

“Transgression” means the existence of any of the following in a person’s record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

441—110.2(237A) Application for registration. A provider shall apply for registration on Form 470-3384, Application for Child Development Home Registration, provided by the department’s local office or, if available, on the department’s Web site. The provider shall also use Form 470-3384 to inform the department of any changes in circumstances that would affect the registration.

441—110.3(237A) Renewal of registration. Renewal of registration shall be completed every 24 months. To request renewal, a provider shall submit Form 470-3384, Application for Child Development Home Registration, and copies of certificates of training, which shall be retained in the registration file. The registration renewal process shall include completion of child abuse, sex offender, and criminal record checks.

441—110.4(237A) Compliance checks. Prior to registration, a compliance visit to inspect for compliance with health, safety, and fire standards shall be completed.

An unannounced compliance visit shall be conducted not less than annually to check for compliance with health, safety, and fire standards as well as all child care regulatory standards. Completed evaluation checklists shall be placed in the registration files.

441—110.5(237A) Parental access. Parents shall be afforded unlimited access to their children and to the people caring for their children during the normal hours of operation or whenever their children are in the care of the child development home, unless parental contact is prohibited by court order.

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441—110.6(237A) Number of children. The number of children in a child development home shall conform to the following standards:

110.6(1) Limit. Except as provided in subrule 110.6(3), no greater number of children shall be received for care at any one time than the number authorized on the registration certificate.

110.6(2) Children counted. To determine the number of children cared for at any one time in a child development home, each child present in the child development home shall be considered to be receiving care unless the child is described by one of the following exceptions:

a. The child's parent, guardian, or custodian established or operates the child development home and either the child is attending school or the child receives child care full-time on a regular basis from another person.

b. The child has been present in the child development home for more than 72 consecutive hours and meets the requirements of the exception in paragraph 110.6(2) "a" as though the person who established or operates the child development home is the child's parent, guardian, or custodian.

110.6(3) Exception for emergency school closing. On days when schools are closed due to emergencies such as inclement weather or physical plant failure, a child development home may have additional children present in accordance with the authorization for the registration category of the home and subject to all of the following conditions:

a. The child development home has prior written approval from the parent or guardian of each child present in the home concerning the presence of additional children in the home.

b. The child development home has a department-approved assistant, aged 14 or older, on duty to assist the care provider, as required for the registration category of the home.

c. One or more of the following conditions are applicable to each of the additional children present in the child development home:

(1) The home provides care to the child on a regular basis for periods of less than two hours.

(2) If the child were not present in the child development home, the child would be unattended.

(3) The home regularly provides care to a sibling of the child.

d. The provider shall maintain a written record including the date of the emergency school closing, the reason for the closing, and the number of children in care on that date.

441—110.7(237A) Provider requirements.

110.7(1) Provider. The provider shall:

a. Give careful supervision at all times.

b. Exchange information with the parent of each child frequently to enhance the quality of care.

c. Give consistent, dependable care and be capable of handling emergencies.

d. Be present at all times except when emergencies occur or an absence is planned, at which time care shall be provided by a department-approved substitute. When an absence is planned, the provider shall give parents at least 24 hours' prior notice.

e. Be free of the use of illegal drugs and shall not be under the influence of alcohol or of any prescription or nonprescription drug that could impair the provider's ability to give careful supervision.

110.7(2) Substitutes. The provider shall assume responsibility for providing adequate and appropriate supervision at all times when children are in attendance. Any designated substitute shall have the same responsibility for providing adequate and appropriate supervision. Ultimate responsibility for supervision shall be with the provider.

a. All standards in this chapter regarding supervision and care of children shall apply to substitutes.

b. Except in emergency situations, the provider shall inform parents in advance of the planned use of a substitute.

c. The substitute must be 18 years of age or older.

d. Use of a substitute shall be limited to:

(1) No more than 25 hours per month.

(2) An additional period of up to two weeks in a 12-month period.

e. The provider shall maintain a written record of the number of hours care is provided by a substitute, including the date of the care and the name of the substitute.

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441—110.8(237A) Standards. Conditions in the home shall be safe, sanitary, and free of hazards. The provider shall certify that the child development home meets the following standards and also the standards in either rule 441—110.13(237A), 441—110.14(237A), or 441—110.15(237A), specific to the category of home for which the provider requests registration.

110.8(1) Facility requirements.

a. The home shall have a nonpay, working landline or mobile telephone with emergency numbers posted for police, fire, ambulance, and the poison information center. The number for each child's parent, for a responsible person who can be reached when the parent cannot, and for the child's physician shall be written on paper and readily accessible by the telephone. The home must prominently display all emergency information, and all travel vehicles must have a paper copy of emergency parent contact information.

b. Electrical wiring shall be maintained, and all accessible electrical outlets shall be tamper-resistant outlets or shall be safely capped. Electrical cords shall be properly used. Improper use includes the running of cords under rugs, over hooks, or through door openings or other use that has been known to be hazardous.

c. Combustible materials shall be kept a minimum of three feet away from furnaces, stoves, water heaters, and gas dryers.

d. Approved safety gates at stairways and doors shall be provided and used as needed.

e. Annual laboratory analysis of a private water supply shall be conducted to show satisfactory bacteriological quality. When children under the age of two are to be cared for, the analysis shall include a nitrate analysis. When private water supplies are determined unsuitable for drinking, commercially bottled water or water treated through a process approved by the health department or designee shall be provided.

f. A safety barrier shall surround any heating stove or heating element, in order to prevent burns.

g. The home shall have at least one 2A 10BC-rated fire extinguisher located in a visible and readily accessible place on each child-occupied floor.

h. The home shall have at least one single-station, battery-operated, UL-approved smoke detector in each child-occupied room and at the top of every stairway. Each smoke detector shall be installed according to the manufacturer's recommendations. The provider shall test each smoke detector monthly and keep a record of testing for inspection purposes.

i. Smoking and the use of tobacco products shall be prohibited at all times in the home and in every vehicle in which children receiving care in the home are transported. Smoking and the use of tobacco products shall be prohibited in the outdoor play area during the home's hours of operation. "No smoking" signs shall be posted at every entrance of the child care home and in every vehicle used to transport children. All signs shall include:

(1) The telephone number for reporting complaints, and

(2) The Internet address of the department of public health (www.iowasmokefreeair.gov).

j. Homes served by private sewer systems shall be in compliance with discharge restrictions identified at 567—Chapter 69. Discharge of untreated waste water from private sewage disposal systems is prohibited. Compliance shall be verified by the local board of health at the time of registration renewal and new registration.

k. A provider operating in a facility built before 1960 shall assess and control lead hazards before being issued an initial child development home registration or a renewal of the registration. To comply with this requirement, the provider shall:

(1) Conduct a visual assessment of the facility for lead hazards that exist in the form of chipping or peeling paint;

(2) Apply interim controls on any chipping or peeling paint found, using lead-safe work methods in accordance with and as defined by department of public health rules at 641—Chapters 69 and 70, unless a certified inspector as defined in 641—Chapter 70 determines that the paint is not lead-based paint; and

(3) Submit Form 470-4755, Lead Assessment and Control, as verification of the visual assessment and completion of interim controls, if necessary.

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l. The child development home shall be located in a single-family residence that is owned, rented, or leased by the person, or, for dual registrations, at least one of the persons, who is named on the child development home's certificate of registration.

m. Any driver who transports children for any purpose shall have a valid driver's license and adequate motor vehicle insurance that authorizes the driver to operate the type of vehicle being driven. Child restraint devices shall be utilized in compliance with Iowa Code section 321.446.

n. Providers shall inform parents of the presence of any pet in the home.

(1) Each dog or cat in the household shall undergo an annual health examination by a licensed veterinarian. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. This examination shall verify that the animal's routine immunizations, particularly rabies, are current and that the animal shows no evidence of endoparasites (roundworms, hookworms, whipworms) and ectoparasites (fleas, mites, ticks, lice).

(2) Each pet bird in the household shall be purchased from a dealer licensed by the Iowa department of agriculture and land stewardship and shall be examined by a veterinarian to verify that the bird is free of infectious diseases. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. Children shall not handle pet birds.

(3) Aquariums shall be well maintained and installed in a manner that prevents children from accessing the water or pulling over a tank.

(4) All animal waste shall be immediately removed from the children's areas and properly disposed of. Children shall not perform any feeding or care of pets or cleanup of pet waste.

(5) No animals shall be allowed in the food preparation, food storage, or serving areas during food preparation and serving times.

o. Using an injury report form, the provider shall document all injuries that require first aid or medical care. The form shall be completed on the date of occurrence, shared with the parent, and maintained in the child's file.

p. The provider shall have written policies regarding the care of mildly ill children and the exclusion of children due to illness and shall inform parents of these policies.

q. The provider shall have written policy and procedures for responding to health-related emergencies.

r. The certificate of registration shall be displayed in a conspicuous place.

110.8(2) Use of outdoor space.

a. A safe outdoor play area shall be maintained in good condition throughout the year. The play area shall be fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child and shall have both sunshine and shade areas. The play area shall be kept free from litter, rubbish, and flammable materials and shall be free from contamination by the drainage or ponding of sewage, household waste, or storm water.

b. When there is a swimming or wading pool on the premises:

(1) The wading pool shall be drained daily and shall be inaccessible to children when it is not in use.

(2) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the ASTM International (formerly known as the American Society for Testing and Materials) specification intended to reduce the risk of drowning by inhibiting access to the water by children under five years of age.

(3) An uncovered aboveground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high.

(4) An uncovered in-ground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high and flush with the ground.

c. If children are allowed to use an aboveground or in-ground swimming pool:

(1) Written permission from parents shall be available for review.

(2) Equipment needed to rescue a child or adult shall be readily accessible.

(3) The child care provider shall accompany the children and provide constant supervision while the children use the pool.

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(4) The child care provider shall complete training in cardiopulmonary resuscitation for infants, toddlers, and children, according to the criteria of the American Red Cross or the American Heart Association.

110.8(3) Medications and hazardous materials.

a. All medicines and poisonous, toxic, or otherwise unsafe materials shall be secured from access by a child.

b. A first-aid kit shall be available and easily accessible whenever children are in the child development home, in the outdoor play area, in vehicles used to transport children, and on field trips. The kit shall be sufficient to address first aid related to minor injury or trauma and shall be stored in an area inaccessible to children. The kit shall, at a minimum, include adhesive bandages, bottled water, disposable tweezers, and disposable plastic gloves.

c. Medications shall be given only with the parent's or doctor's written authorization. Each prescribed medication shall be accompanied by a physician's or pharmacist's direction. Both nonprescription and prescription medications shall be in the original container with directions intact and labeled with the child's name. All medications shall be stored properly and, when refrigeration is required, shall be stored in a separate, covered container so as to prevent contamination of food or other medications. All medications shall be stored so they are inaccessible to children. Any medication administered to a child shall be recorded, and the record shall indicate the name of the medication, the date and time of administration, and the amount administered.

d. All new providers and providers renewing registrations after September 30, 2016, shall not provide medications to a child if the provider has not completed preservice/orientation training that includes medication administration.

110.8(4) Emergency plans. Emergency plans in case of man-made or natural disaster shall be written and posted by the primary and secondary exits. The plans shall clearly map building evacuation routes and tornado and flood shelter areas.

a. Fire and tornado drills shall be practiced monthly, and the provider shall keep documentation evidencing compliance with monthly practice on file for the current year and the previous year.

b. The provider must have procedures in place for the following:

(1) Evacuation to safely leave the facility.

(2) Relocation to a common, safe location after evacuation.

(3) Shelter-in-place to take immediate shelter where the child is when it is unsafe to leave that location due to the emergent issue.

(4) Lockdown to protect children and providers from an external situation.

(5) Communication and plans for reunification with families.

(6) Continuity of operations.

(7) To address the needs of individual children, including those with functional or access needs.

110.8(5) Safe sleep. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Infant sleep shall conform to the following standards:

a. Infants shall always be placed on their backs for sleep.

b. Infants shall be placed on a firm mattress with a tight fitted sheet that meets U.S. Consumer Product Safety Commission federal standards.

c. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in an infant seat, car seat, swing, bouncy seat, or any item not designed for sleeping.

d. No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.

e. No co-sleeping shall be allowed.

f. Sleeping infants shall be actively observed by sight and sound.

g. If an alternate sleeping position is needed, a signed physician authorization with statement of medical reason is required.

110.8(6) Discipline. Discipline shall conform to the following standards:

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- a. Corporal punishment, including spanking, shaking and slapping, shall not be used.
- b. Punishment that is humiliating or frightening or that causes pain or discomfort to the child shall not be used.
- c. Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.
- d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.
- e. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

110.8(7) Meals and snacks.

- a. Regular meals and midmorning or midafternoon snacks shall be provided. The meals and snacks shall be well-balanced, nourishing, and in appropriate amounts as defined by the USDA Child and Adult Care Food Program.
- b. Children may bring food to the child development home for their own consumption but shall not be required to provide their own food.
- c. Clean, sanitary drinking water shall be readily available to children in indoor and outdoor areas, throughout the day.

110.8(8) Activity program. There shall be an activity program which promotes self-esteem and exploration and includes:

- a. Active play.
- b. Quiet play.
- c. Activities for large-muscle development.
- d. Activities for small-muscle development.
- e. Play equipment and materials in a safe condition, for both indoor and outdoor activities which are developmentally appropriate for the ages and number of children present.

441—110.9(237A) Files.

110.9(1) A provider file shall be maintained and shall contain the following:

- a. A physical examination report. Providers and all members of a provider's household over the age of 12 shall have good health as evidenced by a preregistration physical examination. Acceptable physical examinations shall be documented on Form 470-5152, Child Care Provider Physical Examination Report. The physical examination shall include any necessary testing for communicable diseases; shall include a discussion regarding current Advisory Committee on Immunization Practices (ACIP)-recommended vaccinations; shall be performed by a licensed medical doctor, doctor of osteopathy, physician assistant or advanced registered nurse practitioner within six months prior to the provider's registration; and shall be repeated at least every three years. All children residing in the household who are 12 years of age or younger must have the medical documentation outlined in paragraphs 110.9(4) "d," "f," and "g."

- b. Certificates or other documentation from the department verifying the following:

- (1) Required training as set forth in subrule 110.10(1).
- (2) Completion of all record checks as required in subrule 110.11(3), at initial application, at each application for change, and at each application for renewal.

110.9(2) An individual file for each staff assistant shall be maintained and shall contain the following:

- a. Documentation from the department which confirms that the record checks required under subrule 110.11(3) have been completed and authorizes or conditionally limits the person's involvement with child care.

- b. A completed Form 470-5152, Child Care Provider Physical Examination Report, that meets the requirements of paragraph 110.9(1) "a."

- c. Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse, completed within three months of employment and every five years thereafter, as required by Iowa Code section 232.69.

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110.9(3) An individual file for each substitute shall be maintained and shall contain the following:

a. Documentation from the department which confirms that the record checks required under subrule 110.11(3) have been completed and authorizes or conditionally limits the person's involvement with child care.

b. A completed Form 470-5152, Child Care Provider Physical Examination Report, that meets the requirements of paragraph 110.9(1)"*a.*"

c. Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse, completed within three months of employment and every five years thereafter, as required by Iowa Code section 232.69.

d. Certification in first aid that meets the requirements of paragraph 110.10(1)"*c.*"

e. Certification or other documentation that minimum health and safety training has been completed in compliance with paragraph 110.10(1)"*a.*"

110.9(4) *Children's files.* An individual file for each child shall be maintained and updated annually or when the provider becomes aware of changes. The file shall contain:

a. Identifying information including, at a minimum, the child's name and birth date; the parent's name, address and telephone number; special needs of the child; and the parent's work address and telephone number.

b. Emergency contact information including, at a minimum, where the parent can be reached, the name, street address, city and telephone number of the child's regular source of health care, and the name, telephone number, and relationship to the child of another adult available in case of emergency.

c. A signed medical consent from the parent authorizing emergency medical and dental treatment.

d. An admission physical examination report signed by a licensed physician or a designee in a clinic supervised by a licensed physician.

(1) The date of the physical examination shall not be more than 12 months before the child's first day of attendance at the child development home.

(2) The written report shall include the child's past health history, status of the child's present health, allergies and restrictive conditions, and recommendations for continued care when necessary.

(3) For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physical examination report.

(4) The examination report or statement of health status shall be on file before the child's first day of care.

e. A statement of health condition signed by a physician or designee and submitted annually from the date of the admission physical examination. For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physician statement.

f. For each school-age child, on the first day of attendance, documentation of a physical examination that was completed at the time of school enrollment or since.

g. A signed and dated immunization certificate provided by the Iowa department of public health. For the school-age child, a copy of the most recent immunization record shall be acceptable.

h. A list that is signed by the parent and names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

i. Written permission from the parent for the child to attend activities away from the child development home. The permission shall include:

(1) Times of departure and arrival.

(2) Destination.

(3) Persons who will be responsible for the child.

j. Injury report forms documenting injuries requiring first aid or medical care.

k. If the child meets the definition of homelessness as defined by Section 725(2) of the McKinney-Vento Homeless Education Assistance Act, the family shall receive a 60-day grace period to obtain medical documentation.

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441—110.10(237A) Professional development.

110.10(1) Required training. The provider shall complete:

a. Prior to registration and every five years thereafter, the provider shall complete minimum health and safety trainings, approved by the department, in all of the following areas:

- (1) Prevention and control of infectious disease, including immunizations.
- (2) Prevention of sudden infant death syndrome and use of safe sleep practices.
- (3) Administration of medication, consistent with standards for parental consent.
- (4) Prevention of and response to emergencies due to food and allergic reactions.
- (5) Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.
- (6) Prevention of shaken baby syndrome and abusive head trauma.
- (7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.
- (8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.
- (9) Precautions in transporting children.

b. Prior to registration and every five years thereafter, the provider shall complete two hours of Iowa's training for mandatory reporting of child abuse.

c. Prior to registration, the provider shall complete first-aid and cardiopulmonary resuscitation (CPR) training that meets the following requirements:

- (1) Training shall be provided by a nationally recognized training organization, such as the American Red Cross, American Heart Association, National Safety Council, or Emergency Medical Planning (Medic First Aid) or by an equivalent trainer using curriculum approved by the department.
- (2) First-aid training shall include certification in infant and child first aid.
- (3) The provider shall maintain a valid certificate indicating the date of first-aid training and the expiration date.
- (4) The provider shall maintain a valid certificate indicating the date of CPR training and the expiration date.

d. During each two-year registration period, the provider shall receive a minimum of 24 hours of training from one or more of the following content areas. A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time every five years.

- (1) Planning a safe, healthy learning environment (includes nutrition).
- (2) Steps to advance children's physical and intellectual development.
- (3) Positive ways to support children's social and emotional development (includes guidance and discipline).
- (4) Strategies to establish productive relationships with families (includes communication skills and cross-cultural competence).
- (5) Strategies to manage an effective program operation (includes business practices).
- (6) Maintaining a commitment to professionalism.
- (7) Observing and recording children's behavior.
- (8) Principles of child growth and development.

e. A provider who submits documentation from a child care resource and referral agency that the provider has completed the Iowa Program for Infant/Toddler Care (IA PITC), ChildNet, or Beyond Business Basics training series may use those hours to fulfill a maximum of two years' training requirements, not including first-aid and mandatory reporter training.

f. Training identified in paragraph 110.10(1)"a" may be counted toward the total 24 hours of required training only at the initial time in which it is received.

110.10(2) Approved training.

a. The training must be conducted by a trainer who is employed by or under contract with one of the following entities or who uses curriculum or training materials developed by or obtained with the written permission of one of the following entities:

- (1) An accredited university or college.
- (2) A community college.

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- (3) Iowa State University Extension.
 - (4) A child care resource and referral agency.
 - (5) An area education agency.
 - (6) The regents' center for early developmental education at the University of Northern Iowa.
 - (7) A hospital (for health and safety, first-aid, and CPR training).
 - (8) The American Red Cross, American Heart Association, National Safety Council, or Medic First Aid (for first-aid and CPR training).
 - (9) An Iowa professional association, including the Iowa Association for the Education of Young Children (Iowa AEYC), the Iowa Family Child Care Association (IFCCA), the Iowa After School Alliance, and the Iowa Head Start Association.
 - (10) A national professional association, including the National Association for the Education of Young Children (NAEYC), the National Child Care Association (NCCA), the National Association for Family Child Care (NAFCC), the National After School Association, and the American Academy of Pediatrics.
 - (11) The Child and Adult Care Food Program (CACFP) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
 - (12) The Iowa department of public health, department of education, or department of human services.
 - (13) Head Start agencies or the Head Start technical assistance system.
 - (14) Organizations that are certified by the International Association for Continuing Education and Training (IACET).
 - b.* Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph 110.10(2)“a” or an entity approved under paragraph 110.10(2)“h.”
 - c.* Approved training shall be made available to Iowa child care providers through the child care provider training registry.
 - d.* Training received in a group setting may include distance learning opportunities, such as training conducted over the Iowa communications network, online courses, or Web conferencing (webinars) if:
 - (1) The training meets the requirements in subrule 110.10(3);
 - (2) The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and
 - (3) The training organization meets the requirements listed in this subrule or is approved by the department.
 - e.* The department will not approve more than eight hours of training delivered in a single day.
 - f.* The department may randomly monitor any state-approved training for quality control purposes.
 - g.* Training conducted with the provider either during the hours of operation of the facility, provider lunch hours, or while children are resting must not diminish the required ratio coverage. The provider shall not be actively engaged in care and supervision and simultaneously participate in training.
 - h.* A training organization not approved by the department may submit a request for review to the department on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.
- 110.10(3) Elements of training.** Training provided to Iowa child care providers shall offer:
- a.* Instruction that is consistent with:
 - (1) Iowa child care regulatory standards;
 - (2) The Iowa early learning standards; and
 - (3) The philosophy of developmentally appropriate practice as defined by the National Association for the Education of Young Children, the Program for Infant/Toddler Care, and the National Health and Safety Performance Standards.
 - b.* Content equal to at least one contact hour of training.

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- c. An opportunity for teacher-student interaction and timely feedback, including questions and answers and with evaluation of learning.
- d. For each participant, a certificate of training that includes:
 - (1) The name of the participant.
 - (2) The title of the training.
 - (3) The dates of training.
 - (4) The content area addressed.
 - (5) The name of the training organization.
 - (6) The name of the instructor.
 - (7) The number of contact hours.

441—110.11(234) Registration decision. The department shall issue Form 470-3498, Certificate of Registration, when an applicant meets all requirements for registration. Each local office of the department shall maintain a current list of registered child development homes as a referral service to the community.

110.11(1) Registration shall be denied or revoked if the department finds a hazard to the safety and well-being of a child and the provider cannot correct or refuses to correct the hazard, even though the hazard may not have been specifically listed under the health and safety rules. Registration may also be denied or revoked if the department determines that the provider has failed to comply with standards imposed by law and these rules.

110.11(2) Record of all denials or revocations of registration and the documentation of reasons for denying or revoking the registration shall be kept in an open file.

110.11(3) Record checks.

a. *Applicability.* The department shall conduct Iowa criminal history record and child abuse record checks for each registrant, substitute or staff member, anyone living in the home who is 14 years of age or older, and anyone having access to a child when the child is alone. The department shall conduct national criminal history record checks, based on fingerprints, for each registrant, substitute or staff member, anyone living in the home who is 18 years of age or older, and anyone 18 years of age or older having access to a child when the child is alone. In accordance with Iowa Code section 726.23, minors under the age of 18 will not be subject to the fingerprint requirement.

(1) The purpose of these record checks is to determine whether the person has committed a transgression that prohibits or limits the person's involvement with child care.

(2) The department may also conduct criminal history record and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or other states.

(3) Effective July 1, 2013, registration or renewal certificates shall not be issued until the results of all state and national record checks have been received and, when necessary, evaluated.

b. *Authorization.* The person subject to record checks shall complete the Iowa department of human services record check authorization form; Form DCI-45, Waiver Agreement; Form FD-258, Federal Fingerprint Card; and any other forms required by the department of public safety to authorize the release of records.

c. *Iowa records checks.* Checks and evaluations of Iowa child abuse and criminal history records shall be completed before the person's involvement with child care. Iowa records checks shall be repeated at a minimum of every two years and when the department or the registrant becomes aware of any possible transgressions. The department is responsible for the cost of conducting the Iowa records checks.

d. *National criminal history record checks.* Fingerprint-based checks of national criminal history records shall also be completed before a person's involvement with child care. This requirement shall be effective on or after July 1, 2013, for an initial application for registration or a renewal application for registration. The national criminal history record check shall be repeated for each person subject to the check every four years and when the department or registrant becomes aware of any new transgressions

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committed by that person in another state. The department is responsible for the cost of conducting the national criminal history record check.

(1) The registrant is responsible for any costs associated with the taking (rolling) of fingerprints of all persons subject to record checks and for submitting the fingerprints to the department so that the national criminal history record check can be completed. Fingerprints may be taken (rolled) by law enforcement agencies or by agencies or companies that specialize in taking (rolling) fingerprints.

(2) The department shall provide fingerprints to the department of public safety no later than ten business days after receipt of the fingerprint cards. The department shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(3) The department may rely on the results of previously conducted national criminal history record checks when a person subject to a record check in one child development home or child care home submits a request for involvement with child care in another child development home or child care home, so long as the person's national criminal history record check is within the allowable four-year time frame. All initial or new applications shall require a new national criminal history record check.

e. Mandatory prohibition. A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.
- (2) Placement on the sex offender registry.
- (3) Felony child endangerment or neglect or abandonment of a dependent person.
- (4) Felony domestic abuse.
- (5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.
- (6) Forcible felony.

f. Mandatory time-limited prohibition.

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.
2. Founded abuse that was determined to be physical abuse.

(2) After the five-year prohibition period (from the date of the conviction or the founded abuse report) as defined in subparagraph 110.11(3) "f"(1), the person may request the department to perform an evaluation under paragraph 110.11(3) "g" to determine whether prohibition of the person's involvement with child care continues to be warranted.

g. Evaluation required. For all other transgressions, and as requested under subparagraph 110.11(3) "f"(2), the department shall evaluate the transgression and make a decision about the person's involvement with child care.

(1) The person with the transgression shall complete and return the record check evaluation form within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form within ten calendar days of the date on the form shall result in denial or revocation of the registration certificate.

(2) The department may use information from the department's case records in performing the evaluation.

(3) In an evaluation, the department shall consider all of the following factors:

1. The nature and seriousness of the transgression in relation to the position sought or held.
2. The time elapsed since the commission of the transgression.
3. The circumstances under which the transgression was committed.
4. The degree of rehabilitation.
5. The likelihood that the person will commit the transgression again.
6. The number of transgressions committed by the person.

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and the person has no subsequent transgressions, an exemption from reevaluation of the latest record check is

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authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.

3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.

4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

h. Evaluation decision. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements or corrective action plan.

(1) Within 30 calendar days of receipt of a completed record check evaluation, the department shall make a decision on the person's involvement with child care.

(2) Within 30 calendar days of receipt of a completed record check evaluation, the department shall mail to the person subject to an evaluation a record check decision that explains the decision reached regarding the evaluation of the transgression and a notice of decision: child care.

(3) The department shall issue a notice of decision: child care prohibiting involvement with child care when the person subject to an evaluation fails to complete the record check evaluation within the ten-calendar-day time frame.

(4) If the department determines, through the record check evaluation process, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed.

(5) The department may permit a person who is evaluated to maintain involvement with child care if the person complies with the department's conditions relating to the person's involvement with child care, which may include completion of additional training or an individually designed corrective action plan, or both. For an employee of a registrant, these conditional requirements shall be developed with the registrant. All conditions placed on a person's involvement with child care shall be communicated, in writing, to both the person subject to the evaluation and the registrant.

i. Notice to parents of abuse in care. If there has been founded child abuse committed by an owner, director, or staff member of the child care facility or child care home, the department's administrator shall notify the parents, guardians, and legal custodians of each child for whom the facility or child care home provides care.

(1) The child care facility or child care home shall cooperate with the department in providing the names and addresses of the parent, guardian, or custodian of each child for whom the facility provides child care.

(2) This information shall be provided to the department within ten calendar days from the date of the initial request.

(3) Failure or refusal to provide the requested information may result in revocation of registration.

110.11(4) If the department has denied or revoked a registration because the provider has continually or repeatedly failed to operate in compliance with Iowa Code chapter 237A and this chapter, the person shall not own or operate a registered facility for a period of 12 months from the date of denial or revocation. The department shall not act on an application for registration submitted by the applicant or provider during the 12-month period. The applicant shall be prohibited from involvement with child care unless the department specifically permits the involvement.

110.11(5) Required notifications. If a certificate of registration is revoked, the administrator of the department shall notify the parent, guardian, or legal custodian of each child for whom the facility

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provides care. The provider shall cooperate with the department in providing the name and address of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

110.11(6) Required notifications to the department.

a. The provider shall, within ten days, notify the department of any of the following:

- (1) Changes in assistants or substitutes;
- (2) Changes in household membership;
- (3) Address changes; and
- (4) Criminal convictions.

b. No assistant, substitute, or coprovider shall be utilized in the care of children and no person shall be permitted to reside in the household until approved by the department.

c. If the provider does not notify the department of changes within ten days, the provider may be subject to revocation of registration or to recoupment of child care assistance provided, or both.

110.11(7) Letter of revocation. A letter received by an owner or operator of a child development home initiating action to deny or revoke the home's registration shall be conspicuously posted where it can be read by parents or any member of the public. The letter shall remain posted until resolution of the action to deny or revoke an owner's or operator's certificate of registration.

441—110.12(237A) Complaints. The department shall conduct an on-site visit when a complaint is received.

110.12(1) After each complaint visit, the department shall document whether the child development home was in compliance with registration requirements.

110.12(2) The written documentation of the department's conclusion as to whether the child development home was in compliance with requirements shall be available to the public. However, the identity of all complainants shall be confidential, unless expressly waived by the complainant.

