



IOWA ADMINISTRATIVE BULLETIN

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Pages 3091 to 3212

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- Filed, Applicants with work experience in jurisdictions without licensure requirements, 8.12 **ARC 5726C** 3207

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- Filed, Contested case proceedings, 26.8, 26.14 **ARC 5727C** 3209

PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rule Making 2021

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
2	Friday, July 9, 2021	July 28, 2021
3	Friday, July 23, 2021	August 11, 2021
4	Friday, August 6, 2021	August 25, 2021

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, July 13, 2021, at 9 a.m. in Room 103, State Capitol, Des Moines, Iowa. Instructions for participation by videoconference can be found here: www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=705. For more information, contact Jack Ewing at Jack.Ewing@legis.iowa.gov. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Capitol complex operations—pistols and revolvers, 100.2 Notice **ARC 5718C** 6/16/21

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Waivers, amendments to chs 8, 90, 91 Filed **ARC 5721C** 6/30/21

Secondary containment—exemption for soil conditioners consisting entirely of minimally manipulated manures, 44.51, 44.56 Notice **ARC 5743C** 6/30/21

Dog day care; euthanasia guidelines, 67.1, 67.3, 67.4(3)“b,” 67.7, 67.8, 67.9(2)“b,” 67.16 Filed **ARC 5713C** 6/16/21

ALCOHOLIC BEVERAGES DIVISION[185]

COMMERCE DEPARTMENT[181]“umbrella”

Representatives of distillers, rectifiers, manufacturers, brewers and vintners; transportation and warehouse, rescind ch 7; adopt ch 8 Notice **ARC 5734C** 6/30/21

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Petitions for rule making; waivers; reporting requirements, 7.1, 7.4, 7.5 Filed **ARC 5722C** 6/30/21

ECONOMIC DEVELOPMENT AUTHORITY[261]

Petitions for rule making; removal of Iowa broadband deployment program and governance board, amend ch 197; rescind chs 411, 412 Filed **ARC 5691C** 6/16/21

Waivers, amendments to ch 199 Filed **ARC 5692C** 6/16/21

Rural housing needs assessment grant program—eligibility, 220.2, 220.3(2)“a,” 220.4(1) Filed **ARC 5693C** 6/16/21

EDUCATION DEPARTMENT[281]

Therapeutic classrooms; telehealth services on school premises, amendments to ch 14 Filed **ARC 5739C** 6/30/21

Online and virtual learning, ch 15 Filed **ARC 5740C** 6/30/21

Independent private instruction—restriction from certain forms of online learning, 15.6, 15.8(4) Notice **ARC 5737C** 6/30/21

Voluntary diversity plans; open enrollment, 17.2 to 17.9, 17.11(4), 17.13, 17.14 Notice **ARC 5745C** 6/30/21

Drinking drivers instructional course—online delivery, in-person delivery, 21.31, 21.32(1) Filed **ARC 5741C** 6/30/21

Private instruction, amendments to ch 31 Notice **ARC 5738C** 6/30/21

Interscholastic athletic contest eligibility, 36.15 Notice **ARC 5746C** 6/30/21

Educator preparation programs—accreditation, approval criteria, 79.2, 79.4, 79.9 Filed **ARC 5742C** 6/30/21

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Air quality, 20.2, 22.100, 23.1, 25.1(9) Notice **ARC 5678C** 6/16/21

Dams; water storage permitting, amend chs 50 to 52, 70 to 72; adopt ch 73 Notice **ARC 5677C** 6/16/21

Water quality certification, 60.2, 61.2 Filed **ARC 5679C** 6/16/21

Mercury-added switch recovery from end-of-life vehicles, rescind ch 215 Notice **ARC 5676C** 6/16/21

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

Terminology—deaf and hard-of-hearing persons, 1.5(5) Filed **ARC 5730C** 6/30/21

HUMAN SERVICES DEPARTMENT[441]

Home- and community-based services habilitation program—eligibility criteria, staff training, scope of services, 77.25, 78.27 Notice **ARC 5706C** 6/16/21

Prescribing controlled substances, 79.17 Notice **ARC 5708C** 6/16/21

Waivers, 83.61(4)“d,” 83.82(4)“d,” 83.123(1)“e” Filed **ARC 5728C** 6/30/21

Child and spousal support—obligations, terminology, 99.1, 99.2, 99.4(5), 99.69(4), 99.85(1)“d,” 99.91(1), 99.109(2)“b” Notice **ARC 5709C** 6/16/21

Payment for transportation of students, 151.22(2)“b” Filed **ARC 5729C** 6/30/21

Foster home insurance fund—applicability, definitions, payment limits, claims, amendments to ch 158 <u>Notice</u> ARC 5707C	6/16/21
Child care assistance—fee schedule, 170.4(2)“a” <u>Filed Emergency After Notice</u> ARC 5675C	6/16/21
Child care assistance provider reimbursement rates, 170.4(7)“a” <u>Notice</u> ARC 5732C , also <u>Filed Emergency</u> ARC 5731C	6/30/21
Subsidized guardianship program, 204.1 to 204.10 <u>Filed</u> ARC 5680C	6/16/21

INSPECTIONS AND APPEALS DEPARTMENT[481]

Waivers, amendments to chs 6, 41, 50, 51, 57, 58, 60, 61, 63 to 65, 71 <u>Filed</u> ARC 5719C	6/16/21
Definition of “food processing plant”; adoption by reference of 2021 federal regulations, 30.2, 31.2(9) <u>Notice</u> ARC 5703C	6/16/21
Exceptions to the food code—wild-harvested mushrooms, cultivated mushrooms, 30.2, 31.1(4) <u>Notice</u> ARC 5701C	6/16/21
Toilets and lavatories at food establishments, 31.1 <u>Notice</u> ARC 5702C	6/16/21
Deaf and hard-of-hearing persons—terminology, 57.24(4), 58.39(7), 63.21(4), 65.25(2), 71.21(3)“b” <u>Filed</u> ARC 5711C	6/16/21

IOWA FINANCE AUTHORITY[265]

First amended 9 percent qualified allocation plan, 12.1(2), 12.2(2) <u>Filed Emergency After Notice</u> ARC 5717C	6/16/21
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LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella” Safety rules for amusement rides, amusement devices, and concession booths, 61.2, 61.6(2)“j,” 62.6, 62.7(3) <u>Notice</u> ARC 5674C	6/16/21
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LAW ENFORCEMENT ACADEMY[501]

Petitions for rule making; terminology; public safety telecommunicators; waivers, amend chs 1, 3, 13, 16 <u>Notice</u> ARC 5689C	6/16/21
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NATURAL RESOURCES DEPARTMENT[561]“umbrella” State parks, recreation areas, and state forest camping, 61.2 to 61.7, 61.14, 61.23(1) <u>Notice</u> ARC 5690C	6/16/21
Deer hunting by residents, 106.1, 106.2(5), 106.4(5), 106.6, 106.7(1)“a”(2) <u>Filed</u> ARC 5682C	6/16/21
Bobcat seasonal bag limit of one—addition of Delaware and Jones Counties, 108.7 <u>Filed</u> ARC 5681C	6/16/21

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella” Deaf and hard-of-hearing persons—terminology, 6.14(4) <u>Notice</u> ARC 5704C	6/16/21
Temporary designation of controlled substances, 10.39 <u>Notice</u> ARC 5705C	6/16/21

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PUBLIC HEALTH DEPARTMENT[641]“umbrella” Barbers—mobile barbershops, licensing, 21.11, 21.19 <u>Filed</u> ARC 5686C	6/16/21
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PUBLIC HEALTH DEPARTMENT[641]

Radiation, 41.1, 42.2, 42.10, 42.13(5), 42.22, 42.26, 42.31(2)“e”(1) <u>Filed</u> ARC 5683C	6/16/21
Definition of “dust-lead hazard,” 69.2 <u>Filed</u> ARC 5684C	6/16/21

PUBLIC SAFETY DEPARTMENT[661]

Sex offender registry—continuous sexual abuse of a child, 83.2 to 83.4 <u>Filed</u> ARC 5715C	6/16/21
Firearm training organizations, 91.1, 91.10 <u>Notice</u> ARC 5735C	6/30/21
Statewide sobriety and drug monitoring program, 159.12(1) <u>Filed</u> ARC 5716C	6/16/21
Responsibility for installation of light-emitting carbon monoxide alarm for deaf or hard-of-hearing tenant, 211.20 <u>Filed</u> ARC 5714C	6/16/21
Standards for electrician and electrical contractor licensing—reciprocity, disqualifying convictions, fee structure, military spouses, special residential electrician, amendments to chs 500, 502, 506 <u>Filed</u> ARC 5723C	6/30/21

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Bureau[193] COMMERCE DEPARTMENT[181]“umbrella” Waivers; licensure; education, 1.2, 1.4, 1.5, 3.1, 3.2, 4.1, 4.2, 5.1, 5.11, 5.12, 16.3 <u>Notice</u> ARC 5736C	6/30/21
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REGENTS BOARD[681]

State universities—admission, terminology, domicile, application fees, amend ch 1; rescind ch 2 <u>Notice</u> ARC 5694C	6/16/21
Merit system—administration of pay plan, probationary period, 3.14, 3.39, 3.85 <u>Notice</u> ARC 5695C	6/16/21
Traffic and parking at universities, ch 4 <u>Notice</u> ARC 5696C	6/16/21
Equal employment opportunity, affirmative action, and targeted small business, amendments to ch 7 <u>Notice</u> ARC 5697C	6/16/21
Purchasing: policies; practices; procedures, rescind ch 8; amend ch 9 <u>Notice</u> ARC 5698C	6/16/21
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Addresses; waivers, 18.4(3), 18.6, 18.7(2), 19.3(1), 19.5, 19.6(2), 19.18 <u>Notice</u> ARC 5700C	6/16/21

REVENUE DEPARTMENT[701]

Voluntary disclosure program—excise taxes, fees, 3.1(3) <u>Notice</u> ARC 5688C	6/16/21
Payment of fees, taxes, interest, and penalties—remittances payable to the department, 12.2, 70.17, 78.16, 82.5(2) <u>Filed</u> ARC 5712C	6/16/21
Interest expense deduction adjustments, 40.85, 53.29, 59.31 <u>Filed</u> ARC 5733C	6/30/21
Motor fuel and undyed special fuel, 68.2 to 68.5, 68.7(1), 68.8, 68.9, 68.13, 69.2 <u>Notice</u> ARC 5710C	6/16/21
Marketable food products for human consumption, 230.2(1) <u>Amended Notice</u> ARC 5720C	6/16/21
Data center businesses—refund requests, 230.13(7)“d” <u>Notice</u> ARC 5687C	6/16/21

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]“umbrella”

Waivers, amendments to ch 8 <u>Filed</u> ARC 5725C	6/30/21
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UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Restoration of agricultural lands during and after pipeline construction, ch 9 <u>Filed</u> ARC 5685C	6/16/21
Natural gas standards, 10.1(3), 10.2(2), 10.12(1), 19.1(3), 19.2, 19.5(2), 19.11, 19.14(3)“a” <u>Notice</u> ARC 5744C	6/30/21

VETERINARY MEDICINE BOARD[811]

Applicants with work experience in jurisdictions without licensure requirements, 8.12 <u>Filed</u> ARC 5726C	6/30/21
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WORKFORCE DEVELOPMENT DEPARTMENT[871]

Contested case proceedings, 26.8, 26.14 <u>Filed</u> ARC 5727C	6/30/21
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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 Waylon Brown
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Osage, Iowa 50461

Senator Jesse Green
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Harcourt, Iowa 50544

Senator Robert Hogg
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NOTE: See also the Advisory Notice on page 3212.

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Capitol complex operations—pistols and revolvers, 100.2 IAB 6/16/21 ARC 5718C	Procurement Conference Room, A Level Hoover State Office Bldg. Des Moines, Iowa	July 6, 2021 10 to 11 a.m.
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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Secondary containment— exemption for soil conditioners consisting entirely of minimally manipulated manures, 44.51, 44.56 IAB 6/30/21 ARC 5743C	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 30, 2021 10 to 11 a.m.
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EDUCATION DEPARTMENT[281]

Independent private instruction—restriction from certain forms of online learning, 15.6, 15.8(4) IAB 6/30/21 ARC 5737C	Room B100 Grimes State Office Bldg. Des Moines, Iowa Via videoconference: idoe.zoom.us/j/92297466685?pwd=dE1HclI3M2U2Vmo4bEwwSVFPRWU5UT09	July 20, 2021 9 to 9:30 a.m.
Voluntary diversity plans; open enrollment, 17.2 to 17.9, 17.11(4), 17.13, 17.14 IAB 6/30/21 ARC 5745C	Room B100 Grimes State Office Bldg. Des Moines, Iowa Via videoconference: idoe.zoom.us/j/92297466685?pwd=dE1HclI3M2U2Vmo4bEwwSVFPRWU5UT09	July 20, 2021 9:30 to 10 a.m.
Private instruction, amendments to ch 31 IAB 6/30/21 ARC 5738C	Room B100 Grimes State Office Bldg. Des Moines, Iowa Via videoconference: idoe.zoom.us/j/92297466685?pwd=dE1HclI3M2U2Vmo4bEwwSVFPRWU5UT09	July 20, 2021 10:30 to 11 a.m.
Interscholastic athletic contest eligibility, 36.15 IAB 6/30/21 ARC 5746C	Room B100 Grimes State Office Bldg. Des Moines, Iowa Via videoconference: idoe.zoom.us/j/92297466685?pwd=dE1HclI3M2U2Vmo4bEwwSVFPRWU5UT09	July 20, 2021 10 to 10:30 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 20.2, 22.100, 23.1, 25.1(9) IAB 6/16/21 ARC 5678C	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	July 19, 2021 1 to 2 p.m.
Dams; water storage permitting, amend chs 50 to 52, 70 to 72; adopt ch 73 IAB 6/16/21 ARC 5677C	Via video/conference call Contact Jonathan Garton Email: jonathan.garton@dnr.iowa.gov	July 12, 2021 2 to 3 p.m.

LABOR SERVICES DIVISION[875]

Safety rules for amusement rides, amusement devices, and concession booths, 61.2, 61.6(2)“j,” 62.6, 62.7(3) IAB 6/16/21 ARC 5674C	Dial: 312.626.6799 Meeting ID number: 813 6327 9319 Passcode: 590253	July 7, 2021 1:30 p.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

State parks, recreation areas, and state forest camping, 61.2 to 61.7, 61.14, 61.23(1) IAB 6/16/21 ARC 5690C	Via video/conference call Contact Sherry Arntzen Email: sherry.arntzen@dnr.iowa.gov	July 6, 2021 10 a.m.
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REAL ESTATE COMMISSION[193E]

Waivers; licensure; education, 1.2, 1.4, 1.5, 3.1, 3.2, 4.1, 4.2, 5.1, 5.11, 5.12, 16.3 IAB 6/30/21 ARC 5736C	Commission Office, Suite 350 200 East Grand Ave. Des Moines, Iowa	July 23, 2021 9 to 10 a.m.
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REVENUE DEPARTMENT[701]

Marketable food products for human consumption, 230.2(1) IAB 6/16/21 ARC 5720C	Room 430, Fourth Floor Hoover State Office Bldg. Des Moines, Iowa	July 8, 2021 1:30 to 2:30 p.m.
Motor fuel and undyed special fuel, 68.2 to 68.5, 68.7(1), 68.8, 68.9, 68.13, 69.2 IAB 6/16/21 ARC 5710C	Via video/conference call Contact Tim Reilly Email: tim.reilly@iowa.gov	July 6, 2021 2 to 3 p.m. (If requested)

UTILITIES DIVISION[199]

Natural gas standards, 10.1(3), 10.2(2), 10.12(1), 19.1(3), 19.2, 19.5(2), 19.11, 19.14(3)“a” IAB 6/30/21 ARC 5744C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	August 19, 2021 10 a.m. to 12 noon
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The following list will be updated as changes occur.