441—110.13(237A) Additional requirements for child development home category A. In addition to the requirements in rule 441—110.8(237A), a provider requesting registration in child development home category A shall meet the following standards:

110.13(1) *Limits on number of children in care.*

a. No more than six children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these six children, no more than four children who are 24 months of age or younger shall be present at any one time. Of these four children, no more than three may be 18 months of age or younger.

c. In addition to the six children not in school, no more than two children who attend school may be present for a period of less than two hours at a time.

d. No more than eight children shall be present at any one time when an emergency school closing is in effect.

110.13(2) *Provider qualifications.*

a. The provider shall be at least 18 years old.

b. The provider shall have three written references which attest to character and ability to provide child care.

441—110.14(237A) Additional requirements for child development home category B. In addition to the requirements in rule 441—110.8(237A), a provider requesting registration in child development home category B shall meet the following standards:

110.14(1) *Limits on number of children in care.*

a. No more than six children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these six children, no more than four children who are 24 months of age or younger shall be present at any one time. Of these four children, no more than three may be 18 months of age or younger.

c. In addition to the six children not in school, no more than four children who attend school may be present.

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d. In addition to these ten children, no more than two children who are receiving care on a part-time basis may be present.

e. No more than 12 children shall be present at any one time when an emergency school closing is in effect.

f. If more than eight children are present at any one time for a period of more than two hours, the provider shall be assisted by a department-approved assistant who is at least 14 years old.

110.14(2) Provider qualifications.

a. The provider shall be at least 20 years old.

b. The provider shall have a high school diploma, GED, or documentation of current or previous enrollment in credit-based coursework from a postsecondary educational institution that is an accredited college or university.

c. The provider shall either:

(1) Have two years of experience as a registered or nonregistered child care provider, or

(2) Have a child development associate credential or any two-year or four-year degree in a child care-related field and one year of experience as a registered or nonregistered child care home provider.

110.14(3) Facility requirements.

a. The home shall have a minimum of 35 square feet of child-use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors.

b. The home shall have a separate quiet area for sick children.

c. The home shall have a minimum of two direct exits to the outside from the main floor.

(1) If the second level or the basement of the home is used for the provision of child care, other than the use of a restroom, each additional child-occupied floor shall have at least one direct exit to the outside in addition to one inside stairway.

(2) All exits shall terminate at grade level with permanent steps.

(3) A basement window may be used as an exit if the window can be opened from the inside without the use of tools and it provides a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor, with permanent steps inside leading up to the window.

(4) Occupancy above the second floor shall not be permitted for child care.

441—110.15(237A) Additional requirements for child development home category C. In addition to the requirements in rule 441—110.8(237A), a provider requesting registration in child development home category C shall meet the following standards:

110.15(1) Limits on number of children in care.

a. No more than 12 children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these 12 children, no more than four children who are 24 months of age or younger shall be present at any one time. Whenever four children who are under the age of 18 months are in care, both providers shall be present.

c. In addition to the 12 children not in school, no more than two children who attend school may be present for a period of less than two hours at any one time.

d. In addition to these 14 children, no more than two children who are receiving care on a part-time basis may be present.

e. No more than 16 children shall be present at any one time when an emergency school closing is in effect. If more than eight children are present at any one time due to an emergency school closing exception, the provider shall be assisted by a department-approved assistant who is at least 18 years of age.

f. If more than eight children are present, both providers shall be present. Each provider shall meet the provider qualifications for child development home category C.

110.15(2) Provider qualifications.

a. One provider who meets the following qualifications must always be present:

(1) The provider shall be at least 21 years old.

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(2) The provider shall have a high school diploma, GED, or documentation of current or previous enrollment in credit-based coursework from a postsecondary educational institution that is an accredited college or university.

(3) The provider shall either:

1. Have five years of experience as a registered or nonregistered child care provider, or
2. Have a child development associate credential or any two-year or four-year degree in a child care-related field and four years of experience as a registered or nonregistered child care home provider.
 - b. The coprovider shall meet the requirements of subrule 110.14(2).
 - c. No more than two named providers shall be allowed on a registration certificate.

110.15(3) Facility requirements.

- a. The home shall have a minimum of 35 square feet of child-use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors.
- b. The home shall have a separate quiet area for sick children.
- c. The home shall have a minimum of two direct exits to the outside from the main floor.

(1) If the second level or the basement of the home is used for the provision of child care, other than the use of a restroom, each additional child-occupied floor shall have at least one direct exit to the outside in addition to one inside stairway.

(2) All exits shall terminate at grade level with permanent steps.

(3) A basement window may be used as an exit if the window can be opened from the inside without the use of tools and it provides a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor, with permanent steps inside leading up to the window.

(4) Occupancy above the second floor shall not be permitted for child care.

441—110.16(237A) Registration actions for nonpayment of child support. The department shall revoke or deny the issuance or renewal of a child development home registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the rules in this chapter shall apply.

110.16(1) Service of notice. The notice required by Iowa Code section 252J.8 shall be served upon the applicant or registrant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or registrant may accept service personally or through authorized counsel.

110.16(2) Effective date. The effective date of the revocation or denial of the registration as specified in the notice required by Iowa Code section 252J.8 shall be 60 days following service of the notice upon the applicant or licensee.

110.16(3) Preparation of notice. The department director or designee of the director is authorized to prepare and serve the notice as required by Iowa Code section 252J.8 upon the applicant or registrant.

110.16(4) Responsibilities of registrants and applicants. Registrants and registrant applicants shall keep the department informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the department copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in the actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

110.16(5) District court. A registrant or applicant may file an application with the district court within 30 days of service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9.

a. The filing of the application shall stay the department action until the department receives a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

b. For purposes of determining the effective date of the revocation, or denial of the issuance or renewal of a registration, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

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110.16(6) Procedure for notification. The department shall notify the applicant or registrant in writing through regular first-class mail, or such other means as the department deems appropriate in the circumstances, within ten days of the effective date of the revocation of a registration or the denial of the issuance or renewal of a registration, and shall similarly notify the applicant or registrant when the registration is issued, renewed, or reinstated following the department's receipt of a withdrawal of the certificate of noncompliance.

110.16(7) Appeal rights. Notwithstanding Iowa Code section 17A.18, the registrant does not have the right to a hearing regarding this issue but may request a court hearing pursuant to Iowa Code section 252J.9.

441—110.17(237A) Prohibition from involvement with child care. If the department has prohibited a person or program from involvement with child care, that person or program shall not provide child care as a nonregistered child care home provider.

These rules are intended to implement Iowa Code section 234.6 and chapter 237A.

ARC 2552C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby gives Notice of Intended Action to adopt a new Chapter 120, “Child Care Homes,” Iowa Administrative Code.

The federal Child Care and Development Block Grant (CCDBG) was reauthorized in November 2014. As a result, there are new federal laws outlining health, safety, and fire standards for child care providers that receive child care assistance dollars. Proposed Chapter 120 has been created to outline the requirements for child care providers that receive subsidy dollars but are not required by state law to register to provide child care.

Any interested person may make written comments on the proposed amendment on or before June 14, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

This amendment is intended to implement Iowa Code section 237A.12.

The following amendment is proposed.

Adopt the following **new** 441—Chapter 120:

CHAPTER 120
CHILD CARE HOMES

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PREAMBLE

This chapter establishes procedures for child care homes. Included are application and renewal procedures, standards for providers, and procedures for compliance checks and complaint investigations.

441—120.1(237A) Definitions.

“Adult” means a person 18 years of age or older.

“Child” means either of the following:

1. A person 12 years of age or younger.
2. A person 13 years of age or older but younger than 19 years of age who has a developmental disability, as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law No. 106-402, codified in 42 U.S.C. 15002(8).

“Child care” means the care, supervision, or guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis. *“Child care”* shall not mean special activity programs that meet on a regular basis such as music or dance classes, organized athletics or sports programs, scouting programs, or hobby or craft classes or clubs.

“Child care facility” or *“facility”* means a child care center, a preschool, or a registered child development home.

“Child care home” means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.

“Child development home” means a person or program registered under this chapter that may provide child care to six or more children at any one time.

“Department” means the department of human services.

“Involvement with child care” means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, providing child care as a child care home provider, or residing in a child care home.

“Parent” means parent or legal guardian.

“Person subject to an evaluation” means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for registration or is registered.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.
5. The person will reside or resides in a child care home that is not registered but that receives public funding for providing child care.

“Provider” means the person or program that applies to receive payment from the child care assistance program to provide child care and is approved as a child care home.

“School” means kindergarten or a higher grade level.

“Transgression” means the existence of any of the following in a person’s record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with licensing and registration laws and rules.

441—120.2(237A) Application for payment. A provider shall apply for payment on Form 470-2890, Payment Application for Nonregistered Providers, provided by the department’s local office or on the

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department's Web site. The provider shall also use Form 470-2890 to inform the department of any changes in circumstances that would affect the provider.

441—120.3(237A) Renewal of agreement. Renewal of the child care assistance provider agreement shall be completed every 24 months. To request renewal, a provider shall submit Form 470-2890, Payment Application for Nonregistered Providers, and copies of certificates of training, which shall be retained in the file. The agreement renewal process shall include completion of child abuse, sex offender, and criminal record checks.

441—120.4(237A) Compliance checks. An unannounced compliance visit shall be conducted not less than annually to check for compliance with health, safety, and fire standards. Completed evaluation checklists shall be placed in agency files.

441—120.5(237A) Parental access. Parents shall be afforded unlimited access to their children and to the people caring for their children during the normal hours of operation or whenever their children are in the care of the child care home, unless parental contact is prohibited by court order.

441—120.6(237A) Number of children. The number of children in a child care home shall conform to the following standards:

120.6(1) Limit. No more than five children shall receive care at any one time in the single-family residence.

120.6(2) Children counted. To determine the number of children cared for at any one time in a child care home, each child present in the child care home shall be considered to be receiving care unless the child is described by one of the following exceptions:

a. The child's parent, guardian, or custodian established or operates the child care home and either the child is attending school or the child receives child care full-time on a regular basis from another person.

b. The child has been present in the child care home for more than 72 consecutive hours and meets the requirements of the exception listed above as though the person who established or operates the child care home is the child's parent, guardian, or custodian.

441—120.7(237A) Provider requirements.

120.7(1) Provider. The provider shall:

a. Give careful supervision at all times.

b. Exchange information with the parent of each child frequently to enhance the quality of care.

c. Give consistent, dependable care and be capable of handling emergencies.

d. Be present at all times except when emergencies occur or an absence is planned, at which time care shall be provided by a department-approved substitute. When an absence is planned, the provider shall give parents at least 24 hours' prior notice.

e. Be free of the use of illegal drugs and shall not be under the influence of alcohol or of any prescription or nonprescription drug that could impair the provider's ability to give careful supervision.

f. Be at least 18 years of age.

120.7(2) Substitutes. The provider shall assume responsibility for providing adequate and appropriate supervision at all times when children are in attendance. Any designated substitute shall have the same responsibility for providing adequate and appropriate supervision. Ultimate responsibility for supervision shall be with the provider.

a. All standards in this chapter regarding supervision and care of children shall apply to substitutes.

b. Except in emergency situations, the provider shall inform parents in advance of the planned use of a substitute.

c. The substitute must be 18 years of age or older.

d. Use of a substitute shall be limited to:

(1) No more than 25 hours per month.

(2) An additional period of up to two weeks in a 12-month period.

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e. The provider shall maintain a written record of the number of hours care is provided by a substitute, including the date of the care and the name of the substitute.

441—120.8(237A) Standards. Conditions in the home shall be safe, sanitary, and free of hazards. The provider shall certify that the child care home meets the following minimum standards.

120.8(1) Facility requirements.

a. The home shall have a nonpay, working landline or mobile telephone with emergency numbers posted for police, fire, ambulance, and the poison information center. The number for each child's parent, for a responsible person who can be reached when the parent cannot, and for the child's physician shall be written on paper and readily accessible by the telephone. The home must prominently display all emergency information, and all travel vehicles must have a paper copy of emergency parent contact information.

b. Electrical wiring shall be maintained, and all accessible electrical outlets shall be tamper-resistant outlets or shall be safely capped. Electrical cords shall be properly used. Improper use includes the running of cords under rugs, over hooks, or through door openings or other use that has been known to be hazardous.

c. Combustible materials shall be kept a minimum of three feet away from furnaces, stoves, water heaters, and gas dryers.

d. Approved safety gates at stairways and doors shall be provided and used as needed.

e. Annual laboratory analysis of a private water supply shall be conducted to show satisfactory bacteriological quality. When children under the age of two are to be cared for, the analysis shall include a nitrate analysis. When private water supplies are determined unsuitable for drinking, commercially bottled water or water treated through a process approved by the health department or designee shall be provided.

f. A safety barrier shall surround any heating stove or heating element, in order to prevent burns.

g. The home shall have at least one 2A 10BC-rated fire extinguisher located in a visible and readily accessible place on each child-occupied floor.

h. The home shall have at least one single-station, battery-operated, UL-approved smoke detector in each child-occupied room and at the top of every stairway. Each smoke detector shall be installed according to manufacturer's recommendations. The provider shall test each smoke detector monthly and keep a record of testing for inspection purposes.

i. Smoking and the use of tobacco products shall be prohibited at all times in the home and in every vehicle in which children receiving care in the home are transported. Smoking and the use of tobacco products shall be prohibited in the outdoor play area during the home's hours of operation. "No smoking" signs shall be posted at every entrance of the child care home and in every vehicle used to transport children. All signs shall include:

(1) The telephone number for reporting of complaints, and

(2) The Internet address of the department of public health (www.iowasmokefreeair.gov).

j. Homes served by private sewer systems shall be in compliance with discharge restrictions identified at 567—Chapter 69. Discharge of untreated waste water from private sewage disposal systems is prohibited. Compliance shall be verified by the local board of health at the time of renewal of the child care assistance provider agreement and new application.

k. A provider operating in a facility built before 1960 shall assess and control lead hazards before being issued an initial child care assistance provider agreement or a renewal of the provider agreement. To comply with this requirement, the provider shall:

(1) Conduct a visual assessment of the facility for lead hazards that exist in the form of chipping or peeling paint;

(2) Apply interim controls on any chipping or peeling paint found, using lead-safe work methods in accordance with and as defined by department of public health rules at 641—Chapters 69 and 70, unless a certified inspector as defined in 641—Chapter 70 determines that the paint is not lead-based paint; and

(3) Submit Form 470-4755, Lead Assessment and Control, as verification of the visual assessment and completion of interim controls, if necessary.

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l. The child care home shall be located in a single-family residence that is owned, rented, or leased by the provider.

m. Any driver who transports children for any purpose shall have a valid driver's license and adequate motor vehicle insurance that authorizes the driver to operate the type of vehicle being driven. Child restraint devices shall be utilized in compliance with Iowa Code section 321.446.

n. Providers shall inform parents of the presence of any pet in the home.

(1) Each dog or cat in the household shall undergo an annual health examination by a licensed veterinarian. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. This examination shall verify that the animal's routine immunizations, particularly rabies, are current and that the animal shows no evidence of endoparasites (roundworms, hookworms, whipworms) and ectoparasites (fleas, mites, ticks, lice).

(2) Each pet bird in the household shall be purchased from a dealer licensed by the Iowa department of agriculture and land stewardship and shall be examined by a veterinarian to verify that the bird is free of infectious diseases. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. Children shall not handle pet birds.

(3) Aquariums shall be well maintained and installed in a manner that prevents children from accessing the water or pulling over a tank.

(4) All animal waste shall be immediately removed from the children's areas and properly disposed of. Children shall not perform any feeding or care of pets or cleanup of pet waste.

(5) No animals shall be allowed in the food preparation, food storage, or serving areas during food preparation and serving times.

o. Using an injury report form, the provider shall document all injuries that require first aid or medical care. The form shall be completed on the date of occurrence, shared with the parent, and maintained in the child's file.

120.8(2) Use of outdoor space.

a. A safe outdoor play area shall be maintained in good condition throughout the year. The play area shall be fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child and shall have both sunshine and shade areas. The play area shall be kept free from litter, rubbish, and flammable materials and shall be free from contamination by the drainage or ponding of sewage, household waste, or storm water.

b. When there is a swimming or wading pool on the premises:

(1) The wading pool shall be drained daily and shall be inaccessible to children when it is not in use.

(2) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the ASTM International (formerly known as the American Society for Testing and Materials) specification intended to reduce the risk of drowning by inhibiting access to the water by children under five years of age.

(3) An uncovered aboveground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high.

(4) An uncovered in-ground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high and flush with the ground.

c. If children are allowed to use an aboveground or in-ground swimming pool:

(1) Written permission from parents shall be available for review.

(2) Equipment needed to rescue a child or adult shall be readily accessible.

(3) The child care provider shall accompany the children and provide constant supervision while the children use the pool.

(4) The child care provider shall complete training in cardiopulmonary resuscitation for infants, toddlers, and children, according to the criteria of the American Red Cross or the American Heart Association.

120.8(3) Medications and hazardous materials.

a. All medicines and poisonous, toxic, or otherwise unsafe materials shall be secured from access by a child.

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b. A first-aid kit shall be available and easily accessible whenever children are in the child care home, in the outdoor play area, in vehicles used to transport children, and on field trips. The kit shall be sufficient to address first aid related to minor injury or trauma and shall be stored in an area inaccessible to children. The kit shall, at a minimum, include adhesive bandages, bottled water, disposable tweezers, and disposable plastic gloves.

c. Medications shall be given only with the parent's or doctor's written authorization. Each prescribed medication shall be accompanied by a physician's or pharmacist's direction. Both nonprescription and prescription medications shall be in the original container with directions intact and labeled with the child's name. All medications shall be stored properly and, when refrigeration is required, shall be stored in a separate, covered container so as to prevent contamination of food or other medications. All medications shall be stored so they are inaccessible to children. Any medication administered to a child shall be recorded, and the record shall indicate the name of the medication, the date and time of administration, and the amount administered.

d. Medications shall not be provided to a child if the provider has not completed preservice/orientation training that includes medication administration.

120.8(4) Emergency plans. Emergency plans in case of man-made or natural disaster shall be written and posted by the primary and secondary exits. The plans shall clearly map building evacuation routes and tornado and flood shelter areas.

a. Fire and tornado drills shall be practiced monthly, and the provider shall keep documentation evidencing compliance with monthly practice on file.

b. The provider must have procedures in place for the following:

- (1) Evacuation to safely leave the facility.
- (2) Relocation to a common, safe location after evacuation.
- (3) Shelter-in-place to take immediate shelter where the child is when it is unsafe to leave that location due to the emergent issue.
- (4) Lockdown to protect children and providers from an external situation.
- (5) Communication and plans for reunification with families.
- (6) Continuity of operations.
- (7) To address the needs of individual children, including those with functional or access needs.

120.8(5) Safe sleep. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Infant sleep shall conform to the following standards:

a. Infants shall always be placed on their backs for sleep.

b. Infants shall be placed on a firm mattress with a tight fitted sheet that meets U.S. Consumer Product Safety Commission federal standards.

c. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in an infant seat, car seat, swing, bouncy seat, or any item not designed for sleeping.

d. No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.

e. No co-sleeping shall be allowed.

f. Sleeping infants shall be actively observed by sight and sound.

g. If an alternate sleeping position is needed, a signed physician authorization with statement of medical reason is required.

120.8(6) Discipline. Discipline shall conform to the following standards:

a. Corporal punishment, including spanking, shaking and slapping, shall not be used.

b. Punishment that is humiliating or frightening or that causes pain or discomfort to the child shall not be used.

c. Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.

d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.

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e. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

120.8(7) Meals and snacks.

- a.* Regular meals and snacks that are well-balanced and nourishing shall be provided.
- b.* Children may bring food to the child care home for their own consumption but shall not be required to provide their own food.
- c.* Clean, sanitary drinking water shall be readily available to children in indoor and outdoor areas, throughout the day.

441—120.9(237A) Children's files.

120.9(1) An individual file for each child shall be maintained and updated annually or when the provider becomes aware of changes.

120.9(2) The file shall contain:

- a.* Identifying information including, at a minimum, the child's name and birth date; the parent's name, address and telephone number; the special needs of the child; and the parent's work address and telephone number.
- b.* Emergency contact information including, at a minimum, where the parent can be reached, the name, street address, city and telephone number of the child's regular source of health care, and the name, telephone number, and relationship to the child of another adult available in case of emergency.
- c.* A signed medical consent from the parent authorizing emergency medical and dental treatment.
- d.* An admission physical examination report signed by a licensed physician or the designee in a clinic supervised by a licensed physician.
- e.* A statement of health condition signed by a physician or designee submitted annually from the date of the admission physical examination. For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physician statement.
- f.* A list that is signed by the parent and names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.
- g.* A signed and dated immunization certificate provided by the Iowa department of public health. For the school-age child, a copy of the most recent immunization record shall be acceptable.
- h.* Written permission from the parent for the child to attend activities away from the child care home. The permission shall include:
 - (1) Times of departure and arrival.
 - (2) Destination.
- i.* If the child meets the definition of homelessness as defined by Section 725(2) of the McKinney Vento Homeless Education Assistance Act, the family shall receive a 60-day grace period to obtain medical documentation.

441—120.10(237A) Professional development.

120.10(1) Prior to the issuance of a provider agreement and every five years thereafter, the provider shall complete minimum health and safety trainings, approved by the department, in all of the following content areas:

- a.* Prevention and control of infectious disease, including immunizations.
- b.* Prevention of sudden infant death syndrome and use of safe sleep practices.
- c.* Administration of medication, consistent with standards for parental consent.
- d.* Prevention of and response to emergencies due to food and allergic reactions.
- e.* Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.
- f.* Prevention of shaken baby syndrome and abusive head trauma.
- g.* Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.

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- h.* Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.
- i.* Precautions in transporting children.

120.10(2) Prior to issuance of a provider agreement and every five years thereafter, the provider shall complete two hours of Iowa's training for mandatory reporting of child abuse.

120.10(3) Prior to issuance of a provider agreement, the provider shall complete first-aid and cardiopulmonary resuscitation (CPR) training that meets the following requirements:

- a.* Training shall be provided by a nationally recognized training organization, such as the American Red Cross, American Heart Association, National Safety Council, or Emergency Medical Planning (Medic First Aid) or by an equivalent trainer using curriculum approved by the department.
- b.* First-aid training shall include certification in infant and child first aid.
- c.* The provider shall maintain a valid certificate indicating the date of first-aid training and the expiration date.
- d.* The provider shall maintain a valid certificate indicating the date of CPR training and the expiration date.

441—120.11(237A) Child care assistance provider agreement decision. The department shall issue Form 470-3871, Child Care Assistance Provider Agreement, when an applicant meets all requirements for a child care home. The department shall maintain a current list of child care homes as a referral service to the community.

120.11(1) A provider agreement shall be denied or canceled if the department finds a hazard to the safety and well-being of a child and the provider cannot correct or refuses to correct the hazard, even though the hazard may not have been specifically listed under these rules. The provider agreement may also be denied or canceled if the department determines that the provider has failed to comply with standards imposed by law and rules found in this chapter or at 441—Chapter 170.

120.11(2) Record of all denials or cancellations of provider agreements and the documentation of reasons for denying or canceling the agreement shall be kept in an open file.

120.11(3) Record checks.

a. Applicability. The department shall conduct Iowa criminal history record and child abuse record checks for each provider, substitute or staff member, anyone living in the home who is 14 years of age or older, and anyone having access to a child when the child is alone. The department shall conduct national criminal history record checks, based on fingerprints, for each provider, substitute or staff member, anyone living in the home who is 18 years of age or older, and anyone 18 years of age or older having access to a child when the child is alone. In accordance with Iowa Code section 726.23, minors under the age of 18 will not be subject to the fingerprint requirement.

(1) The purpose of these record checks is to determine whether the person has committed a transgression that prohibits or limits the person's involvement with child care.

(2) The department may also conduct criminal history record and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or other states.

(3) Child care assistance provider agreements shall not be issued until the results of all state and national record checks have been received and, when necessary, evaluated.

b. Authorization. The person subject to record checks shall complete the Iowa department of human services record check authorization form; Form DCI-45, Waiver Agreement; Form FD-258, Federal Fingerprint Card; and any other forms required by the department of public safety to authorize the release of records.

c. Iowa records checks. Checks and evaluations of Iowa child abuse and criminal history records shall be completed before the person's involvement with child care. Iowa records checks shall be repeated at a minimum of every two years and when the department or the provider becomes aware of any possible transgressions. The department is responsible for the cost of conducting the Iowa records checks.

d. National criminal history record checks. Fingerprint-based checks of national criminal history records shall also be completed before a person's involvement with child care. This requirement shall

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be required for an initial application or a renewal application. The national criminal history record check shall be repeated for each person subject to the check every four years and when the department or provider becomes aware of any new transgressions committed by that person in another state. The department is responsible for the cost of conducting the national criminal history record check.

(1) The provider is responsible for any costs associated with the taking (rolling) of fingerprints of all persons subject to record checks and for submitting the fingerprints to the department so the national criminal history record check can be completed. Fingerprints may be taken (rolled) by law enforcement agencies or by agencies or companies that specialize in taking (rolling) fingerprints.

(2) The department shall provide fingerprints to the department of public safety no later than ten business days after receipt of the fingerprint cards. The department shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(3) The department may rely on the results of previously conducted national criminal history record checks when a person subject to a record check in one child development home or child care home submits a request for involvement with child care in another child development home or child care home, so long as the person's national criminal history record check is within the allowable four-year time frame. All initial or new applications shall require a new national criminal history record check.

e. Mandatory prohibition. A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.
- (2) Placement on the sex offender registry.
- (3) Felony child endangerment or neglect or abandonment of a dependent person.
- (4) Felony domestic abuse.
- (5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.
- (6) Forcible felony.

f. Mandatory time-limited prohibition.

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or the founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.
2. Founded abuse that was determined to be physical abuse.

(2) After the five-year prohibition period (from the date of the conviction or the founded abuse report) as defined in subparagraph 120.11(3) "f"(1), the person may request the department to perform an evaluation under paragraph 120.11(3) "g" to determine whether prohibition of the person's involvement with child care continues to be warranted.

g. Evaluation required. For all other transgressions, and as requested under subparagraph 120.11(3) "f"(2), the department shall evaluate the transgression and make a decision about the person's involvement with child care.

(1) The person with the transgression shall complete and return the record check evaluation form within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form within ten calendar days of the date on the form shall result in denial or revocation of the child care assistance provider agreement.

(2) The department may use information from the department's case records in performing the evaluation.

(3) In an evaluation, the department shall consider all of the following factors:

1. The nature and seriousness of the transgression in relation to the position sought or held.
2. The time elapsed since the commission of the transgression.
3. The circumstances under which the transgression was committed.
4. The degree of rehabilitation.
5. The likelihood that the person will commit the transgression again.
6. The number of transgressions committed by the person.

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and the

HUMAN SERVICES DEPARTMENT[441](cont'd)

person has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.

3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.

4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

h. Evaluation decision. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements or corrective action plan.

(1) Within 30 calendar days of receipt of a completed record check evaluation, the department shall make a decision on the person's involvement with child care.

(2) Within 30 calendar days of receipt of a completed record check evaluation, the department shall mail to the person subject to an evaluation a record check decision that explains the decision reached regarding the evaluation of the transgression and a notice of decision: child care.

(3) The department shall issue a notice of decision: child care prohibiting involvement with child care when the person subject to an evaluation fails to complete the record check evaluation within the ten-calendar-day time frame.

(4) If the department determines, through the record check evaluation process, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed.

(5) The department may permit a person who is evaluated to maintain involvement with child care if the person complies with the department's conditions relating to the person's involvement with child care, which may include completion of additional training or an individually designed corrective action plan, or both. For an employee of a provider, these conditional requirements shall be developed with the provider. All conditions placed on a person's involvement with child care shall be communicated, in writing, to both the person subject to the evaluation and the provider.

i. Notice to parents of abuse in care. If there has been founded child abuse committed by an owner, director, or staff member of the child care facility or child care home, the department's administrator shall notify the parents, guardians, and legal custodians of each child for whom the facility or child care home provides care.

(1) The child care facility or child care home shall cooperate with the department in providing the names and addresses of the parent, guardian, or custodian of each child for whom the facility provides child care.

(2) This information shall be provided to the department within ten calendar days from the date of the initial request.

(3) Failure or refusal to provide the requested information may result in cancellation of the provider agreement.

120.11(4) Required notifications to the department.

a. The provider shall, within ten days, notify the department of any of the following:

- (1) Changes in substitutes;
- (2) Changes in household membership;
- (3) Address changes; and
- (4) Criminal convictions.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. No substitute shall be utilized in the care of children and no person shall be permitted to reside in the household until approved by the department.

c. If the provider does not notify the department of changes within ten days, the provider may be subject to revocation of the provider's child care assistance provider agreement or to recoupment of child care assistance provided, or both.

441—120.12(237A) Complaints. The department shall conduct an on-site visit when a complaint is received.

120.12(1) After each complaint visit, the department shall document whether the child care home was in compliance with requirements.

120.12(2) The written documentation of the department's conclusion as to whether the child care home was in compliance with requirements shall be available to the public. However, the identity of all complainants shall be confidential, unless expressly waived by the complainant.

441—120.13(237A) Prohibition from involvement with child care. If the department has prohibited a person or program from involvement with child care, that person or program shall not provide child care as a nonregistered child care home provider.

These rules are intended to implement Iowa Code section 237A.12.

ARC 2551C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 170, “Child Care Services,” Iowa Administrative Code.

These amendments revise Chapter 170 to reflect new federal Child Care and Development Block Grant (CCDBG) rules regarding child care assistance eligibility. Specifically, these amendments remove provisions regarding nonregistered child care providers from Chapter 170 and incorporate the provisions in new Chapter 120, “Child Care Homes.” (See **ARC 2552C** herein.) In addition, these amendments revise in-home provider language to mirror the new CCDBG rules.