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

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

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

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ARC 5743C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action****Proposing rule making related to exemption for containment of soil conditioners and providing an opportunity for public comment**

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 44, “On-Site Containment of Pesticides, Fertilizers and Soil Conditioners,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 200.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 200.14.

Purpose and Summary

This proposed rule making provides a new exemption for soil conditioners consisting of minimally manipulated manures from certain secondary containment requirements. In order to ensure continued protection of the environment, different storage and containment requirements are put in place for these types of soil conditioners, which mostly consist of organic material.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 23, 2021. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.281.7808
Email: colin.tadlock@iowaagriculture.gov

Public Hearing

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

July 30, 2021
10 to 11 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of “Minimally manipulated manures” and “Minimally processed” in rule **21—44.51(200)**:

“Minimally manipulated manures.” Minimally processed substances composed primarily of excreta, plant remains, or mixtures of such substances.

“Minimally processed.” Processing a nonliquid manure in a manner which does not modify the nutrient value on a dry matter basis.

ITEM 2. Amend rule 21—44.56(200), introductory paragraph, as follows:

21—44.56(200) Secondary containment for nonliquid fertilizers and soil conditioners. Nonliquid fertilizer and soil conditioner stored in a totally enclosed building and a soil conditioner meeting the requirements of subrule 44.56(3) are exempt from the requirements of this rule. Unless stored in a totally enclosed building, or soil conditioners meeting the requirements under subrule 44.56(3), all nonliquid fertilizer and soil conditioner materials shall be stored within an area which drains into a secondary containment structure. The secondary containment structure shall have a volume sufficient to retain the equivalent of 12 inches of runoff from the area drained into the containment structure. This minimum storage volume may be provided within the containment structure or in auxiliary storage tanks, and may be constructed of earth, concrete, or a combination of both.

ITEM 3. Adopt the following **new** subrule 44.56(3):

44.56(3) Soil conditioners consisting entirely of minimally manipulated manures are exempt from the requirements of this rule if all of the following apply to the storage of the soil conditioner:

- a. The soil conditioner is stored in an impermeable container.
- b. The soil conditioner is stored in the field of application or adjacent fields of application and the amount stored does not exceed the necessary amount of nitrogen, phosphorus, or potassium to achieve optimal crop yields, as determined by average county or proven yields, on the acres in the fields of application. The total potential acres of application stored in any field shall not exceed an amount necessary for application on 160 acres.
- c. The soil conditioner is stored in the field for a period not to exceed six months.
- d. The soil conditioner meets all of the storage requirements for bulk dry animal nutrients under rule 21—49.7(200A).

ARC 5734C**ALCOHOLIC BEVERAGES DIVISION[185]****Notice of Intended Action****Proposing rule making related to alcoholic liquor product management
and providing an opportunity for public comment**

The Alcoholic Beverages Division hereby proposes to rescind Chapter 7, “Representatives of Distillers, Rectifiers, Manufacturers, Brewers and Vintners,” and Chapter 8, “Transportation and Warehouse,” Iowa Administrative Code, and adopt a new Chapter 8 with the same title.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 123.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 123.10(2), 123.10(3), 123.10(6) and 123.10(10).

Purpose and Summary

The purpose of this proposed rule making is to update rules related to management of alcoholic liquor products available for sale by the Division. The proposed amendments rescind and reserve Chapter 7 and rescind and replace Chapter 8 with new rules.

The proposed rules do the following:

- Define new terms related to product management;
- Describe the various listing classifications under which an alcoholic liquor product may be classified when sold by the Division;
- Describe how suppliers of alcoholic liquor products can submit requests for their products to be listed for sale;
- Describe how alcoholic liquor products shall be shipped to the Division for sale;
- Describe how alcoholic liquor suppliers shall maintain appropriate inventory levels in the Division’s warehouse for alcoholic liquor products available for sale;
- Describe how often alcoholic liquor suppliers may make temporary or permanent price changes to alcoholic liquor products listed for sale;
- Describe the requirements for how an alcoholic liquor supplier shall remove products from the Division’s warehouse that are no longer listed for sale; and
- Describe the requirements for barrel programs offered by alcoholic liquor suppliers.

Overall, the proposed rules reflect the policies and procedures described in the Division’s current Listing Manual. The proposed rules will allow for continued responsible and efficient management of the Division’s product portfolio, give the Division the flexibility to respond to marketplace changes, and provide alcoholic liquor suppliers with stability, predictability, and transparency as to how their alcoholic liquor products can be sold in the state of Iowa.

Fiscal Impact

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

Jobs Impact

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

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 185—Chapter 19.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on July 20, 2021. Comments should be directed to:

Tyler Ackerson
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, Iowa 50021
Email: rules@iowaabd.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve **185—Chapter 7**.

ITEM 2. Rescind 185—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
TRANSPORTATION AND WAREHOUSE

185—8.1(123) Definitions.

“*Administrator*” means the administrator of the alcoholic beverages division of the department of commerce.

“*Category*” means the classification of an alcoholic liquor product, such as rum, vodka, or whiskey.

“*Commission*” means the alcoholic beverages commission established in Iowa Code chapter 123.

“*Delist*” means the removal of products from the division’s product inventory.

“*Division*” means the alcoholic beverages division of the department of commerce.

“*Product*” means “alcoholic liquor” or “native distilled spirits” as defined in Iowa Code chapter 123.

“*Supplier*” means a manufacturer, distiller, or importer of alcoholic liquors or native distilled spirits shipping, selling, or having such alcoholic beverages brought into this state for resale by the division.

185—8.2(123) Listing classifications. Each product available for sale by the division shall be assigned to one of the following listing classifications. Suppliers may indicate their preferred listing classification; however, final determination shall be made by the administrator or the administrator’s designee.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

8.2(1) *Permanent.* Products with a permanent listing shall be available for sale by the division on an ongoing basis, unless otherwise delisted or temporarily out of stock.

8.2(2) *Temporary.* Temporary listings shall have a duration determined by the administrator or the administrator's designee, and the duration may be extended at the discretion of the administrator or the administrator's designee.

8.2(3) *Size extension.* A supplier shall submit a listing request for each additional size of a product that is currently listed for sale. All listed sizes of the product should meet sales criteria established by the administrator, or the administrator's designee, in order for a size extension listing request to be approved as a permanent listing.

8.2(4) *Special order.* Products that are not currently listed for sale by the division may be purchased through a special order placed with the supplier of the product.

a. A request for a special order will be placed with the division by a class "E" liquor control licensee. Special order requests shall be submitted electronically or in a manner prescribed by the administrator or the administrator's designee. The administrator, or the administrator's designee, may reject a special order request if it is determined that the requested product is in violation of the requirements set out in subparagraphs 8.3(3) "a"(1) and 8.3(3) "a"(2).

b. If the division accepts a special order request, the request shall be forwarded on to the supplier of the product. The supplier may approve or deny the special order request.

c. All special order products shall be sold and distributed by the division to class "E" liquor control licensees by the case only.

d. Special order products are not eligible for return to the division by a class "E" liquor control licensee without approval from the administrator or the administrator's designee.

8.2(5) *Special order on hand.* Products that are frequently sold as special orders but do not qualify for permanent listing may be listed as special order on hand.

a. To be eligible for classification as a special order on-hand listing, a product must have been previously sold as a special order and meet sales criteria established by the administrator or the administrator's designee.

b. Products that have been delisted shall not be eligible to be moved from permanent listing to special order on-hand listing.

8.2(6) *Highly allocated.* Highly allocated products are products of a limited supply as determined by the supplier.

a. Highly allocated products may be sold via a lottery system as deemed necessary by the administrator or the administrator's designee.

b. Highly allocated products shall not be available for sale as special orders.

8.2(7) *Quantity limitations.* Quantities of listed products available for purchase by class "E" liquor control licensees may be limited at the administrator's, or the administrator's designee's, discretion.

185—8.3(123) Listing requests. The supplier of a product to be sold by the division shall submit a listing request for consideration by the administrator or the administrator's designee.

8.3(1) *Submitting a listing request.* Listing requests shall be submitted electronically or in a manner prescribed by the administrator or the administrator's designee.

8.3(2) *Listing request requirements.*

a. A listing request shall contain the following information:

(1) A control state code number for the product issued by the National Alcohol Beverage Control Association.

(2) The supplier's f.o.b. cost per case. The case price shall be divisible by the number of bottles in the case. The supplier shall determine the number of bottles that constitute a case for the product.

(3) The product's case quantity size and standard of fill.

(4) An image of the product.

(5) A brief description of the product.

(6) The weights and dimensions of the product container, case, and pallet.

(7) The product's 14-digit shipping container code.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

(8) The product's universal product code.

(9) Any other information required by the administrator or the administrator's designee.

b. The administrator, or the administrator's designee, may require a supplier to conduct a listing presentation for new products that have not been previously listed.

8.3(3) Decisions.

a. The criteria used to determine whether a listing request shall be approved or denied shall include, but not be limited to, the following:

(1) Whether the product violates the code of responsible practices established by the Distilled Spirits Council of the United States.

(2) The reasonable potential of the product to unduly jeopardize the welfare, health, peace, morals, or safety of the people of the state.

b. The administrator, or the administrator's designee, shall approve or deny a listing request not more than 20 business days from the date the listing request was submitted. Suppliers shall be notified of the decision in writing delivered electronically or in a manner prescribed by the administrator or the administrator's designee.

8.3(4) Appeals.

a. Appeal to administrator.

(1) A supplier may appeal the denial of a listing request by the administrator's designee to the administrator by filing a notice of appeal within 30 days of the date of denial.

(2) A notice of appeal shall be in writing and shall specify the specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

(3) A notice of appeal shall be considered filed at the time it is received by the administrator.

(4) The administrator shall affirm, reverse, or modify the denial of the listing request and shall notify the supplier of the decision in writing.

b. Appeal to commission.

(1) If the administrator denies a listing request or affirms the denial of a listing request by the administrator's designee, the supplier may appeal the administrator's decision by filing a notice of appeal with the commission within 30 days of the date of the administrator's decision.

(2) A notice of appeal shall be in writing and shall specify the specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

(3) A notice of appeal shall be considered filed at the time it is received by the commission.

(4) The commission shall have discretion as to whether to hear the appeal. If the commission chooses to hear the appeal, it shall be heard at the next scheduled commission meeting or a special meeting called for by the commission chairperson, the administrator, or at least three members of the commission.

(5) If the commission reverses the decision of the administrator, the listing request shall be approved.

(6) If the commission affirms the administrator's decision or chooses not to hear the appeal, the listing request shall be denied.

(7) The commission's decision shall constitute final agency action for the purposes of Iowa Code chapter 17A.

8.3(5) Resubmission of a listing request. If a listing request for a product is denied, a new listing request for the product may be submitted by the supplier not less than three months after the denial date of the original listing request.

8.3(6) Moratorium. The administrator, or the administrator's designee, may implement a moratorium on new permanent listing requests. The duration of the moratorium period shall be determined by the administrator or the administrator's designee. The administrator, or the administrator's designee, may allow a supplier to trade out a permanently listed product for a new product during a moratorium period.

185—8.4(123) Shipment of product to the division. Shipments of product intended for sale by the division shall be made in accordance with this rule.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

8.4(1) *Product shipments into the state.* Product shipments shall only be made into the state of Iowa by suppliers.

8.4(2) *Product shipment locations.* Product shipments shall only be made to a state warehouse or to receiving points designated by the administrator.

8.4(3) *Pallet requirements.*

a. Products shipped to the division shall be on securely shrink-wrapped pallets that are in good repair. The administrator, or the administrator's designee, may establish additional requirements as deemed necessary.

b. Products shipped to the division on slip sheets shall not be accepted by the division and shall be returned to the supplier.

8.4(4) *Case labeling requirements.*

a. Each case of product shipped to the division shall include a case code label placed on an end panel of the case.

b. The case code label shall contain the following information:

(1) The control state code number issued by the National Alcohol Beverage Control Association for the product.

(2) The product's universal product code and corresponding barcode.

(3) The 14-digit shipping container code and corresponding barcode. The shipping container code and barcode shall meet the minimum requirements established by the American National Standards Institute and the International Organization for Standardization.

(4) Any other information required by the administrator or the administrator's designee.

8.4(5) *Bottle deposit requirements.*

a. All products intended for resale by the division shall meet the requirements of Iowa Code section 455C.5 and rule 567—107.3(455C). Products that do not meet the requirements shall not be made available for sale until the requirements are met.

b. Suppliers may purchase bottle deposit refund stickers from the division. The cost of the stickers to suppliers shall not exceed the division's cost of producing and distributing the stickers.

8.4(6) *Special handling charges.* Product shipments that do not meet the requirements of subrule 8.4(3), 8.4(4), or 8.4(5) shall result in the assessment of special handling charges against the supplier in an amount not to exceed the division's actual cost to bring the shipments into compliance. The division's actual cost shall be determined using the negotiated hourly rate of the third party the division has contracted with for warehousing services.

185—8.5(123) *Inventory levels.* The administrator, or the administrator's designee, shall establish maximum and minimum inventory levels for each listed product. Maximum and minimum inventory levels may be adjusted at the discretion of the administrator or the administrator's designee.

8.5(1) *Purchase orders.* Suppliers shall submit purchase orders to the division electronically, or in a manner prescribed by the administrator or the administrator's designee, as needed to maintain appropriate inventory levels.

8.5(2) *Maximum inventory level exception.* A supplier may request from the division an exception to the established maximum inventory level for a product. Requests for a maximum inventory level exception shall be submitted to the division electronically or in a manner prescribed by the administrator or the administrator's designee. The administrator, or the administrator's designee, shall approve or deny the request and the supplier shall be notified of the decision in writing delivered electronically or in a manner prescribed by the administrator or the administrator's designee.

185—8.6(123) *Pricing.*

8.6(1) *Permanent price changes.* Suppliers may make permanent price changes to the case cost of products in any listing classification.

a. The frequency at which permanent price changes may be made shall be determined by the administrator or the administrator's designee.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

b. Permanent price changes shall be submitted electronically, or in a manner prescribed by the administrator or the administrator's designee, at least 20 business days prior to the effective date.

8.6(2) Temporary price reductions. Suppliers may make temporary price reductions to the case cost of products with a permanent or temporary listing classification.

a. Products with a listing classification of special order, special order on hand, or highly allocated shall not be eligible for temporary price reductions.

b. Temporary price reductions shall become effective as determined by the administrator or the administrator's designee.

c. Temporary price reductions shall be submitted electronically, or in a manner prescribed by the administrator or the administrator's designee, at least 20 business days prior to the effective date.

8.6(3) Price lists. The division shall publish a price list electronically on a monthly basis showing the price to be paid by class "E" liquor control licensees for each brand, variety, and category of product available for sale by the division. The price list shall be published on the division's website at shop.iowaabd.com and may be distributed to class "E" liquor control licensees as deemed necessary by the administrator or the administrator's designee.

185—8.7(123) Delisting. Listed products that do not meet sales guidelines established by the administrator, or the administrator's designee, may be delisted. The frequency of delisting shall be determined by the administrator or the administrator's designee.

8.7(1) Notification. Suppliers of delisted products shall be notified of the decision in writing delivered electronically or in a manner prescribed by the administrator or the administrator's designee.