Any interested person may make written comments on the proposed amendments on or before June 14, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

ITEM 1. Amend subrule 170.4(3) as follows:

170.4(3) Method of provision. Parents shall be allowed to exercise their choice for in-home care, except when the parent meets the need for service under subparagraph 170.2(2)“b”(3), as long as the conditions in paragraph 170.4(7)“d” are met. When the child meets the need for service under

HUMAN SERVICES DEPARTMENT[441](cont'd)

170.2(2) "b"(3), parents shall be allowed to exercise their choice of licensed, registered, or nonregistered child care provider except when the department service worker determines it is not in the best interest of the child. The provider must meet one of the applicable requirements set forth below.

~~The provider must meet one of the applicable requirements set forth below.~~

a. to d. No change.

e. *In-home care.* The adult caretaker selected by the parent to provide care in the child's own home shall be sent ~~the pamphlet Comm. 95 or Comm. 95(S), Minimum Health and Safety Requirements for Nonregistered Child Care Home Providers, and Form 470-2890 or 470-2890(S), Payment Application for Nonregistered Providers.~~ The provider shall complete and sign Form 470-2890 or 470-2890(S) and return the form to the department before payment may be made. An identifiable application is an application that contains a legible name and address and that has been signed. Signature on the form certifies the provider's understanding of and compliance with the conditions and requirements for nonregistered in-home care providers that include:

(1) ~~Minimum health and safety requirements;~~ Professional development. The provider shall complete:

1. Prior to provider agreement and every five years thereafter, minimum health and safety trainings, approved by the department, in the following content areas:

- Prevention and control of infectious disease, including immunizations.
- Prevention of sudden infant death syndrome and use of safe sleep practices.
- Administration of medication, consistent with standards for parental consent.
- Prevention of and response to emergencies due to food and allergic reactions.
- Building and physical-premises safety, including identification of and protection from hazards

that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.

- Prevention of shaken baby syndrome and abusive head trauma.
- Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.

- Handling and storage of hazardous materials and appropriate disposal of biocontaminants.
- Precautions in transporting children.

2. Prior to provider agreement, two hours of Iowa's training for mandatory reporting of child abuse.

3. Prior to provider agreement, first-aid and cardiopulmonary resuscitation (CPR) training meeting the following requirements:

• Training shall be provided by a nationally recognized training organization, such as the American Red Cross, American Heart Association, National Safety Council, or Emergency Medical Planning (Medic First Aid) or by an equivalent trainer using curriculum approved by the department.

- First-aid training shall include certification in infant and child first aid.

• The provider shall maintain a valid certificate indicating the date of first-aid training and the expiration date.

• The provider shall maintain a valid certificate indicating the date of CPR training and the expiration date.

(2) Limits on the number of children for whom care may be provided;

(3) Unlimited parental access to the child or children during hours when care is provided, unless prohibited by court order; and

(4) Conditions that warrant nonpayment.

f. *Nonregistered family child care home.* ~~The adult caretaker selected by the parent to provide care in a nonregistered family child care home shall be sent the pamphlet Comm. 95 or Comm. 95(S), Minimum Health and Safety Requirements for Nonregistered Child Care Home Providers, and Form 470-2890 or 470-2890(S), Payment Application for Nonregistered Providers. The provider shall complete and sign Form 470-2890 or 470-2890(S) and return the form to the department before payment may be made. An identifiable application is an application that contains a legible name and address and that has been signed. Signature on the form certifies the provider's understanding of and compliance~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~with the conditions and requirements for nonregistered providers that include:~~ A nonregistered child care home shall meet the requirements set forth in 441—Chapter 120.

- ~~(1) Minimum health and safety requirements;~~
~~(2) Limits on the number of children for whom care may be provided;~~
~~(3) Unlimited parental access to the child or children during hours when care is provided, unless prohibited by court order; and~~
~~(4) Conditions that warrant nonpayment.~~

~~g. Iowa records checks for nonregistered child care homes and in-home care.~~ If a nonregistered child care provider or a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete and submit to the department Form 470-5143, Iowa Department of Human Services Record Check Authorization Form, for the provider, for anyone having access to a child when the child is alone, and for anyone 14 years of age or older living in the home. The department shall use this form to conduct Iowa criminal history record and child abuse record checks.

(1) The purpose of these checks is to determine whether the person has committed a transgression that prohibits or limits the person's involvement with child care.

(2) The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or in other states.

(3) Records checks shall be repeated for each person subject to the check every two years and when the department or provider becomes aware of any new transgressions committed by that person.

~~h. National criminal history record checks for nonregistered child care homes and in-home care.~~ If a nonregistered child care provider or a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete Form DCI-45, Waiver Agreement, and Form FD-258, Federal Fingerprint Card, ~~for the provider, for anyone 18 years of age or older who is living in the home, or for anyone having access to a child when the child is alone.~~

(1) ~~The provider or other person~~ subject to this check shall submit any other forms required by the department of public safety to authorize the release of records.

(2) ~~The provider or other person~~ subject to this check is responsible for any costs associated with obtaining the fingerprints and for submitting the prints to the department.

(3) to (5) No change.

i. No change.

ITEM 2. Amend subparagraph 170.4(7)“a”(1) as follows:

(1) “Child care center” shall mean those providers as defined in 170.4(3) “a” and “g.” “Registered child development home” shall mean those providers as defined in 170.4(3) “b.” “Nonregistered family child care home” shall mean those providers as defined in ~~170.4(3)“f.”~~ 441—Chapter 120.

ARC 2540C

REGENTS BOARD[681]

Notice of Intended Action

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

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

Pursuant to the authority of 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 13, “Iowa State University of Science and Technology Organization and General Rules,” Iowa Administrative Code.

REGENTS BOARD[681](cont'd)

The proposed amendment revises 681—13.8(262) to permit the President of Iowa State University to delegate authority to sign contracts through the University's contracting authority policy.

Any interested person may make written comments on the proposed amendment on or before June 14, 2016, addressed to Tim Cook, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905; fax (515)281-6420; or e-mail timcook@iastate.edu.

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

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681—19.18(17A).

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

This amendment is intended to implement Iowa Code section 262.9.

The following amendment is proposed.

Amend rule 681—13.8(262) as follows:

681—13.8(262) Contracting authority.

13.8(1) *General delegation.* Except for authority retained by the board of regents in the rules adopted under [681] of the Iowa Administrative Code or in the regents policy manual, the board of regents has delegated to the president authority to enter into contracts and agreements. The president has further delegated authority for entering into such contracts and agreements ~~to the senior vice president for business and finance in all cases except the following:~~ as outlined in the university's contracting authority policy. This policy is available for review at the following Web site: <http://www.policy.iastate.edu/policy/contracting>.

~~*a.* Employment contracts and agreements involving deans, directors, department chairs and faculty are signed by the senior vice president and provost.~~

~~*b.* Applications, proposals, grants, contracts and agreements relating to economic development, research and sponsored projects are signed by the senior vice president and provost, vice president for research and economic development or the director of the office of sponsored programs administration.~~

~~*c.* Contracts and agreements relating to educational consortia, joint educational projects, cooperative education, service learning and internship opportunities, and academic instruction provided to others are signed by the senior vice president and provost.~~

13.8(2) *Specific delegations.* Within the limits prescribed by the board of regents, the president, the senior vice president for business and finance, the senior vice president and provost, the vice president for research and economic development, and the director of the office of sponsored programs administration may delegate the authority they have received as provided by the ISU contracting authority policy found in the policy library.

REVENUE DEPARTMENT[701]

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 the 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 2015 by each taxpayer, for replacement taxes payable in the 2016-2017 fiscal year.

REVENUE DEPARTMENT(cont'd)

**2015 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA
RATE CHANGES ONLY**

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3074	Aurelia Municipal Electric Utility	0.00007766
3228	Bigelow Municipal Electric	0.00225048
3230	City of Fredericksburg	0.00000539
3236	Coggon Municipal Light Plant	0.00004608
3237	Coon Rapids Municipal Utilities	0.00054180
3242	Corning Municipal Utilities	0.00031761
3085	Earlville Municipal Utilities	0.00130143
3267	Hopkinton Municipal Utilities	0.00000909
3276	LaPorte City Utilities	0.00000998
3277	Laurens Municipal Light & Power	0.00029015
3291	Milford Municipal Utilities	0.00017981
3324	Spencer Municipal Utilities	0.00013490
3342	Webster City Municipal Utilities	0.00043808
3347	West Point Municipal Utility	0.00012951

CO. #	IOUs — ELECTRICS	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00055662

CO. #	REC's	DELIVERY TAX RATE
4214	Boone Valley Electric Coop	0.00085075
4287	Consumers Energy	0.00197219
4250	Farmers Electric Coop - Greenfield	0.00292299
4249	Farmers Electric Coop - Kalona	0.00050512
4253	Franklin Rural Electric Coop	0.00080840
4254	Freeborn-Mower Cooperative	0.00132999
4260	Grundy Electric Cooperative	0.00050220
4223	Heartland Power Cooperative	0.00033977
4348	Western Iowa Power Coop	0.00103103

REVENUE DEPARTMENT(cont'd)

**2015 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA
RATE CHANGES ONLY**

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5238	Coon Rapids Municipal Gas	0.00006100
5241	Corning Municipal Gas	0.00000627
5283	Manilla Municipal Gas	0.00047428
5317	Rock Rapids Municipal Gas	0.00013422
5340	Wayland Municipal Gas	0.00025660
5344	West Bend Municipal Gas	0.00001907
5349	Winfield Municipal Gas	0.00060614

CO. #	IOUs — GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.02359319
5335	United Cities Gas	0.00647536

ARC 2547C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

The proposed amendments update the rules on tax credits for investments in qualifying businesses and community-based seed capital funds, also known as the “Angel Investor Tax Credit Program.” These amendments are necessary to implement 2015 Iowa Acts, chapter 138, and to restructure existing language to provide clarity.

Interested persons may submit comments on the proposed amendments on or before June 14, 2016. Comments may be submitted to Victoria Daniels by e-mail to victoria.daniels@iowa.gov; or by mail to Victoria Daniels, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact Victoria Daniels, Policy and Communications Division, Department of Revenue at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by June 14, 2016.

These amendments do not have any fiscal impact to the state of Iowa.

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

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

REVENUE DEPARTMENT[701](cont'd)

These amendments are intended to implement Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, and 422.60.

The following amendments are proposed.

ITEM 1. Amend subrule 42.22(1) as follows:

42.22(1) *Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund.*

a. Equity investments in a qualifying business or community-based seed capital fund before January 1, 2011. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011. For equity investments made in a qualifying business prior to January 1, 2004, only direct investments made by an individual are eligible for the investment tax credit. Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.

b. Equity investments in a qualifying business or community-based seed capital fund on or after January 1, 2011, and before July 2, 2015. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the ~~Iowa capital investment board or the economic development authority~~ when the tax credit certificates are issued.

(2) Amount of the tax credit. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund.

(3) Year in which the tax credit may be claimed. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. For investments made prior to January 1, 2014, a taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For investments made in qualifying businesses on or after January 1, 2014, the credit can be claimed in the year of the investment. However, for investments made in qualifying businesses during the 2014 calendar year, the credit cannot be redeemed prior to January 1, 2016. For example, if an individual taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the individual taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. However, if the taxpayer dies prior to redeeming the tax credit, the remaining tax credit may be redeemed on the decedent's final income tax return. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

(4) Carried over tax credits. If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if an individual taxpayer makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

(5) Limitations. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

(6) Pro rata tax credit claims for certain business entities. For equity investments made in a community-based seed capital fund or equity investments made in a qualifying business on or after January 1, 2004, an individual may claim the credit if the investment was made by a partnership, S

REVENUE DEPARTMENT[701](cont'd)

corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

~~For equity investments made in a qualifying business prior to January 1, 2004, only direct investments made by an individual are eligible for the investment tax credit. Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.~~

c. *Equity investments in a qualifying business on or after July 2, 2015.* For equity investments made on or after July 2, 2015, see 261—Chapter 115 for information regarding eligibility for qualifying businesses, applications for the investment tax credit for equity investments in a qualifying business, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. For fiscal years beginning July 1, 2011, the amount of the tax credits authorized cannot exceed \$2 million. The credit is equal to 25 percent of the taxpayer's equity investment in a qualifying business. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed \$500,000. The maximum amount of tax credit that may be issued per calendar year to a natural person and the person's spouse or dependent shall not exceed \$100,000 combined. For purposes of this paragraph, "dependent" has the same meaning as provided by the Internal Revenue Code.

(3) Year in which the tax credit may be claimed. A taxpayer shall not claim a tax credit prior to September 1, 2016. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate. For purposes of this paragraph, an investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code.

(4) Pro rata tax credit claims for certain business entities. An individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust. Any credits claimed by an individual are subject to the limitations provided in 42.22(1)"c"(2) above.

(5) Refundability. For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division II, any tax credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final completed return credited to the tax liability for the following tax year.

(6) Transfers and carryback of tax credits prohibited. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

ITEM 2. Amend rule ~~701—42.22(15E,422)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 15E.51, 15E.52, 15E.66, 422.11F, and 422.11G and section 15E.43 as amended by ~~2014~~ 2015 Iowa Acts, ~~Senate File 2359~~ chapter 138.

ITEM 3. Amend subrule 52.21(1) as follows:

52.21(1) *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.*

a. *Equity investments in a qualifying business or community-based seed capital fund before January 1, 2011.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011.

b. *Equity investments in a qualifying business or community-based seed capital fund on or after January 1, 2011, and before July 2, 2015.* For equity investments made on or after January 1, 2011, see

REVENUE DEPARTMENT[701](cont'd)

261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by ~~the Iowa capital investment board or~~ the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund.

(3) Year in which the tax credit may be claimed. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. For investments made prior to January 1, 2014, a taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For investments made in qualifying businesses on or after January 1, 2014, the credit can be claimed in the year of the investment, but these investments cannot be redeemed prior to January 1, 2016. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the corporation taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

(4) Carried over tax credits. If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

(5) Limitations. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

(6) Pro rata tax credit claims for certain business entities. For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

c. Equity investments in a qualifying business on or after July 2, 2015. For equity investments made on or after July 2, 2015, see 261—Chapter 115 for information regarding eligibility for qualifying businesses, applications for the investment tax credit for equity investments in a qualifying business, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. For fiscal years beginning July 1, 2011, the amount of the tax credits authorized cannot exceed \$2 million. The credit is equal to 25 percent of the taxpayer's equity investment in a qualifying business. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed \$500,000. For purposes of this paragraph, a tax credit issued to a partnership, limited liability company, S corporation, estate or trust electing to have income taxed directly to the individual shall be deemed to be issued to the individual owners based upon a pro rata share of the individual's earnings from the entity.

(3) Year in which the credit may be claimed. A taxpayer shall not claim a tax credit prior to September 1, 2016. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate. For the purposes of this

REVENUE DEPARTMENT[701](cont'd)

paragraph, an investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code.

(4) Pro rata tax credit claims for certain business entities. An individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust. Any credits claimed by an individual are subject to the limitations provided in 701—paragraph 42.22(1) "c."

(5) Carryforward period. For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division III, any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following three years or until depleted, whichever is earlier.

(6) Refunds, transfers, and carryback prohibited. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not refundable and is not transferable to any other taxpayer.

ITEM 4. Amend rule **701—52.21(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 15E.42, 15E.52, 15E.66 and 422.33 and section 15E.43 as amended by ~~2014~~ 2015 Iowa Acts, ~~Senate File 2359~~ chapter 138.

ITEM 5. Amend subrule 58.11(1) as follows:

58.11(1) *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.*

a. Equity investments in a qualifying business or community-based seed capital fund before January 1, 2011. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011.

b. Equity investments in a qualifying business or community-based seed capital fund on or after January 1, 2011, and before July 2, 2015. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by ~~the Iowa capital investment board or~~ the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund.

(3) Year in which the tax credit may be claimed. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. For investments made prior to January 1, 2014, a taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For investments made in qualifying businesses on or after January 1, 2014, the credit can be claimed in the year of the investment, but these investments cannot be redeemed prior to January 1, 2016. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the franchise taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

(4) Carried over tax credits. If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013,

REVENUE DEPARTMENT[701](cont'd)

had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

(5) Limitations. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

(6) Pro rata tax credit claims for certain business entities. For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

c. Equity investments in a qualifying business on or after July 2, 2015. For equity investments made on or after July 2, 2015, see 261—Chapter 115 for information regarding eligibility for qualifying businesses, applications for the investment tax credit for equity investments in a qualifying business, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. For fiscal years beginning July 1, 2011, the amount of the tax credits authorized cannot exceed \$2 million. The credit is equal to 25 percent of the taxpayer's equity investment in a qualifying business. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed \$500,000.

(3) Year in which the credit may be claimed. A taxpayer shall not claim a tax credit prior to September 1, 2016. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate. For the purposes of this paragraph, an investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code.

(4) Pro rata tax credit claims for certain business entities. An individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust. Any credits claimed by an individual are subject to the limitations provided in 701—paragraph 42.22(1) "c."

(5) Carryforward period. For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division V, any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following three years or until depleted, whichever is earlier.

(6) Refunds, transfers, and carryback prohibited. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not refundable and is not transferable to any other taxpayer.

ITEM 6. Amend rule **701—58.11(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 15E.42, 15E.66 and 422.60 and section 15E.43 as amended by 2014 2015 Iowa Acts, ~~Senate File 2359~~ chapter 138.

ARC 2546C**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 86, “Inheritance Tax,” Iowa Administrative Code.

The General Assembly enacted 2015 Iowa Acts, chapter 125, which simplified the language of Iowa Code section 450.9, specified that descendants by adoption are included in the meaning of “lineal descendants” for the purposes of that section, and added lineal descendants of stepchildren to the list of people entitled to the exemption from inheritance tax. The Department hereby amends its rules relating to inheritance taxes in order to reflect those changes.

Where references in the rules mirror the prior language of Iowa Code section 450.9, the proposed amendments reflect the new language of that section instead. References that exclude lineal descendants of stepchildren from the exemption are amended and, where appropriate, explanations are added as to which ascendants and descendants do, and which do not, qualify for the exemption under the new language of the Iowa Code. Some examples in the rules are amended to maintain consistency with the new language of the Iowa Code.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than June 27, 2016, to Ben Clough, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457. Alternatively, requests may be e-mailed to ben.clough@iowa.gov. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business, or an organization representing at least 25 such persons.

Interested persons may make written comments on the proposed amendments on or before June 14, 2016. Written comments on the proposed amendments should be directed by mail to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457 or by e-mail to ben.clough@iowa.gov. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue by telephone at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by June 14, 2016.

The Department finds that the changes to the inheritance tax exemption will reduce inheritance tax revenues beginning in fiscal year 2016.

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

After analysis and review of this rule making, the Department finds that the amendments to these rules are not likely to have a significant impact on jobs.

These amendments are intended to implement Iowa Code section 450.9 as amended by 2015 Iowa Acts, chapter 125.

The following amendments are proposed.

ITEM 1. Amend paragraph **86.2(1)“c”** as follows:

c. *Who is not required to file a return for ~~estate~~ estates of decedents dying on or after July 1, 2004.*

REVENUE DEPARTMENT[701](cont'd)

(1) Effective for estates with decedents dying on or after July 1, 2004, if an estate has no Iowa inheritance tax due and there is no obligation for the estate to file a federal estate tax return, even though real estate is involved, an Iowa inheritance tax return need not be filed if at least one of the following situations is applicable:

~~(1)~~ 1. All estate assets are held solely in joint tenancy with right of survivorship between husband and wife alone; or

~~(2)~~ 2. All estate assets are held solely in joint tenancy with right of survivorship, and not as tenants in common, solely between the decedent and individuals listed in Iowa Code section 450.9 as individuals that who are entirely statutorily exempt from Iowa inheritance tax on shares received from a decedent based on the individuals' relationship to the decedent. This numbered paragraph does not apply to a jointly held interest in an asset that passes to both an individual listed in Iowa Code section 450.9 and any other individual not listed in Iowa Code section 450.9, including that individual's spouse. See subparagraph 86.2(1) "c"(2) for a list of individuals who are statutorily exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9; or

~~(3)~~ 3. All assets are passing by beneficiary designation pursuant to a trust and are intended to pass the decedent's property at death or through a nonprobate transfer solely to individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax on shares received from a decedent based on their relationship to the decedent. The entire amount of property, interest in property, and income passing solely to the surviving spouse and to parents, grandparents, great-grandparents, and other lineal ascendants, to children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants is exempt from tax. This numbered paragraph does not apply to a jointly held interest in an asset that passes to both an individual listed in Iowa Code section 450.9 and any other individual not listed in Iowa Code section 450.9, including that individual's spouse. See subparagraph 86.2(1) "c"(2) for a list of individuals who are statutorily exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9; or

~~(4)~~ 4. All estate assets are passed by will or intestate succession as set forth in Iowa Code chapter 633, division IV, and beginning with section 633.210, solely to individuals who are statutorily exempt from Iowa inheritance tax as set forth ~~above~~ below in subparagraph ~~(3)~~ 86.2(1) "c"(2); or

~~(5)~~ 5. For estates of decedents dying on or after July 1, 2007, if the total aggregate value of all the tangible personal property in the estate is \$5,000 or less and in-kind distributions are made. Any in-kind distribution of personal property is exempt from inheritance tax when the total aggregate value of the tangible personal property in the estate is \$5,000 or less. If the total aggregate amount of tangible personal property is greater than \$5,000, then the exemption for in-kind distributions of tangible personal property does not apply. See Iowa Code section 450.4(7); see also Iowa Code section 633.276 for a description of tangible personal property that qualifies.

EXAMPLE 1: The total aggregate value of the tangible personal property in the estate is \$3,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is not subject to inheritance tax.

EXAMPLE 2: The total aggregate value of the tangible personal property in the estate is \$15,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is subject to inheritance tax because the total aggregate value of tangible personal property is greater than \$5,000.

Paragraph 86.2(1) "c" does not apply to interests in an asset or assets that pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

(2) Individuals listed in Iowa Code section 450.9 who are statutorily exempt from Iowa inheritance tax.

1. For estates of decedents dying prior to July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants are exempt from Iowa inheritance tax.

REVENUE DEPARTMENT[701](cont'd)

2. For estates of decedents dying on or after July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, lineal ascendants, lineal descendants, and stepchildren and their lineal descendants are exempt from Iowa inheritance tax. "Lineal descendants" includes descendants by adoption.

ITEM 2. Amend paragraph **86.2(2)"d"** as follows:

d. Estates of decedents dying on or after July 1, 1999.

(1) In addition to the special rule for surviving spouses set forth in paragraph 86.2(2) "c," of this subrule, effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and a lineal ascendant of the decedent, lineal descendant of the decedent, a child legally adopted in compliance with the laws of this state by the decedent or a stepchild of the decedent, or any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance tax return, unless such an estate has an obligation to file a federal estate tax return. ~~Property~~ For property of the estate passing by means other than by joint tenancy with right of survivorship or if any property passes passing by joint tenancy with right of survivorship when the title of to the property is held by persons other than a lineal ascendant, lineal descendant, a child legally adopted in compliance with the laws of this state, or a stepchild of the decedent or by any other person those persons declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

1. For estates of decedents dying prior to July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants are exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9.

2. For estates of decedents dying on or after July 1, 2016, the entire amount of property, interest in property, and income passing solely to the surviving spouse, lineal ascendants, lineal descendants, and stepchildren and their lineal descendants are exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9. "Lineal descendants" includes descendants by adoption.

(2) The exemption granted to stepchildren and their lineal descendants is limited to ~~that class of step relationships~~ the stepchildren of the decedent and the lineal descendants of the stepchildren of the decedent exclusively. The exemption is not extended to include any lineal ascendants or ~~descendants~~ of the step relationship, such as ~~stepgrandchild~~, stepparent or stepgrandparent, nor does it include step relations of the decedent's lineal ascendants or descendants, such as the stepchildren of the decedent's children. For a definition of "stepchild" for estates of decedents dying on or after July 1, 2003, please see the definition found in 701—86.1(450).

(3) The rate of Iowa inheritance tax imposed on a share is based upon the relationship of the beneficiary to the decedent or the type of entity that is the beneficiary. For estates of decedents dying before July 1, 2001, a net estate that is less than \$10,000 does not have an Iowa inheritance tax obligation. For estates of decedents dying on or after July 1, 2001, the net estate that is less than \$25,000 does not have an Iowa inheritance tax obligation. The following is the most current Iowa inheritance tax rate schedule for net estates over \$25,000:

SCHEDULE B

Brother, sister (including half-brother, half-sister), son-in-law, and daughter-in-law. There is no exemption.

If the share is:

Not over \$12,500, the tax is 5% of the share.

REVENUE DEPARTMENT[701](cont'd)

If over	But not over	Tax is	Of excess over
\$ 12,500	\$ 25,000	\$ 625 + 6%	\$ 12,500
25,000	75,000	1,375 + 7%	25,000
75,000	100,000	4,875 + 8%	75,000
100,000	150,000	6,875 + 9%	100,000
150,000	and up	11,375 + 10%	150,000

SCHEDULE C			
Uncle, aunt, niece, nephew, foster child, cousin, brother-in-law, sister-in-law, stepgrandchild <u>child's stepchild</u> , and all other individual persons. There is no exemption.			
If the share is: Not over \$50,000, tax is 10% of the share.			
If over	But not over	Tax is	Of excess over
\$ 50,000	\$100,000	\$ 5,000 + 12%	\$ 50,000
100,000	and up	11,000 + 15%	100,000

SCHEDULE D			
A firm, corporation or society organized for profit, including an organization failing to qualify as a charitable, educational or religious organization:			
Effective July 1, 2001, any fraternal and social organization which does not qualify for exemption under IRC Section 170(c) or 2055:			
15% of the amount.			

SCHEDULE E			
Any society, institution or association incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to a cemetery association, including a humane society not organized under the laws of this state, or to a resident trustee for use without this state, the rate of tax imposed in excess of \$500:			
10% of the amount.			

SCHEDULE F			
An unknown heir, as distinguished from an heir who is not presently ascertainable, due to contingent events:			
5% of the amount.			

SCHEDULE G			
A charitable, religious, educational, or veterans organization as defined in IRC Section 170(c) or 2055.			

REVENUE DEPARTMENT[701](cont'd)

All other shares to income tax exempt organizations that are not defined in IRC Section 170(c) must provide their IRS letter of determination. Organizations may also be required to provide evidence that the bequest has restricted the funds to a conforming activity.

Public libraries, public art galleries, hospitals, humane societies, municipal corporations, bequests for care of cemetery or burial lots of the decedent or the decedent's family, and bequests for religious services the total of which does not exceed \$500.

Entirely exempt: No tax.

ITEM 3. Amend paragraph **86.5(11)“f”** as follows:

f. Inclusion in the estate of the surviving spouse.

(1) Upon the death of the surviving spouse the qualified terminable interest property, which was the subject of an election, that was not disposed of prior to death, shall be included in the gross estate of the surviving spouse and be treated as if it passed in fee from the surviving spouse to those succeeding to the remainder interests. The included QTIP property will receive a stepped up basis for gain or loss as property acquired from a decedent. See 26 U.S.C. Section 1014(b)(10). The relationship of the surviving spouse to the owners of the remainder interest shall determine whether the individual exemptions provided for in Iowa Code section 450.9 apply and which tax rate in Iowa Code section 450.10 shall be applicable.

(2) Qualified property included in the estate of the surviving spouse shall be valued as if it passed from the surviving spouse in fee and shall be valued either (1) at the time of the surviving spouse's death under the provisions of Iowa Code section 450.37 and rule 701—86.9(450), or at its special use value under Iowa Code chapter 450B and rule 701—86.8(450B), if the real estate is otherwise qualified; or (2) at the alternate valuation date under the provisions of Iowa Code section 450.37(1)“b” and rule 701—86.10(450), if the property is otherwise eligible.

(3) This subrule can be illustrated by the following examples:

EXAMPLE 1. Decedent A died testate on July 2, ~~1997~~ 2017, survived by a spouse, B, aged 65, ~~and two step-grandchildren, C and D~~ a child, C, and C's stepchildren, D and E. Under A's will, all property was left in trust to pay all of the income to B for life. Upon B's death, the trust was to terminate and the principal was to be divided equally between ~~C and D and E~~, who are the ~~grandchildren~~ stepchildren of ~~surviving spouse B~~ child C. The personal representative elected to treat the trust assets as passing entirely in fee to surviving spouse B. The net corpus of the trust consists of a 160-acre farm valued at \$250,000 and personal property valued at \$200,000.

Tax on the basis of all property passing in fee to B

Share	Tax
\$450,000	\$0

EXAMPLE 2. Same facts as Example 1, with the exception that the personal representative did not make an Iowa qualified terminable interest election. In this fact situation, the trust assets are taxed on the basis of a life estate passing to the surviving spouse B with a remainder over to ~~C and D and E~~.

REVENUE DEPARTMENT[701](cont'd)

Share	Tax
Spouse B: Life estate factor .42226 $\$450,000 \times .42226 = \$190,017$	-0-
<u>C</u> 's <u>D</u> 's share $\frac{1}{2}$ remainder factor .57774 $\$450,000 \times .57774 \div 2 = \$129,991.50$	\$15,498.73
<u>D</u> 's <u>E</u> 's share—same as <u>C</u> 's <u>D</u> 's share \$129,991.50	\$15,498.73
Total \$450,000.00	\$30,997.46

In Example 1, the qualified terminable interest election results in no inheritance tax. However, as shown in Example 2, it would have cost the ~~step-grandchildren, C and D~~ and E, \$30,997.46 if the election had not been made.