8.7(2) Appeals.

a. *Appeal to administrator.*

(1) A supplier may appeal the delisting of a product by the administrator's designee to the administrator by filing a notice of appeal within 30 days of the date of delisting notification.

(2) A notice of appeal shall specify the specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

(3) A notice of appeal shall be considered filed at the time it is received by the administrator.

(4) The administrator shall affirm, reverse, or modify the delisting and shall notify the supplier of the decision in writing.

b. *Appeal to commission.*

(1) If the administrator delists a product, or if the administrator affirms a delisting by the administrator's designee, the supplier may appeal the administrator's decision by filing a notice of appeal with the commission within 30 days of the date of the administrator's decision.

(2) A notice of appeal shall specify the specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief.

(3) A notice of appeal shall be considered filed at the time it is received by the commission.

(4) The commission shall have discretion as to whether to hear the appeal. If the commission chooses to hear the appeal, it shall be heard at the next scheduled commission meeting or a special meeting called for by the commission chairperson, the administrator, or at least three members of the commission.

(5) If the commission reverses the decision of the administrator, the product shall remain listed under terms established by the commission.

(6) If the commission affirms the administrator's decision, or chooses not to hear the appeal, the product shall be delisted.

(7) The commission's decision shall constitute final agency action for the purposes of Iowa Code chapter 17A.

8.7(3) Removal of delisted products. Delisted products shall be removed from the division's warehouse by the supplier or by the supplier's agent or employee within a time frame established by the administrator or the administrator's designee. A supplier may authorize the division to destroy a delisted product in lieu of removal of the product by the supplier from the division's warehouse. New

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

listing requests submitted by a supplier shall not be considered by the division until all of the supplier's delisted product has been removed from the division's warehouse.

8.7(4) Resubmission of a delisted product for listing. If a product in a permanent listing classification is delisted, a new listing request for the product may be submitted not less than six months after the date the product was removed from the warehouse.

185—8.8(123) Barrel programs. A supplier may offer a barrel program, allowing a class "E" liquor control licensee to purchase the bottled contents of a barrel-aged product along with the aging barrel.

8.8(1) Barrel programs shall be uniformly offered to all class "E" liquor control licensees.

8.8(2) Suppliers may sample barrel-aged products pursuant to rule 185—16.8(123).

8.8(3) Barrel program products shall be classified as special orders.

8.8(4) Products purchased as part of a barrel program shall be sold and delivered to the individual class "E" liquor control licensee that placed the special order. Barrel program special orders and products shall not be split between two or more class "E" liquor control licensees.

8.8(5) Aging barrels sold in conjunction with a barrel program shall bear conspicuous and substantial advertising matter.

8.8(6) Bottles from a barrel program may bear customized labels.

These rules are intended to implement Iowa Code sections 123.10(2), 123.10(3), 123.10(6), and 123.10(10).

ARC 5737C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to independent private instruction and online learning and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 15, "Use of Online Learning and Telecommunications for Instruction by Schools," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 546.

Purpose and Summary

2020 Iowa Acts, Senate File 546, removed the ability for students receiving independent private instruction to participate in certain forms of online learning. This proposed rule making conforms the Department's rules to that statutory requirement. The proposed amendments reflect the language in new Chapter 15, published in **ARC 5740C**, IAB 6/30/21.

Fiscal Impact

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

Jobs Impact

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

EDUCATION DEPARTMENT[281](cont'd)

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 20, 2021. Comments should be directed to:

Thomas Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

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

July 20, 2021
 9 to 9:30 a.m.

Room B100
 Grimes State Office Building
 Des Moines, Iowa
 Via videoconference:
idoe.zoom.us/j/92297466685?pwd=dE1HclI3M2U2Vm04bEwwSVFPRWU5UT09

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

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 15.6(1) as follows:

15.6(1) *Online learning program delivered by area education agencies.* Subject to an appropriation of funds by the general assembly for this purpose, AEAs may provide an online learning program to deliver distance education to Iowa's secondary students, including students receiving ~~independent private instruction~~, competent private instruction, ~~or private instruction by a nonlicensed person~~ under Iowa Code chapter 299A. An AEA may provide an online learning program separately, in collaboration with other AEAs, or in partnership with school districts and accredited nonpublic schools.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 2. Amend subrule 15.6(6) as follows:

15.6(6) *Private instruction.* This rule applies to students receiving ~~independent private instruction as defined in Iowa Code section 299A.1(2) “b,”~~ competent private instruction under Iowa Code section 299A.2, or private instruction by a nonlicensed person under Iowa Code section 299A.3 chapter 299A. To participate in an online learning program offered by an area education agency, a student receiving competent private instruction under Iowa Code chapter 299A shall take whatever steps are necessary to enroll with the student’s district of residence. The coursework offered by AEAs pursuant to this subrule must be taught and supervised by a teacher licensed under Iowa Code chapter 272 who has online learning experience, and the course content must meet the requirements established by rule pursuant to Iowa Code section 256.7(32) “c.”

ITEM 3. Amend subrule 15.8(4) as follows:

15.8(4) *Private instruction.* The online learning platform described in subparagraph 15.8(3) “b”(3) may deliver distance education to students, ~~including students receiving independent private instruction as defined in Iowa Code section 299A.1(2) “b,”~~ competent private instruction under Iowa Code section 299A.2, or private instruction by a nonlicensed person under Iowa Code section 299A.3 chapter 299A, provided such students register with the school district of residence and the coursework offered by the online learning platform is taught and supervised by a teacher licensed under Iowa Code chapter 272 who has online learning experience, and the course content meets the requirements established by rule pursuant to Iowa Code section 256.7(32) “c.”

ARC 5745C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to voluntary diversity plans and open enrollment and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 17, “Open Enrollment,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, House File 228; 2021 Iowa Acts, Senate File 260; and 2021 Iowa Acts, House File 847.

Purpose and Summary

2021 Iowa Acts, House File 228, eliminates the ability of school districts to offer voluntary diversity plans. 2021 Iowa Acts, House File 847, makes substantive changes to open enrollment. 2021 Iowa Acts, Senate File 260, provides additional requirements for Medicaid billing for students with disabilities who participate in open enrollment. These changes are incorporated in this proposed rule making, as well as nonsubstantive changes in grammar and word choice.

Fiscal Impact

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

Jobs Impact

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

EDUCATION DEPARTMENT[281](cont'd)

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 20, 2021. Comments should be directed to:

Thomas Mayes
 Department of Education
 Grimes State Office Building
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.242.5614
 Email: thomas.mayes@iowa.gov

Public Hearing

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

July 20, 2021
 9:30 to 10 a.m.

Room B100
 Grimes State Office Building
 Des Moines, Iowa
 Via videoconference:
doe.zoom.us/j/92297466685?pwd=dE1Hc1I3M2U2Vmo4bEwwSVFPRWU5UT09

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

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind the definitions of “Diversity plan,” “Eligible district,” “Minority student” and “Socioeconomic status” in rule **281—17.2(282)**.

ITEM 2. Amend rule **281—17.2(282)**, definition of “Court-ordered desegregation plan,” as follows:

“Court-ordered desegregation plan” means a ~~plan that is under direct court order to avoid racial isolation in the district~~ decree, judgment, or order entered by a court in response to a case or controversy alleging the district engaged in unlawful segregation. A desegregation plan is not “court-ordered” merely because a school district seeks approval of a voluntarily developed desegregation plan.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 3. Amend paragraph **17.3(2)“c”** as follows:

c. The parent/guardian may withdraw an open enrollment request ~~anytime~~ any time prior to the first day of school in the resident district. After the first day of school, an open enrollment request can only be changed during the term of the approval by the procedures of subrules 17.8(4), 17.8(5), 17.8(6), and 17.8(7).

ITEM 4. Amend subrule 17.3(3) as follows:

17.3(3) *Exception to process when resident district is under ~~voluntary or~~ court-ordered desegregation.* If the resident district has a ~~voluntary or~~ court-ordered desegregation plan ~~requiring the district to maintain minority and nonminority student ratios~~, the request for open enrollment shall be filed solely with the district of residence on or before March 1 of the school year preceding the school year for which open enrollment is requested. The superintendent of the resident district may deny a request under this subrule unless the request is made on behalf of a student whose sibling already actively participates in open enrollment to the same receiving district to which open enrollment is sought for this student. A denial by the superintendent may be appealed to the board of the district in which the request was denied. A decision of the local board to uphold the denial may only be appealed to the district court in the county in which is located the primary business office of the district that upheld the denial of the open enrollment request.

ITEM 5. Amend subrule 17.4(1) as follows:

17.4(1) Good cause related to change in the pupil's residence shall include:

a. A change in the family residence due to the family's moving from the district of residence ~~anytime~~ any time after March 1 of the school year preceding the school year for which open enrollment is requested.

b. A change in the child's residence from the residence of one parent or guardian to the residence of a different parent or guardian.

~~b. c.~~ A change in the state of residence allowing a parent/guardian moving into an Iowa school district from out of state to obtain open enrollment to a different district from their new district of residence.

~~e. d.~~ A change in the marital status of the pupil's parents.

~~d. e.~~ A guardianship or custody proceeding.

~~e. f.~~ Placement of the child in foster care.

~~f. g.~~ Adoption.

~~g. h.~~ Participation in a foreign exchange program.

i. Initial placement of a prekindergarten student in a special education program requiring specially designed instruction.

~~h. j.~~ Participation in a substance abuse or mental health treatment program.

ITEM 6. Adopt the following **new** paragraph **17.4(2)“e”**:

e. Other actions.

(1) Revocation of a charter school contract after March 1 as provided in Iowa Code section 256F.8.

(2) The child's assigned attendance center in the district of residence is identified as in significant need for improvement. "Significant need for improvement" means a school attendance center designated by the department of education under the priority category under the Iowa school performance profiles for two or more of the immediately preceding school years or identified for comprehensive support and improvement under the federal Every Student Succeeds Act, Pub. L. No. 114-95, or an equivalent objective federal standard, for two or more of the immediately preceding school years.

ITEM 7. Amend paragraph **17.4(6)“a”** as follows:

a. Upon affirmative vote of a majority of its board to do so, the resident district shall file a written appeal to the director within 30 days of receipt by the resident district of notification by the board of the receiving district of the approval by the receiving district of a late-filed open enrollment request. The written appeal shall state the name and grade level of the affected student, the name of the receiving district, the date of approval by the board of the receiving district, the date the resident district was

EDUCATION DEPARTMENT[281](cont'd)

notified of the approval, and a brief statement explaining why the resident district board believes there is no good cause for the request to have been filed and approved after March 1. The appeal shall be signed by the president of the board of the resident district and shall have attached to it a copy of the disputed open enrollment request and the minutes of the board meeting at which the resident district board voted to appeal. An appeal is timely filed if it is postmarked or delivered personally or via facsimile transmission or electronic mail to the director within the 30-day time period.

ITEM 8. Amend rule 281—17.5(282) as follows:

281—17.5(282) Filing after the March 1 deadline—harassment, failure to respond to academic needs, or serious health condition. A parent/guardian may apply for open enrollment after the filing deadline of March 1 of the school year preceding the school year for which open enrollment is requested if the parent's/guardian's child is the victim of repeated acts of harassment that the resident district cannot adequately address, if there is a consistent failure of the resident district to reasonably respond to a student's failure to meet basic academic standards after notice provided by a parent or guardian, or if the child has a serious health condition that the resident district cannot adequately address. If either any of these conditions exists, the parent/guardian shall be permitted to apply for open enrollment by sending notification to both the resident and receiving districts.

17.5(1) Board action. The board of the resident district shall act on the request within 30 days of its receipt. If the request is denied, the parent/guardian shall be notified by the district superintendent within 3 days following board action. If the request is approved, the district superintendent shall forward the approved application form to the receiving district within 5 days following board action and shall notify the parent/guardian within 3 days of this action. The board of the receiving district shall act to approve or deny an open enrollment request within 30 days following receipt of the notice of approval from the resident district. The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within 15 days of board action.

17.5(2) Appeal. A denial by either board of a request made under this rule involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address may be appealed by a parent/guardian to the state board of education pursuant to Iowa Code section 290.1. The state board shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children.

17.5(3) Criteria for determining whether a resident district consistently failed to reasonably respond to a student's failure to meet basic academic standards. Reserved.

ITEM 9. Amend subrule 17.6(2) as follows:

17.6(2) ~~Voluntary diversity plans or court-ordered~~ Court-ordered desegregation plans. In districts with court-ordered desegregation ~~or voluntary diversity plans~~ where there is a requirement to maintain minority and nonminority student ratios according to the plan, the superintendent of the district may deny a request for open enrollment if it is found that the enrollment or release of a pupil will adversely affect the district's court-ordered desegregation plan ~~or voluntary diversity plan~~. Open enrollment requests that would facilitate the court-ordered desegregation plan ~~or voluntary diversity plan~~ shall be given priority over other open enrollment requests received by the district. A parent/guardian whose request for open enrollment is denied by the superintendent of the district on the basis of its adverse effect on the district's court-ordered desegregation plan ~~or voluntary diversity plan~~ may appeal that decision to the district board.

ITEM 10. Amend rule 281—17.7(282) as follows:

281—17.7(282) Open enrollment for kindergarten or certain prekindergarten programs. While the regular time frame in requesting open enrollment is that an application should be made no later than March 1 of the school year preceding the school year for which the enrollment is requested, a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence or a parent/guardian of a prekindergarten student enrolled in a special education program and included in the resident school district's basic enrollment under Iowa Code section 257.6(1) "a"(1) may make such

EDUCATION DEPARTMENT[281](cont'd)

application on or before September 1 of that school year. In considering an application for a kindergarten pupil, the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space, the requirements of rule 281—17.11(282), or the requirements of a desegregation ~~plan or~~ order.

As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed on or before September 1 under this rule. The timelines established in rule 281—17.4(282) shall apply to applications for a ~~kindergarten~~ pupil under this rule.

ITEM 11. Amend subrule 17.8(2), introductory paragraph, as follows:

17.8(2) *Restrictions on participation in interscholastic athletic contests and competitions.* Subject to rule 281—17.15(282), a pupil who changes school districts under open enrollment in any of the grades 9 through 12 shall not be eligible to participate in varsity interscholastic athletic contests and competitions during the first 90 school days of enrollment. This restriction also shall apply to enrollments resulting from an approved petition filed by a parent/guardian to open enroll to an alternative receiving district and when the pupil returns to the district of residence using the process outlined in subrule 17.8(4). This 90-school-day restriction does not prohibit the pupil from practicing with an athletic team during the 90 school days of ineligibility. If a pupil is declared ineligible for interscholastic athletic contests and athletic competitions in the pupil's district of residence due to the pupil's academic performance, upon participating in open enrollment, in addition to any other period of ineligibility under this rule, the pupil shall be ineligible in the receiving district for the remaining period of ineligibility declared by the district of residence. This 90-school-day restriction is not applicable to a pupil who:

ITEM 12. Adopt the following **new** paragraphs **17.8(2)“k”** to **“n”**:

k. Participates in open enrollment because of circumstances that meet the definition of “good cause” under rule 281—17.4(282).

l. Resides in a district in which the board of directors or superintendent issues or implements a decision that results in the discontinuance or suspension of varsity interscholastic sports activities in the district.

m. Participates in open enrollment and the board of directors of the district of residence and the board of directors of the receiving district both agree to waive the ineligibility period.

n. Open enrolls for the school year beginning July 1, 2021, if the pupil's district of residence had a voluntary diversity plan in effect on January 1, 2021, and applicable to the school year beginning July 1, 2021.

ITEM 13. Amend subrule 17.8(6) as follows:

17.8(6) *Change in residence when participating in open enrollment.* If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian shall have the option to leave the pupil in the receiving district under open enrollment, to open enroll to another school district, or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement. If the choice is to leave the pupil under open enrollment or to open enroll to another school district, the original district of residence, as determined on the date specified in Iowa Code section 257.6(1), shall be responsible for payment of the cost per pupil plus any applicable weightings or special education costs for the balance of the school year, if any, in which the move took place, providing the move took place on or after the date specified in Iowa Code section 257.6, subsection 1. The new district of residence shall be responsible for these payments during succeeding years of the agreement.

~~If the move takes place between the end of one school year and the date specified in Iowa Code section 257.6, subsection 1, of the following school year, the new district of residence shall be responsible for that year's payment as well as succeeding years.~~

If the pupil is to remain under open enrollment or to open enroll to another school district, the parent/guardian shall write a letter, delivered by mail or by hand on or before the date specified in Iowa Code section ~~257.6, subsection 1~~ 257.6(1), to notify the original resident district, the new resident district, and the receiving district of this decision.

EDUCATION DEPARTMENT[281](cont'd)

Timely requests under this rule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2).

ITEM 14. Amend subrule 17.8(7) as follows:

17.8(7) *Change in residence when not participating in open enrollment.* If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program or to open enroll to another school district. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made on or before the date specified in Iowa Code section ~~257.6, subsection 1~~ 257.6(1). Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is on or after the date specified in Iowa Code section ~~257.6, subsection 1~~ 257.6(1), the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

a. This subrule applies in the following circumstances: a change in family residence, a change in a child's residence from the residence of one parent or guardian to the residence of a different parent or guardian, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program.

b. This rule applies to the following children:

(1) A child who is enrolled in any grade from kindergarten through grade 12.

(2) A prekindergarten student who is enrolled in a special education program at the time of the request and is not currently using any provision of open enrollment.

ITEM 15. Amend subrule 17.8(9) as follows:

17.8(9) *Appeal procedure.* A parent/guardian may appeal the decision of the board of directors of a school district (resident or receiving) only on an application for open enrollment under Iowa Code section 282.18(5) ~~as amended by 2002 Iowa Acts, House File 2515 and rule 281—17.5(282)~~. This appeal is to the state board of education and shall comply with the provisions of Iowa Code section 290.1. The appeal shall be filed within 30 days of the decision of the district board and shall be in the form of an affidavit signed by the parent/guardian. It shall state in a plain and concise manner what the parent/guardian feels to be the basis for appeal.

ITEM 16. Amend subrule 17.9(3) as follows:

17.9(3) *Economic eligibility requirements for transportation.* A parent/guardian shall be eligible for transportation assistance from the resident district if the household income of the parent/guardian is ~~at or below 160 percent of the federal income poverty guidelines as stated by household size~~ 200 percent or less of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services. Since the federal ~~income~~ poverty income guidelines are adjusted each year, the department of education shall provide revised eligibility guidelines to school districts each year.

ITEM 17. Amend subrule 17.11(4) as follows:

17.11(4) *Finance.* The district of residence shall pay to the receiving district on the schedule set forth in subrule 17.10(5) the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open

EDUCATION DEPARTMENT[281](cont'd)

enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency. For children requiring special education, the receiving district shall complete and provide to the district of residence the documentation necessary to seek Medicaid reimbursement for eligible services.

ITEM 18. Rescind and reserve rule **281—17.13(282)**.

ITEM 19. Rescind rule 281—17.14(282) and adopt the following new rule in lieu thereof:

281—17.14(282) Court-ordered desegregation plans.

17.14(1) Applicability. These rules govern only the components of a court-ordered desegregation plan as the plan affects open enrollments.

17.14(2) Nature of court-ordered desegregation plan. The language of the court order shall be binding on a district's implementation of open enrollment. The district shall notify the department of any court-ordered desegregation plan and any court-ordered modifications to that plan.

This rule is intended to implement Iowa Code section 282.18 as amended by 2021 Iowa Acts, House File 228.

ARC 5738C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rule making related to private instruction
and providing an opportunity for public comment**

The State Board of Education hereby proposes to amend Chapter 31, "Private Instruction and Dual Enrollment," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 546.

Purpose and Summary

2021 Iowa Acts, Senate File 546, makes changes to Iowa Code chapter 299A, "Private Instruction." This proposed rule making incorporates the changes that are within the jurisdiction of the Department of Education and the State Board (certain changes are within the jurisdiction of the Iowa Department of Transportation). This rule making also removes obsolete references to Iowa Acts that have subsequently been codified, as well as making nonsubstantive wording changes regarding special education eligibility.

Fiscal Impact

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

Jobs Impact

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

EDUCATION DEPARTMENT[281](cont'd)

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 20, 2021. Comments should be directed to:

Thomas Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.242.5614
 Email: thomas.mayes@iowa.gov

Public Hearing

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

July 20, 2021
 10:30 to 11 a.m.

Room B100
 Grimes State Office Building
 Des Moines, Iowa
 Via videoconference:
idoe.zoom.us/j/92297466685?pwd=dE1Hc1I3M2U2Vmo4bEwwSVFPRWU5UT09

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

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **31.1(2)“a”** as follows:

a. “*Competent private instruction*” means ~~private~~ either of the following:

(1) Private instruction provided on a daily basis for at least 148 days during a school year, to be met by attendance for at least 37 days each school quarter, by or under the supervision of a licensed practitioner in the manner provided under Iowa Code section 299A.2 and this chapter, which results in the student about whom a report of private instruction has been filed making adequate progress.

(2) Private instruction provided by a parent, guardian, or legal custodian pursuant to Iowa Code section 299A.3.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 2. Amend paragraph **31.1(2)“b”** as follows:

b. “*Independent private instruction*” means private instruction that meets the following criteria:

- (1) Is not accredited.
- (2) Enrolls not more than four unrelated students.
- (3) Does not charge tuition, fees, or other remuneration for instruction.
- (4) Provides private or religious-based instruction as its primary purpose.
- (5) Provides enrolled students with instruction in mathematics, reading and language arts, science, and social studies.
- (6) Provides, upon written request from the superintendent of the school district in which the independent private instruction is provided, or from the director of the department of education, a report identifying the primary instructor, name and location of the authority responsible for the independent private instruction, and the names of the students enrolled.
- (7) Is not a nonpublic school and does not provide competent private instruction as defined in Iowa Code section 299A.1 ~~as amended by 2013 Iowa Acts, House File 215, section 87,~~ and these rules.
- (8) Is exempt from all state statutes and administrative rules applicable to a school, a school board, or a school district, except as otherwise provided in Iowa Code chapters 299 and 299A ~~as amended by 2013 Iowa Acts, House Files 215 and 454.~~

ITEM 3. Amend subrule 31.2(3) as follows:

31.2(3) Reporting requirement option: private instruction exemption. A parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 ~~as amended by 2013 Iowa Acts, House File 215, section 88, (private instruction by nonlicensed person)~~ may meet, but is not required to meet, all of the following requirements:

- a.* Complete and send, in a timely manner, the report required under Iowa Code section 299.4 ~~as amended by 2013 Iowa Acts, House File 215, sections 84 to 86,~~ and this rule to the school district of residence of the child.
- b.* Ensure that the child under the parent’s, guardian’s, or legal or actual custodian’s instruction is evaluated annually to determine whether the child is making adequate progress, as defined in Iowa Code section 299A.6 and this chapter.
- c.* Ensure that the results of the child’s annual evaluation are reported to the school district of residence of the child and to the department of education by a date not later than June 30 of each August 1 of the year following the school year in which the child is under competent private instruction, pursuant to this chapter.

ITEM 4. Amend paragraph **31.3(3)“e”** as follows:

e. Referring to the child’s district of residence for evaluation a child who the practitioner has reason to believe may ~~be in~~ need of special education.

ITEM 5. Amend paragraph **31.4(3)“e”** as follows:

e. For purposes of assisting the district to meet its “child find” obligation under the Individuals with Disabilities Education Act, referring to the child’s district of residence for evaluation any child who the practitioner has reason to believe may ~~be in~~ need of special education.

ITEM 6. Amend paragraph **31.5(1)“d”** as follows:

d. The district shall annually report to the department of education by ~~June 30~~ August 1 of the year following the school year in which a child was under competent private instruction the names of all resident children who are subject to an annual assessment and who either failed to make adequate progress or whose parent, guardian, or legal or actual custodian failed to comply with the assessment requirements of the compulsory attendance law.

ITEM 7. Amend paragraph **31.5(1)“g”** as follows:

g. The district may request a parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 ~~as amended by 2013 Iowa Acts, House File 215, section 88, (private instruction by nonlicensed person)~~

EDUCATION DEPARTMENT[281](cont'd)

to provide the information required by this subrule; however, the parent, guardian, or legal or actual custodian is not required to do so, pursuant to Iowa Code section 299A.3 ~~as amended by 2013 Iowa Acts, House File 215, section 88,~~ and subrule 31.2(3).

ITEM 8. Amend paragraph **31.5(2)“c”** as follows:

c. The administration of the annual achievement evaluation shall not constitute a dual enrollment purpose under Iowa Code section 299A.8 ~~as amended by 2013 Iowa Acts, House File 215, section 94,~~ and this rule.

ITEM 9. Amend subrule 31.5(6) as follows:

31.5(6) Driver education. The public school district shall offer or make available to all resident students, including those receiving competent private instruction on an equal basis with students enrolled in the district, an approved course in driver education, as required by Iowa Code section 321.178(1)“c.” ~~as amended by 2013 Iowa Acts, House File 215, section 99.~~

ITEM 10. Amend subrule **31.8(1)**, second unnumbered paragraph, as follows:

A child who is at least seven years old by September 15 and who begins a program of competent private instruction and is subject to the annual assessment requirement shall be administered a baseline evaluation for the purposes of obtaining educational data. The baseline evaluation and annual assessment shall be taken by May + 31.

ITEM 11. Adopt the following new paragraph **31.8(2)“e”**:

e. This rule shall not be construed to require or prohibit testing on any subject matter at intervals more frequently or at grade levels other than those set forth in Iowa Code section 256.7(21)“b”(2).

ITEM 12. Amend subrule 31.8(3), introductory paragraph, as follows:

31.8(3) Portfolio assessment or evaluation. A parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement may arrange to have an appropriately licensed Iowa practitioner review a portfolio of evidence of the child’s progress annually by May + 31, subject to the following requirements:

ITEM 13. Amend subrule 31.9(2) as follows:

31.9(2) Standardized tests. The results of a standardized test taken by a child subject to the annual assessment requirements shall be reported by the child’s parent, guardian, or legal or actual custodian to the district of residence of the child by ~~June 30~~ August 1 of the year following the school year in which the test was taken. The results shall be submitted either in original form or as a true and correct photocopy of the original form as received from the agency responsible for scoring the test, from which any test results not required under law may be redacted.

ITEM 14. Amend subrule 31.9(3), introductory paragraph, as follows:

31.9(3) Portfolio assessments. The results of an assessment of a child’s educational portfolio made by a qualified Iowa licensed practitioner shall be submitted by the portfolio evaluator to the child’s parent, guardian, or legal or actual custodian, who shall send a copy to the district of residence of the child by ~~June 30~~ August 1 of the year following the school year in which the assessment was done.

ITEM 15. Amend subrule 31.9(4) as follows:

31.9(4) Report card from accredited correspondence school. Report cards from an accredited correspondence school shall be submitted by the child’s parent, guardian, or legal or actual custodian to the child’s district of residence by ~~June 30~~ August 1 of the year following the school year in which the report cards were issued by the accredited correspondence school.

ITEM 16. Amend subparagraph **31.11(2)“a”(1)** as follows:

(1) The public school district shall offer or make available to all resident students receiving independent private instruction an approved course in driver education on an equal basis with students enrolled in the district, as required by Iowa Code section 321.178(1)“c.” ~~as amended by 2013 Iowa Acts, House File 215, section 99.~~

EDUCATION DEPARTMENT[281](cont'd)

ITEM 17. Amend subrule 31.12(1) as follows:

31.12(1) Confidentiality of records. Records maintained by school districts or area education agencies under Iowa Code chapters 299 and 299A ~~as amended by 2013 Iowa Acts, House Files 215 and 454,~~ and this chapter shall be protected under Iowa Code chapter 22, as well as 20 U.S.C. Section 1232g and 34 CFR Part 99. Personally identifiable information about students, as defined in 34 CFR Part 99, shall be disclosed only as permitted by that Part.

ITEM 18. Amend subrule 31.12(2), introductory paragraph, as follows:

31.12(2) Compulsory attendance actions. In taking any action under Iowa Code chapters 299 and 299A ~~as amended by 2013 Iowa Acts, House Files 215 and 454,~~ a school district shall consider the requirements of compulsory attendance to be satisfied in the following instances:

ITEM 19. Amend paragraph **31.12(2)“d”** as follows:

d. The child is receiving private instruction under subrule 31.2(3) and Iowa Code section 299A.3 ~~as amended by 2013 Iowa Acts, House File 215, section 88,~~ unless the subrule and section do not apply.

ITEM 20. Amend **281—Chapter 31**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 299 and 299A as amended by ~~2013~~ 2021 Iowa Acts, ~~House Files 215 and 454~~ Senate File 546.

ARC 5746C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to interscholastic athletic contest eligibility and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 36, “Extracurricular Interscholastic Competition,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, House File 847.

Purpose and Summary

2021 Iowa Acts, House File 847, makes changes to athletic eligibility for certain transfer situations. This proposed rule making incorporates those changes. This proposed rule making also makes changes in light of current family law practice.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

EDUCATION DEPARTMENT[281](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 20, 2021. Comments should be directed to:

Thomas Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

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

July 20, 2021
10 to 10:30 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa
Via videoconference:
idoe.zoom.us/j/92297466685?pwd=dE1Hc1I3M2U2Vmo4bEwwSVFPRWU5UT09

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subparagraph **36.15(3)“a”(1)** as follows:

(1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence or to an accredited nonpublic member or associate member school located in the new school district of residence. In addition, if with a contemporaneous change in parental residence, the student had attended an accredited nonpublic member or associate member school immediately prior to the change in parental residence, the student may have immediate eligibility if the student transfers to another accredited nonpublic member or associate member school. For purposes of this subparagraph, a contemporaneous change in parental residence includes a change in a student's residence from the residence of one parent or guardian to the residence of a different parent or guardian.

ITEM 2. Amend subparagraph **36.15(3)“a”(4)** as follows:

(4) Pursuant to Iowa Code section 256.46, a student whose residence changes due to any of the following circumstances is immediately eligible provided the student meets all other eligibility requirements in these rules and those set by the school of attendance:

EDUCATION DEPARTMENT[281](cont'd)

1. to 8. No change.

9. The child's former school or school district, if located in this state, was unable to participate in varsity interscholastic sports as the result of a decision or implementation of a decision of the school board or superintendent.