EXAMPLE 3. B G, the surviving spouse of ~~A in Example 1~~ F, died testate, a resident of Iowa, on October 15, 1997 2017. Under the terms of B's G's will, B's G's grandchildren, C H and D I, inherit B's G's entire estate in equal shares. B's G's net estate consists of \$200,000 in personal property and a 160-acre Iowa farm with a value of \$250,000 both of which were the subject of a qualified terminable interest election in A's F's estate and in which C H and D I own the remainder interest. B's G's net estate also consisted of \$100,000 in intangible personal property ~~which B that G~~ owned in fee simple.

B's G's net estate for Iowa inheritance tax purposes consists of the following:

\$200,000, personal property from A's F's estate.

\$250,000, 160-acre farm from A's F's estate.

\$100,000, owned by B G in fee simple.

\$550,000 Total

The shares of C H and D I and their tax owed in B's G's estate are computed as follows:

Share	Tax
Beneficiary <u>C H</u> : $\frac{1}{2}$ of the net estate, or \$275,000	\$0
Beneficiary <u>D I</u> : (same as <u>C H</u>) \$275,000	\$0
Totals \$550,000	\$0

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TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 117, "Outdoor Advertising," and Chapter 118, "Logo Signing," Iowa Administrative Code.

The proposed amendments to Chapter 117 ease restrictions and clarify existing requirements for companies and individuals interested in outdoor advertising signs along primary highways in Iowa. The amendments correct the use of terms for the sake of meaning and consistency with Iowa Code chapter 306C; eliminate redundant, confusing or nongermane language; improve reader comprehension of original intent; eliminate overly restrictive regulations; clarify zoning requirements; provide for notice preceding permit revocation allowing opportunity to correct signs which are blank or in a state of

TRANSPORTATION DEPARTMENT[761](cont'd)

disrepair; eliminate the permitting system for religious signs and service club signs; clarify that permit revocation may occur in conjunction with the issuance of removal notices; and include opportunities for contested case hearings within the rule rather than expecting the reader to search other Iowa Code chapters.

The proposed amendments to Chapter 118 clarify that individual business signs are to be provided by the applicants; allow for the placement of signs in urban areas; limit the number of individual business signs to four on a trailblazer service sign; update the list of protected statuses to the antidiscrimination provision; prohibit entry restrictions based on age; set a minimum of eight hours of operation per day for food services; require a minimum seating for ten customers for food services; allow for breweries and distilleries to qualify for the attractions category of the program; clarify existing procedures regarding the attractions category to explain that the department reviews the sites first for technical compliance and then submits the applications to the tourist signing committee; clarify that the \$50 service fee for changing out logo signs is a per-trip fee; require signs to be retroreflective; and eliminate the separate RV symbol program.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than June 14, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, June 16, 2016, at 1 p.m. in the Administration Building, First Floor, South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by June 27, 2016.

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

These amendments are intended to implement Iowa Code chapters 306B and 306C.

The following amendments are proposed.

ITEM 1. Amend rule **761—117.1(306B,306C)**, definitions of “Official sign or notice” and “On-premises sign,” as follows:

“*Official sign or notice*” means a sign or notice lawfully erected and maintained by a city, county or public agency within its territorial or zoning jurisdiction for the purpose of carrying out an official duty or responsibility. ~~The definition includes a historical marker lawfully erected by a state or local government agency or a nonprofit historical society.~~

“*On-premises sign*” or “*on-property sign*” means an advertising device advertising the sale or lease of, or activities being conducted upon, the property where the sign is located. The criteria to be used to determine if an advertising device qualifies as on-premises signing, excluding development directory signing, include but are not limited to the following:

1. No change.
2. An on-premises sign must be located on the same property as the advertised activity or the same property as that advertised for sale or lease. A subdivided property is may be considered to be

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one property if all lots remain under common ownership and all lots share a common, private access to public roads. However, if any lot in the subdivided property is sold or disposed of in any manner, that lot will be considered to be separate property.

3. ~~Contiguous lots or parcels of land combined for development purposes are~~ may be considered to be one property for outdoor advertising control purposes provided they are owned or leased by the same party ~~or parties. However, land held by lease or easement must be used for a purpose related to the advertised activity other than signing.~~ To be considered one property, all contiguous lots or parcels of land must also be used for a purpose related to the advertised activity other than signing.

4. to 7. No change.

ITEM 2. Amend rule 761—117.2(306B,306C) as follows:

761—117.2(306B,306C) General provisions.

117.2(1) Scope. This chapter of rules pertains to all advertising devices which are visible from the main traveled way of any ~~interstate, freeway primary, or primary~~ highway, with the following exceptions:

a. and *b.* No change.

117.2(2) to 117.2(4) No change.

117.2(5) Advertising devices within the right of way. Any advertising device placed or erected within the right of way of any ~~interstate, freeway primary, or primary~~ highway, ~~except signs or devices authorized by law or approved by the department, is an obstruction in the highway right of way and violates Iowa Code section 318.3 and subsection 318.11(4) in violation of Iowa Code chapter 318 is subject to removal in the manner specified in Iowa Code chapter 318. In accordance with Iowa Code sections 318.4 and 318.5, the department shall remove the advertising device and assess the cost of removal against the owner of the device.~~

ITEM 3. Amend rule 761—117.3(306B,306C) as follows:

761—117.3(306B,306C) General criteria. The department shall control the erection and maintenance of advertising devices, subject to the provisions of these rules, in accord with the following criteria:

117.3(1) Prohibition. Advertising devices shall not be erected, maintained or illuminated unless they comply with the following:

a. No ~~sign~~ advertising device shall attempt or appear to attempt to direct the movement of traffic.

b. No sign advertising device shall interfere with, imitate or resemble any official sign, signal or device.

c. No ~~directional sign or sign~~ advertising device subject to the more restrictive controls of the bonus Act shall move or have any animated or moving parts.

d. No sign advertising device shall be erected or maintained upon trees, painted or drawn upon rocks or other natural features.

e. No off-premises sign advertising device shall include any flashing, intermittent or moving light or lights except those signs giving public service information such as time, date, temperature, weather and news. No on-premises sign located within the adjacent area of an interstate highway but outside an area zoned and used for commercial or industrial purposes, as defined in rule 761—117.1(306B,306C), shall include any flashing, intermittent or moving light or lights except those signs giving public service information such as time, date, temperature, weather and news. Any variation or addition to the stated service information is subject to department approval. This paragraph does not prohibit an LED display, provided:

(1) to (3) No change.

f. No lighting shall be used in any way in connection with any sign advertising device unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of any highway, or is of such low intensity or brilliance as to not cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle. This paragraph does not prohibit an LED display provided the light intensity presented does not exceed that allowed for other illuminated displays.

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g. No ~~directional sign or sign~~ advertising device subject to the more restrictive controls of the bonus Act shall be obsolete.

h. ~~Signs~~ No ~~advertising device~~ shall be maintained in good repair so as to be legible. Any ~~advertising device that for a period of at least 90 days is in a state of disrepair or is illegible due to deferred maintenance is subject to removal in the manner specified in subrule 117.8(1), and any permit that has been issued for the advertising device is subject to revocation~~ in a state of disrepair or illegible for a period of time exceeding 90 days.

i. ~~Signs~~ Advertising devices shall be securely affixed to a substantial structure.

j. No ~~directional sign or sign~~ advertising device subject to the more restrictive controls of the bonus Act shall advertise activities which are illegal under federal or state laws in effect at the location of those activities or at the location of the sign.

k. No change.

l. No off-premises advertising device may be erected within the adjacent area of any ~~interstate, freeway primary or primary~~ highway that has been designated a scenic highway or scenic byway if the advertising device will be visible from the highway.

m. An advertising device shall not be constructed or reconstructed beyond the adjacent area in unincorporated areas of the state if the advertising device is visible from the main traveled way of any ~~interstate, freeway primary, or primary~~ highway except for on-premises signs and official signs and notices.

117.3(2) and 117.3(3) No change.

117.3(4) *Zoning exclusions.*

a. A zone in which limited commercial or industrial activities are permitted incidental to other primary land uses is not a commercial or industrial zone for ~~outdoor~~ advertising control purposes.

b. Action which is not a part of comprehensive zoning ~~and is taken primarily to permit outdoor advertising devices in accordance with Iowa Code chapter 335 or Iowa Code chapter 414~~ is not ~~zoning a commercial or industrial zone~~ for advertising control purposes.

c. Action taken primarily to permit advertising devices is not a commercial or industrial zone for advertising control purposes.

ITEM 4. Amend rule 761—117.5(306B,306C) as follows:

761—117.5(306B,306C) Location, size and spacing requirements. This rule does not apply to on-premises signs.

117.5(1) *Advertising devices lawfully in existence prior to July 1, 1972.*

a. An advertising device that was lawfully in existence prior to July 1, 1972, and is visible from any ~~interstate, freeway primary or primary~~ highway, including a device located beyond the adjacent area in unincorporated areas, may remain in existence without conforming to subrule 117.5(5) as long as the device otherwise conforms to all other applicable statutory and regulatory requirements. The permit provisions of rule 761—117.6(306C) apply.

b. No change.

117.5(2) to 117.5(4) No change.

117.5(5) *Advertising devices erected after July 1, 1972.* Except as otherwise provided in this chapter, an advertising device which is visible from the main traveled way of any ~~interstate, freeway primary, or primary~~ highway shall not be erected after July 1, 1972, or subsequently maintained within the adjacent area unless the advertising device complies with the following:

a. No change.

b. *Commercial or industrial area.*

(1) No change.

(2) An advertising device visible from the main traveled way of a ~~freeway primary or noninterstate primary~~ highway must be located within a commercial or industrial zone or an unzoned commercial or industrial area, as defined in Iowa Code section 306C.10.

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c. Spacing within city—interstate and freeway-primary highway. Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) No change.

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite the advertising device.

(3) No change.

d. Spacing outside city—interstate and freeway-primary highway. Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) No change.

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite the advertising device.

(3) No change.

e. to g. No change.

h. Spacing—measurement of distance. The minimum distance between two advertising devices visible to traffic proceeding in the same direction shall apply without regard to the side of the highway on which the advertising devices may be located and shall be measured along a line parallel to the centerline of the highway between points directly opposite the advertising devices. When a sign is visible and subject to control from more than one primary highway (~~interstate, freeway-primary or primary~~), it must meet spacing requirements along each route.

i. Spacing—rural area next to incorporated area.

(1) No change.

(2) In those areas where the adjacent area on one side of the highway is incorporated and on the opposite side of the highway all or part of the adjacent area is not, the spacing on both sides of the highway, except for daylight spacing, shall be regulated by the rural or unincorporated area spacing requirements.

j. to l. No change.

ITEM 5. Amend rule 761—117.6(306C), introductory paragraph, as follows:

761—117.6(306C) Outdoor advertising permits and fees required. The owner of an advertising device must apply to the department for an outdoor advertising permit if the device is visible from the main traveled way of any ~~interstate, freeway-primary or primary~~ highway and the device is regulated by subrule 117.4(1) or rule 761—117.5(306B,306C).

ITEM 6. Amend paragraph **117.6(1)“a”** as follows:

a. A permit is required for each face of an advertising device; thus, a permit application must be submitted for each face. Three permits are required for a tri-face device if all three faces are visible from the main traveled way of ~~an interstate, freeway-primary, or a primary~~ highway. However, only one application and permit are required for a back-to-back advertising device that identifies the same business or service on each face if each face is no larger than 8 feet in width or height and 32 square feet in area.

ITEM 7. Amend subrule 117.6(9) as follows:

117.6(9) Blank sign.

a. A blank sign is:

(1) An advertising device that has had a face physically removed.

~~(2) An advertising device that has been completely removed.~~

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~~(3)~~ (2) An advertising device that does not display copy. “This space for rent” or a similar message is not copy.

(4) (3) An advertising device that qualifies as an obsolete sign.

~~b. A sign that is a blank sign for at least six months shall result in revocation of any permit that has been issued for the advertising device and removal of the advertising device in the manner specified in subrule 117.8(1). A blank sign shall not remain in blank status for a period of time exceeding six months.~~

~~c. If the department determines that an advertising device has been blank for a period of time exceeding six months, the department shall issue a notice pursuant to rule 761—117.8(306B,306C) in which the owner has 30 days to either cause it to conform or to remove it.~~

ITEM 8. Amend rule 761—117.7(306C) as follows:

761—117.7(306C) Official signs and notices, public utility signs, and service club and religious notices. This rule does not pertain to on-premises signs.

~~117.7(1) Official signs and notices.~~ Official signs and notices regulated by the Manual on Uniform Traffic Control Devices, as adopted in 761—Chapter 130, shall comply with its provisions. All other official signs and notices shall comply with applicable state law, local ordinance or administrative authority. Historical markers are subject to the approval of the department if they are erected within the right of way of any interstate, freeway primary or primary highway.

~~117.7(2) Public utility signs.~~ Public utility signs shall be erected no larger than required to adequately convey the necessary message, and only at such places as are required to adequately mark the location of the utility. Public utility signs are subject to the approval of the department if they are erected within the right of way of any interstate, freeway primary or primary highway.

~~117.7(3) Service club and religious notices.~~ Service club and religious notices may be placed upon private property with the permission of the land owner provided the notice complies with the definition of “service club or religious notice” in rule 761—117.1(306B,306C), complies with the general criteria of rule 761—117.3(306B,306C), and does not exceed eight square feet in area.

~~a. Service club and religious notices shall not be placed within the right of way.~~

~~b. Service club and religious notices may be placed within the adjacent area of an interstate highway only if they are eligible for issuance of an outdoor advertising permit. All permit provisions apply, including but not limited to size and spacing requirements of subrule 117.5(5) and permit fees.~~

~~c. Service club and religious notices may be placed outside the right of way of a freeway primary or primary highway and outside the adjacent area of an interstate highway. Notices in these locations may be grouped upon a common panel and shall comply with the following:~~

~~(1) The message shall comply with the definition of “service club or religious notice” in rule 761—117.1(306B,306C).~~

~~(2) A notice shall not exceed eight square feet in area.~~

~~(3) A notice shall comply with rule 761—117.3(306B,306C).~~

~~(4) The department’s approval shall be obtained prior to erection. A special application form shall be filed with the department, but no fees are required.~~

ITEM 9. Amend rule 761—117.8(306B,306C) as follows:

761—117.8(306B,306C) Removal procedures. The department shall cause to be removed every advertising device illegally erected or maintained and every abandoned sign.

117.8(1) Removal of illegal and abandoned advertising devices. In accordance with Iowa Code sections 306B.5 and 306C.19, an advertising device erected or maintained in violation of Iowa Code chapter 306B or 306C or these rules is a public nuisance and may be removed by the department upon 30 days’ notice, by certified mail, to the owner of the advertising device and to the owner of the land on which the advertising device is located.

~~a. The notice shall require the owner of the advertising device to remove the advertising device if it is prohibited, or to cause it to conform to the provisions of these rules if it is not. The department may~~

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revoke a permit issued for the advertising device as part of the same notice, in which case, the notice shall be served by restricted certified mail or by personal service.

b. to e. No change.

117.8(2) *Removal from right of way and other state-owned property.* The department shall remove advertising devices erected upon the right of way of any ~~interstate, freeway primary or~~ primary highway; see subrule 117.2(5). Unauthorized advertising devices erected upon other property owned by the state of Iowa are subject to removal by the agency, board, commission or department having control or jurisdiction of the property.

ITEM 10. Adopt the following new rule 761—117.10(17A,306C):

761—117.10(17A,306C) Contested cases.

117.10(1) An applicant who has been denied an outdoor advertising permit by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the office of traffic and safety at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the department's mailing of the letter denying the application.

117.10(2) The owner of an outdoor advertising permit which has been revoked or canceled by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the office of traffic and safety at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the owner's receipt of the revocation notice issued by the department.

117.10(3) Failure to timely request a hearing on the denial, revocation, or cancellation of a permit is a waiver of the right to a hearing and a failure to exhaust administrative remedies.

ITEM 11. Amend rule 761—117.15(306C) as follows:

761—117.15(306C) Development directory signing.

117.15(1) No change.

117.15(2) *Limitation.* Each business within the development is limited to its name appearing on not more than two development directory signs visible to traffic proceeding in any one direction on any ~~interstate, freeway primary or~~ primary highway.

117.15(3) *Commercial or industrial development.* A development directory sign must be located within a commercial or industrial development. For the purposes of this rule, a commercial or industrial development is a single premises that meets all of the following requirements:

a. No change.

b. No part of the development is separated from another part by ~~an interstate, freeway primary, or~~ a primary highway.

c. to g. No change.

ITEM 12. Amend rule 761—118.1(306C) as follows:

761—118.1(306C) Introduction. Logo signing consists of individual business signs attached to specific service signs erected by the department within the right-of-way of interstate and freeway-primary highways. The purpose of logo signing is to provide specific motorist service information of interest to the traveling public. Logo signing shall comply with this chapter and the "Manual on Uniform Traffic Control Devices," as adopted in rule 761—130.1(321). The department shall perform all required installation, maintenance, removal and replacement of specific service signs and business signs within the right-of-way. The business signs are provided by the applicants.

ITEM 13. Amend rule **761—118.2(306C)**, definition of "Trailblazing sign," as follows:

"Trailblazing sign" means a specific service sign erected on the road network accessed from an interchange that has logo signing; the sign directs motorists to a particular business signed on the mainline and has spaces for the attachment of business signs.

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ITEM 14. Amend rule 761—118.3(306C) as follows:

761—118.3(306C) Erection and location of specific service signs and placement of business signs.

118.3(1) General.

a. The department shall erect specific service signs at rural interchanges if the requirements of this chapter are met and sufficient space is available. The department may also erect specific service signs at urban, or nonrural interchanges if the requirements of this chapter are met and sufficient space is available. If sufficient space is not available for more than one specific service sign, the department may install a general service sign in lieu of a specific service sign.

b. No change.

118.3(2) Mainline specific service signs and placement of business signs. Following are the requirements for mainline specific service signs erected in advance of an interchange, in a single direction of travel, and limitations regarding the number and types of business signs attached to these service signs.

a. to i. No change.

j. The department shall designate each mainline specific service sign for a particular type of motorist service, although the service sign may, in use, be displaying more than one service type, subject to paragraph “h” of this subrule. When a specific service sign designated for a particular service type exists and that sign is full, the department may grant an exception, in accordance with subrule 118.4(11), to allow the placement of a business sign for that service type on a specific service sign designated for another service type, provided that the department has displayed the legend for that service type on the service sign.

118.3(3) No change.

118.3(4) Trailblazing signs and placement of business signs.

a. to c. No change.

d. Trailblazing signs shall not display more than four business signs.

d. e. The department may approve the use of an official traffic control device that is placed by the department or a local jurisdiction on the public right-of-way in compliance with the “Manual on Uniform Traffic Control Devices” as a substitute for a trailblazing sign.

e. f. If site or other conditions do not permit the erection of a trailblazing sign, the department may approve the use of an off-premises advertising device as a substitute for a trailblazing sign if the advertising device complies, as applicable, with 761—Chapter 117 (including permit requirements) and any local regulations; the device is legible and understandable; and the device is placed along the route in advance of the intersection where the trailblazing sign would have been placed.

f. g. No more than two trailblazing signs ~~or~~, including approved substitutes, are allowed for a business. If the department determines that more than two trailblazing signs ~~or~~, including approved substitutes, would be needed to guide motorists to the business, the business does not qualify for logo signing at the interchange. Also, if the department determines that one or two trailblazing signs or approved substitutes are required and conditions do not permit the erection of the required trailblazing signs or approved substitutes, the business does not qualify for logo signing at the interchange.

ITEM 15. Amend rule 761—118.4(306C) as follows:

761—118.4(306C) Eligibility for placement of business signs on mainline specific service signs. To qualify for placement of a business sign on a mainline specific service sign, the business ~~must~~ shall be open to the general public, shall not restrict entrance based on age, and shall meet the following requirements:

118.4(1) Written assurance. Discrimination prohibited. ~~The business shall give the department written assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, age, sex or national origin, and shall not be in continuing breach of that assurance.~~ As a condition of approval as a participant in the logo signing program, the applicant shall give the department written assurance of the business’s conformity with all applicable laws prohibiting discrimination based on age, race, creed, color, sex, sexual orientation,

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gender identity, national origin, religion or disability, and a participant shall not be in breach of that assurance.

118.4(2) and **118.4(3)** No change.

118.4(4) *Food.*

a. Qualifications. To qualify for placement of a business sign on a food specific service sign, the business must:

(1) No change.

(2) Operate a minimum of eight hours per day, six days per week, and serve three meals per day: breakfast, lunch, and dinner.

1. At a minimum, breakfast shall be served from 10 a.m. to 11 a.m. and shall consist of at least two of the following items: eggs, bacon, ham, sausage, pancakes, waffles, oatmeal, cereal, fruit, muffins, toast, croissants, doughnuts or rolls, or combinations thereof. Hamburgers, hot dogs, pizza, burritos, or other foods not commonly associated with breakfast menus do not meet the breakfast requirement and at least two of the following drinks: coffee, juice, tea or milk.

2. and 3. No change.

(3) and (4) No change.

(5) Have seating available for a minimum of ten customers.

b. and c. No change.

118.4(5) and **118.4(6)** No change.

118.4(7) *Attraction.*

a. and b. No change.

c. Types of qualifying sites or attractions. The site or attraction must be one of the following:

(1) to (7) No change.

(8) Winery, brewery or distillery with on-site production, tours, gift shop, and tasting room.

(9) to (17) No change.

118.4(8) to **118.4(11)** No change.

ITEM 16. Amend subrule 118.5(3) as follows:

118.5(3) *Applications for attraction signing.* The department shall perform an initial review of all applications for attraction signing to determine if the attraction signing meets the technical requirements, such as the maximum distance the site or attraction is allowed to be from the interchange. If the site or attraction meets the technical requirements, the department shall submit the applications for attraction signing to the tourist signing committee. The tourist signing committee will determine whether the applications meet the qualifications set forth in subrule 118.4(7) for an attraction under the logo signing program. The composition of the committee is set out in 761—subrule 119.5(3).

ITEM 17. Amend subrule 118.5(5) as follows:

118.5(5) *Fees.* A business is required to pay the following fees to the department for participation in the logo signing program.

a. and b. No change.

c. Service fee. The department may install replacement business signs at the request of the business and shall assess a \$50 service fee per business sign installed. The department shall also assess a \$50 service fee to install a renovated or new business sign that replaces a misleading, unsightly, badly faded or dilapidated sign, as specified in subrule 118.7(5). If removal of an existing business sign for the purpose of refurbishing is requested by the business, thereby requiring two service trips by the department, the service fee shall be applied per trip. The department shall invoice the business once installation is complete; the service fee is due within 30 days.

~~*d. RV symbol fee. See rule 761—118.8(306C).*~~

ITEM 18. Amend subrule 118.7(3) as follows:

118.7(3) *Reflectorization.* ~~Reflectorization of business signs is optional, at the discretion of the applicant~~ All business signs must be retroreflective.

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ITEM 19. Amend subrule 118.7(4) as follows:

118.7(4) Supplemental messages.

a. With department approval, a supplemental ~~messages~~ message such as “OPEN 24 HRS,” “DIESEL,” “E-85,” “MECHANIC ON DUTY,” “24 HR TOWING,” “RV ACCESS,” or the dates of operation for seasonal operations may be displayed on a mainline business ~~signs~~ sign provided the letter height is at least 6 5 inches. Approval shall be limited to essential motorist information and does not extend to messages such as, but not limited to, “INDOOR POOL,” “CAR WASH” or “PLAY AREA.”

b. With departmental approval, a scaled-down version of the supplemental messages indicating the dates of operation for seasonal operations message used on the mainline business sign may be displayed on ramp business signs provided the letter height is at least 2 inches.

c. Business signs are limited to one supplemental message per business sign.

ITEM 20. Rescind and reserve rule **761—118.8(306C)**.

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TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321.180B, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 602, “Classes of Driver’s Licenses,” Iowa Administrative Code.

The proposed amendments to this chapter:

- Add the Department’s Web site as a resource to obtain driver’s license applications and forms.
- Add a new subrule to explain the passenger restriction for an intermediate license and the process required to waive the restriction. The passenger restriction is added to an intermediate driver’s license, unless waived by the licensee’s parent or guardian, and requires the licensee to limit the number of unrelated minor passengers in the motor vehicle when the intermediate licensee is operating the motor vehicle to one passenger for the first six months after the license is issued. The proposed amendment conforms to existing practice.

- Add a new paragraph to comply with Iowa Code section 321.180B(2) concerning eligibility requirements for an intermediate license, to clarify that the 12-month period to possess an instruction permit is calculated cumulatively to include any period of time the applicant possessed a valid instruction permit but excludes any period of time the applicant did not have a valid driving privilege; and to clarify that the six-month period to remain accident and violation free is calculated continuously and must encompass without interruption the six-month period of time immediately preceding the application. The proposed amendment conforms to existing practice.

- Add a new paragraph to comply with Iowa Code section 321.180B(4) concerning eligibility requirements for persons who are 17 years of age and relating to full driver’s licenses to state that the applicant is required to possess an intermediate license for a 12-month period of time and must remain accident and violation free before applying for a full license. The applicant must hold an intermediate license issued under Iowa Code section 321.180B(2) or a comparable license issued by another state and maintain a valid driving privilege through the continuous 12-month period without interruption. The proposed amendment conforms to existing practice.

- Amend rules concerning a minor’s school license to align the hours that a minor school licensee may operate a motor vehicle unaccompanied during the hours provided for in Iowa Code section 321.194. Also, the proposed amendments update the process by which an applicant who qualifies for a “hardship exemption” may demonstrate that completion of the driver’s education course would impose a hardship. The proposed amendments conform to existing practice.

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- Add a new subrule to accommodate a student who holds a minor's school license and whose parents are divorced or legally separated and as a result of shared custody maintain more than one residence. The proposed amendments conform to existing practice.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@dot.iowa.gov.

5. Be received by the Office of Policy and Legislative Services no later than June 14, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, June 16, 2016, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

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

These amendments are intended to implement Iowa Code sections 321.180B and 321.194.

The following amendments are proposed.

ITEM 1. Amend subrule 602.1(2) as follows:

602.1(2) *Special licenses and permits.* The department issues the following special licenses and permits. More than one type of special license or permit may be issued to an applicant. On the driver's license, a restriction number designates the type of special license or permit issued, as follows:

- 1—Motorcycle instruction permit—includes motorcycle instruction permits issued under Iowa Code subsections 321.180(1) and 321.180B(1)

- 2—Noncommercial instruction permit (vehicle less than 16,001 gross vehicle weight rating)—includes instruction permits, other than motorcycle instruction permits, issued under Iowa Code subsection 321.180(1), and section 321.180A and subsection 321.180B(1)

- 3—Commercial learner's permit

- 4—Chauffeur's instruction permit

- 5—Motorized bicycle license

- 6—Minor's restricted license

- 7—Minor's school license

ITEM 2. Amend rule 761—602.2(321) as follows:

761—602.2(321) Information and forms. Applications, forms and information about driver's licensing are available at any driver's license examination station or on the department's Web site at www.iowadot.gov. Assistance is also available at the address in rule 761—600.2(17A).

602.2(1) to 602.2(3) No change.

602.2(4) *Passenger restriction for intermediate licensee.* The passenger restriction required by Iowa Code subsection 321.180B(2) will be added to an intermediate license unless waived by the licensee's parent or guardian at the time the license is issued. If the restriction is not waived at the time the license is issued, the intermediate license will be designated with a "9" restriction with the following notation: "Only 1 unrelated minor passenger allowed until [six months from the date the license is issued]." The licensee must obey the restriction for the first six months after the intermediate license is issued. If a parent or guardian wishes to waive the passenger restriction after the license has

TRANSPORTATION DEPARTMENT[761](cont'd)

already been issued, the licensee and the parent or guardian must apply for a duplicate license and pay the replacement fee pursuant to 761—subrule 605.11(3).

This rule is intended to implement Iowa Code sections 321.8, 321.178, 321.180B, 321.184, 321.189, and 321.194.

ITEM 3. Amend subrule 602.11(2) as follows:

602.11(2) Requirements.

a. and b. No change.

c. For purposes of determining eligibility for an intermediate license issued to a person 16 or 17 years of age under Iowa Code subsection 321.180B(2):

(1) The 12-month period during which the applicant is required to possess an instruction permit before applying for an intermediate license shall be calculated cumulatively and shall include any period of time during which the applicant has held a valid instruction permit issued under Iowa Code subsection 321.180B(1), a minor's school license issued under Iowa Code section 321.194, or comparable instruction permit or license issued by another state, but shall exclude any period of time during which the permit or license is suspended, revoked, or canceled, or the applicant otherwise did not have a valid driving privilege.

(2) The six-month period during which the applicant is required to remain accident and violation free shall be calculated continuously and must encompass without interruption the six-month period of time immediately preceding the application. The applicant must hold a valid instruction permit issued under Iowa Code subsection 321.180B(1), a minor's school license issued under Iowa Code section 321.194, or a comparable instruction permit or license issued by another state and maintain a valid driving privilege without interruption throughout the continuous six-month period.

d. For purposes of determining eligibility for a full license issued to a person 17 years of age under Iowa Code subsection 321.180B(4), the 12-month period during which the applicant is required to possess an intermediate license and to remain accident and violation free before applying for a full license shall be calculated together and continuously and must encompass without interruption the 12-month period of time immediately preceding the application. The applicant must hold a valid intermediate license issued under Iowa Code subsection 321.180B(2) or a comparable license issued by another state and maintain a valid driving privilege without interruption throughout the continuous 12-month period.

ITEM 4. Amend rule 761—602.26(321) as follows:

761—602.26(321) Minor's school license.

602.26(1) Validity and issuance.

a. No change.