ITEM 3. Amend subrule 36.15(4) as follows:

36.15(4) *Open enrollment transfer rule.* A student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer except that a student may participate immediately if the student is entering grade 9 for the first time and did not participate in an interscholastic athletic competition for another school during the summer immediately following eighth grade. The period of ineligibility applies only to varsity level contests and competitions. ("Varsity" means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.) If a pupil is declared ineligible for interscholastic athletic contests and athletic competitions in the pupil's district of residence due to the pupil's academic performance, upon participating in open enrollment, in addition to any other period of ineligibility under this rule, the pupil shall be ineligible in the receiving district for the remaining period of ineligibility declared by the district of residence. This period of ineligibility does not apply if ~~the student:~~

a. ~~Participates~~ The student participates in an athletic activity in the receiving district that is not available in the district of residence; or

b. ~~Participates~~ The student participates in an athletic activity for which the resident and receiving districts have a cooperative student participation agreement pursuant to rule 281—36.20(280); or

c. ~~Has~~ The student has paid tuition for one or more years to the receiving school district prior to making application for and being granted open enrollment; or

d. ~~Has~~ The student has attended in the receiving district for one or more years prior to making application for and being granted open enrollment under a sharing or mutual agreement between the resident and receiving districts; or

e. ~~Has~~ The student has been participating in open enrollment and ~~whose the student's~~ parents/guardians move out of their district of residence but exercise either the option of remaining in the original open enrollment district or enrolling in the new district of residence. If the student has established athletic eligibility under open enrollment, it is continued despite the parent's or guardian's change in residence; or

f. ~~Has~~ The student has not been participating in open enrollment, but utilizes open enrollment to remain in the original district of residence following a change of residence of the student's parent(s). If the student has established athletic eligibility, it is continued despite the parent's or guardian's change in residence; or

g. ~~Obtains~~ The student obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code ~~subsection~~ section 256.11(12); or

h. ~~Obtains~~ The student obtains open enrollment due to the student's district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the student would be enrolled at the start of the whole-grade sharing agreement; or

i. ~~Participates~~ The student participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services; or

j. ~~Open~~ The student open enrolls from a district of residence that has determined that the student was previously subject to a founded incident of harassment or bullying as defined in Iowa Code section 280.28 while attending school in the district of residence.; or

k. The student participates in open enrollment because of circumstances that meet the definition of "good cause" under Iowa Code section 282.18(4) "b"; or

EDUCATION DEPARTMENT[281](cont'd)

l. The board of directors or superintendent of the district of residence issues or implements a decision that results in the discontinuance or suspension of varsity interscholastic sports activities in the district of residence; or

m. The board of directors of the district of residence and the board of directors of the receiving district both agree to waive the ineligibility period; or

n. For open enrollment applications approved for the school year beginning July 1, 2021, the student's district of residence had a voluntary diversity plan in effect on January 1, 2021, and applicable to the school year beginning July 1, 2021.

ITEM 4. Adopt the following **new** implementation sentence in **281—Chapter 36**:

These rules are intended to implement Iowa Code sections 256.46, 280.13, and 282.18 and 2021 Iowa Acts, House File 847.

ARC 5732C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to child care assistance provider reimbursement rates and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 170, “Child Care Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 234.6 and 2021 Iowa Acts, House File 891.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6 and 45 CFR Part 98.

Purpose and Summary

The Department is proposing to revise the child care assistance provider reimbursement rate ceiling tables. This is being done to comply with federal requirements (45 CFR Part 98) that states must use the most recent market rate survey in establishing child care reimbursement rates. Iowa’s most recent market rate survey was conducted in December 2020.

Proposed reimbursement rates for providers of child care assistance are increased to at least the 50th percentile of the 2020 market rate for child care providers. The proposed base rates for the Quality Rating System (QRS) bonuses reflect increased child care provider reimbursement rates.

The proposed base rates are updated to the 50th percentile and the QRS highest rates to the 75th percentile of the 2020 survey. Previously, the highest rates had been at the 75th percentile based on the 2017 market rate survey.

Fiscal Impact

Increasing the maximum provider rates as shown in the rate tables is estimated to cost \$13,355,730 per year. This cost is expected to be funded by federal Child Care and Development Fund (CCDF) funds carried forward until SFY25, when it is anticipated that the balance of CCDF funds will be fully expended.

Jobs Impact

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 20, 2021. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

Emergency Rule Making Adopted by Reference

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 5731C**, IAB 6/30/21). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

ARC 5735C**PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action****Proposing rule making related to firearm training organizations
and providing an opportunity for public comment**

The Public Safety Department hereby proposes to amend Chapter 91, “Weapons and Iowa Professional Permits to Carry Weapons,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in 2021 Iowa Acts, House File 756, section 20.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, House File 756, sections 19 and 20.

Purpose and Summary

The proposed amendments to Chapter 91 align the Department's rules for firearm training organizations with 2021 Iowa Acts, House File 756. Under this new law, the Department, not just the National Rifle Association (NRA), may approve firearm training organizations that certify individuals as handgun safety training instructors. The proposed amendments establish the requirements that firearm training organizations must meet in order to receive approval from the Department. The amendments also set forth the procedure for submitting an application for approval as a firearm training organization and the conditions in which a certification of approval may be denied, suspended, or revoked.

Fiscal Impact

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

Jobs Impact

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

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 20, 2021. Comments should be directed to:

Sarah Jennings
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: jennings@dps.state.ia.us

Public Hearing

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

Review by Administrative Rules Review Committee

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

PUBLIC SAFETY DEPARTMENT[661](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definition of “Approved training organization” in rule **661—91.1(724)**:

“*Approved training organization*” means any firearm training organization that has satisfied the requirements to certify handgun safety training instructors eligible to offer handgun safety training in Iowa for the purpose of obtaining an Iowa permit to carry weapons and has been approved by the commissioner.

ITEM 2. Amend rule **661—91.1(724)**, definitions of “Firearm training documentation” and “Firearm training program,” as follows:

“*Firearm training documentation*” means a photocopy of a certificate of completion or any similar document indicating completion of any firearm training program course; an affidavit from the instructor, school, organization or group that conducted or taught a firearm training program; a copy of or the display of an honorable discharge or general discharge under honorable conditions or Form DD-214 for personnel released or retired from active duty with the armed forces of the United States; or possession of a certificate of completion of basic training with a service record of successful completion of small arms training and qualification for active duty personnel in the armed forces of the United States. ~~For a renewal application, firearm training documentation also includes documentation of qualifying on a firing range under the supervision of an instructor certified by the National Rifle Association or the Iowa law enforcement academy or another state’s department of public safety, state police department, or similar certifying body.~~

“*Firearm training program*” means any National Rifle Association handgun safety training course; any handgun safety training course available to the general public utilizing instructors certified by the National Rifle Association, an organization approved by the Iowa department of public safety pursuant to Iowa Code section 724.9A as enacted by 2021 Iowa Acts, House File 756, section 20, or the Iowa law enforcement academy or another state’s department of public safety, state police department, or similar certifying body; any handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency approved by the Iowa department of public safety; or completion of small arms training while serving with the armed forces of the United States. Any person or entity seeking approval by the Iowa department of public safety for a handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency, other than those certified by the National Rifle Association, the Iowa department of public safety, or the Iowa law enforcement academy or courses conducted by instructors certified by the National Rifle Association or the Iowa law enforcement academy, shall submit a detailed description of the course content to the commissioner for review. Any handgun safety training course submitted for review shall be reviewed by the commissioner ~~to determine if the course is substantially equivalent to the Iowa law enforcement academy marksmanship qualification course.~~

ITEM 3. Adopt the following **new** rule 661—91.10(724):

661—91.10(724) Application for approved training organization.

91.10(1) Firearm training organizations seeking approval by the Iowa department of public safety to certify individuals as handgun safety training instructors eligible to offer handgun safety training shall meet the criteria outlined in this rule, such as the years of training experience of the organization’s primary point of contact or owner, and shall maintain student records, an active website URL, and the ability of the organization’s instructors and primary point of contact or owner to legally possess and carry firearms. A firearm training organization seeking approval shall submit the following:

a. A certificate of existence from the Iowa secretary of state issued within 60 days of application or, if a non-Iowa corporation, a certificate of authority to do business in Iowa.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

b. The course syllabi or lesson plans and the goals or objectives for instructor certification courses, which shall show that instructor candidates who successfully complete the courses possess knowledge, competence, and demonstrated proficiency in the area of handgun safety instruction and operation.

c. The course syllabi or lesson plans and the goals or objectives for general student courses, which shall demonstrate that students will receive the basic requirements for a permit to carry a weapon as established by the Iowa department of public safety. The courses shall include:

(1) Instruction in current Iowa laws related to use of deadly force, reasonable force, defense of home, and defense of property;

(2) Instruction in basic handgun safety, safe handling, safe storage, and safe cleaning; and

(3) Instruction in handgun nomenclature and the operation of pistols and revolvers.

d. A copy of the certificate to be issued by the organization to instructors who complete the program.

e. A copy of the résumé and firearm-related training credentials of the individual serving as the organization's primary point of contact or owner, which shall demonstrate a minimum of five years of cumulative experience as a firearm instructor. This experience shall include firearm instructor duties related to military service or firearm instructor certification by the National Rifle Association or by an organization approved by the Iowa department of public safety pursuant to Iowa Code section 724.9A as enacted by 2021 Iowa Acts, House File 756, section 20, or by the Iowa law enforcement academy or another state's department of public safety, state police department, or similar certifying body.

f. A written description of how the organization will maintain instructor records.

g. A written description of how the organization will maintain proficiency of instruction, including staying abreast of statutory changes that may affect what is being taught, and will ensure the instructional practices and integrity of instructors.

h. The URL of a website containing a list of certified instructors or an electronic application that allows users to search and validate instructor credentials.

i. An application processing fee of \$500 (the certification of approval is valid for five years).

91.10(2) A firearm training organization seeking to renew its certification of approval must submit:

a. Current lesson plans or course syllabi and course goals or objectives.

b. A certificate of existence from the Iowa secretary of state issued within 60 days of application or, if a non-Iowa corporation, a certificate of authority to do business in Iowa.

c. A copy of the updated credentials of the organization's primary point of contact or owner (submit all documentation demonstrating qualification to provide oversight of firearm training instructors). These credentials must include a minimum of five years of verifiable firearm instructor experience.

d. An application processing fee of \$500 (the certification of approval is valid for five years).

91.10(3) The Iowa department of public safety may deny, suspend, or revoke the certification of approval of a firearm training organization if the department has reason to believe that the organization or its primary point of contact or owner has:

a. Become ineligible to possess a firearm under Iowa Code chapter 724 or federal law;

b. Knowingly and willfully provided false information to the department;

c. Provided instruction contrary to the established and approved curriculum; or

d. Failed to meet any portion of the instructor certification guidelines as originally approved.

91.10(4) An applicant for certification as a firearm training organization or a certified firearm permit-to-carry instructor has the same appeal rights as set forth in rule 661—91.7(724).

ITEM 4. Amend **661—Chapter 91**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 724 as amended by ~~2010 Iowa Acts, Senate File 2357 and Senate File 2379~~ 2021 Iowa Acts, House File 756.

ARC 5736C**REAL ESTATE COMMISSION[193E]****Notice of Intended Action****Proposing rule making related to waivers, licensure, and education requirements and providing an opportunity for public comment**

The Real Estate Commission hereby proposes to amend Chapter 1, “Administration,” Chapter 3, “Broker License,” Chapter 4, “Salesperson License,” Chapter 5, “Licensees of Other Jurisdictions and Reciprocity,” and Chapter 16, “Prelicense Education and Continuing Education,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 543B.9.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House Files 2627 and 2389.

Purpose and Summary

The proposed amendments implement changes required by 2020 Iowa Acts, House Files 2389 and 2627. The proposed amendments are also a result of the rolling five-year review of administrative rules outlined in Iowa Code section 17A.7(2). These amendments include:

- Removal of the term “variance” when it is used to mean a waiver, as required by 2020 Iowa Acts, House File 2389, section 10, which amended Iowa Code section 17A.9A;
- Addition of a new rule 193E—5.12(543B) to set forth the procedures for licensure by verification for applicants who are licensed in other jurisdictions, as required by 2020 Iowa Acts, House File 2627;
- Changes in Chapters 3 and 4 regarding the use of criminal convictions in licensure decisions, as set forth in 2020 Iowa Acts, House File 2627;
- Changes regarding the terms “classroom” to “live education” and “computer-based” to “distance learning” for consistency with the definitions outlined in rule 193E—16.1(543B);
- A general cleanup of Chapters 1, 3, 4, 5, and 16.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, there is a potential positive impact on jobs as individuals who may have been ineligible for licensure may become eligible for licensure as a result of this rule making.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 193—Chapter 5.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on July 23, 2021. Comments should be directed to:

REAL ESTATE COMMISSION[193E](cont'd)

Jeffrey Evans
 Real Estate Commission
 200 East Grand Avenue, Suite 350
 Des Moines, Iowa 50309
 Email: jeff.evans@iowa.gov

Public Hearing

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

July 23, 2021
 9 to 10 a.m.

Commission Office, Suite 350
 200 East Grand Avenue
 Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 193E—1.2(543B) as follows:

193E—1.2(543B) Correspondence and communications. Correspondence and communications with the commission shall be addressed or directed to the commission office at ~~1918 S.E. Hulsizer~~ 200 E. Grand Avenue, Suite 350, ~~Ankeny~~ Des Moines, Iowa ~~50024~~ 50309. The facsimile number is ~~(515)281-7411~~ (515)725-9032. Contact information is available from the commission's ~~Web site~~ website located at <http://www.state.ia.us/iree/plb.iowa.gov/board/real-estate-sales-brokers>.

ITEM 2. Amend rule 193E—1.4(543B) as follows:

193E—1.4(543B) Custodian of records, filings, and requests for public information. Unless otherwise specified by the rules of the department of commerce or the professional licensing and regulation division, the commission is the principal custodian of its own agency orders, statements of law or policy issued by the commission, legal documents, and other public documents on file with the commission.

1.4(1) No change.

1.4(2) Records, documents and other information may be gathered, stored, and available in electronic format. Information, various forms, documents, and the license law and rules may be reviewed or obtained at any time by the public from the commission's ~~Web site~~ website located at <http://www.state.ia.us/iree/plb.iowa.gov/board/real-estate-sales-brokers>.

1.4(3) and 1.4(4) No change.

ITEM 3. Amend rule 193E—1.5(543B) as follows:

193E—1.5(543B) Waiver or variance from rules. Persons who wish to seek waivers from commission rules should consult the uniform rules for the professional licensing and regulation division at 193—Chapter 5.

REAL ESTATE COMMISSION[193E](cont'd)

ITEM 4. Amend rule 193E—3.1(543B) as follows:

193E—3.1(543B) General requirements for broker license. An applicant for a broker license must meet all requirements of Iowa Code section 543B.15.

3.1(1) and 3.1(2) No change.

3.1(3) An applicant for a real estate broker's license who has been convicted of ~~forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or another similar offense, or of any crime involving moral turpitude,~~ a disqualifying criminal offense in a court of competent jurisdiction in this state or in any other state, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission on the grounds of the conviction as provided by Iowa Code section 272C.15 and rule 193—15.2(272C). "Conviction" is defined in Iowa Code section 543B.15(3) and rule 193E—2.1(543B).

3.1(4) No change.

3.1(5) As required by Iowa Code section 543B.15(7) and 193E—subrule 16.3(1), an applicant for licensure as a real estate broker shall complete at least ~~72-classroom~~ 60 live instruction hours of commission-approved real estate education within 24 months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense ~~course~~ courses. ~~Effective January 1, 2005, and thereafter, all persons applying for a broker license within their first renewal term must complete the 36-hour salesperson postlicense courses, including 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices, before a broker license can be issued.~~

3.1(6) No change.

ITEM 5. Amend rule 193E—3.2(543B) as follows:

193E—3.2(543B) License examination. Examinations for licensure as a real estate broker shall be conducted by the commission or its authorized representative.

3.2(1) No change.

3.2(2) Requests for waiver ~~or variance~~. An examinee must meet the requirements set out in Iowa Code section 543B.15. Requests for waiver ~~or variance~~ of commission rules or of the qualifications for licensure as permitted by Iowa Code section 543B.15 shall be submitted in writing and as provided by the commission's rules regarding waivers ~~and variances~~, which can be found in the uniform rules for the professional licensing and regulation bureau at 193—Chapter 5. The commission will consider each case on an individual basis. The commission may require additional supporting information. If the applicant's experience or prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the deficiency. If a waiver is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

3.2(3) Evidence of completion of prelicense education required. An examinee shall be required to show evidence at the examination site that required prelicense education has been completed. If the commission has granted a waiver ~~or variance~~ of prelicense education, the letter granting the waiver ~~or variance~~ will serve as evidence of completion. Persons planning to qualify under rule 193E—5.3(543B) or 193E—5.12(543B) must obtain written authorization from the commission to show at the examination site.

3.2(4) and 3.2(5) No change.

ITEM 6. Amend rule 193E—4.1(543B) as follows:

193E—4.1(543B) General requirements for salesperson license. A person who is licensed under and employed by or otherwise associated with a real estate broker or firm is a "salesperson" as defined in Iowa Code section 543B.5(20) and rule 193E—2.1(543B).

4.1(1) to 4.1(6) No change.

4.1(7) An applicant for a real estate salesperson license who has been convicted of ~~forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or~~

REAL ESTATE COMMISSION[193E](cont'd)

~~another similar offense, or of any crime involving moral turpitude,~~ a disqualifying criminal offense in a court of competent jurisdiction in this state or in any other state, jurisdiction, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission on the grounds of the conviction as provided by Iowa Code section 272C.15 and rule 193—15.2(272C). “Conviction” is defined in Iowa Code section 543B.15(3) and rule 193E—2.1(543B).

4.1(8) No change.

4.1(9) Salesperson prelicense education requirements. As required by Iowa Code section 543B.15(8) and 193E—Chapter 16, the required course of study for the salesperson licensing examination shall consist of 60 ~~classroom~~ live instruction or ~~computer-based~~ distance learning hours of real estate principles and practices. To be eligible to take the examination, the applicant must complete the 60 ~~classroom~~ live education or ~~computer-based~~ distance learning hours of real estate principles and practices during the 12 months prior to taking the examination. The applicant must also provide evidence of successful completion of the following courses: 12 hours of Developing Professionalism and Ethical Practices, 12 hours of Buying Practices and 12 hours of Listing Practices. The applicant must complete all the required prelicense education during the 12 months prior to the date of application.

ITEM 7. Amend rule 193E—4.2(543B) as follows:

193E—4.2(543B) License examination. Examinations for licensure as a real estate salesperson shall be conducted by the commission or its authorized representative.

4.2(1) No change.

4.2(2) *Requests for waiver ~~or variance~~.* An examinee must meet the requirements set out in Iowa Code section 543B.15. Requests for waiver ~~or variance~~ of the qualifications for licensure as required by Iowa Code section 543B.15 shall be submitted in writing and as provided by the commission’s rules regarding waivers ~~and variances~~, which can be found in the uniform rules for the professional licensing and regulation bureau at 193—Chapter 5. The commission will consider each case on an individual basis. The commission may require additional supporting information. If the applicant’s prelicense education is found to be less than equivalent to the statutory requirement, the commission may suggest methods of satisfying the deficiency. If a waiver ~~or variance~~ is granted, the applicable examination must be passed before the end of the sixth month following the date of the waiver.

4.2(3) *Evidence of completion of prelicense education required.* An examinee shall be required to show evidence at the examination site that 60 ~~classroom~~ live education or ~~computer-based~~ distance learning hours of real estate principles and practices have been completed. If the commission has granted a waiver ~~or variance~~ of prelicense education, the letter granting the waiver ~~or variance~~ will serve as evidence of completion. Persons planning to qualify under rule 193E—5.3(543B) or 193E—5.12(543B) must obtain written authorization from the commission to show at the examination site.

4.2(4) No change.

ITEM 8. Amend rule 193E—5.1(543B) as follows:

193E—5.1(543B) Licensees of other jurisdictions. As provided in Iowa Code section 543B.21, a nonresident of this state may be licensed as a real estate broker or a real estate salesperson upon complying with all requirements of Iowa law and with all the provisions and conditions of Iowa Code chapter 543B and commission rules relative to resident brokers or salespersons.

5.1(1) A person licensed in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) or 193E—5.12(543B) may qualify for a salesperson license in Iowa.

5.1(2) A person licensed as a broker or broker associate in another state or jurisdiction making application in Iowa by reciprocity or as provided in rule 193E—5.3(543B) or 193E—5.12(543B) may qualify for the same type of broker or broker associate license in Iowa. The person must have met all requirements for an Iowa broker license as provided in rule 193E—3.1(543B). If the person does not meet the requirements, the person shall meet, at a minimum, the requirements for an Iowa salesperson license as provided in 193E—Chapter 4 and shall only qualify for a salesperson license.

REAL ESTATE COMMISSION[193E](cont'd)

5.1(3) No change.

ITEM 9. Amend rule 193E—5.11(543B) as follows:

193E—5.11(543B) License discipline reporting required. If a nonresident an Iowa licensee has a real estate license disciplined, suspended or revoked by any other state or jurisdiction, that disciplinary action will be considered prima facie evidence of violation of Iowa Code section 543B.29 or 543B.34 or both, and a hearing may be held to determine whether similar disciplinary action should be taken against the Iowa licensee. Failure to notify the commission within 15 days of an adverse action taken by another state or jurisdiction shall be cause for disciplinary action.

ITEM 10. Adopt the following new rule 193E—5.12(543B):

193E—5.12(543B) Licensure by verification. A person licensed in another state or jurisdiction may qualify for an Iowa salesperson or broker license through verification by making application as provided in rule 193—14.4(272C). In addition to all requirements provided by rule 193—14.4(272C), an applicant for a license through verification shall also submit to the commission proof of passing the Iowa portion of the salesperson or broker real estate examination.

5.12(1) Temporary licenses. Applicants who satisfy all requirements for a license by verification under this rule except for passing the Iowa portion of the salesperson or broker real estate examination may be issued a temporary license that is valid for a period of three months and may be renewed once for an additional period of three months. The applicant must submit proof of passing the Iowa portion of the salesperson or broker real estate examination before the temporary license expires.

5.12(2) License terms. Once the applicant submits proof of passing the Iowa portion of the salesperson or broker real estate examination before the temporary license expires, a license will be issued for a three-year term, counting the remaining portion of the year issued as a full year. Licenses expire on December 31 of the third year of the license term.

ITEM 11. Rescind subrule 16.3(1).

ITEM 12. Renumber subrules 16.3(2) to 16.3(4) as 16.3(1) to 16.3(3).

ITEM 13. Amend renumbered subrule 16.3(1) as follows:

16.3(1) Required course of study beginning January 1, 2020. Beginning January 1, 2020, the The required course of study to take the broker examination shall consist of at least 60 classroom live instruction hours. Approved courses shall be completed within 24 months prior to the applicant’s taking the broker examination and shall include the following subjects:

Contract Law and Contract Writing	6 hours
Iowa Real Estate Trust Accounts.	6 hours
Principles of Appraising and Market Analysis.	6 hours
Real Estate Law and Agency Law	6 hours
Real Estate Finance	6 hours
Federal and State Laws Affecting Iowa Practice	6 hours
Real Estate Office Organization, Administration and Human Resources	12 hours
Real Estate Technology and Data Security.	6 hours
Ethics and Safety Issues for Brokers.	6 hours

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for June is 3.75%.

TREASURER OF STATE(cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective June 9, 2021, 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 .05%

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 5744C

UTILITIES DIVISION[199]

Notice of Intended Action

Proposing rule making related to inspections of natural gas pipelines and providing an opportunity for public comment

The Utilities Board hereby proposes to amend Chapter 10, "Intrastate Gas Pipelines and Underground Gas Storage," and Chapter 19, "Service Supplied by Gas Utilities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 476 and 479.

UTILITIES DIVISION[199](cont'd)

Purpose and Summary

Federal regulations require the Utilities Board, as an agent of the federal Pipeline and Hazardous Materials Safety Administration, to update its rules every two years so that the Board staff applies the current federal regulations during inspections of natural gas pipelines. This proposed rule making updates the natural gas standards accordingly and updates other provisions in Chapters 10 and 19 that are outdated, inconsistent, or incompatible with statutes and other administrative rules.

The Board issued an order commencing rule making on June 15, 2021. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2021-0010.

Fiscal Impact

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

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapters 10 and 19.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on July 20, 2021. Comments should be directed to:

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITSupport@iub.iowa.gov

Public Hearing

An oral presentation at which persons may present their views orally or in writing will be held as follows:

August 19, 2021
10 a.m. to 12 noon

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

UTILITIES DIVISION[199](cont'd)

The following rule-making actions are proposed:

ITEM 1. Amend subrule 10.1(3) as follows:

10.1(3) Definitions. Technical terms not defined in this chapter shall be as defined in the appropriate standard adopted in rule 199—10.12(479). For the administration and interpretation of this chapter, the following words and terms shall have the following meanings:

“*Affected person*” means any person with a ~~recorded~~ legal right or recorded interest in the property, including but not limited to a landowner, a contract purchaser of record, a ~~tenant-occupying person~~ possessing the property under a ~~recorded~~ lease, a record lienholder, and a record encumbrancer of the property. ~~The term also includes persons in possession of or residing on the property and persons with unrecorded interests in the property that have been identified through a good-faith effort of the pipeline company.~~

“*Amendment of permit*” means that changes to the pipeline permit or pipeline require the filing of a petition to amend an existing pipeline permit as described in rule 199—10.9(479).

“*Approximate right angle*” means within 5 degrees of a 90 degree angle.

“*Board*” means the utilities board within the utilities division of the department of commerce.

“*CFR*” means the Code of Federal Regulations, which contains the general administrative rules adopted by federal departments and agencies, in effect as of [the effective date of this amendment] unless a separate effective date is identified in a specific rule.

“*County inspector*” means a professional engineer licensed under Iowa Code chapter 542B who is familiar with agricultural and environmental inspection requirements and has been employed by a county board of supervisors to do an on-site inspection of a proposed pipeline for compliance with 199—Chapter 9 and Iowa Code chapter 479.

“*Multiple line crossing*” means a point at which a proposed pipeline will either cross over or under an existing pipeline.

“*Negotiating*” means contact between a pipeline company and a person with authority to negotiate an easement that involves the location, damages, compensation, or other matter that is prohibited by Iowa Code section 479.5(5). Contact for purposes of obtaining addresses and other contact information from a landowner or tenant is not considered negotiation.

“*Permit*” means a new, amended, or renewal permit issued by the board.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“*Pipeline*” means any pipe, pipes, or pipelines used for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

“*Pipeline company*” means any person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the intrastate transportation or transmission of any solid, liquid, or gaseous substance, except water.

“*Underground storage*” means storage of natural gas in a subsurface stratum or formation of the earth.

ITEM 2. Amend subrule 10.2(2) as follows:

10.2(2) Facilities. A pipeline company shall be responsible for all negotiations and compensation for a suitable facility to be used for each informational meeting, including but not limited to a building or facility which is in substantial compliance with any applicable requirements of the Americans with Disabilities Act Standards for Accessible Design, including both the Title III regulations at 28 CFR Part 36, Subpart D, and the 2004 Americans with Disabilities Act Accessibility Guidelines at 36 CFR Part 1191, Appendices B and D ~~(as amended through April 1, 2020)~~, where such a building or facility is reasonably available.

ITEM 3. Amend subrule 10.12(1) as follows:

10.12(1) All pipelines, underground storage facilities, and equipment shall be designed, constructed, operated, and maintained in accordance with the following standards:

a. 49 CFR Part 191, “Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports,” ~~as amended through April 1, 2020.”~~

UTILITIES DIVISION[199](cont'd)

- b.* 49 CFR Part 192, “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,” ~~as amended through April 1, 2020.~~”
- c.* 49 CFR Part 199, “Drug and Alcohol Testing,” ~~as amended through April 1, 2020.~~”
- d.* ASME B31.8 - 2016, “Gas Transmission and Distribution Piping Systems.”
- e.* 199—Chapter 9, “Restoration of Agricultural Lands During and After Pipeline Construction.”
- f.* At railroad crossings, 199—42.7(476), “Engineering standards for pipelines.”

Conflicts between the standards established in paragraphs 10.12(1)“*a*” through “*f*” or between the requirements of rule 199—10.12(479) and other requirements which are shown to exist by appropriate written documentation filed with the board shall be resolved by the board.

ITEM 4. Adopt the following **new** definition of “CFR” in subrule **19.1(3)**:

“CFR” means the Code of Federal Regulations, which contains the general administrative rules adopted by federal departments and agencies, in effect as of [the effective date of this amendment] unless a separate effective date is identified in a specific rule.

ITEM 5. Amend paragraph **19.2(3)“a”** as follows:

a. ~~The tariff shall be filed electronically using the board’s electronic filing system. The filed tariff shall be printed, typewritten or otherwise capable of being reproduced on 8½- × 11-inch sheets of durable white paper so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding. In the case of utilities subject to regulation by any federal agency, the format of sheets of tariff as paper so customers may reproduce copies of the tariff. A tariff filed with the board may be the same format as is required by the a federal agency provided that the rules of the board as to title page; identity of superseding, replacing or revision sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue, effective date; and the words “Gas Tariff Filed with Board” shall apply in the modification of the federal agency format for the purposes of filing with this board. Pursuant to 199—subrule 14.5(5), tariffs filed electronically shall be formatted in accordance with this rule.~~

ITEM 6. Amend paragraph **19.2(5)“g”** as follows:

g. *Reports to federal agencies.* Copies of reports submitted to the U.S. Department of Transportation pursuant to 49 CFR Part 191, Part 192, or Part 199, ~~as amended through May 1, 2019,~~ shall be filed with the board no later than ten days following the submission. Utilities operating in other states shall provide to the board data for Iowa only.

ITEM 7. Amend subrule 19.5(2) as follows:

19.5(2) Standards incorporated by reference.

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

- (1) 49 CFR Part 191, “Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports,” ~~as amended through May 1, 2019.~~”
- (2) 49 CFR Part 192, “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,” ~~as amended through May 1, 2019.~~”
- (3) 49 CFR Part 193, “Liquefied Natural Gas Facilities: Federal Safety Standards,” ~~as amended through May 1, 2019.~~”
- (4) 49 CFR Part 199, “Drug and Alcohol Testing,” ~~as amended through May 1, 2019.~~”
- (5) ASME B31.8 - 2016, “Gas Transmission and Distribution Piping Systems.”
- (6) NFPA 59-2018, “Utility LP-Gas Plant Code.”
- (7) At railroad crossings, rule 199—42.7(476), “Engineering standards for pipelines.”

b. The following publications are adopted as standards of accepted good practice for gas utilities:

- (1) ANSI Z223.1/NFPA 54-2018, “National Fuel Gas Code.”
- (2) NFPA 501A-2017, “Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities.”

ITEM 8. Amend rule **199—19.11(476)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~476.6(15)~~ 476.6(11).

UTILITIES DIVISION[199](cont'd)

ITEM 9. Amend paragraph **19.14(3)“a”** as follows:

a. ~~An application fee of \$125 must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant may be billed an hourly rate for actual time spent by the board reviewing the application.~~ For actual time spent reviewing the application, the board will directly assess the applicant as set forth in 199—Chapter 17. Iowa Code section 476.87(3) requires the board to allocate the costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding.

ARC 5731C

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed Emergency****Rule making related to child care assistance provider reimbursement rates**

The Human Services Department hereby amends Chapter 170, "Child Care Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6 and 45 CFR Part 98.