~~b. The license is valid for driving unaccompanied from 6 a.m. to 10 p.m. on the most direct route between a licensee's residence and schools of enrollment or the closest school bus stop or public transportation service, and between schools of enrollment, to attend scheduled courses and extracurricular activities within the school district, during the times and for the purposes set forth in Iowa Code subsection 321.194(1) "a" and at any time~~

~~e. The license is also valid for driving when the licensee is accompanied by a person specified in accordance with Iowa Code subsection 321.180B(1).~~

~~c. The type of motor vehicle that may be operated is controlled by the class of driver's license issued. A Class C minor's school license is valid for operating a motorcycle only if the license has a motorcycle endorsement. A minor's school license is valid for operating a motorized bicycle only for the purposes specified in paragraph "b" of this subrule.~~

~~d. The license is issued for two years.~~

602.26(2) No change.

602.26(3) Exemption.

a. No change.

~~b. "Demonstrates to the satisfaction of the department" means that the department has received an affidavit on Form 430021 attesting that completion of the course would impose a hardship upon~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~the applicant. The affidavit shall be signed by the~~ written proof that a hardship exists, signed by the applicant's parent, custodian or guardian and by the superintendent of the applicant's school, the chairperson of the school board, or the principal of the applicant's school if authorized by the superintendent.

602.26(4) Multiple residences.

a. An applicant whose parents are divorced or separated and who as a result of shared custody maintains more than one residence may be authorized to operate a motor vehicle from either residence during the times and for the purposes set forth in Iowa Code subsection 321.194(1) "a" provided that the statement of necessity provided to the department certifies that a need exists to drive from each residence, that the school of enrollment identified in the statement of necessity meets the geographic requirements set forth in Iowa Code subsection 321.194(1) "c" as determined by the primary residence identified in the statement of necessity, and that the secondary residence identified in the statement of necessity is either within the school district that includes the applicant's school of enrollment or is an Iowa school district contiguous to the applicant's school of enrollment. The fact that either residence is less than one mile from the applicant's school of enrollment shall not preclude travel to and from each residence at the times and for the purposes set forth in Iowa Code subsection 321.194(1) "a" provided that need is otherwise demonstrated.

b. A minor's school license approved for travel to and from two residences for the purposes set forth in Iowa Code subsection 321.194(1) "a" shall not be valid for travel directly between each residence unless the licensee is accompanied in accordance with Iowa Code subsection 321.180B(1).

c. The primary residential address listed in the statement of necessity shall appear on the face of the license. A minor's school license approved for travel to and from two residences shall include a "J" restriction on the face of the license, and the secondary address listed in the statement of necessity shall be listed on the reverse side of the license as part of the "J" restriction, with the following notation: "Also valid to drive to and from [secondary residential address] in compliance with 321.194."

This rule is intended to implement Iowa Code sections 321.177, 321.180B, 321.189, 321.194 and 321.196.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for May is 4.00%.

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

TREASURER OF STATE(cont'd)

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 10, 2016, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

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

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

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

ARC 2548C

VOTER REGISTRATION COMMISSION[821]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 47.8, 48A.11 and 17A.4, the Voter Registration Commission hereby gives Notice of Intended Action to amend Chapter 2, “Voter Registration Forms, Acceptability, Registration Dates, and Effective Dates,” Iowa Administrative Code.

This amendment is necessary because the Commission has updated the voter registration application form. The Commission determined that the voter registration application form approved by the Commission and effective April 9, 2014, needed to be updated in regard to the “gender” portion of the form. To reflect Iowa Code section 48A.11(1)“g,” which specifies that the form ask for a potential voter’s “sex” instead of “gender,” the Commission adopted a change to the form that no longer asks for the voter’s “gender” and will now mirror the statute’s requirements to ask for the voter’s “sex.” The Commission adopted the change on April 5, 2016.

Any interested person may make written suggestions or comments on the proposed amendment on or before June 14, 2016. Written suggestions or comments should be directed to Eric Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by June 14, 2016.

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

This amendment is intended to implement Iowa Code section 48A.11.

The following amendment is proposed.

VOTER REGISTRATION COMMISSION[821](cont'd)

Amend rule 821—2.16(47,48A) as follows:

821—2.16(47,48A) Form of official Iowa voter registration application. The official Iowa voter registration application pursuant to Iowa Code section 48A.11 shall be the State of Iowa Official Voter Registration Form Revised ~~4/9/2014~~ 4/5/2016.

ARC 2542C

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 8B.4, 17A.3, and 22.11, the Office of the Chief Information Officer (the Office) hereby adopts new Chapter 1, “Office Organization,” Chapter 2, “Public Records and Fair Information Practices,” Chapter 3, “Petitions for Rule Making,” Chapter 4, “Declaratory Orders,” Chapter 5, “Office Procedures for Rule Making,” and Chapter 6, “Contested Cases,” Iowa Administrative Code.

The Office, in accordance with Iowa Code chapters 8B, 17A, and 22, adopts new Chapters 1 through 6 to describe the Office’s internal organizational structure and establish how the Office will interact with the public in carrying out its duties and responsibilities. Chapter 1 describes the Office’s mission and internal organizational structure. Chapter 2 describes the information and records collected by the Office and the procedures by which individuals may interact with the Office in order to access and alter such records. Chapter 3 sets forth the nature and requirements related to petitioning the Office to adopt new rules. Chapter 4 sets forth the nature and requirements related to declaratory orders. Chapter 5 describes the procedures related to the Office’s adoption of rules and regulations. Chapter 6 sets forth the rules and procedures that shall govern contested case proceedings conducted by the Office.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2421C** on March 2, 2016. Public comments were allowed until 4:30 p.m. on March 22, 2016. No public comments were received. A public hearing was held on that date. No members of the public attended the public hearing.

Based upon comments received by the Administrative Rules Review Committee, the adopted rules reflect a change from the rules published under Notice. New paragraph 2.12(2)“a” has been added to clarify: (1) the confidential status of records in the physical possession of the Office held on behalf of other public bodies and of which the Office is not the lawful custodian; and (2) how the Office will handle public records requests regarding such records. Accordingly, paragraphs 2.12(2)“a” to “q” that were published under Notice have been relettered as “b” to “r.”

An agencywide waiver provision has not yet been adopted by the Office, but will be in a subsequent rule-making proceeding.

The Office adopted these rules on April 28, 2016.

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

These rules are intended to implement Iowa Code chapters 8B, 17A, and 22.

These rules will become effective June 29, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** 129—Chapter 1:

TITLE I
GENERAL OFFICE PROCEDURES
CHAPTER 1
OFFICE ORGANIZATION

129—1.1(8B,17A) Creation and mission. The office of the chief information officer is established in Iowa Code chapter 8B. The office leads, directs, manages, coordinates, and provides accountability for the information technology resources of state government and coordinates statewide broadband availability and access.

The mission of the office is to provide high-quality, customer-focused information technology services and business solutions to government and to the citizens of the state of Iowa.

CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

129—1.2(8B,17A) Location. The office's primary headquarters is located in the Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The office's Web site, available at www.ocio.iowa.gov, provides information about the office's organization and services.

1.2(1) The information security office is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(2) The infrastructure services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(3) The business services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(4) The enterprise applications division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(5) The application development division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(6) The project management office is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(7) The agency services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

129—1.3(8B,17A) Office head. The head of the office is the state chief information officer, who is appointed by the governor with the approval of two-thirds of the members of the senate. The CIO serves at the pleasure of the governor.

The CIO has the statutory authority to designate an employee of the office to carry out the powers and duties of the CIO in the absence of the CIO or due to the inability of the CIO to do so.

Specific powers and duties of the office, the CIO, and the office's employees and agents are set forth in Iowa Code chapters 8B and 17A and these administrative rules.

129—1.4(8B,17A) Administration of office. In order to carry out the functions of the office, the following enterprises and divisions have been established:

1.4(1) CIO's office. The CIO is the head of the office. The CIO's central administration area provides support to the CIO and to the governmental and business operations of the office and its enterprises. The following functions are included in this area: general counsel; strategic, performance and business continuity planning; program oversight and accountability; and departmental and enterprise policy and standards development.

1.4(2) Information security office. The information security office is responsible for developing, implementing and maintaining information security policies, standards, and practices for state government that enhance the confidentiality, integrity and availability of computer systems and electronic data resources and for ensuring enterprisewide compliance with security requirements. This office includes the state chief information security officer.

1.4(3) Infrastructure services. The infrastructure services division is responsible for infrastructure technology management and operations support throughout state government, including the management and administration of information technology (IT) assets such as data centers, servers, mainframes, networks, storage, desktops, mobile devices, and related infrastructure components.

CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

1.4(4) *Business services.* The business services division is responsible for procurement, contracting, vendor management, financial management, brokerage services, and related business support activities of the office.

1.4(5) *Enterprise applications.* The enterprise applications division is responsible for support, configuration, and customization of commercial off-the-shelf applications, software-as-a-service applications, geospatial services, enterprise content management services, and related vendor business applications used throughout state government.

1.4(6) *Application development.* The application development division is responsible for software application, development, maintenance, and training and for providing advice and assistance in developing and supporting business applications throughout state government.

1.4(7) *Project management.* The project management office is responsible for the oversight, coordination, and tracking of IT projects throughout state government.

1.4(8) *Agency services.* The agency services division is responsible for customer IT service management throughout state government, including IT financial planning and budget support, customer liaison services, agency IT strategic planning, advisory services related to IT expenditures, and related services.

129—1.5(8B,17A) Definitions. As used in these rules, unless specified elsewhere:

“*Chief information officer*” or “*CIO*” means the state chief information officer.

“*Office*” or “*OCIO*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

These rules are intended to implement Iowa Code chapter 8B and section 17A.3.

ITEM 2. Adopt the following new 129—Chapter 2:

CHAPTER 2

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

129—2.1(8B,17A,22) Definitions. As used in this chapter:

“*Chief information officer*” or “*CIO*” means the state chief information officer.

“*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 office 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 office, the CIO, or another person lawfully delegated authority by the office to act for the office in implementing Iowa Code chapter 22.

“*Office*” or “*OCIO*,” unless the context otherwise requires, means the office of the chief information officer authorized by Iowa Code chapter 8B.

“*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, that is owned by or in the physical possession of the office.

“*Record system*” means any group of records under the control of the office 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.

129—2.2(8B,17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound determinations by the office with respect to

CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

the handling of confidential records and the implementation of the Iowa fair information practices Act. This office is committed to the policies set forth in Iowa Code chapter 22; office staff shall cooperate with members of the public in implementing the provisions of that chapter.

129—2.3(8B,17A,22) Requests for access to records.

2.3(1) Location of record. A request for access to a record under the jurisdiction of the OCIO shall be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The OCIO shall forward the request appropriately. If a request for access to a record is misdirected, office personnel will forward the request to the appropriate person within the office.

2.3(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 holidays.

2.3(3) Request for access. Requests for access to open records may be made in writing, in person, by e-mail or other electronic means, or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the office's response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

2.3(4) Response to requests. The custodian of records under the jurisdiction of the office is authorized to grant or deny access to a record according to the provisions of this chapter and directions from the office. The decision to grant or deny access may be delegated to one or more designated employees.

a. 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 custodian 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.

b. 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 129—2.4(8B,17A,22) in this chapter and other applicable provisions of law.

2.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from office files. Examination and copying of office records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

2.3(6) Copying. A reasonable number of copies of an open record may be made in the office of the OCIO. If photocopy equipment is not available in the offices of the OCIO where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

2.3(7) Fees.

a. *When charged.* The office may charge fees in connection with the examination or copying of records only if the fees are authorized by law. 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.* Price schedules for published materials and for photocopies of records supplied by the OCIO shall be prominently posted in the offices of the OCIO. Copies of records may be made by or for members of the public on office photocopy machines or from electronic storage

CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

systems at cost as determined and posted in the offices of the OCIO by the custodian. 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 office expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in the offices of the OCIO the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an office clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. 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. Upon completion, the actual fee will be calculated and the difference refunded or collected.

(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.

2.3(8) Records held for others. Requests for records the office holds solely in storage for or as the agent of another public body are not within the jurisdiction of the office and shall be directed to the owner of the records.

129—2.4(8B,17A,22) 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 129—2.3(8B,17A,22).

2.4(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.

2.4(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.

2.4(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 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.

2.4(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.

2.4(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.

CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

129—2.5(8B,17A,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, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

2.5(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.

2.5(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 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, 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 filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the office 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.

2.5(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 office does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 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.

2.5(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 filed, or when the custodian receives a request for access to the record by a member of the public.

2.5(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.

2.5(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 shall 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

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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.

129—2.6(8B,17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester and shall include the current address and telephone number of the requester or the requester's representative.

129—2.7(8B,17A,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, 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 before the office on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the office to disclose records about that person to the person's attorney.

129—2.8(8B,17A,22) Disclosures without the consent of the subject.

2.8(1) Open records are routinely disclosed without the consent of the subject.

2.8(2) To the extent allowed by law, disclosure of confidential 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 129—2.9(8B,17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the office 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 such government agency or instrumentality has submitted a written request to the office 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.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

129—2.9(8B,17A,22) Routine use.

2.9(1) "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. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.9(2) To the extent allowed by law, the following uses are considered routine uses of all office records:

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- a.* Disclosure to those officers, employees, and agents of the office 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 a legitimate need to use confidential records.
- b.* 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.
- c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the office.
- d.* Transfers of information within the office, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the office is operating a program lawfully.
- f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.
- g.* Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlements filed in contested case proceedings before the office.
- h.* Transmittal to the district court of the record in a contested case before the office, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

129—2.10(8B,17A,22) Consensual disclosure of confidential records.

2.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to the office's disclosure of confidential records as provided in rule 129—2.7(8B,17A,22).

2.10(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 office 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.

129—2.11(8B,17A,22) Release to subject.

2.11(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 129—2.6(8B,17A,22). However, the office need not release the following records to the subject:

- a.* The identity of a person providing information to the office 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 are otherwise privileged.
- c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.
- d.* As otherwise authorized by law.

2.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the office may take reasonable steps to protect confidential information relating to another subject.

129—2.12(8B,17A,22) Availability of records.

2.12(1) *General.* Office records are open for public inspection and copying unless otherwise provided by rule or law.

2.12(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.* The office is a depository for the records of other public bodies. Records are maintained on paper, audiotape, and microform, and in electronic information storage and media systems. Although these records are in the physical possession of the office, the responsibility for compliance with Iowa

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Code chapter 22 remains with the “lawful custodian.” The public body requesting creation or storage of the record by the office is the lawful custodian (see Iowa Code section 22.1, definition of “lawful custodian”). All such records are confidentially maintained while in the possession of the office. Requests for access to any such records must be directed to the lawful custodian. In the event the office receives a request for access to any such records, the office may, in its discretion, direct the person making such a request to the lawful custodian of the subject records, or forward such request to the lawful custodian of the subject records. Additionally, any records maintained by the office concerning the content, location, or disposition of such records are confidential in order to maintain security for access to confidential records pursuant to Iowa Code section 22.7.

- b.* Records which are exempt from disclosure under Iowa Code section 22.7.
- c.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)
- d.* Procurement proposals prior to completion of the evaluation process and the issuance of a notice of intent to award a contract by the appropriate procurement authority. (11—subrule 117.19(3), Iowa Administrative Code)
- e.* Tax records made available to the office. (Iowa Code sections 422.20 and 422.72)
- f.* Minutes or audio recordings of closed meetings of a government body. (Iowa Code section 21.5(4))
- g.* Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“e.”
- h.* Those portions of office staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by office staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances of criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the office. (Iowa Code sections 17A.2(11)“f” and 17A.3(1)“d”)
- i.* Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.
- j.* Computer resource security files containing names, identifiers, and passwords of users of computer resources. Such files must be kept confidential to maintain security for access to confidential records pursuant to Iowa Code section 22.7. (Iowa Code section 22.7(50))
- k.* Data or information collected for the purpose of assessing, analyzing, measuring, preparing for, or responding to suspected, potential, or actual information security threats. (Iowa Code section 22.7(50))
- l.* Data or information collected for the purpose of assessing, analyzing, or classifying the severity of, nature of, ability to remediate, or ability to migrate data. (Iowa Code section 22.7(50))
- m.* Detailed security audit information. Such information includes but is not limited to security assessment reports; information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of the office. (Iowa Code section 22.7(50))
- n.* Information security data, information security proposals, or information security assessments compiled, prepared, or developed by a governmental body, or compiled, prepared, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.7(50))

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o. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.3A(2)“a”)

p. Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to the disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

q. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

r. Any other records made confidential by law.

2.13(3) Authority to release confidential records. The office 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 records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 129—2.4(8B,17A,22). If the office initially determines that it will release such records, the office may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

129—2.13(8B,17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the office by personal identifier in record systems as defined in rule 129—2.1(8B,17A,22). Unless otherwise stated, the authority to maintain the record is provided by Iowa Code chapter 8B.

2.13(1) Retrieval. Personal identifiers may be used to retrieve information from any of the systems of records that the office maintains that contain personally identifiable information.

2.13(2) Means of storage. Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

2.13(3) Comparison. Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

2.13(4) Comparison with data from outside the office. Personally identifiable information in systems of records maintained by the office is retrievable through the use of personal identifiers and may be compared with information from outside the office when specified by law.

2.13(5) Nature and extent. All of the record systems listed in subrule 2.13(6) contain personally identifiable information concerning matters such as income and social security numbers.

2.13(6) Record systems with personally identifiable retrieval. The office maintains other public bodies' systems or records that contain personally identifiable and confidential information. The legal authority for the collection of the information is with the public body of record for that system. The following record systems contain personally identifiable information:

a. Personnel files. The office maintains files containing information about employees and applicants for positions with the office. The files include payroll records, 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 is confidential under Iowa Code section 22.7(11).

b. Telephone directory of state employees. The office maintains a telephone directory of state employees. The directory contains names, department names, business addresses and telephone numbers. The publication also includes private industry information and advertising containing business names, addresses and telephone numbers. This record is stored on both paper and electronically.

c. Contracts. These are records pertaining to training, consultants, and other services. These records are collected in accordance with Iowa Code chapter 8B, and portions are confidential records under Iowa Code section 22.7.

These records contain names, social security numbers, and other identifying numbers and are collected in the form of paper, microfilm, tape, and electronic records. Electronic records permit the comparison of personally identifiable information in one record system with that in another system.

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d. Vendor files. The office maintains files of vendors eligible to do business with the state of Iowa. Files may contain applications, vendor information booklets, vendor codes, commodity codes, minority-owned vendor identification information, and mailing lists. Records are stored on paper and electronically.

e. Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing 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.

129—2.14(8B,17A,22) Other groups of records. This rule describes groups of records maintained by the office other than record systems as defined in rule 129—2.1(8B,17A,22). These records are routinely available to the public. However, the office's files of these records may contain confidential information. In addition, the records listed in rule 129—2.13(8B,17A,22) may contain information about individuals. All records are stored on paper and in automated data processing systems unless otherwise noted.

2.14(1) Rule-making records. Rule-making records are official documents executed during the promulgation of office rules and public comments. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may be found on the office's Web site.

2.14(2) Rule-making initiatives. The office maintains both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9 signed September 14, 1999.

2.14(3) Board and commission records. Agendas, minutes, and materials presented to boards and commissions within the office are available from the office except those records which concern closed sessions and are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records may contain information about individuals who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records may also be stored on audiotapes. This information is not stored in an automated data processing system, although minutes and other information may be found on the office's Web site.

2.14(4) Publications. News releases, annual reports, project reports, office newsletters, and other publications are available from the office. Office news releases, project reports, and newsletters may contain information about individuals, including office staff or members of office councils or committees. This information is not stored in an automated data processing system, although some office publications may be found on the office's Web site.

2.14(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 129—2.5(8B,17A,22) or subrule 2.12(2). These records, collected under the authority of Iowa Code chapter 8B, may contain confidential information about individuals.

2.14(6) Published materials or manuals. The office uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright laws.

2.14(7) Mailing lists and contact lists. The office maintains lists including names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public. These lists may be used for distribution of informational material, such as newsletters, policy directives, or educational bulletins. These lists are also used to provide contacts for coordination of services or as reference information sources.

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2.14(8) Authorized user lists. The office maintains a list of persons authorized to use the office's online services.

2.14(9) Bid/purchasing process. The office maintains records of specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, printing orders, supply orders, and correspondence.

2.14(10) Project files. The office maintains plans, specifications, contracts, studies, drawings, photos, requests for services, lease/rental files, 28E agreements, and facilities records.

2.14(11) Property/equipment files. The office maintains records of inventory, assignments, distribution, maintenance, requests, operations, shipping/receiving reports, and adjustments.

2.14(12) Data processing files. Data processing files include operations logs, database user requests, job number maintenance/updates, data entry format books, integrated data dictionaries, computer output form designations, system software, hardware/software configurations, problem determination/resolution records, and incident reports.

2.14(13) Administrative records. Administrative records include, but are not limited to, the following:

- a. Reports: weekly, monthly, annual, biennial, statistical, analysis, activity.
- b. Correspondence: public, interagency, internal.
- c. Policies and procedures.
- d. Organizational charts or tables of authorized positions.
- e. Memberships: professional/technical organizations.
- f. Budget and financial records.
- g. Accounting records: accounts receivable, accounts payable, receipts, invoices, claims, vouchers, office billings.
- h. Requisitions of equipment and supplies.
- i. Time sheets.
- j. Purchasing documents and records.

2.14(14) Legislative files. Legislative files include pending bills, enrolled bills, legislative proposals, and copies of amendments.

2.14(15) Printing files. Printing files include print requisitions, plates, negatives, samples, typesetting, artwork, and production logs.

2.14(16) Waivers and variances. Requests for waivers and variances, office proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others.

2.14(17) General correspondence, reciprocity agreements with other states, and cooperative agreements and memorandums of understanding with other agencies.

2.14(18) All other records. Records are open if not exempted from disclosure by law.

129—2.15(8B,17A,22) Data processing systems comparison. Some of the data processing systems used by the office permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

129—2.16(8B,17A,22) Applicability. This chapter does not:

1. Require the office to index or retrieve records which contain information about individuals by a person'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 office which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the office 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

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constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the office.

129—2.17(8B,17A,22) Notice to suppliers of information. When the office requests a person to supply information about that person, the office shall notify the person of the use that will be made of the information, which persons outside the office might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

These rules are intended to implement Iowa Code chapters 8B, 17A, and 22.

ITEM 3. Adopt the following new 129—Chapter 3:

CHAPTER 3
PETITIONS FOR RULE MAKING

129—3.1(17A) Petition for rule making.

3.1(1) Filing. Any person, other state agency, or board may file a petition for rule making with the office of the chief information officer at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the office. The office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the office an extra copy for this purpose.

3.1(2) Form. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER		
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state the subject matter).	}	PETITION FOR RULE MAKING

3.1(3) Content. The petition must provide the following information:

- a. 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 and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
- b. A citation to any law deemed relevant to the office’s authority to take the action urged or to the desirability of that action.
- c. A brief summary of petitioner’s arguments in support of the action urged in the petition.
- d. A brief summary of any data supporting the action urged in the petition.
- e. 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.
- f. Any request by the petitioner for a meeting provided for by rule 129—3.4(17A).

3.1(4) Additional requirements. The petition must:

- a. Be dated and signed by the petitioner or the petitioner’s representative;
- b. Include the name, mailing address, and telephone number of the petitioner and petitioner’s representative; and
- c. Include a statement indicating the person to whom communications concerning the petition should be directed.

3.1(5) Denial. The chief information officer (CIO) may deny a petition if it does not substantially conform to or comply with the above requirements relating to filing, form, content, or additional requirements.

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129—3.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The CIO, or the CIO’s designee, may request a brief from the petitioner or from any other person concerning the substance of the petition.

129—3.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

129—3.4(17A) Office consideration.

3.4(1) Within 14 days after the filing of a petition, the office must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the office must schedule a brief and informal meeting between the petitioner and the office to discuss the petition. The office may request the petitioner to submit additional information or argument concerning the petition. The office may also solicit comments from any person on the substance of the petition. Comments on the substance of the petition may also be submitted to the office by any person.

3.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the office must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or granting of the petition on the date when the office mails or delivers the required notification to the petitioner.

3.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the office’s rejection of the petition.

These rules are intended to implement Iowa Code chapters 8B and 17A.

ITEM 4. Adopt the following new 129—Chapter 4:

CHAPTER 4
DECLARATORY ORDERS

129—4.1(8B,17A) Petition for declaratory order.

4.1(1) Filing. Any person may file a petition with the office for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the office of the chief information officer at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the office. The office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the office with an extra copy for this purpose.

4.1(2) Form. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER		
Petition by (Name of Petitioner) for a Declaratory Order on (cite the provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

4.1(3) Content. The petition must provide the following information:
a. A clear and concise statement of all relevant facts on which the order is requested.
b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
c. The questions the petitioner wants answered, stated clearly and concisely.

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d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

e. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.

f. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.

g. 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 questions in the petition.

h. Any request by petitioner for a meeting provided for by rule 129—4.7(8B,17A).

4.1(4) *Additional requirements.* The petition must:

a. Be dated and signed by the petitioner or the petitioner’s representative;

b. Include the name, mailing address, and telephone number of the petitioner and petitioner’s representative; and

c. Include a statement indicating the person to whom communications concerning the petition should be directed.

129—4.2(8B,17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the office shall give notice of the petition to all persons not served by the petitioner pursuant to rule 129—4.6(8B,17A) to whom notice is required by any provision of law. The office may also give notice to any other persons.

129—4.3(8B,17A) Intervention.

4.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

4.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the office.

4.3(3) *Filing.* A petition for intervention shall be filed at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by the office. The office will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

4.3(4) *Form.* A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER	
Petition by (Name of Original Petitioner) for a Declaratory Order on (cite the provisions of law cited in the original petition).	} PETITION FOR INTERVENTION

4.3(5) *Content.* The petition for intervention must provide the following information:

a. Facts supporting the intervenor’s standing and qualifications for intervention.

b. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

c. Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome.

d. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

e. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

f. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

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4.3(6) Additional requirements. The petition must:

- a. Be dated and signed by the intervenor or the intervenor's representative;
- b. Include the name, mailing address, and telephone number of the intervenor and intervenor's representative; and
- c. Include a statement indicating the person to whom communications should be directed.

129—4.4(8B,17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The office may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

129—4.5(8B,17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the Office of the Chief Information Officer, c/o Business Services Division, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

129—4.6(8B,17A) Service and filing of petitions and other papers.

4.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the office.

4.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 129—6.14(8B,17A).

129—4.7(8B,17A) Consideration. Upon request by petitioner, the office shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the office to discuss the questions raised. The office may solicit comments from any person on the questions raised. Additionally, any person may submit comments on the questions raised to the office.

129—4.8(8B,17A) Action on petition.

4.8(1) The office shall take action on a petition for a declaratory order within 30 days after its receipt as required by Iowa Code section 17A.9.

4.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 129—6.2(8B,17A).

129—4.9(8B,17A) Refusal to issue order.

4.9(1) The office shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a. The petition does not substantially conform to or comply with the requirements set forth in rule 129—4.1(8B,17A) relating to filing, form, content, or additional requirements.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the office to issue an order.
- c. The office does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in a current rule making, contested case, or other office or judicial proceeding that may definitively resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

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f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an office decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests that the office determine whether a statute is unconstitutional on its face.

4.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final office action on the petition.

4.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

129—4.10(8B,17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of the petitioner, the name of any intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

129—4.11(8B,17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

129—4.12(8B,17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the office, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the office. The issuance of a declaratory order constitutes final office action on the petition.

These rules are intended to implement Iowa Code chapters 8B and 17A.

ITEM 5. Adopt the following new 129—Chapter 5:

CHAPTER 5 OFFICE PROCEDURE FOR RULE MAKING

129—5.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the office are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

129—5.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the office may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the office by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

129—5.3(17A) Public rule-making docket.

5.3(1) Docket maintained. The office shall maintain a current public rule-making docket.

5.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of a proposed rule

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is distributed for internal discussion within the office. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the office for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of office personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the office of that possible rule. The office may also include in the docket other subjects upon which public comment is desired.

5.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule’s becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any office determination with respect thereto;
- h. Any known timetable for office decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

129—5.4(17A) Notice of proposed rule making.

5.4(1) Contents. At least 35 days before the adoption of a rule, the office shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the office shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the office for the resolution of each of those issues.

5.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 5.12(2) of this chapter.

5.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the office a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the office shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either

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mailing or electronic transmittal with the office for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. Inquiries regarding the subscription price should be directed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

129—5.5(17A) Public participation.

5.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action.

5.5(2) *Oral proceedings.* The office may, at any time, schedule an oral proceeding on a proposed rule. The office shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the office by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

5.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” or this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The CIO, a member of the office, or another person designated by the CIO who will be familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule. If the CIO does not preside, the presiding officer shall prepare a memorandum for consideration by the CIO summarizing the contents of the presentations made at the oral proceeding unless the CIO determines that such a memorandum is unnecessary because the CIO will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the CIO at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the office’s decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To

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encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the office.

(6) The presiding officer may continue the oral proceeding at a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

5.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the office may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

5.5(5) *Accessibility.* The office shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance to arrange access or other needed services.

129—5.6(17A) Regulatory analysis.

5.6(1) *Definition of small business.* A “small business” is defined in Iowa Code section 17A.4A(8).

5.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the office’s small business impact list by making a written application addressed to Small Business Registry, c/o Business Services Division, Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. The address of the small business or organization of small businesses;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant’s business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The office may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The office may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

5.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the office shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business and that was adopted in reliance upon

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Iowa Code section 17A.4(3), the office shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

5.6(4) *Qualified requesters for regulatory analysis—economic impact.* The office shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“a” after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

5.6(5) *Qualified requesters for regulatory analysis—business impact.* The office shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“b” after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

5.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the office shall adhere to the time lines described in Iowa Code section 17A.4A(4).

5.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the office. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

5.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) through 17A.4A(6).