Purpose and Summary

The Department is revising the child care assistance provider reimbursement rate ceiling tables. This is being done to comply with federal requirements (45 CFR Part 98) that states must use the most recent market rate survey in establishing child care reimbursement rates. Iowa's most recent market rate survey was conducted in December 2020.

Effective July 1, 2021, reimbursement rates for providers of child care assistance are being increased to at least the 50th percentile of the 2020 market rate for child care providers.

The base rates for the Quality Rating System (QRS) bonuses are also updated to reflect increased child care provider reimbursement rates. The base rates are updated to the 50th percentile and the QRS highest rates to the 75th percentile of the 2020 survey. Previously, the highest rates had been at the 75th percentile based on the 2017 market rate survey.

*Reason for Adoption of Rule Making Without
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary or impractical because emergency adoption was approved by the Administrative Rules Review Committee. 2021 Iowa Acts, House File 891, allows for emergency adoption due to its July 1, 2021, effective date. This rule making also provides a benefit with increased provider rates.

In compliance with Iowa Code section 17A.4(3)"a," the Administrative Rules Review Committee at its June 8, 2021, meeting reviewed the Department's determination and this rule making and approved the emergency adoption.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on July 1, 2021, because increased child care provider rates provide a benefit.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 10, 2021.

Fiscal Impact

Increasing the maximum provider rates as shown in the rate tables is estimated to cost \$13,355,730 per year. This cost is expected to be funded by federal Child Care Development Fund (CCDF) funds carried forward until SFY25, when it is anticipated that the balance of CCDF funds will be fully expended.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

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

The following rule-making action is adopted:

Amend paragraph **170.4(7)“a”** as follows:

a. Rate of payment. The rate of payment for child care services, except for in-home care which shall be paid in accordance with 170.4(7)“d,” shall be the actual rate charged by the provider for a private individual, not to exceed the maximum rates shown below. When a provider does not have a half-day rate in effect, a rate is established by dividing the provider's declared full-day rate by 2. When a provider has neither a half-day nor a full-day rate, a rate is established by multiplying the provider's declared hourly rate by 4.5. Payment shall not exceed the rate applicable to the provider type and age group as shown in the tables below. To be eligible for the special needs rate, the provider must submit documentation to the child's service worker that the child needing services has been assessed by a qualified professional and meets the definition for “child with special needs,” and a description of the child's special needs, including, but not limited to, adaptive equipment, more careful supervision, or special staff training.

Age Group	No QRS		QRS 1 or 2		QRS 3 or 4		QRS 5	
	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	\$17.00 \$19.30	\$51.94	\$19.75 \$20.50	\$51.94	\$20.50 \$21.50	\$51.94	\$21.90 \$23.21	\$51.94
Preschool	\$14.75 \$17.00	\$30.43	\$15.50 \$18.00	\$30.43	\$16.40 \$18.98	\$30.43	\$18.69 \$20.00	\$30.43
School Age	\$12.18 \$13.50	\$30.34	\$12.50 \$14.75	\$30.34	\$13.50 \$15.00	\$30.34	\$15.00 \$16.00	\$30.34

HUMAN SERVICES DEPARTMENT[441](cont'd)

Table 2 Half-Day Rate Ceilings for (Child Development Home A/B)								
Age Group	No QRS		QRS 1 or 2		QRS 3 or 4		QRS 5	
	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	\$12.98	\$19.47	\$13.50	\$20.25	\$13.75	\$20.63	\$14.00	\$21.00
Preschool	\$12.50	\$18.75	\$12.75	\$19.13	\$13.00	\$19.50	\$13.75	\$20.63
School Age	\$10.82	\$16.23	\$11.25	\$16.88	\$12.00	\$18.00	\$12.50	\$18.75

Table 3 Half-Day Rate Ceilings for (Child Development Home C)								
Age Group	No QRS		QRS 1 or 2		QRS 3 or 4		QRS 5	
	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	\$13.00	\$19.50	\$14.00	\$21.00	\$14.50	\$21.75	\$15.00	\$22.50
	\$14.00	\$21.00	\$14.50	\$21.75	\$15.00	\$22.50	\$15.25	\$22.88
Preschool	\$12.50	\$18.75	\$13.00	\$19.50	\$13.50	\$20.25	\$15.00	\$22.50
	\$13.75	\$20.63	\$14.50	\$21.75	\$14.75	\$22.13		
School Age	\$11.25	\$16.88	\$12.00	\$18.00	\$12.50	\$18.75	\$14.00	\$21.00
			\$12.50	\$18.75	\$13.00	\$19.50	\$14.50	\$21.75

Table 4 Half-Day Rate Ceilings for Child Care Home (Not Registered)		
Age Group	Basic	Special Needs
Infant and Toddler	\$8.19 \$12.98	\$12.29 \$19.47
Preschool	\$7.19 \$12.50	\$10.79 \$18.75
School Age	\$7.36 \$10.82	\$11.04 \$16.23

The following definitions apply in the use of the rate tables:
 (1) to (9) No change.

[Filed Emergency 6/10/21, effective 7/1/21]
 [Published 6/30/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5721C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Rule making related to waivers

The Agriculture and Land Stewardship Department hereby amends Chapter 8, “Waiver or Variance of Rules,” Chapter 90, “State Licensed Warehouses and Warehouse Operators,” and Chapter 91, “Licensed Grain Dealers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 159.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

This rule making implements 2020 Iowa Acts, House File 2389, by removing references to “variances” within Chapters 8, 90, and 91 and updating the process by which the Department publishes rule waivers.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5575C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on May 28, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

The following rule-making actions are adopted:

ITEM 1. Amend **21—Chapter 8**, title, as follows:

~~WAIVER OR VARIANCE OF RULES~~

ITEM 2. Amend rule 21—8.1(17A,159) as follows:

21—8.1(17A,159) Definition. For purposes of this chapter, a “waiver ~~or variance~~” means action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 21—8.4(17A,159) as follows:

21—8.4(17A,159) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule 21—8.6(17A,159), the department may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend rule 21—8.12(17A,159) as follows:

21—8.12(17A,159) ~~Summary reports~~ Submission of waiver information. ~~Semiannually, the department shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the department shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. ~~The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department’s actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 5. Amend rule 21—90.1(203C) as follows:

21—90.1(203C) Application of rules. These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable. These rules are subject to such waivers ~~or variances~~ as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203C.5.

ITEM 6. Amend rule 21—91.1(203) as follows:

21—91.1(203) Application of rules. These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable. These rules are subject to such waivers ~~or variances~~ as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203.2.

[Filed 6/2/21, effective 8/4/21]

[Published 6/30/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5722C**DENTAL BOARD[650]****Adopted and Filed****Rule making related to licensure**

The Dental Board hereby amends Chapter 7, "Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 147.76 and 2020 Iowa Acts, House File 2389.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

These amendments implement 2020 Iowa Acts, House File 2389, and provide updates to the requirements for petitions for rule making and waivers and reporting requirements related to the disposition thereof.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5441C**. No public comments were received. One technical change from the Notice has been made: Subrules 7.4(11) to 7.4(16) have been renumbered to maintain the sequential order of the subrules in the rule.

Adoption of Rule Making

This rule making was adopted by the Board on April 2, 2021.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, there is no impact on jobs since the legislation affects requests for rule waivers and does not directly affect requirements for licensure or the ability to practice dentistry.

Waivers

The rule making updates the requirements for a petition of a rule waiver and is not subject to requests for waiver under normal circumstances.

Review by Administrative Rules Review Committee

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

DENTAL BOARD[650](cont'd)

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 650—7.1(17A,147,153) as follows:

650—7.1(17A,147,153) Petition for rule making.

7.1(1) and **7.1(2)** No change.

7.1(3) The petition is filed when it is received by the board. Within 14 days after the filing of a petition is received, the board shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee (ARRC).

7.1(4) Upon receipt of the petition, the board shall take the petition under advisement. The board may request additional information from the petitioner or the board office. Upon request by the petitioner, the board shall schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of board staff to discuss the petition. The board may also solicit comments from any person on the substance of the petition. Any person may submit to the board comments on the substance of the petition.

7.1(5) No change.

7.1(6) The board shall deny the petition or initiate rule-making procedures within 60 days after filing of the petition. In the case of a denial, the board shall state in writing its reasons for the denial. The petitioner and the ARRC shall be notified ~~by mail~~ in writing of the board action taken.

This rule is intended to implement Iowa Code sections 17A.3(1) and 17A.7.

ITEM 2. Amend rule 650—7.4(17A,147,153) as follows:

650—7.4(17A,147,153) Waivers.

7.4(1) Definition. For purposes of this rule, “a waiver ~~or variance~~” means action by the board that suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

7.4(2) and **7.4(3)** No change.

7.4(4) Criteria for waiver. In response to a petition ~~completed pursuant to subrule 7.4(6)~~, the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

a. to d. No change.

7.4(5) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

a. to c. No change.

d. A petition is deemed filed when it is received at the board’s office. ~~A petition should be sent~~ may be filed using the online form, emailed to IDB@iowa.gov, or mailed to the Iowa Dental Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687. The petition must ~~be typewritten or legibly handwritten in ink and substantially conform to the form~~ include the content specified in 650—7.5(17A,147,153) subrule 7.4(6).

7.4(6) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, email address, and telephone number of the person for whom a waiver is being requested and a reference to any related contested case. Also, the name, address, email address, and telephone number of the petitioner’s legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

b. and c. No change.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 7.4(4). ~~This statement shall include a signed statement from the~~ The

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petitioner ~~attesting~~ shall attest to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

~~e.~~—A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, registration, certification, or permit affected by the proposed waiver, including a description of each affected license, registration, certification, or permit held by the requester, any formal charges filed, any notices of violation, contested case hearings, or investigations relating to the regulated activity, license, registration, certification or permit.

~~f.~~—Any information known to the requester regarding the board's action in similar circumstances.

~~g.~~—The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the grant of a waiver.

~~h.~~—The name, address, and telephone number of any person who would be adversely affected by the grant of the petition.

~~i. e.~~ The name, address, email address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

~~j.~~—Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

7.4(7) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

~~7.4(8) Notice.~~ The board shall acknowledge a petition upon receipt. Except where otherwise provided by law, every petition shall be served by the petitioner upon each of the parties of record of the proceeding, and on all other persons identified in the petition for waiver as affected by the petition, simultaneously with the filing. The petitioner shall serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided. In addition, the board may give notice to other persons. The board shall provide public notice by including any petitions for waiver on the agenda of the board meeting during which the petition for waiver will be discussed.

~~7.4(9) Hearing procedures.~~ The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case. A person who objects to a denial of a waiver in proceedings other than a contested case hearing may make an informal appearance before the board to request reconsideration.

~~7.4(10)~~ **7.4(9) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

~~a. and b.~~ No change.

~~c.~~ **Narrowly tailored exception.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

~~d.~~ **Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

~~e. d.~~ **Conditions.** The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

~~f. e.~~ **Time period of waiver.** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

~~g. f.~~ **Time for ruling.** The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than

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the time at which the final decision in that contested case is issued. The board may issue a waiver in conjunction with an application that remains in place in perpetuity.

h. g. When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

i. h. Service of order. Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains, ~~and to any other person entitled to such notice by any provision of law.~~

i. Delegation. The board may authorize staff to administratively approve additional petitions for waiver under the same parameters as an approved petition.

~~7.4(11)~~ **7.4(10)** *Public availability.* All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

~~7.4(12)~~ **7.4(11)** *Summary reports Submission of waiver information.* ~~Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee. Within 60 days of granting or denying a waiver, the board shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, and a citation to the statutory provisions implemented by these rules. The submission shall include a general summary of the reasons justifying the board's action on waiver requests. If practical, the submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of waiver has affected the general applicability of the rule itself.~~

~~7.4(13)~~ **7.4(12)** *Cancellation of a waiver.* A waiver issued by the board pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

a. and b. No change.

c. The subject of the waiver order has failed to comply with all conditions contained in the order;

or

d. The rule cited in the waiver has been amended since the waiver was issued.

~~7.4(14)~~ **7.4(13)** *Violations.* A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

~~7.4(15)~~ **7.4(14)** *Defense.* After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

~~7.4(16)~~ **7.4(15)** *Judicial review.* Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

This rule is intended to implement Iowa Code chapters 17A, 147, and 153.

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ITEM 3. Rescind and reserve rule **650—7.5(17A,147,153)**.

[Filed 6/1/21, effective 8/4/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5739C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to therapeutic classrooms and telehealth services on school premises

The State Board of Education hereby amends Chapter 14, "School Health Services," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate Files 2360 (behavioral health screening) and 2261 (classroom management, therapeutic classrooms).

Purpose and Summary

This rule making provides guidance on therapeutic classrooms and telehealth services on school premises. Prior to publication of the Notice of Intended Action, the Department conducted five separate meetings with the following stakeholder groups in the drafting of the rules: the Area Education Agency Joint Chiefs and Special Education Directors, the American Civil Liberties Union of Iowa, the Adverse Childhood Experiences Policy Coalition, the ASK Resource Center, Disability Rights Iowa, and the University of Northern Iowa School Psychology Program. The Department also provided opportunity for written comment from the Area Education and Local Education Agency Wellness Committee to collect input on the rules. This rule making incorporates feedback from the stakeholder groups.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5580C**. A public hearing was held on May 11, 2021, at 9 a.m. in the ICN Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. The Department received comments from an individual representing the Urban Education Network and the Rural School Advocates of Iowa. The individual's comments were largely supportive of the proposed rules but included several well-reasoned suggestions for improvement.

Comment 1: The commenter expressed concern that the definition of "therapeutic classroom" in rule 281—14.7(279) may have unintended consequences and further noted that districts are not required to have a therapeutic classroom.

Response 1: The Department addressed this concern by adding new subrule 14.13(6), rule of construction.

Comment 2: The commenter provided a suggestion to reorganize subrule 14.10(3) for clarity, as well as moving the definition of "attending students" into rule 281—14.7(279).

Response 2: The Department made the suggested organizational changes for readability purposes. Concerning the definition, the Department added additional explanatory language but kept the definition in rule 281—14.10(279).

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Comment 3: The commenter requested “same age/grade peers” in subrule 14.13(2) be changed to “similar age/grade peers” because with the potential “for very small class size in therapeutic classrooms, there may not be another student of the same age or grade in the mix.”

Response 3: The Department believes this change is warranted, for the reason stated. Whether students are of “similar” ages and grades will be determined based on the facts of each case. The Department made this change in subparagraph 14.13(2)“a”(7).

Comment 4: The commenter suggested that the requirement for the placement of general education students in a therapeutic classroom be reviewed regularly, rather than every 60 days (paragraph 14.13(3)“c”). The commenter asserted that there should be some local control about how often these placements are reviewed. The commenter also suggested including language that placement in a therapeutic classroom is not permanent or indefinite.

Response 4: Regarding the 60-day review period, the Department made no change. The students at issue are general education students, who lack the more structured procedural safeguards the law provides to children who are eligible for special education. This specific and certain review period adds a layer of protection to general education students, including that they will be evaluated for special education eligibility if their data so suggests. Regarding the second suggestion, the Department added the suggested language in the introductory paragraph to rule 281—14.13(256).

Comment 5: The commenter objected to the prohibition in subrule 14.13(5) on purchasing or holding seats for therapeutic classrooms. The commenter asserted that this funding mechanism may be necessary to “get the ball rolling” and is not prohibited by 2020 Iowa Acts, Senate File 2360. The commenter suggested that this funding mechanism be allowed to pay for seat rights for the first few years of a therapeutic classroom.