5.6(9) *Publication of a concise summary.* The office shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(6).

5.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“a,” unless a written request expressly waives one or more of the items listed in the section.

5.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“b.”

129—5.7(17A,25B) Fiscal impact statement.

5.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services, shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.5.

5.7(2) If the office determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the office shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

129—5.8(17A) Time and manner of rule adoption.

5.8(1) *Time of adoption.* The office shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the office shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

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5.8(2) Consideration of public comment. Before the adoption of a rule, the office shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

5.8(3) Reliance on office expertise. Except as otherwise provided by law, the office may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

129—5.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

5.9(1) The office shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

5.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the office shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action;
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

5.9(3) The office shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the office finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

5.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the office to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

129—5.10(17A) Exemptions from public rule-making procedures.

5.10(1) Omission of notice and comment. When the statute so provides, or with the approval of the administrative rules review committee, if the committee finds good cause that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the office may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.10(2) Categories exempt. The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

5.10(3) Public proceedings on rules adopted without them. The office may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 5.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less

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than 25 members, or at least 25 persons, the office shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 5.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the office may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 5.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

129—5.11(17A) Concise statement of reasons.

5.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the office shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Office of the Chief Information Officer, c/o Business Services Division, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

5.11(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the office's reasons for overruling the arguments made against the rule.

5.11(3) Time of issuance. After a proper request, the office shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

129—5.12(17A) Contents, style, and form of rule.

5.12(1) Contents. Each rule adopted by the office shall contain the text of the rule and, in addition:

- a. The date the office adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(2) or the office in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(2) or the office in its discretion decides to include such reasons; and
- g. The effective date of the rule.

5.12(2) Incorporation by reference. The office may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the office finds that the incorporation of such matter in the office's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the office's proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The office may incorporate such matter by reference in a proposed or adopted rule only if the office makes copies of such matter readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the office, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing

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that matter. The office shall retain permanently a copy of any materials incorporated by reference in a rule of the office.

If the office adopts standards by reference to another publication, it shall deliver an electronic copy of the publication, or the relevant part of the publication, containing the standards to the administrative code editor who shall publish it on the general assembly's internet site. If an electronic copy of the publication is not available, the office shall deliver a printed copy of the publication to the administrative code editor who shall deposit the copy in the state law library where it shall be made available for inspection and reference.

5.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the office shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the office. The office will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the office shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

5.12(4) *Style and form.* In preparing its rules, the office shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

129—5.13(17A) Office rule-making record.

5.13(1) *Requirement.* The office shall maintain an official rule-making record for each rule it proposes or adopts by publication in the Iowa Administrative Bulletin of a Notice of Intended Action. The rule-making record and materials incorporated by reference must be available for public inspection.

5.13(2) *Contents.* The office rule-making record shall contain:

- a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;
- b. Copies of any portions of the office's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;
- c. All written petitions, requests, and submissions received by the office, and all other written materials of a factual nature and distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the office and considered by the CIO, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the office is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the office shall identify in the record the particular materials deleted and state the reasons for that deletion;
- d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;
- e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;
- f. A copy of the rule and any concise statement of reasons prepared for that rule;
- g. All petitions for amendment or repeal or suspension of the rule;

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h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(3) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(6), and any office response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

5.13(3) *Effect of record.* Except as otherwise required by a provision of law, the office rule-making record required by this rule need not constitute the exclusive basis for office action on that rule.

5.13(4) *Maintenance of record.* The office shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in paragraph 5.13(2) “g,” “h,” “i,” or “j.”

129—5.14(17A) *Filing of rules.* The office shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that were issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the office shall use the standard form prescribed by the administrative rules coordinator.

129—5.15(17A) *Effectiveness of rules prior to publication.*

5.15(1) *Grounds.* The office may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.15(2) *Special notice.* When the office makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b,” the office shall employ all reasonable efforts to make the rule’s contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the office to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the office of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notices or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b” shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 5.15(2).

129—5.16(17A) *General statements of policy.*

5.16(1) *Compilation, indexing, public inspection.* The office shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated and indexed and a record thereof kept. Except

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for those portions containing rules governed by Iowa Code section 17A.2(11) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

5.16(2) Enforcement of requirements. A general statement of policy subject to the requirements of this rule shall not be relied on by the office to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 5.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

129—5.17(17A) Review by office of rules.

5.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the office to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the office shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or whether the rule should be amended or repealed. The office may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

5.17(2) In conducting the formal review, the office shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the office’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the office or granted by the office. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the office’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapters 8B and 17A.

ITEM 6. Adopt the following new 129—Chapter 6:

CHAPTER 6
CONTESTED CASES

129—6.1(8B,17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the office or by the division of administrative hearings in the department of inspections and appeals on behalf of the office.

129—6.2(8B,17A) Definitions. Except where otherwise specifically defined by law, for purposes of this chapter:

“*Administrative law judge*” or “*ALJ*” means an employee of the administrative hearings division of the department of inspections and appeals who presides over contested cases and other proceedings.

“*Chief information officer*” or “*CIO*” means the state chief information officer or the state chief information officer’s designee.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Division*” means the division of administrative hearings of the department of inspections and appeals.

“*Issuance*” means, unless another date is specified in the order, the date of mailing of a decision or order or date of delivery if service is by other means.

“*Office*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

“*Party*” means a party as defined in Iowa Code section 17A.2(8).

“*Presiding officer*” means the administrative law judge assigned to the contested case, or the chief information officer, whichever is appropriate.

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“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the CIO did not preside.

129—6.3(8B,17A) Time requirements.

6.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

6.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as otherwise precluded by rule or law. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

129—6.4(8B,17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the office action in question.

The request for a contested case proceeding should state the name and address of the requester; identify the specific office action which is disputed; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute. If the office denies the request, the office shall issue a written order specifying the basis for the denial.

129—6.5(8B,17A) Informal settlement. A party to a controversy that may culminate in contested case proceedings or a party to a contested case proceeding may attempt informal settlement of the controversy or contested case by complying with the procedures set forth in this rule. No party to such a controversy or contested case shall be required to settle the controversy or contested case by submitting to informal settlement procedures.

6.5(1) Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

6.5(2) When signed by the parties to a controversy or contested case and by the CIO, a proposed settlement shall represent final disposition of the matter in place of any prospective or current contested case proceedings.

6.5(3) Where there are more than two parties to a controversy or contested case involving the office, a separate settlement between one party and the office is permissible.

6.5(4) A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations are likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

129—6.6(8B,17A) Notice of hearing and transmission of contested cases.

6.6(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery of the notice of hearing may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure;
- b. Certified mail, return receipt requested;
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

6.6(2) Contents. Notices of hearing shall contain the information required by Iowa Code section 17A.12(2), any additional information required by statute or rule, and the following information:

- a. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the office or the state and of parties’ counsel where known;
- b. Reference to the procedural rules governing conduct of the contested case proceeding;
- c. Reference to the procedural rules governing informal settlement;

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d. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., an administrative law judge from the department of inspections and appeals or the CIO);

e. Information on who to contact if auxiliary aids or services are needed to participate in the matter because of a disability; and

f. The mailing address and e-mail address for filing with the division or office, whichever is applicable, and notice of the option of e-mail service as provided in paragraph 6.14(2) "b."

6.6(3) *Transmission of contested cases.* In every proceeding filed by the office with the division, the office shall complete a transmittal form. The transmittal form shall contain the information required by 481—subrule 10.4(1).

6.6(4) *Issuance of the hearing notice.* When a case is transmitted by the office to the division for hearing, the division shall issue the notice of hearing. The office shall provide the division with the information required by 481—subrule 10.4(2).

6.6(5) *Attachments.* The office shall attach the documents required by 481—subrule 10.4(3) to the completed transmittal form when it is sent to the division.

6.6(6) *Receipt.* When a properly transmitted case is received, it is marked with the date of receipt by the division. The division assigns an identifying number to each contested case upon receipt.

6.6(7) *Scheduling.* The division shall promptly schedule hearings for the office. The availability of an administrative law judge and any special circumstances shall be considered.

129—6.7(8B,17A) Legal representation. Parties in a contested case have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Business entities, such as partnerships, corporations, or associations may be represented by a nonlawyer partner, member, officer, director, shareholder, other owner or manager, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law. The attorney shall file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14. The cost of any such representation shall be borne by the represented party.

129—6.8(8B,17A) Presiding officer.

6.8(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the CIO.

6.8(2) The CIO may deny the request only upon a finding that one or more of the following apply:

a. Neither the office nor any officer of the office under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge with the qualifications identified in subrule 6.8(3) is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

6.8(3) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the office:

a. A license to practice law in the state of Iowa;

b. Three years' experience as an administrative law judge;

c. For a hearing related to procurement, knowledge of contract law;

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d. For a hearing in which the underlying dispute or subject matter is related to information technology, and to the extent an administrative law judge with a background in information technology is available, a background in information technology.

6.8(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the office. A party must seek any available intra-agency appeal in order to exhaust administrative remedies.

6.8(5) Unless otherwise provided by law, the CIO, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

129—6.9(8B,17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the office in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

129—6.10(8B,17A) Telephone and electronic proceedings. The presiding officer may, on the presiding officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the parties or witnesses, as well as the nature of the case, shall be considered when the location is chosen. The presiding officer may permit any witness to testify by telephone or other electronic means. If there is a prehearing conference, the parties shall disclose at or before the prehearing conference whether any witness will be testifying by telephone or other electronic means. If there is not a prehearing conference, the parties shall disclose not less than three business days prior to the hearing date whether any witness will be testifying by telephone or other electronic means unless any law, rule, or order of the presiding officer requires disclosure sooner. Objections, if any, shall be filed and served on all parties at least three business days in advance of hearing.

129—6.11(8B,17A) Disqualification.

6.11(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.11(2) 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 person's investigative work product in the

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course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other office 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 presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.11(3) and 6.25(9).

6.11(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.11(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.11(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code sections 17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

6.11(5) If, during the course of the hearing, a party becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

6.11(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 129—6.27(8B,17A) and seek a stay under rule 129—6.31(8B,17A).

129—6.12(8B,17A) Consolidation—severance.

6.12(1) Consolidation. The presiding officer may, upon motion by any party or the presiding officer's own motion, consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.12(2) Severance. The presiding officer may, upon motion by any party or the presiding officer's own motion, for good cause shown, order any contested case proceedings or portions thereof severed.

129—6.13(8B,17A) Pleadings.

6.13(1) When required. Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.13(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

6.13(3) Answer.

a. An answer shall be filed within 20 days of service of the petition unless otherwise ordered.

b. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

c. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds.

d. An answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

e. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

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f. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

6.13(4) Amendment. Any notice of hearing or petition may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer. The presiding officer may impose terms as a condition of allowing such amendments or grant a continuance.

129—6.14(8B,17A) Service and filing of pleadings and other papers.

6.14(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the office, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.14(2) Service—to whom and how made. Service upon a party represented in the contested case proceeding by an attorney shall be made upon the attorney unless otherwise ordered. Service may be made in the following ways:

a. Service may be made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

b. The presiding officer may by order or a party or a party's attorney may by consent permit service of particular documents by e-mail or similar electronic means unless precluded by a provision of law. In the absence of such an order or consent, electronic transmission shall not satisfy service requirements, but may be used to supplement service when rapid notice is desirable. Consent to electronic service by a party or a party's attorney shall be in writing, may be accomplished through electronic transmission to the office and other parties, and shall specify the e-mail address for such service. Service by electronic transmission is complete upon transmission unless the office or party making service learns the attempted service did not reach the party to be served.

6.14(3) Filing—when required.

a. After a matter has been assigned to the division, and until a proposed decision is issued, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the division, rather than the office. All pleadings, motions, documents or other papers filed after the notice is issued that are required to be served upon a party shall be filed simultaneously with the division.

b. After the notice of hearing, when a matter has not been assigned to the division for hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the office.

6.14(4) Filing—how and when made.

a. Except where otherwise provided by law, a document is deemed filed at the time it is:

(1) Delivered to the division pursuant to paragraph 6.14(3) "a" or to the office pursuant to paragraph 6.14(3) "b," and date-stamped received;

(2) Delivered to an established courier service for immediate delivery to the proper entity;

(3) Mailed by first-class mail or by state interoffice mail to the proper entity, so long as there is adequate proof of mailing; or

(4) Transmitted by electronic mail (e-mail) or by other electronic means to the proper entity as provided in paragraph 6.14(4) "b."

b. All documents filed with the division or the office pursuant to these rules, except a person's request or demand for a contested case proceeding (see Iowa Code section 17A.12(9)), may be filed by e-mail or other electronic means as approved by the division or the office, whichever is appropriate. A document filed by e-mail or other approved electronic means is presumed to be an accurate reproduction

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of the original. If a document filed by e-mail or other approved electronic means is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by e-mail or other approved electronic means shall be the date the document is received by the division or the office. Neither the division nor the office will provide a mailed file-stamped copy of documents filed by e-mail or other approved electronic means.

6.14(5) Proof of mailing. Proof of mailing includes:

- a. A legible United States Postal Service postmark on the envelope;
- b. A certificate of service;
- c. A notarized affidavit; or
- d. A certification in substantially the following form(s):

(1) After a matter has been assigned to the division for hearing, the certification shall take the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Administrative Hearings Division, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(SIGNATURE) (DATE)

(2) When a matter has not been assigned to the division for hearing, the certification shall take the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(SIGNATURE) (DATE)

129—6.15(8B,17A) Discovery.

6.15(1) Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases.

6.15(2) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

6.15(3) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. The time frames for discovery in the corresponding Iowa Rule of Civil Procedure govern those specific procedures, unless lengthened or shortened by the presiding officer.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition

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costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

6.15(4) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the presiding officer may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceedings or impose an undue hardship. As a practical matter the purpose of the disclosure requirements and discovery conference is served by the office's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 129—6.16(8B,17A).

6.15(5) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

6.15(6) Discovery shall be served on all parties to the contested case proceeding, but shall not be filed with the division or office.

6.15(7) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the division or office, whichever is applicable, relating to discovery shall allege that the moving party previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

6.15(8) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

129—6.16(8B,17A) Subpoenas.

6.16(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Upon written request that complies with this rule, subpoenas shall be issued either by the division when a matter has been assigned to the division for hearing or by the office when a matter has not been assigned to the division for hearing. The request may be made in person or by mail or electronic mail. A request for a subpoena must be received by the division or the office, whichever is applicable, at least seven calendar days before the scheduled hearing, or the subpoena will not be issued.

6.16(2) A request for a subpoena shall include the following information, as applicable:

a. The name, address, e-mail address, and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date and time and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other real evidence requested; and

f. The date, time and location for production, or inspection and copying.

6.16(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

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- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date and time and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address and telephone number of the presiding officer or designee;
- j.* The date of issuance;
- k.* A return of service.

6.16(4) The presiding officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena. The person who requested the subpoena is responsible for the costs associated with such service, and for the payment of any witness fees and mileage expenses in connection with execution of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

6.16(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the division or office, whichever is applicable, a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then move the presiding officer to issue an order compelling production.

6.16(6) Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the presiding officer may issue a decision. The presiding officer may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the presiding officer may schedule oral argument or hearing by telephone or in person.

6.16(7) A person who is aggrieved by a ruling of a presiding officer and desires to challenge the ruling must appeal the ruling to the office in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 129—6.27(8B,17A) and 129—6.29(8B,17A), provided that all of the time frames are reduced by one-half.

6.16(8) If the person contesting the subpoena is not a party to the contested case proceeding, the presiding officer's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the presiding officer's decision is not final for purposes of judicial review until there is a final decision in the contested case.

129—6.17(8B,17A) Motions.

6.17(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.17(2) Any party may file a written response to a motion within 15 days after the motion is served, unless the time period is extended or shortened by rules of the office or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.17(3) The presiding officer may schedule oral argument on any motion upon request by any party or the presiding officer's own motion.

6.17(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action

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or the time for such action is lengthened or shortened by rule of the office or an order of the presiding officer.

6.17(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 129—6.30(8B,17A) and appeal pursuant to rule 129—6.29(8B,17A).

129—6.18(8B,17A) Prehearing conference.

6.18(1) Any party may request a prehearing conference. Additionally, the presiding officer may order a prehearing conference on the presiding officer's own motion. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. The presiding officer shall give written notice of the prehearing conference to all parties. For good cause, the presiding officer may permit variances from this rule.

6.18(2) Each party shall disclose at or prior to the prehearing conference:

- a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and
- b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

6.18(3) In addition to the requirements of subrule 6.18(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations concerning the admissibility of exhibits;
- c.* Identify matters which the parties intend to request be officially noticed;
- d.* Unless precluded by statute, enter into stipulations for waiver of the provisions of Iowa Code chapter 17A, as permitted by Iowa Code section 17A.10(2), or waiver of office rules; and
- e.* Consider any additional matters which will expedite the hearing.

6.18(4) Prehearing conferences shall be conducted by telephone or other electronic means unless otherwise ordered.

6.18(5) The parties shall exchange and receive witness and exhibit lists in advance of a prehearing conference.

6.18(6) The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 6.23(4) no later than three business days in advance of hearing, unless otherwise ordered by the presiding officer at the prehearing conference.

129—6.19(8B,17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.19(1) A written application for a continuance shall:

- a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

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- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the requesting party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The office may waive notice of such requests for a particular case or an entire class of cases.

6.19(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Any prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection to the continuance;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request;
- i. Any applicable state or federal statutes or regulations; and
- j. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

6.19(2) The presiding officer may enter an order granting or denying an uncontested or contested application for a continuance.

129—6.20(8B,17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with office rules. Requests for withdrawal may be oral or written. If the request is oral, the presiding officer may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

129—6.21(8B,17A) Intervention.

6.21(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.21(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing, whichever is earlier. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will be denied.

6.21(3) Grounds for intervention. In order to be entitled to intervene, the movant must demonstrate that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. The movant will be aggrieved or adversely affected by a final order in the proceeding; and
- c. The interests of the movant are not adequately represented by existing parties.

6.21(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

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129—6.22(8B,17A) Hearing procedures.

6.22(1) *Role of presiding officer.* The presiding officer shall preside at and be in control of the proceedings and shall have the authority to:

- a. Issue such orders and rulings as will ensure the orderly conduct of the proceedings;
- b. Rule on motions and objections;
- c. Administer oaths to witnesses;
- d. Admit or exclude testimony or other evidence;
- e. Require that the parties submit briefs; and
- f. Issue a proposed decision.

6.22(2) *Public hearing.* The hearing shall be open to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

6.22(3) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disruptive or disorderly.

6.22(4) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the office for at least five years from the date of decision.

6.22(5) *Right to participation.* Subject to terms and conditions prescribed by the presiding officer, parties in a contested case proceeding have the right to introduce evidence on issues of material fact, cross-examine witnesses who testify at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.22(6) *Examination of witnesses.* All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning consistent with Iowa Code section 17A.14 and other applicable law.

6.22(7) *Sequestering witnesses.* The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses during the hearing.

6.22(8) *Witness fees.* The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

6.22(9) *Depositions.* Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

6.22(10) *Objections.* All objections to procedures, admissions of evidence, or any other matter shall be timely made and stated on the record.

6.22(11) *Witness right to legal representation.* Witnesses are entitled to be represented by an attorney at their own expense. An attorney to a witness may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

6.22(12) *Order of proceedings.* The presiding officer shall generally conduct hearings in the following order:

- a. The presiding officer shall give an opening statement, which shall be on the record, in which the presiding officer briefly identifies himself or herself, identifies the primary parties and their representatives, notes the fact that all testimony is being recorded, and describes the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. The parties shall present their cases in the sequence determined by the presiding officer;
- d. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

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129—6.23(8B,17A) Evidence.

6.23(1) The presiding officer shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may, where appropriate, take official notice of facts in accordance with Iowa Code section 17A.14(4).

6.23(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.23(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party that did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend its pleadings and to prepare on the additional issue.

6.23(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The way in which the parties shall mark exhibits shall be determined at the prehearing conference, if any. If there is no prehearing conference, the way in which the parties shall mark exhibits shall be determined by mutual agreement between the parties prior to hearing.

6.23(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such objection shall be timely, and the objecting party shall briefly state the grounds for the objection. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.23(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

6.23(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

129—6.24(8B,17A) Default.

6.24(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.24(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.24(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become the final action of the office unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 129—6.29(8B,17A). A motion to vacate must state all facts relied upon by the moving party that establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.24(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.24(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have

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ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.24(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

6.24(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 129—6.27(8B,17A).

6.24(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.24(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

6.24(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 129—6.31(8B,17A).

129—6.25(8B,17A) Ex parte communication.

6.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the office or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.11(2), prosecuting, or advocating in, 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.

6.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.25(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

6.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 129—6.14(8B,17A) and may be supplemented by telephone, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call, or other similar electronic means, that include all parties or their representatives.

6.25(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.25(6) Other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for the parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.25(1).

6.25(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 129—6.19(8B,17A).

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6.25(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.25(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.25(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the office. Violation of ex parte communication prohibitions by office personnel shall be reported to the CIO for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

129—6.26(8B,17A) Recording costs. Upon request, the office shall provide a copy of the tape-recorded hearing or a printed transcript of the whole or any portion of the hearing at cost. The cost of preparing the tape or transcript of the hearing shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

129—6.27(8B,17A) Interlocutory appeals. Upon written request of a party or on the CIO's own motion, the CIO may review an interlocutory order of the presiding officer. In determining whether to do so, the CIO shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which such review of that interlocutory order by the office at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is earlier.

129—6.28(8B,17A) Final decision.

6.28(1) *Final decision of office.* When the CIO presides over the reception of evidence at the hearing, the CIO's decision is a final decision.

6.28(2) *Proposed decision.* When the CIO does not preside at the reception of evidence, the presiding officer shall make a proposed decision.

6.28(3) *Contents of decision.* The proposed or final decision or order shall:

- a. Be in writing or stated on the record.
- b. Include findings of fact. Findings of fact, if set forth within statutory language, shall be accompanied by a concise, explicit statement of underlying facts supporting the findings.
- c. Include conclusions of law stated separately from the findings of fact and supported by cited authority or a reasoned opinion.
- d. Be based on the record of the contested case. The record of the contested case shall include all materials specified in Iowa Code section 17A.12(6). This record shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

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6.28(4) *Proposed decision becomes final.* The proposed decision of the presiding officer becomes the final decision of the office without further proceedings unless there is an appeal to, or review on motion of, the office within the time provided in rule 129—6.31(8B,17A).

6.28(5) *Reports.* The office shall send the division a copy of any request for review of a proposed decision issued by a presiding officer from the division. The office shall notify the division of the results of the review, the office's final decision, and any judicial decision issued.

129—6.29(8B,17A) Appeals and review.

6.29(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the CIO within 14 days after issuance of the proposed decision. Such an appeal is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

6.29(2) *Review.* The CIO may initiate review of a proposed decision on the CIO's own motion at any time within 21 days following the issuance of such a decision.

6.29(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought; and
- e. The grounds for relief.

6.29(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The CIO may remand a case to the presiding officer for further hearing or may preside at the taking of additional evidence.

6.29(5) *Scheduling.* The office shall issue a schedule for consideration of the appeal.

6.29(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 14 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The CIO may resolve the appeal on the briefs or provide an opportunity for oral argument. The CIO may shorten or extend the briefing period as appropriate.

129—6.30(8B,17A) Applications for rehearing.

6.30(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

6.30(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the office decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.29(4), the applicant requests an opportunity to submit additional evidence.

6.30(3) *Time of filing.* The application shall be filed with the office within 20 days after issuance of the final decision.

6.30(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the office shall serve copies on all parties.

6.30(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the CIO grants the application within 20 days after its filing.

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6.30(6) Proceedings. If the CIO grants an application for rehearing, the CIO may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will be received, the CIO may remand the case to the presiding officer for further hearing or may preside at the taking of additional evidence. If additional evidence will not be received, the CIO may issue a ruling without oral argument or hearing. The CIO may, on the request of a party or on the CIO's own motion, order or permit the parties to provide written argument on one or more designated issues. The CIO may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

129—6.31(8B,17A) Stays of office actions.**6.31(1) When available.**

a. Any party to a contested case proceeding may petition the office for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the office. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The CIO may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the office for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. Seeking a stay from the office is required to exhaust administrative remedies prior to seeking a stay from the district court.

6.31(2) When granted. In determining whether to grant a stay, the CIO or the presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) "c."

6.31(3) Vacation. A stay may be vacated by the issuing authority upon application of the office or any other party.

129—6.32(8B,17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

129—6.33(8B,17A) Emergency adjudicative proceedings.

6.33(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and consistent with the Constitution and other provisions of law, the office may issue a written order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the office by emergency adjudicative order. Before issuing an emergency adjudicative order, the office shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the office is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the office is necessary to avoid the immediate danger.

6.33(2) Issuance of order.

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a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the office's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the office;
- (3) Certified mail to the last address on file with the office;
- (4) First-class mail to the last address on file with the office; or
- (5) Electronic service. E-mail notification may be used as the sole method of delivery if the person required to comply with the order has filed a written request that office orders be sent by e-mail and has provided an e-mail address for that purpose.

c. To the extent practicable, the office shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.33(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the office shall make reasonable immediate efforts to contact by telephone, or other similar electronic means, the persons who are required to comply with the order.

6.33(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the office shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which office proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further office proceedings to a later date will be granted only in compelling circumstances upon application in writing.

129—6.34(8B,17A) *Judicial review.* Judicial review of the office's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

6.34(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the office's final decision. The office's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

6.34(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 6.30(5).

These rules are intended to implement Iowa Code chapters 8B and 17A.

[Filed 5/2/16, effective 6/29/16]

[Published 5/25/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/25/16.

ARC 2541C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Pursuant to the authority of Iowa Code section 15.106A, the Economic Development Authority amends Chapter 115, "Tax Credits for Investments in Qualifying Businesses and Community-Based Seed Capital Funds," Iowa Administrative Code.

The rules in Chapter 115 describe the tax credits for investments in qualifying businesses and community-based seed capital funds, i.e., the Angel Investor Tax Credit Program. The legislature, in 2015 Iowa Acts, chapter 138, amended the Angel Investor Tax Credit Program. The amendments to

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Chapter 115 increase the amount of tax credit awarded per investment, allow refundability for certain tax credits, change the cap on individual credit awards and introduce a cap on the amount of awards that can be issued to the investors of a given qualifying business, change the eligibility requirements for a business to be certified as a qualifying business, identify information that will be treated as confidential, and update application deadlines.

Notice of Intended Action for these amendments was published in the January 20, 2016, Iowa Administrative Bulletin as **ARC 2373C**. No comments were received.

Two changes have been made to the amendments since the publication of the Notice of Intended Action. First, the Authority decided to extend the deadline for qualifying businesses to submit applications for investments made in the 2015 calendar year in order to allow qualifying businesses sufficient time to prepare applications after the effective date of these amendments. Therefore, the proposed date of June 30, 2016, has been updated to August 17, 2016, in renumbered subrule 115.4(2) and paragraph 115.5(1)“a.” Second, upon reviewing the amendments, the Authority has decided to recharacterize the subset of eligibility requirements in subparagraph 115.5(1)“a”(3) to better reflect the nature of those requirements as amended by 2015 Iowa Acts, chapter 138. Subparagraph 115.5(1)“a”(3) has been amended to replace the word “training,” and to add the phrase “business experience” in its place.

The Economic Development Authority Board adopted these amendments at the Board meeting held on April 22, 2016.

These amendments do not have any fiscal impact to the state of Iowa.

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

These amendments are intended to implement Iowa Code sections 15E.41 to 15E.46.

These amendments will become effective June 29, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 261—115.1(84GA,SF517) as follows:

261—115.1(84GA,SF517 15E) Tax credits for investments in qualifying businesses and community-based seed capital funds. Tax credits for investments in qualifying businesses and community-based seed capital funds may be claimed as provided in this rule.

115.1(1) No change.

115.1(2) *Investments in qualifying businesses.*

a. and b. No change.

c. Investments made in qualifying businesses on or after January 1, 2011, and before July 2, 2015, are governed by 2015 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

d. Investments made in qualifying businesses on or after July 2, 2015, are governed by 2016 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

115.1(3) *Investments in community-based seed capital funds.*

a. and b. No change.

c. Investments made in community-based seed capital funds on or after January 1, 2011, and before July 2, 2015, are governed by 2015 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

d. Investments made in community-based seed capital funds on or after July 2, 2015, are not eligible for tax credits. See 2015 Iowa Acts, Senate File 510, sections 107 to 128, which include the repeal of Iowa Code section 15E.45 and other provisions related to the administration of community-based seed capital funds.

115.1(4) *Amount of tax credit that may be claimed by taxpayer.*

a. The In the case of investments made on or after July 1, 2011, and before July 2, 2015, the amount of tax credit available to a taxpayer under this rule is equal to 20 percent of the taxpayer’s equity investment in either a qualifying business or community-based seed capital fund. In the case of investments made on or after July 2, 2015, the amount of tax credit available to a taxpayer under this rule is equal to 25 percent of the taxpayer’s equity investment in a qualifying business.

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b. ~~The~~ In the case of investments made on or after July 1, 2011, and before July 2, 2015, the maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be \$50,000. Each year, an investor, and all affiliates of that investor, shall not claim tax credits under this rule for more than five different investments in five different qualifying businesses. In the case of investments made on or after July 2, 2015, the maximum amount of tax credit that may be issued per calendar year to a natural person and the person's spouse or dependent shall not exceed \$100,000 combined. For purposes of this paragraph, a tax credit issued to a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual shall be deemed to be issued to the individual owners based upon the pro rata share of the individual's earnings from the entity. For purposes of this paragraph, "dependent" has the same meaning as provided by the Internal Revenue Code.

c. Investments in community-based seed capital funds.

(1) An investor in a community-based seed capital fund shall receive a tax credit pursuant to this rule only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments in a qualifying business made by the community-based seed capital fund or in an Iowa-based seed capital fund which has at least 40 percent of its committed capital subscribed by community-based seed capital funds. However, an investor in a community-based seed capital fund may receive a tax credit under this rule with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

(2) Paragraph "c" only applies to investments in community-based seed capital funds made on or after July 1, 2011, and before July 2, 2015.

d. The maximum amount of tax credits that may be issued per calendar year for equity investments in any one qualifying business shall not exceed \$500,000.

115.1(5) *Claiming an investment tax credit.* A taxpayer that makes an investment in a qualifying business or community-based seed capital fund and that otherwise meets the requirements of this chapter will receive a board-approved tax credit certificate from the authority. To claim the credit, the taxpayer must attach the certificate to a tax return filed with the department of revenue. For more information on claiming the tax credit, see department of revenue rule 701—42.22(15E,422). See also 2015 Iowa Acts, chapter 138, division XX.

115.1(6) No change.

115.1(7) *Refundability for certain tax credits.* For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division II, any tax credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

115.1(8) *Carryforward period for certain tax credits.* For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, divisions III and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following three years or until depleted, whichever is earlier.

115.1(9) *Carryback of credits prohibited.* A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

ITEM 2. Amend rule 261—115.2(84GA,SF517), parenthetical implementation statute, as follows:

261—115.2(84GA,SF517 15E) Definitions.

ITEM 3. Adopt the following **new** definition of "Entrepreneurial assistance program" in rule 261—115.2(15E):

"*Entrepreneurial assistance program*" includes the entrepreneur investment awards program administered under Iowa Code section 15E.362, the receipt of services from a service provider engaged pursuant to Iowa Code section 15.411(1) or the program administered under Iowa Code section 15.411(2).

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ITEM 4. Rescind the definition of “Near equity” in rule **261—115.2(15E)**.

ITEM 5. Amend rule **261—115.2(15E)**, definitions of “Investor” and “Qualifying business,” as follows:

“*Investor*” means a person that makes a cash investment in a community-based seed capital fund or in a qualifying business on or after January 1, 2011, and before July 2, 2015. “Investor” also means a person making a cash investment in a qualifying business on or after July 2, 2015. “Investor” does not include a person that holds at least a 70 percent ownership interest as an owner, member, or shareholder in a qualifying business for investments made on or after January 1, 2011.

“*Qualifying business*” means, in the case of investments made on or after July 2, 2015, a business that meets all of the following criteria:

1. The principal business operations of the business are located in the state of Iowa;
2. The business has been in operation for six years or less, as measured from the date of the investment for which a credit is claimed;
3. ~~The business has an owner who has successfully completed one of the following:~~
 - ~~An entrepreneurial venture development curriculum, such as programs developed by a John Pappajohn Entrepreneurial Center, or a holistic training program recognized by the Iowa economic development authority which generally encompasses the following areas: entrepreneurial training, management team development, intellectual property management, market research and analysis, sales and distribution development, financial planning, and management and strategic planning;~~
 - ~~Three years of relevant business experience;~~
 - ~~A four-year college degree in business management, business administration or a related field;~~
 - ~~Other training or experience sufficient to increase the probability of success of the qualifying business;~~
3. The business is participating in an entrepreneurial assistance program. The authority may waive this requirement if a business establishes that its owners, directors, officers, and employees have an appropriate level of experience such that participation in an entrepreneurial assistance program would not materially change the prospects of the business. The authority may consult with outside service providers in consideration of such a waiver;
4. The business is not a business engaged primarily in retail sales, real estate or the provision of health care services or other services requiring a professional license;
5. The business does not have a net worth that exceeds \$5 ~~\$10~~ million as of the date of the investment for which the credit is claimed; and
6. ~~Within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, the business shall have secured total equity or near equity financing equal to at least \$250,000.~~
6. The business shall have secured all of the following at the time of application for tax credits:
 - At least two investors.
 - Total equity financing, binding investment commitments, or some combination thereof, equal to at least \$500,000 from investors.

For purposes of paragraph “6,” “investor” includes a person that executes a binding investment commitment to a business.

ITEM 6. Amend rule 261—115.3(84GA,SF517), parenthetical implementation statute, as follows:

261—115.3(84GA,SF517 15E) Cash investments required.

ITEM 7. Amend rule 261—115.4(84GA,SF517) as follows:

261—115.4(84GA,SF517 15E) Applying for an investment tax credit.

115.4(1) No change.

~~**115.4(2)** Application forms may also be obtained by contacting a Small Business Development Center in the applicant’s geographic location. The authority will coordinate with Small Business Development Centers throughout the state to provide uniform application forms to Small Business~~

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

~~Development Centers and to disseminate information regarding the investment tax credits. The authority will provide a summary of the investment tax credits to Small Business Development Centers by either supplying the Small Business Development Centers with a copy of these rules or delivering substantially similar information in any other format approved by the authority. The authority will make itself accessible to Small Business Development Centers for assistance with questions concerning completion of applications or any other questions pertaining to the investment tax credits available under this chapter.~~

~~115.4(3)~~ 115.4(2) Applications shall be date- and time-stamped by the authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer's equity investment was made. For investments made on or after July 2, 2015, and before January 1, 2016, applications for the investment tax credit shall be accepted by the authority until August 17, 2016.

EXAMPLE 1: A taxpayer makes an equity investment in a qualifying business on December 31, 2011. The taxpayer has until March 31, 2012, to apply to the authority for an investment tax credit.

EXAMPLE 2: A taxpayer makes an equity investment in a qualifying business on July 1, 2012. The taxpayer has until March 31, 2013, to apply to the authority for an investment tax credit.

The authority may accept applications after the deadline under extenuating circumstances.

ITEM 8. Amend rule 261—115.5(84GA,SF517) as follows:

~~261—115.5(84GA,SF517~~ 15E) **Verification of qualifying businesses and community-based seed capital funds.**

115.5(1) *Qualifying businesses.*

a. Within ~~180~~ 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the ~~2014~~ 2015 calendar year, not later than ~~June 30, 2012~~ August 17, 2016), a qualifying business shall provide to the authority the following information as a prerequisite to the authority's issuance of any investment tax credits to investors in such qualifying business:

(1) and (2) No change.

(3) A signed statement, from an owner of the business, that describes the manner in which ~~such owner~~ the business satisfies one of the ~~training business experience~~ requirements set forth in the definition of a qualifying business under rule 261—115.2(84GA,SF517 15E); and

(4) A signed statement, from an officer, director, manager, member or general partner of the qualifying business, that states the names, addresses, shares or equity interests issued, consideration paid for the shares or equity interests, and the amounts of any tax credits of all shareholders or equity holders who may initially qualify for the tax credits and ~~the earliest year in which the tax credits may be redeemed~~ the date on which the investment was made. The statement shall contain a commitment by the qualifying business to amend its statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change; ~~and~~

~~(5) A certificate of existence of a business plan for the qualifying business which details the business's growth strategy, management team, production/management plan, marketing plan, financial plan and other standard elements of a business plan.~~

b. Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the authority shall, within a reasonable period of time, determine whether a business is a qualifying business. If the authority verifies that the business is a qualifying business, the authority shall register the qualifying business on a registry of such qualifying businesses. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers who make equity investments in qualifying businesses registered with the authority. The authority shall issue written notification to the qualifying business and the applicant that such business has been registered as a qualifying business with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission

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under rule 261—115.9(84GA,SF517 15E) for any failure of the business to continuously satisfy the requirements necessary for verification and registration as a qualifying business.

115.5(2) Community-based seed capital funds.

a. Within ~~180~~ 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2011 calendar year, not later than June 30, 2012), a community-based seed capital fund shall provide to the authority information as a prerequisite to the authority's issuance of investment tax credits to investors in such community-based seed capital fund. A community-based seed capital fund cannot invest in the Iowa fund of funds organized by the Iowa capital investment corporation under Iowa Code section 15E.65 but may invest up to 60 percent of its committed capital in an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds. The following information must be provided:

(1) to (3) No change.

b. Upon the authority's receipt of the information and documentation necessary to demonstrate a community-based seed capital fund's satisfaction of the criteria set forth herein, the board shall, within a reasonable period of time, determine whether a fund is a community-based seed capital fund. If the authority verifies that the fund is a community-based seed capital fund, the authority shall register the community-based seed capital fund on a registry of such community-based seed capital funds. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers that make equity investments in the community-based seed capital funds registered with the authority. The authority shall issue written notification to the community-based seed capital fund and the applicant that such fund has been registered as a community-based seed capital fund with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 261—115.9(84GA,SF517 15E) for any failure of the community-based seed capital fund to continuously satisfy the requirements necessary for verification and registration as a community-based seed capital fund.

c. The authority will not verify investments made in community-based seed capital funds on or after July 2, 2015.

ITEM 9. Amend rule 261—115.6(84GA,SF517) as follows:

261—115.6(84GA,SF517 15E) Approval, issuance and distribution of investment tax credits.

115.6(1) No change.

115.6(2) Issuance by the authority. Upon approval by the board, the authority shall issue a tax credit certificate to the applicant, provided, however, that such tax credit certificate shall be subject to rescission pursuant to rule 261—115.9(84GA,SF517 15E). In the case of investments made on or after July 2, 2015, the authority will not issue a tax credit certificate prior to July 1, 2016.

115.6(3) No change.

115.6(4) ~~Maximum aggregate limitation~~ Tax credit amount limitations. The aggregate amount of tax credits issued pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119, subsection 2. For fiscal year 2012 and all subsequent fiscal years, that amount is \$2 million. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed \$500,000.

If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum ~~aggregate amount~~ amounts are received and approved, the applications will be carried forward and prioritized to receive tax credit certificates on a first-come, first-served basis in subsequent fiscal years.

When carrying forward and prioritizing such applications, the authority shall (1) issue tax credit certificates to the taxpayers for such carryover tax credits before issuing any new tax credits to later applicants, and (2) apply the aggregate amount of the credits carried over against the total amount of tax credits to be issued during the subsequent fiscal year before approving or issuing additional tax credits.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 10. Amend rule 261—115.7(84GA,SF517) as follows:

261—115.7(84GA,SF517 15E) Claiming the tax credits. To claim a tax credit under this chapter, a taxpayer must attach to that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422). In the case of tax credits issued for investments made on or after July 2, 2015, a taxpayer shall not claim a tax credit at the department of revenue prior to September 1, 2016.

ITEM 11. Amend rule 261—115.8(84GA,SF517), parenthetical implementation statute, as follows:

261—115.8(84GA,SF517 15E) Notification to the department of revenue.

ITEM 12. Amend rule 261—115.9(84GA,SF517) as follows:

261—115.9(84GA,SF517 15E) Rescinding tax credits.

115.9(1) *Rescission of credits for investments in qualifying businesses.*

a. ~~Within~~ In the case of investments made on or after July 1, 2011, and before January 1, 2014, within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, a qualifying business shall have secured total equity or near equity financing equal to at least \$250,000. The business shall provide to the authority information and documentation sufficient to demonstrate that the business has secured total equity or near equity financing equal to at least \$250,000 and that such financing was secured within the 24 months required by this rule and shall do so by the equity deadline. For purposes of this subrule, the "equity deadline" shall be the next June 30 following the end of the calendar year in which the qualifying business is required to have secured total equity or near equity financing equal to at least \$250,000. For example, a qualifying business in which equity investments qualifying for investment tax credits were made in 2011 shall have an equity deadline of June 30, 2014. Examples of sufficient information and documentation include, but are not limited to, the following:

(1) and (2) No change.

b. and *c.* No change.

115.9(2) No change.

ITEM 13. Amend rule 261—115.10(84GA,SF517) as follows:

261—115.10(84GA,SF517 15E) Additional information—confidentiality—annual report.

115.10(1) *Additional information.* The authority may at any time request additional information and documentation from a qualifying business or community-based seed capital fund regarding the operations, job creation and economic impact of such qualifying business or community-based seed capital fund, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.

115.10(2) *Confidentiality.*

a. Except as provided in paragraph "b," all information or records in the possession of the authority with respect to this chapter shall be presumed by the authority to be a trade secret protected under Iowa Code chapter 550 or common law and shall be kept confidential by the authority unless otherwise ordered by a court.

b. All of the following shall be considered public information under Iowa Code chapter 22:

(1) The identity of a qualifying business.

(2) The identity of an investor and the qualifying business in which the investor made an equity investment.

(3) The number of tax credit certificates issued by the authority.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

(4) The total dollar amount of tax credits issued by the authority.

115.10(3) Annual report. The authority will publish an annual report of the activities conducted pursuant to Iowa Code chapter 15E, division V, and will submit the report to the governor and the general assembly. The report will include a listing of eligible qualifying businesses and the number of tax credit certificates and the amount of tax credits issued by the authority.

[Filed 4/29/16, effective 6/29/16]

[Published 5/25/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/25/16.

ARC 2549C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 427.1(4), the Department of Revenue hereby amends Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

The subject matter of new rule 701—80.31(427) is the broadband infrastructure property tax exemption. The rule is intended to implement 2016 Iowa Code section 427.1(40), which allows a property tax exemption for the installation of broadband infrastructure that meets certain requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2466C** on March 16, 2016. A public hearing was held on April 6, 2016. The Department received public comments on this rule making. The Department made no changes based on the public comments.

The Iowa Communications Alliance (ICA) commented that the root cause of uncertainty that a property will receive a 100 percent exemption from property tax was due to the process of central assessments. ICA noted that care should be taken to ensure that all inputs of value are separately accounted for and excluded from the assessment if related to qualifying broadband infrastructure property. ICA also suggested that the definition of "installation of the broadband infrastructure" should include "equipment and structures such as conduits, pedestals, enclosures, electronics, and other supporting equipment that is used in delivering or protecting equipment that delivers broadband services." The Department declined to adopt this definition of the term "installation of the broadband infrastructure" because the Department determined it would be ultra vires to the statutory definition of the term "broadband infrastructure" under Iowa Code section 8B.1(2). ICA also commented that the February 1 deadline for applications for exemption might be too soon relative to the year-end for applicants to provide finalized supporting documentation at the time of application for exemption.

The Iowa Cable and Telecommunications Association (ICTA) commented that there should be a process for informing the public of applications for exemptions in order to allow for public feedback on the applications submitted. In addition, ICTA commented that interested parties should have a process whereby they could contest pending applications or participate in the revocation of an exemption. The Department determined that providing such a process would be ultra vires to the statute. ICTA commented that the rules should specify that the broadband infrastructure subject to exemption should be required to achieve and maintain 25 megabits per second of download speed and 3 megabits per second of upload speed and that the Office of the Chief Information Officer (OCIO) may not grant a waiver or variance of these speeds. The Department determined that the law and rule as they are written accommodate this comment and that under the law it is the province of OCIO to determine whether or not a waiver or variance may be issued for broadband speeds.

The Iowa League of Cities (ILC) commented that the exemption should only apply to new broadband infrastructure. The Department determined that the law and rule as they are currently written address this comment. ILC also commented that the administrative and notice procedures should take into consideration the March 15 annual deadline for the certification of local budgets. The Department determined that the rule, as written, conforms to the law and that the March 15 deadline has been contemplated in the notice requirements under the law.

REVENUE DEPARTMENT[701](cont'd)

One nonsubstantive change was made from the Notice. In subparagraphs 80.31(7)“b”(1) and (2), “denial” was changed to “revocation.”

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

The Department of Revenue adopted this rule on May 4, 2016.

After analysis and review of this rule making, a positive impact on jobs may exist. This rule implements a property tax exemption for the installation of new broadband infrastructure and furthers the goals of the Connect Every Acre initiative to provide broadband services to underserved areas in the state.

This rule is intended to implement Iowa Code section 427.1.

This rule will become effective June 29, 2016.

The following amendment is adopted.

Adopt the following new rule 701—80.31(427):

701—80.31(427) Broadband infrastructure.

80.31(1) Definitions. For purposes of this rule, the following definitions shall govern.

“*Broadband*” means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver Internet services to the public.

“*Broadband infrastructure*” means the physical infrastructure used for the transmission of data that provides broadband services. “Broadband infrastructure” does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband.

“*Certified project*” means the installation of broadband infrastructure certified by the office of the chief information officer to serve a targeted service area.

“*Date of commencement*” means the date first occurring after July 1, 2015, and before July 1, 2020, in which broadband infrastructure used in a certified project becomes property taxed as real property as determined by Iowa Code section 427A.1.

“*Date of completion*” means the date that the entire targeted service area receives broadband service delivered at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

“*Installation of the broadband infrastructure*” means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

“*Targeted service area*” means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of June 22, 2015.

80.31(2) Exemption. An exemption from property tax shall be allowed for each certified project in the amount equal to 100 percent of the actual value added by installation of the broadband infrastructure in a targeted service area that facilitates broadband service for the public at or above 25 megabits per second of download speed and 3 megabits per second of upload speed, as certified by the office of the chief information officer. The exemption shall be allowed beginning January 1 of the assessment year in which an application for exemption is approved until the exemption is revoked or at the expiration of ten years, whichever occurs earlier.

80.31(3) Calculation of actual value added by installation of the broadband infrastructure. The actual value added by installation of the broadband infrastructure is the amount of increase in the actual assessed value of the property that is directly attributable to the installation of broadband infrastructure in a targeted service area for the assessment year in which the property receives the exemption. Changes

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in the value of the property which are attributable to general market fluctuations are not to be included in the calculation of the actual value added by installation of the broadband infrastructure. Installation of broadband infrastructure that is not part of a certified project is not eligible to receive the exemption.

Broadband infrastructure in general may be assessed locally or by the department of revenue. Broadband infrastructure that qualifies as telephone or telegraph property under Iowa Code chapter 433 is centrally assessed by the department of revenue. Broadband infrastructure that does not qualify as telephone or telegraph property under Iowa Code chapter 433 is locally assessed under Iowa Code chapter 441. The owner of the property must separately report property that is centrally assessed from property that is locally assessed.

a. Locally assessed property. The local assessor shall determine the actual value added by installation of broadband infrastructure using the methodologies required under Iowa Code section 441.21.

b. Centrally assessed property. The department of revenue shall determine the actual value added by installation of the broadband infrastructure by using the appropriate methodologies set forth in 701—Chapter 77.

The department shall calculate the actual value added by installation of the broadband infrastructure as part of the total unit value of the operating property of the company. The exemption attributable to the installation of the broadband infrastructure shall be applied to each unit before any other exemption or credit. In no case shall the taxable value of the property be reduced below zero. The department shall certify the exemption value per line mile for each company to the county auditor pursuant to Iowa Code section 433.8.

80.31(4) Commencement and completion of project. To be eligible for the exemption, the date of commencement of the installation of the broadband infrastructure must occur on or after July 1, 2015, and the date of completion of the installation of the broadband infrastructure must occur on or before July 1, 2020.

80.31(5) Application for exemption. The owner of broadband infrastructure shall file one application with the department of revenue. The department shall forward the application to the appropriate county boards of supervisors for approval or denial for broadband infrastructure associated with property subject to local assessment. The department shall retain the application for approval or denial for broadband infrastructure associated with property subject to central assessment.

a. Application deadline. The owner of the property shall file the application with the department of revenue by February 1 of the year in which the broadband infrastructure is first assessed for taxation or by February 1 of the following two assessment years. If approved, the exemption shall be allowed for ten years from January 1 of the assessment year in which the application is filed or until revoked without further application. However, at any time prior to the completion of the installation of the broadband infrastructure, an owner may submit a proposal to the department requesting that the owner be allowed to file an application for exemption by February 1 of any other assessment year following completion of the installation of broadband infrastructure. The department shall approve the proposal for property that is centrally assessed. The board of supervisors shall approve the proposal by resolution for property that is locally assessed. If approved, the exemption shall be allowed for ten years from January 1 of the assessment year in which the application is approved or until revoked without further application. If an exemption that was revoked is reinstated on appeal, the exemption shall remain in effect only for the remaining period of exemption. No property shall receive an exemption for the installation of broadband infrastructure for a period greater than ten years.

Neither the department nor the board of supervisors shall approve an application for exemption that is missing any of the requirements listed in this subrule. The department or the board of supervisors may consult with the office of the chief information officer in order to obtain additional information necessary to review an application for exemption.

b. Application requirements. The owner shall submit the application to the department of revenue. It is the responsibility of the owner to ensure that the application is complete and accurate. The application must be made on forms prescribed by the department. In addition, the application must contain the following information, certifications and documentation:

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(1) The nature of the broadband infrastructure installation, including the number of new line miles installed within the jurisdiction of the assessing authority to which the owner is applying for exemption, and a description of the property and how it is directly related to delivering broadband services.

(2) The percentage of homes, farms, schools, and businesses in the targeted service area that will be provided access to broadband service.

(3) The actual cost of installing the broadband infrastructure under the project, if available. The application shall contain supporting documents demonstrating actual cost.

(4) Certification from the office of the chief information officer pursuant to Iowa Code section 8B.10 that the installation is being performed or was completed in a targeted service area and that it facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

(5) Certification by the company of the date of commencement and actual or estimated date of completion. If an application contains only an estimated date of completion, the owner must notify the department of the actual completion date once the certified project is completed. If the actual completion date occurs after July 1, 2020, the exemption may be revoked.

(6) A copy of any nonwireless broadband-related permit issued by a political subdivision, if applicable.

c. Special application requirements. If an owner submits a proposal to the department prior to the completion of the installation of broadband infrastructure requesting to file an application for exemption in any other assessment year following completion of the project, the owner must provide the following information and documentation in addition to those required under paragraph 80.31(5) "b."

(1) The actual cost already incurred for installation of broadband infrastructure, if any, with supporting documentation demonstrating the actual cost.

(2) The estimated costs for project completion.

(3) The estimated date of project completion. Once the project has been completed, the owner must notify the department of the actual completion date. If the actual completion date occurs after July 1, 2020, the exemption may be revoked.

d. Approval or denial of application. All applications shall be submitted to the department of revenue. The department shall forward applications for property subject to local assessment to the board of supervisors of the county in which the exempt property is located. The department shall retain the applications for centrally assessed property. The department and the board of supervisors, as applicable, shall notify an applicant of approval or denial of an application for exemption by March 1 of the assessment year in which the application was submitted. The notification shall include a notification of the applicant's right to appeal. The board of supervisors shall forward all approved applications and any necessary information regarding the applications to the appropriate local assessor by March 1 of the assessment year in which the application was submitted.

80.31(6) Revocation of exemption. The department or board of supervisors may revoke the exemption at any time after the exemption is granted if the department or board of supervisors determines that the property owner no longer provides the broadband service to a targeted service area at the speeds required under Iowa Code section 427.1(40). The property owner has the responsibility to provide the department, the board of supervisors or the office of the chief information officer the information required to substantiate that the broadband infrastructure meets the requirements of the exemption. The department or board of supervisors, as applicable, shall provide notice of revocation to the property owner. An owner may appeal the decision to revoke the exemption within 30 days of the issuance of the notice of revocation.

80.31(7) Appeals.

a. Appeal of denial of application for exemption. An applicant for the exemption under this rule whose application is denied may appeal the denial within 30 days of its issuance.

(1) Denial by board of supervisors. An applicant may appeal the denial of its application for exemption by the board of supervisors to the property assessment appeal board within 30 days of the issuance of the denial.

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(2) Denial by the department of revenue. An applicant may appeal the denial of its application for exemption by the department of revenue to the director of revenue within 30 days of the issuance of the denial.

b. Appeal of revocation of exemption. An owner whose exemption is revoked may appeal the revocation within 30 days of its issuance.

(1) Revocation by board of supervisors. An owner may appeal the revocation of its exemption by the board of supervisors to the property assessment appeal board within 30 days of the issuance of the revocation.

(2) Revocation by the department of revenue. An owner may appeal the revocation of its exemption by the department of revenue to the director of revenue within 30 days of the issuance of the revocation.

c. Appeal of value of exemption. A property owner who is dissatisfied with the value of the owner's exemption may appeal the value assigned by the local assessor using the protest procedures under Iowa Code section 441.37. A property owner who is dissatisfied with the value of the owner's exemption may appeal the value assigned by the department using the appeal procedures under Iowa Code section 429.2.

This rule is intended to implement Iowa Code section 427.1(40).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/25/16.

ARC 2545C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4 and 421.1A(4)“e,” the Property Assessment Appeal Board hereby amends Chapter 126, “Property Assessment Appeal Board,” Iowa Administrative Code.

These amendments are necessary to fully implement rules for the use of the Board's electronic filing system and to address the applicability of changes to the Iowa Rules of Civil Procedure in cases before the Board.

Item 1 amends subrule 126.1(2) to adopt definitions relating to the Board's electronic filing system.

Item 2 amends subrule 126.1(4) to address good cause for lengthening or shortening time in appeals before the Board.

Item 3 amends subrule 126.2(1) relating to the appeal and certification. The amendment clarifies that appeals are filed with the Board and how appeals may be filed, including through the Board's electronic filing system.

Item 4 amends subrule 126.2(2) to clarify the form of the appeal and to require less documentation from the appealing party for the initial filing.

Item 5 amends subrule 126.2(4) to provide that a local board of review will receive notice of any appeal filed in its jurisdiction through the electronic filing system.

Item 6 amends subrule 126.2(5) to lessen the documentation required from the local board of review when it certifies its record. The new documentation for certification will include an answer, the taxpayer's protest filed with the local board of review, the board of review's final decision letter, and a notice of assessment, if any. The local board of review is no longer required to file its entire record with the Board.

Item 7 amends subrule 126.2(6) to address the docketing of appeals through the Board's electronic filing system and maintenance of the Board's records.

Item 8 amends subrule 126.2(8) to clarify that attorneys and designated representatives both shall file a notice of appearance in an appeal.

Item 9 amends rule 701—126.3(421,441) regarding applicability of the rule for nonelectronic service on parties filing with the Board. The amendments clarify procedures used when a party is not participating in an appeal using the electronic filing system.

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Item 10 adopts new rule 701—126.4(421,441) regarding the Board's electronic filing system. The rule sets forth procedures for registration, format and filing of documents using the system, service upon the parties, and filing by the Board in appeals using the electronic filing system.

Item 11 amends rule 701—126.5(421,441) to clarify how the Board issues orders and how parties may file motions and settlements.

Item 12 amends rule 701—126.6(421,441) regarding hearing scheduling and discovery plans. The amendments require that parties to the appeal confer and file a hearing scheduling and discovery plan, in certain cases, within 60 days after receiving the notice of appeal. The amendments also allow the Board to require a hearing scheduling and discovery plan in any case for which the Board deems it necessary. The rule also addresses prehearing conferences and failure to comply with the requirements.

Item 13 amends rule 701—126.7(421,441) to exempt appeals before the Board from amendments to Iowa Rules of Civil Procedure 1.500 and 1.507 regarding mandatory disclosure and discovery conference requirements. The rule also clarifies the applicability of other provisions of the Iowa Rules of Civil Procedure in appeals before the Board, addresses rebuttal evidence offered by the party, and requires the local board of review to submit the property record card or cost report as a labeled exhibit.

Item 14 amends subrule 126.8(2) to clarify that the Board shall serve notice of any hearing.

Item 15 amends subrule 126.8(3) to clarify that a waiver should not be e-mailed to the Board.

Item 16 amends subrule 126.8(4) to clarify what constitutes good cause for filing a continuance and to provide that the party requesting the continuance may be required to substantiate the request with additional materials.

Item 17 amends subrule 126.8(6) to clarify that a partnership, corporation, or association may be represented by any member, officer, director, or duly authorized agent. The amendment also notes that witnesses to a hearing may be sequestered during the hearing.

Item 18 amends subrule 126.10(1) to explain how and when the Board's final agency action is filed and to address the time period for appeal to the district court.

These amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 16, 2016, as **ARC 2464C**. No comments were received from the public. Technical changes have been made from the Notice to correct one reference and minor grammatical errors in Item 10.

The Property Assessment Appeal Board adopted these amendments on April 26, 2016.

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

These amendments are intended to implement Iowa Code sections 421.1A and 441.37A.

These amendments shall become effective June 29, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 126.1(2) as follows:

126.1(2) Definitions. For the purpose of these rules, the following definitions shall apply:

"Appellant" means the party filing the notice of appeal with ~~the secretary of~~ the property assessment appeal board.

"Board" means the property assessment appeal board as created by Iowa Code section 421.1A and governed by Iowa Code chapter 17A and section 441.37A.

"Department" means the Iowa department of revenue.

"Electronic filing" means the electronic transmission of a document to the electronic filing system together with the production and transmission of a notice of electronic filing.

"Electronic filing system" means the system established by the board for the filing of papers and service of the same to opposing parties.

"Electronic record" means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

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“Electronic service” means the electronic transmission of a notification to the registered users who are entitled to receive notice of the filing.

“Local board of review” means the board of review as defined by Iowa Code section 441.31.

“Nonelectronic filing” means a process by which a paper document or other nonelectronic item is filed with the board.

“Notice of electronic filing” means an e-mail notification generated by the electronic filing system when a document is electronically filed.

“Party” means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“PDF” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

“Presiding officer” means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the ~~property assessment appeal~~ board.

“Public access terminal” means a computer located at the board’s office where the public may view, print, and electronically file documents.

“Registered user” means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

“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 board’s office.

“Secretary” means the secretary for the property assessment appeal board.

“Signature” means a 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.

ITEM 2. Amend subrule 126.1(4) as follows:

126.1(4) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34). For good cause, the board may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the board shall afford all parties an opportunity to be heard or to file written arguments.

ITEM 3. Amend subrule 126.2(1) as follows:

126.2(1) Appeal and jurisdiction. The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by ~~written notice of appeal given to the secretary~~ filing an appeal with the board. The ~~written notice of~~ appeal shall include a petition setting forth the basis of the appeal and the relief sought. The ~~written notice of~~ appeal shall be filed with the ~~secretary board~~ within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed. For an appeal filed through the electronic filing system to be timely, the appeal must be filed by 11:59 p.m. on the last day for filing.

b. ~~Notice of~~ The appeal may be filed through the board’s electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery; or e-mailed to the board at paab@iowa.gov.

c. ~~For an appeal filed by e-mail to be timely, it must be received by the board by 11:59 p.m. on the last day for filing as established within the time period set forth in paragraph 126.2(1) “a.”~~

ITEM 4. Amend subrule 126.2(2) as follows:

126.2(2) Form of appeal. The ~~notice of~~ appeal shall include:

- a.* The appellant’s name, mailing address, e-mail address, and telephone number;
- b.* The address of the property being appealed and its parcel number;
- ~~*c.* A copy of the letter of disposition by the local board of review;~~
- d. c.* A short and plain statement of the claim ~~showing that the appellant is entitled to relief;~~

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- e. d.* The relief sought; and
f. e. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, e-mail address, and telephone number.

ITEM 5. Amend subrule 126.2(4) as follows:

126.2(4) *Notice to local board of review.* ~~The secretary board shall mail serve, through the electronic filing system, a copy of the appellant's written notice of appeal and petition appeal to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is provided to served on the local board of review.~~

ITEM 6. Amend subrule 126.2(5) as follows:

126.2(5) *Certification Answer and certification by local board of review.*

a. Initial certification.

~~(1) Within 21 days after notice of appeal is given, the local board of review shall certify to the board the original notice of assessment if any, the petition to the board of review, and a copy of the board of review's letter of disposition.~~

~~(2) The local board of review shall also submit to the board in writing the name, address, telephone number, and e-mail address of the attorney representing the local board of review before the board. The local board of review may request additional time to certify a copy of its record to the board by submitting a request in writing or by e-mail to the board at paab@iowa.gov.~~

b. Full record certification prior to hearing.

~~(1) At least 21 calendar days prior to the contested case hearing, the local board of review shall certify to the board the complete property record card for the subject property, the protest hearing minutes of the local board of review kept pursuant to Iowa Code chapter 21, and any information provided to or considered by the local board of review as part of the protest.~~

~~(2) The local board of review shall also send a copy of the full record to the opposing party.~~

Using the form provided by the board or a conforming document, the local board of review's attorney or representative shall file an answer and certification within 21 days after service of the notice of appeal. The answer and certification shall include a statement setting forth the local board of review's position on the appeal and include the following attachments:

1. The taxpayer's protest to the local board of review;
2. The final decision of the local board of review; and
3. The notice of assessment, if any.

ITEM 7. Amend subrule 126.2(6) as follows:

126.2(6) *Docketing.* Appeals shall be assigned consecutive docket numbers. ~~Records~~ Electronic records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the secretary board, as well as all filings made in the appeal. ~~The records of each case shall also include each action and each act done, with the proper dates, as follows:~~

- ~~a. The title of the appeal including jurisdiction and parcel identification number;~~
- ~~b. Brief statement of the grounds for the appeal and the relief sought;~~
- ~~c. Postmarked date of the local board of review's letter of disposition;~~
- ~~d. The manner and date/time of service of notice of appeal;~~
- ~~e. Date of notice of hearing;~~
- ~~f. Date of hearing; and~~
- ~~g. The decision by the board, or other disposition of the case, and date thereof.~~

ITEM 8. Amend subrule 126.2(8) as follows:

126.2(8) *Appearances.* Any party may appear and be heard on its own behalf, or by its attorney or designated representative. ~~A designated representative shall file a notice of appearance with the board for each case in which the representative appears for a party. Filing a motion or pleadings on behalf of a party shall be equivalent to filing a notice of appearance. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a~~

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party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

ITEM 9. Amend rule 701—126.3(421,441) as follows:

701—126.3(421,441) Service Nonelectronic service on parties and filing with the board.

126.3(1) Applicability. This rule applies to all nonelectronic filings made with the board by parties not voluntarily using the electronic filing system or in all other cases for which the board has not ordered the conversion of the case to an electronic file. Electronic filing and service of documents using the board's electronic filing system is governed by rule 701—126.4(421,441).

~~126.3(1)~~ **126.3(2) Service and filing of papers paper documents.** After the notice of appeal and petition have been filed, all motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. ~~Service on a party how and when made parties to the appeal.~~ The parties may agree to exchange the certified record, motions, pleadings, briefs, exhibits, and any other papers with each other electronically or via any other means. All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; or mailed by first-class mail, so long as there is proof of mailing; ~~or sent electronically if the parties have agreed to service by such means.~~

b. ~~Filing with the board when made.~~ Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; or mailed by first-class mail, so long as there is proof of mailing; ~~or sent by e-mail as permitted by this chapter.~~ A registered user of the board's electronic filing system may electronically file documents with the board pursuant to rule 701—126.4(421,441).

~~(1) For most filings in a docket made with the board, only an original is required.~~

~~(2) For exhibits and other documents to be introduced at hearing, three copies are required. For a nonoral submission, only one copy is required.~~

~~(3) The board or presiding officer may request additional copies.~~

c. *Proof of mailing.* Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).
(Date) (Signature)

~~126.3(2)~~ **126.3(3) Reserved.** *Board-generated documents.* The board will mail copies of all board-generated documents to any party not served by the board's electronic filing system.

126.3(4) Conversion of filed paper documents. The board will convert all filed paper documents to an electronic format viewable to registered users of the electronic filing system.

126.3(5) Form of paper documents. Each document delivered to the board must be printed on only one side and have no tabs, staples, or permanent clips. The document may be organized with paperclips, clamps, or another type of temporary fastener or be contained in a file folder.

126.3(6) Return of copies by mail. If a party requests that a document filed in paper form be returned by mail, the party must deliver to the board a self-addressed envelope, with proper postage, large enough to accommodate the returned document.

ITEM 10. Adopt the following **new** rule 701—126.4(421,441):

701—126.4(421,441) Electronic filing system.

126.4(1) Electronic filing and applicability.

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a. Electronic filing. The board will maintain an electronic filing system, which shall be the preferred method for filing documents with the board.

b. Applicability. This rule applies to electronic filing and service of documents using the board's electronic filing system. Nonelectronic filing and service are governed by rule 701—126.3(421,441).

(1) The board may order the conversion of any case to an electronic file. Upon such an order, all future filings must be made using the board's electronic filing system in compliance with this rule, unless a filing is subject to the exception in paragraph 126.4(1) "c."

(2) In all other cases, a party or parties to a proceeding may voluntarily choose to use the electronic filing system in compliance with this rule.

c. Exceptions. Any item that is not capable of electronic filing shall be filed in a nonelectronic format pursuant to rule 701—126.3(421,441).

126.4(2) Registration.

a. Registration required. Every individual who is filing documents or viewing or downloading documents filed in an appeal must register as a registered user of the electronic filing system.

b. How to register. To register, an individual must complete the registration process online at <https://efile-paab.iowa.gov/>, consent to the user agreement, and obtain a username and password for the electronic filing system.

c. Changing passwords. Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user must change the password immediately. The board may require password changes periodically.

d. Changes in a registered user's contact information. If a registered user's e-mail address, mailing address, or telephone number changes, the registered user must promptly make the necessary changes to the registered user's information contained in the electronic filing system. The registered user shall promptly give notice of changes in contact information to any nonregistered party in every active proceeding in which the registered user is a party.

e. Duties of a registered user. Each registered user shall ensure that the user's e-mail account information is current, that the account is monitored regularly, and that e-mail notices sent to the account are timely opened.

f. Canceling registration. Withdrawal from participation in the electronic filing system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

g. Use of username and password. A registered user is responsible for all documents filed with the registered user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

h. Username and password security. If a username or password is lost, misappropriated, misused, or compromised, the registered user of that username and password shall notify the board promptly.

i. Denial of access. The board may refuse to allow an individual to electronically file or download information in the electronic filing system due to misuse, fraud or other good cause.

126.4(3) Signatures.

a. Registered user. A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

b. Documents requiring oaths, affirmations or verifications. Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

c. Format. Any filing requiring a signature must be signed, with either a nonelectronic signature (actual signature scanned), an electronic signature (the symbol "/s/" or "/registered user's name/"), or a digitized signature (an inserted image of a handwritten signature).

d. Multiple signatures. By filing a document containing multiple signatures, the registered user confirms that the content of the document is acceptable to all persons signing the document and that all such persons consent to having their signatures appear on the document.

126.4(4) Format and redaction of electronic documents. All documents must be converted to a PDF format before they are filed in the electronic filing system. Prior to filing any document, the registered

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user shall ensure that the document is certified as confidential or that the confidential information is omitted or redacted.

126.4(5) Exhibits and other attachments. Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing. Each exhibit shall be filed as a separate PDF. Exhibits shall be labeled as required by paragraph 126.7(3)“d.”

126.4(6) Filing and service using electronic filing.

a. What constitutes filing. The electronic transmission of a document to the electronic filing system consistent with the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes the filing of the document.

b. Electronic file stamp. Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

c. E-mail or fax. The e-mailing or faxing of a document to the board will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise ordered by the board.

d. Public access terminal. The board shall maintain a public access terminal at the board’s office.

e. Service of filings. When a document is electronically filed, the electronic filing system will produce and transmit a notice of electronic filing to all parties to the appeal who are registered users. The notice of electronic filing shall constitute service of the filing on registered users. No other service is required on registered users unless ordered by the board. The filing party is responsible for ensuring service, pursuant to paragraph 126.3(2)“a,” on any party that is not a registered user. Notices of electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until the users have filed a withdrawal of appearance.

f. Proof of service of nonelectronic filings. Parties filing a document nonelectronically pursuant to paragraph 126.3(2)“c” and rule 701—126.3(421,441) shall electronically file a notice of nonelectronic filing along with proof of service.

g. Electronic filing and service of board-generated documents. All board-generated documents issued in an appeal governed by this chapter shall be electronically filed and served. The board shall only mail paper copies of documents as provided in subrule 126.3(3).

126.4(7) Filing by the board on behalf of a party.

a. Where the circumstances and administrative efficiency requires, board staff may file a motion on behalf of a party to an appeal pursuant to this subrule.

b. When a party to an appeal contacts board staff via telephone or other means and indicates the party’s desire to file a motion or request specified in paragraph 126.4(7)“c,” board staff may file the request or motion in the electronic filing system on behalf of the party. The request or motion shall be consistent with the instructions and information provided by the party and shall only be filed with the permission of the party. Board staff shall not file any motions or requests on behalf of a party if any opposing party requires nonelectronic service under subrule 126.3(2).

c. Only the following motions or requests may be filed by board staff on behalf of a party:

- (1) Motion for telephone hearing;
- (2) Motion to appear in person at hearing;
- (3) Motion for hearing;
- (4) Motion for continuance;
- (5) Motion to withdraw appeal.

d. Upon filing of the motion or request, board staff will provide a courtesy copy of the filing to the party.

ITEM 11. Amend rule 701—126.5(421,441) as follows:

701—126.5(421,441) Motions and settlements.

126.5(1) Authority of board to issue procedural orders. The board may issue preliminary orders regarding procedural matters. ~~The secretary shall mail copies of all procedural orders to the parties.~~

REVENUE DEPARTMENT[701](cont'd)

126.5(2) Motions. No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the ~~secretary~~ board and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. and *b.* No change.

c. Motions to withdraw. An appellant may withdraw the appeal prior to the hearing. Such a withdrawal of an appeal must be in writing ~~or by e-mail to paab@iowa.gov~~ and signed by the appellant or the appellant's designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board's granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

126.5(3) Settlements. Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed ~~in writing or by an electronic copy e-mailed to paab@iowa.gov~~ with the board. The board will not approve settlements unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

ITEM 12. Amend rule 701—126.6(421,441) as follows:

701—126.6(421,441) Hearing scheduling and discovery plan.

126.6(1) When required. For appeals involving properties classified ~~commercial or industrial~~ commercial, industrial, or multiresidential and assessed at \$2 million or more, ~~a scheduling order shall be sent to the parties to set dates for discovery, designation of witnesses, filing of motions, exchange of evidence, and a contested case hearing~~ the parties shall confer and file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule 126.2(4). In any other appeal, the parties may jointly ~~enter a scheduling order~~ file a hearing scheduling and discovery plan or the board may, on its own motion, ~~issue a scheduling order~~ require parties to file a hearing scheduling and discovery plan. The dates established in a ~~scheduling order~~ hearing scheduling and discovery plan under this rule shall supersede any dates set forth in any other rule in this chapter.

126.6(2) Prehearing conference. A party may request a prehearing conference to resolve ~~scheduling~~ issues ~~any disputed issue~~ pertaining to the hearing scheduling and discovery plan.

126.6(3) Modification. The parties may jointly agree to modify ~~a scheduling order~~ the plan. If one party seeks to modify ~~a scheduling order~~ the plan, the party must show good cause for the modification.

126.6(4) Failure to comply. A party that fails to comply with a ~~scheduling order~~ plan shall be required to show good cause for failing to comply ~~with the order~~ and that the other party is not substantially prejudiced. Failing to comply with a ~~scheduling order~~ plan may result in sanctions including, but not limited to, the exclusion of evidence or dismissal of the appeal.

ITEM 13. Amend rule 701—126.7(421,441) as follows:

701—126.7(421,441) Discovery and evidence.

126.7(1) Discovery procedure. ~~Discovery procedures applicable in civil actions under the Iowa Rules of Civil Procedure are available to parties in cases before the board. Unless lengthened or shortened by these rules, the board or presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure. The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings. The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other~~

REVENUE DEPARTMENT[701](cont'd)

purposes; and requests for admission. The time frames for discovery in specific Iowa Rules of Civil Procedure govern those specific procedures, unless lengthened or shortened by the board.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in an appeal. Any party taking a deposition in an appeal shall be responsible for any deposition costs. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in an appeal.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things; and entry upon land for inspection and other purposes in an appeal.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in an appeal. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in an appeal.

e. The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to appeals before the board.

f. Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to an appeal.

g. Discovery shall be served on all parties to the appeal, but shall not be filed with the board. Parties shall file a notice with the board when a notice of deposition or a discovery request or response is served on another party. The notice filed with the board shall include the date, the manner of service, and the names and addresses of the persons served. Other discovery materials shall not be filed unless ordered by the presiding officer.

126.7(2) No change.

126.7(3) *Evidence.*

a. to c. No change.

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have entered a scheduling order filed a hearing scheduling and discovery plan under rule 701—126.6(421,441). Rebuttal evidence need not be exchanged or served on the opposing party prior to the hearing. All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark exhibits each exhibit with consecutive numbers. The appellee shall mark exhibits each exhibit with consecutive letters. The local board of review's Exhibit A shall be the subject property's property record card or cost report.

e. and f. No change.

126.7(4) *Subpoenas.*

a. Issuance of subpoena for witness.

(1) ~~An agency~~ A subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least ~~40~~ 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

b. Issuance of subpoena for production of documents.

(1) ~~An agency~~ A subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least ~~20~~ 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.

REVENUE DEPARTMENT[701](cont'd)

c. Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure.

ITEM 14. Amend subrule 126.8(2) as follows:

126.8(2) Notice of hearing. Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. If a hearing is requested, the ~~secretary board~~ shall ~~mail~~ serve a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 126.8(3). The notice of hearing shall contain the following information:

- a.* A statement of the date, time, and place of the hearing;
- b.* A statement of legal authority and jurisdiction under which the hearing is to be held;
- c.* A reference to the particular sections of the statutes and rules involved;
- d.* That the parties may appear and present oral arguments;
- e.* That the parties may submit evidence and briefs;
- f.* That the hearing will be electronically recorded by the board;
- g.* That a party may obtain a certified court reporter for the hearing at the party's own expense;
- h.* That audiovisual aids and equipment are to be provided by the party intending to use them;
- i.* A statement that, upon submission of the appeal, the board will take the matter under advisement. ~~A letter of disposition~~ An order will be mailed issued to the parties; and
- j.* A compliance notice required by the Americans with Disabilities Act (ADA).

ITEM 15. Amend subrule 126.8(3) as follows:

126.8(3) Waiver of 30-day notice. The parties to the appeal may jointly waive the 30-day written notice requirement for a hearing. The waiver must be ~~in writing or by e-mail to paab@iowa.gov~~ and signed by the parties or their designated representatives and filed with the board. By waiving notice, the parties acknowledge they are ready to proceed with the hearing. The parties will be contacted when a hearing date is available but notice for said date may be less than 30 days. The parties will have the right to accept or reject the hearing date.

ITEM 16. Amend subrule 126.8(4) as follows:

126.8(4) Continuance. Any hearing may be continued for "good cause." "Good cause" is equated to any cause not growing out of the fault or negligence of the movant, which satisfies the board that substantial justice will more nearly be obtained if the case is continued. ~~Requests for continuance prior to the hearing~~ A motion to continue the hearing shall be in writing or by e-mail to paab@iowa.gov and promptly filed with the secretary of the board and, except in exigent or other unusual circumstances, filed not later than 7 days before the hearing or immediately upon "the cause" becoming known. The motion must contain sufficient specific information or be supported by sufficient evidentiary materials or both to allow the board to determine whether there is "good cause" and whether the alleged cause grows out of the fault or negligence of the moving party. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

- a.* Prior continuances;
- b.* The interests of all parties;
- c.* The likelihood of informal settlement;
- d.* The existence of an emergency;
- e.* Any objection;
- f.* Any applicable time requirements;
- g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h.* The timeliness of the request; and
- i.* Other relevant factors, including the existence of a ~~scheduling order~~ hearing scheduling and discovery plan.

REVENUE DEPARTMENT[701](cont'd)

ITEM 17. Amend subrule 126.8(6) as follows:

126.8(6) Hearing procedures. A party to the appeal may request a hearing, or the appeal may proceed without a hearing. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members.

a. No change.

b. *Representation.* Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative. A partnership, corporation, or association may be represented by any member, officer, director, or duly authorized agent.

c. and d. No change.

e. *Conduct of the hearing.* The presiding officer shall conduct the hearing in the following manner:

(1) to (3) No change.

(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. Witnesses may be sequestered during the hearing. The presiding officer may limit questioning in a manner consistent with law; and

(5) No change.

ITEM 18. Amend subrule 126.10(1) as follows:

126.10(1) Appeals of board decisions. A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the ~~letter of disposition of the appeal by the board is mailed~~ board's final agency action is postmarked to the appellant or the final agency action is filed in the board's electronic filing system. Iowa Code chapter 17A applies to judicial review of the board's final decision. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

[Filed 5/6/16, effective 6/29/16]

[Published 5/25/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/25/16.

ARC 2538C

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 9E.3 and 17A.3, the Secretary of State hereby adopts new Chapter 6, "Safe at Home Program," Iowa Administrative Code.

This new chapter facilitates the administration of the Safe at Home Program, an address confidentiality program, in accordance with Iowa Code chapter 9E. The rules in Chapter 6 describe the manner and process for program participant certification renewal and recertification, cancellation of program certification, the manner and process for changing program participant voter registration information, and the manner and process for cancellation of program participant absentee ballot voting through the Safe at Home Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2416C** on February 17, 2016. No comments were received from the public. The adopted rules are identical to those proposed under Notice of Intended Action.

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

These rules are intended to implement Iowa Code section 9E.3.

These rules will be effective June 29, 2016.

The following amendment is adopted.

SECRETARY OF STATE[721](cont'd)

Adopt the following **new** 721—Chapter 6:

CHAPTER 6
SAFE AT HOME PROGRAM

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.

For purposes of this definition, a person determined to be a sexually violent predator pursuant to Iowa Code section 229A.7 or a similar law 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.

721—6.2(9E) Failure to notify secretary of changes in information; cancellation. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.4. This rule describes the manner and process for cancellation of certification to the program.

6.2(1) Warning by the secretary.

a. The secretary must contact the program participant to request that the program participant comply with Iowa Code section 9E.4 if:

(1) The program participant’s legal name or contact information changes, unless the program participant provides the secretary with prior written notice of the name change or contact information;

(2) Mail forwarded by the secretary to the program participant’s address is returned as undeliverable by the United States Postal Service; or

(3) The program participant does not accept service of process or is unavailable for delivery of service of process as described in Iowa Code section 9E.5(4).

SECRETARY OF STATE[721](cont'd)

b. The notice must state that if the program participant fails to comply within ten business days, the program participant's certification shall be canceled and the former program participant must return any safe at home cards in the participant's possession.

6.2(2) *Participant no longer eligible.* If the secretary learns that the program participant is no longer eligible, the secretary must provide the program participant with the opportunity to submit a withdrawal request in accordance with Iowa Code section 9E.3(3).

6.2(3) *Pending-cancellation status.* After the secretary has provided notice as required by subrule 6.2(1) or 6.2(2), the program participant is in pending-cancellation status. While the program participant is in this status, the secretary must hold the program participant's mail and must not forward it to the program participant. Pending-cancellation status ends after ten business days or upon the program participant's compliance with Iowa Code section 9E.4. This subrule does not prevent the secretary from forwarding correspondence marked "service of process" pursuant to Iowa Code section 9E.5(4).

6.2(4) *Cancellation.*

a. If the program participant's pending-cancellation status expires, the secretary shall cancel the certification of the program participant.

b. If a program participant or applicant provides false information when applying for certification renewal or on a change of information notice, the secretary shall cancel the certification of the program participant.

c. If a program participant relocates outside the state of Iowa, the secretary shall cancel the certification of the program participant.

6.2(5) *Cancellation of program certification without recourse.* The secretary shall cancel a program participant's certification if the program participant or applicant is determined to be a sexually violent predator pursuant to Iowa Code section 229A.7 or a similar law of another state.

6.2(6) *Return of mail.* If the certification of the program participant is canceled, mail addressed to the program participant must be returned to sender.

721—6.3(9E) Renewal of certification; recertification. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.3(3). This rule describes the manner and process for renewal of program participant certification and for recertification.

6.3(1) *Renewal notification.* At least 30 days before the expiration of a program participant's certification, the secretary shall inform the program participant of the option of renewing certification in the safe at home program by sending an application to renew certification (renewal application) by first-class mail to the program participant's mailing address. The notice must also provide instructions to the program participant on what actions to take upon expiration of the certification, including the return of any safe at home cards and notification to public and private persons of the program participant's actual address, and that the designated address is no longer the address of the program participant. If the secretary has not received a renewal application within 10 days before the expiration of the program participant's certification, the secretary must mail a notice to the program participant reminding the program participant of the option to renew.

6.3(2) *Renewal process.* Along with the renewal application sent 30 days prior to expiration, the secretary may include a voter registration form so that the program participant may register to vote if the program participant has not already done so.

a. *Application.* The secretary shall renew the certification of a program participant when the secretary receives a complete renewal application from that program participant. The completed renewal application must contain the same information required in the certification application as specified in Iowa Code section 9E.3(1).

b. *Duties of applicant.* The program participant must provide all the information required by Iowa Code section 9E.3(3) and date and sign the renewal application.

c. *Completed renewal application to be signed.* The program participant must sign the completed renewal application and submit it and any additional materials in person, by mail, by facsimile, or by electronic mail to the secretary.

SECRETARY OF STATE[721](cont'd)

d. Missing information. If the completed renewal application does not meet the requirements of this subrule, the secretary shall contact the program participant or applicant to obtain the missing information.

e. Effective date. If submitted on or before the expiration date of the certification, a properly completed renewal application is effective on the day it is reviewed and certified by the secretary.

f. Duties of the secretary and program participants. The secretary must send a new safe at home card(s), which shall have an updated expiration date, within 10 business days of renewing a program participant's certification. The program participant must immediately sign the new safe at home card(s) upon receipt. The program participant must return any expired cards to the secretary by first-class mail so that they may be properly destroyed.

g. Penalties. A person who falsely attests in a renewal application or who knowingly provides false information upon making an application for certification renewal is subject to cancellation of program certification.

6.3(3) Recertification of former participants. Former program participants who have left the program through the withdrawal or cancellation process may reapply for certification in the program.

a. Application. The secretary may recertify a former program participant when the secretary receives an application from that former program participant. The application for recertification must contain the same information required in the certification application as specified in Iowa Code section 9E.3(1).

b. Duties of applicant. The applicant must provide all the information required by Iowa Code section 9E.3(1) and date and sign the application.

c. Completed application to be signed. The applicant must sign the completed application and submit it and any additional materials in person, by mail, by facsimile, or by electronic mail to the secretary.

d. Missing information. If the completed application does not meet the requirements of this subrule, the secretary shall contact the program participant or applicant to obtain the missing information.

e. Explanation statement. An applicant whose program participation was canceled under rule 721—6.2(9E) may be required to submit an explanation of the action that resulted in cancellation.

f. Effective date. A properly completed application is effective on the day it is reviewed and certified by the secretary.

g. Duties of the secretary and program participants. The secretary must send a new safe at home card(s), which shall have current expiration date and information, within 10 business days of recertifying a former program participant. The program participant must immediately sign the safe at home card(s) upon receipt.

h. Penalties. A person who falsely attests in an application or who knowingly provides false information upon making an application for recertification is subject to denial or cancellation of program certification.

721—6.4(9E) Cancellation of voter registration in the statewide voter registration database. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.6(1). This rule describes the manner and process for canceling a program participant's voter registration in the statewide voter registration database.

6.4(1) Voluntary cancellation of voter registration. The secretary shall cancel the program participant's voter registration record in the statewide voter registration database upon the program participant's written and signed request to the secretary to register to vote through the program.

6.4(2) Exclusion of program participant information in the statewide voter registration system. In accordance with Iowa Code section 9E.6(1), the name, address, and telephone number of a program participant shall not be listed in the statewide voter registration system even if the program participant does not submit a request to the secretary to register to vote through the program.

SECRETARY OF STATE[721](cont'd)

721—6.5(9E) Change of voter registration through the program. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.6(1). This rule describes the manner and process for program participant change of voter registration through the program.

6.5(1) *Change of address within the county of the preregistered address.* If the program participant relocates within the county in which the program participant has already registered with the program, the program participant must submit an updated voter registration form to the secretary.

6.5(2) *Change of address to an Iowa county outside the county of the preregistered address.*

a. If the program participant relocates outside the county in which the program participant has already registered with the program, the program participant must submit an updated voter registration form to the secretary.

b. The secretary shall make the necessary changes in the registration records without any actions by the participant.

6.5(3) *Change of name.* If the program participant changes the program participant's name but does not move outside the county in which the program participant is registered, the secretary shall update the program participant's previous registration to reflect this change in accordance with Iowa Code section 48A.27(2) "a"(1). The participant shall submit a signed, written notice to the secretary in person, by mail, by facsimile, or by electronic mail. For purposes of this subrule, a change of information form shall constitute a signed, written notice.

6.5(4) *Other changes.* If the program participant's circumstances change so as to render inaccurate the information previously submitted with the program participant's voter registration, the program participant shall contact the secretary to update the voter registration information. A program participant may request changes to the program participant's voter registration record at any time by submitting a signed, written notice to the secretary in person, by mail, by facsimile, or by electronic mail in accordance with Iowa Code section 48A.27(2) "a"(1).

721—6.6(9E) Cancellation of absentee ballot voting through the program. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.6(2). This rule describes the manner and process for program participant cancellation of absentee ballot voting through the program.

6.6(1) *Voluntary cancellation of voter registration.* The secretary shall cancel the program participant's voter registration and absentee ballot application with the program upon the written and signed request of the participant.

6.6(2) *Involuntary cancellation of voter registration.* The secretary shall cancel the program participant's voter registration and absentee ballot application with the program upon one of the following:

a. The death of the program participant, as evidenced in accordance with the standards set forth in Iowa Code section 48A.30.

b. Notification of the program participant's relocation to another county.

c. The receipt of notice from the clerk of the district court, the United States Attorney, or the state registrar that the program participant has been convicted of a felony as defined in Iowa Code section 701.7 or convicted of an offense classified as a felony under federal law in accordance with the procedure set forth in Iowa Code section 48A.30(1) "d."

d. The receipt of notice from the district court or the state registrar that the program participant has been declared a person who is incompetent to vote under state law.

e. The inactivity of the program participant's voter registration record pursuant to Iowa Code section 48A.29 for two successive general elections.

f. The withdrawal of a program participant from the program.

g. The cancellation of a program participant's certification in the program.

6.6(3) *Cancellation of active absentee ballots issued through the program.*

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a. The secretary shall notify the local county auditor, and the local county auditor shall have the authority to challenge or cancel the active absentee ballot issued through the safe at home program if one of the following occur:

(1) The death of the program participant, as evidenced in accordance with the standards set forth in Iowa Code section 48A.30.

(2) Notification of the program participant's relocation to another county.

(3) The receipt of notice from the clerk of the district court, the United States Attorney, or the state registrar that the program participant has been convicted of a felony as defined in Iowa Code section 701.7 or convicted of an offense classified as a felony under federal law in accordance with the procedure set forth in Iowa Code section 48A.30(1) "d."

(4) The receipt of notice from the district court or the state registrar that the program participant has been declared a person who is incompetent to vote under state law.

(5) The withdrawal of a program participant from the program.

(6) The cancellation of a program participant's certification in the program.

b. The local county auditor shall have the authority to challenge or cancel the active absentee ballot issued through the safe at home program.

6.6(4) *Confirmation of voter registration cancellation.* The secretary shall confirm cancellation of absentee ballot voting within ten business days by sending notice of cancellation to the program participant's mailing address.

These rules are intended to implement Iowa Code chapter 9E.

[Filed 4/27/16, effective 6/29/16]

[Published 5/25/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/25/16.

AGENCY	RULE	DELAY
Iowa Finance Authority[265]	rescind 9.1 to 9.22; adopt 9.1 to 9.11 [IAB 4/27/16, ARC 2506C]	Effective date of June 1, 2016, delayed until the adjournment of the 2017 General Assembly by the Administrative Rules Review Committee at its meeting held May 10, 2016. [Pursuant to §17A.8(9)]