Response 5: The Department is unable to make the suggested change. While 2020 Iowa Acts, Senate File 2360, does not prohibit this funding mechanism, the Department is mindful of other laws which lend support to this prohibition, such as the allowance and payment of just claims and the prohibition in federal special education law on making placements based on funding formulas. The Department is concerned about the real possibility of a use-it-or-lose-it placement of a child in a therapeutic classroom when such a placement is inappropriate. Rather than relax the rule, the Department will offer guidance and technical assistance to districts seeking to start a therapeutic classroom. The Department also reminds the commenter and other readers of the availability of a waiver under Chapter 4 of the Department’s administrative rules.

Comment 6: In the claims for reimbursement under paragraph 14.14(2)“g,” the commenter suggested that the claim specify that a student does not have an individualized education plan (IEP), consistent with paragraph 14.14(2)“c.”

Response 6: The Department made the suggested change, for the reason stated by the commenter.

Comment 7: The commenter requested that the training review requirement in subrule 14.15(3) be changed to “regularly, or at least once every licensure review cycle,” rather than “annually.”

Response 7: The commenter’s point is sound; however, the renewal cycle for teachers holding a standard teaching license is five years. The Department views this time period as too long for this purpose. For that reason, the Department has revised subrule 14.15(3) to read “regularly, but no less frequently than once every three school years.”

Comment 8: The commenter requested that subrule 14.15(4) be revised from “accepting employment” to “beginning employment,” given that many teachers accept teaching positions in the spring but are not yet district employees.

Response 8: The Department made the suggested change, for the reason stated by the commenter.

Comment 9: The commenter requested that the training about the documentation and notification requirements of paragraph 14.15(5)“h” be modified because not all districts will maintain therapeutic classrooms.

Response 9: The Department made no change. While not all districts will operate therapeutic classrooms, all districts may have the capability to refer or transfer a student to another district’s therapeutic classroom.

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Comment 10: The commenter expressed concern about the definition of “behavioral health screening” in rule 281—14.21(280A). The commenter worried that a common academic and social-emotional health screener used by schools might meet the definition of behavioral health screener and trigger the obligations of Division III of Chapter 14.

Response 10: No change is needed. The definition of “behavioral health screening” in rule 281—14.21(280A) is verbatim the definition contained in 2020 Iowa Acts, Senate File 2261. The obligations to comply with Division III of Chapter 14 are triggered only when a district, accredited nonpublic school, or AEA contracts with a private provider for behavioral health screenings.

Comment 11: Subparagraph 14.23(3)“c”(2) requires that the parent or guardian be present to establish a provider-patient relationship through telehealth. The commenter asked if the parent or guardian may be present virtually.

Response 11: No change is needed. The language is verbatim the language contained in Iowa Code section 280A.3(3)“c.” Whether the parent or guardian must be physically present with the child or may be present electronically from another location is best left to the mental health provider’s professional judgment in light of the applicable standard of care.

Comment 12: The commenter requested that the responsibility for providing “information to the student participating in telehealth services about how and to whom to report inappropriate behavior by a mental health professional” in paragraph 14.24(2)“e” be shifted from schools and AEAs to others, such as the parent. The commenter asserted that this is not the school’s responsibility.

Response 12: No change is possible. While the commenter’s public policy argument very well may be sound, 2020 Iowa Acts, Senate File 2261, places this responsibility on the schools. Paragraph 14.24(2)“e” is verbatim the language contained in Iowa Code section 280A.4(1)“e.”

Additional comments by the Department: The Department made a clarifying change to subrule 14.14(2) to align with statute by changing “IEP” to “weighted IEP” or “IEP weighting.” In addition, one nonsubstantive grammatical change and one cross-reference correction have been made. Through legislative staff, the Department has been made aware that districts may be hoping to avoid the requirements of 2020 Iowa Acts, Senate File 2360, by using cute, clever euphemisms for “classroom clears” (“Okay kids, time for a ‘bathroom break’! Let’s go!”). The Department will monitor the implementation of Chapter 14 and take enforcement action against districts, accredited nonpublic schools, and AEAs that seek to avoid compliance with this chapter.

Adoption of Rule Making

This rule making was adopted by the State Board on June 11, 2021.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa, due to a related appropriation to implement 2020 Iowa Acts, Senate File 2360.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

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meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new 281—Chapter 14**, Division I heading:

DIVISION I
IN GENERAL

ITEM 2. Amend rule 281—14.5(256,280) as follows:

281—14.5(256,280) Severability. If any provisions of ~~these rules~~ this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of ~~these rules~~ this chapter which can be given effect, and to this end the provisions of ~~these rules~~ this chapter are declared to be severable.

ITEM 3. Amend **281—Chapter 14**, implementation sentence, as follows:

~~These rules are~~ This division is intended to implement Iowa Code sections 135.185, 256.7(33), 279.70 and 280.16.

ITEM 4. Adopt the following **new 281—Chapter 14**, Division II heading:

DIVISION II
COMPREHENSIVE HEALTHY AND SAFE LEARNING ENVIRONMENTS

ITEM 5. Adopt the following **new** rules 281—14.6(279) to 281—14.16(279):

281—14.6(279) Purpose and objectives: comprehensive healthy and safe learning environments.

The purpose of this division is to provide uniform definitions and rules for public schools, accredited nonpublic schools, and area education agencies (AEAs) regarding standards for professional development and training in evidence-based classroom management practices, evidence-based interventions, appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person, and in accordance with 281—Chapter 103 for the reasonable, necessary, and appropriate physical restraint of a student. This division gives clear guidance that classroom clearance may be used only to terminate or prevent a threat of bodily injury and clarifies the required parental notification, response, and reporting of school behavior challenges.

This division also provides clarification of Iowa AEAs', public school districts', and accredited nonpublic school districts' responsibilities and the responsibilities of behavioral health service providers as required by Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

This division is intended to promote a comprehensive safe learning space for learners and school staff, and to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies resulting in increased learning for all students; lessen disruption to instruction; and expand supports for educators through teacher preparation, revised protocols, training and professional learning.

281—14.7(279) Definitions. For the purposes of this chapter:

“*Assault*” means the same as defined in Iowa Code section 708.1.

“*Bodily injury*” or “*injury*” means physical pain, illness, or any other impairment of physical condition. For purposes of required reporting, the injury must be the result of intentional act and not accidental and must be a physical injury to a person’s body that is apparent within 24 hours after the

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incident and may include damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition. Mental or verbal insult is not covered by this definition.

“Classroom clear” means clearing all other students out of the classroom to calm a child or to address disruption by a child. It is not necessary to use the phrase “classroom clear” to be covered by this division. The mere use of the term “classroom clear” does not bring that activity within the coverage of this division. Using another term for a “classroom clear” does not remove that activity from the coverage of this division. A classroom clear is not either of the following:

1. Removing other students from a classroom to preserve a student’s dignity/privacy in the event of a medical emergency, health issue, or both, or
2. Emergency procedures a school/district may use in the event of a school crisis or natural disaster.

“Classroom management” means the set of skills, practices, and strategies teachers use to maintain productive and prosocial behaviors that enable effective instruction in whole class or small group settings.

“Department” means the Iowa department of education.

“Evidence-based” means an activity, strategy or intervention that demonstrates a significant effect on improving student outcomes or other relevant outcomes. Activities, strategies, or interventions with strong or moderate evidence should be prioritized.

“Parent” means an individual included in the definition of “parent” in rule 281—41.30(256B,34CFR300) and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

“Physical restraint” means the same as defined in rule 281—103.2(256B,280).

“Property damage” means serious damage to property of significant monetary value or significant nonmonetary value or importance because of violence. For purposes of required reporting, the property damage must be the result of intentional act and not accidental. In assessing significant nonmonetary value for purposes of this definition, the following shall be considered: the property is not of significant monetary value but difficult to replace or its loss or damage impedes learning, or an object(s) used as a weapon resulting in damage to the object or property.

“Reasonable and necessary force” means that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 281—103.5(256B,280).

“School district” means an Iowa public school district directly supported in whole or in part by tax dollars, as defined in Iowa Code section 280.2, and with the power and jurisdiction provided by Iowa Code section 274.1.

“Social-emotional-behavioral health” or *“SEBH”* means social, emotional, behavioral and mental well-being that affects how one thinks, feels, communicates, acts, and learns. These contribute to resilience and to how one relates to others, responds to stress and emotions, and makes choices. Foundational knowledge and skills that promote SEBH include self-awareness, self-management, responsible decision-making, social awareness, and relationship skills that support positive well-being and academic success.

“Therapeutic classroom” means a classroom designed for the purpose of providing support for any student whose emotional, social, or behavioral needs interfere with the student’s ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student’s current education environment, with or without supports, including but not limited to the general education classroom. It is not necessary to use the phrase “therapeutic classroom” to be covered by this division. The mere use of the term “therapeutic classroom” does not bring those services or locations within the coverage of this division. Using another term for a “therapeutic classroom” does not remove that service or location from the coverage of this division.

281—14.8(279) Classroom clears.

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14.8(1) A classroom teacher may clear students from the classroom only if necessary to prevent or terminate an imminent threat of bodily injury to a student or another person in the classroom. A threat is imminent when it is reasonably likely to inflict pain, illness, or any other impairment of physical condition.

14.8(2) A classroom clear means clearing all other students out of the classroom to calm a child. A classroom clear in which an adult remains with a student to calm the student shall not be considered seclusion.

14.8(3) The restrictions on use of classroom clears pertains to all classrooms, general and special education, ages 3 through 21, when a child is served in a setting that is using public funds for educational purposes.

14.8(4) If a classroom clear is included within a school's or district's crisis response plan, the school or district must also follow the additional requirements outlined in 2020 Iowa Acts, Senate File 2360, and this division.

14.8(5) In determining if a classroom clear may be used to prevent or terminate an imminent threat, the following factors shall be applied:

- a. The size and physical, mental, and psychological condition of the student;
- b. The nature of the student's behavior;
- c. The presence of a weapon or material that can be weaponized;
- d. The extent and nature of resulting bodily injury to the student and other persons in the classroom; and
- e. The prevention of physical intervention that will likely escalate behavior and result in bodily injury.

281—14.9(279) Required parent/guardian notifications and responses.

14.9(1) General. If a classroom clear is used to prevent an imminent threat, the following notifications and actions shall occur:

- a. The school principal shall, by the end of the school day if possible, but at least within 24 hours after the incident, notify the parents/guardians of all students assigned to the classroom that it was cleared.
- b. The notification shall not identify, directly or indirectly, any students involved in the incident giving rise to the classroom clearance.
- c. The principal shall request that the parent/guardian of the student whose behavior caused the classroom clear meet with the principal, the classroom teacher, and other staff as appropriate.

14.9(2) Students with disabilities. When a student with a disability whose behavior caused a classroom clear and has an individualized education program (IEP) or a behavioral intervention plan (BIP), the classroom teacher shall call for and be included in a review and potential revision of the student's IEP or BIP by the student's IEP team. The AEA, in collaboration with the school district, may, when the parent or guardian meets with the IEP team during the review or reevaluation of the student's IEP, inform the parent or guardian of individual or family counseling services available in the area. The public agencies must provide those services if those services are necessary for a free appropriate public education, pursuant to 281—subrule 41.320(7).

14.9(3) Students without disabilities.

- a. If a student does not have an IEP or a BIP, the meeting shall include an intervention plan that reduces the likelihood of the recurrence of behaviors requiring a classroom clear.
- b. If a student has a BIP but does not have an IEP, the classroom teacher shall call for and be included in a review and potential revision of the student's behavioral intervention plan.
- c. If the school suspects the student whose behavior resulted in a classroom clear might be eligible for a BIP, individual health plan (IHP), safety plan, or IEP, the public agencies shall promptly determine the child's eligibility in accordance with the procedures required for determining eligibility.

14.9(4) Parent input. The team must consider parent input in identifying supports to address behaviors that caused the classroom clear.

- a. If the parent of a student with an IEP chooses not to participate in the meeting, the school must follow procedures to document efforts to invite the parent, as required by rule

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281—41.322(256B,34CFR300), and inform the parent of proposed changes to the IEP or BIP, or both, as required by rule 281—41.503(256B,34CFR300).

b. If the parent of a student without an IEP chooses not to participate in the meeting, the school will continue to support the student's needs by planning and providing intervention for the student.

14.9(5) Additional provisions. When calling for a meeting, the classroom teacher may be required to follow procedures established by the school district or AEA to request such a meeting. Any recommended change to a student's behavior intervention plan, individual health plan, safety plan, or educational placement shall be made in accordance with the procedures required for amending said plan or changing said placement.

281—14.10(279) Documentation and reporting.

14.10(1) General. A classroom teacher shall report to the principal any incident of assault or violence that results in injury or property damage by a student enrolled in the school. For purposes of this rule, "attending students" includes all students who are actively attending school, suspended or expelled during the reporting school year. Districts should document all incidents that occur in a school building, on school grounds, or at a school-sponsored function by students attending school in the district. The school district shall report to the department, in a manner prescribed by the department, an annual count of disaggregated incidents of assault, violence resulting in injury, violence resulting in property damage, and referral/transfer to a therapeutic classroom that includes the therapeutic components as described in subrule 14.13(2). Incidents shall be reported if they occurred by a student in a school building, on school grounds, or at a school-sponsored function.

14.10(2) Contents of report. The report shall include demographic information on students reported as victims and perpetrators, disaggregated by race, gender, national origin, age, grade level, and disability status, along with any other data required by the department to implement the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act, Public Law 114-95, and with safeguards to ensure student privacy.

14.10(3) Reporting by the department. The department of education shall compile and summarize the data it receives under this rule and submit a report to the general assembly each year by November 1.

281—14.11(256) Crisis response.

14.11(1) General. The following consists of appropriate responses to classroom behavior that presents an imminent threat of bodily injury and consistent with rules for seclusion and restraint:

a. Responses shall include nationally recognized best practices of crisis response/intervention to de-escalate behaviors that are likely to result in bodily harm.

b. Crisis response strategies shall include a safety assessment and continuum of strategies informed by the level of risk and the safety assessment.

c. When possible, response strategies shall use less disruptive, nonphysical intervention prior to the use of physical interventions, unless the circumstances are such that physical intervention is necessary to ensure the safety of the student and others.

14.11(2) Use of reasonable force. Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from using reasonable and necessary force in compliance with this chapter and 281—Chapter 103. An employee is not privileged to use unreasonable force to accomplish any of the purposes listed in this chapter and 281—Chapter 103. If physical force is used, school employees shall comply with any requirements imposed by 281—Chapter 103 and this chapter.

281—14.12(256) Prevention of classroom behaviors that present an imminent threat.

14.12(1) Appropriate responses to behaviors, including classroom behavior that presents an imminent threat of bodily injury, shall be part of evidence-based tiered supports within the department's continuous improvement framework to support student SEBH.

14.12(2) The evidence-based tiered supports shall:

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- a. Include universal support for all students that foster the emotional well-being of students through schoolwide safe and supportive environments.
- b. Be culturally responsive.
- c. Be trauma responsive.
- d. Include positive school discipline practices.
- e. Include crisis prevention, intervention and de-escalation that is based on student SEBH needs and reasonable in response to the behavior that is being exhibited.
- f. Include proactive strategies which enable schools to identify and intervene early in order to minimize the escalation of identified behavioral health symptoms and other barriers to school success.
- g. Include classroom management practices that include the following evidence-based practices:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- h. Engage parents and guardians as partners in identifying appropriate supports for the students.
- i. Support student development of social-emotional competencies and skills through planned universal instruction.
- j. Have a set of specific supplemental interventions and intensive intervention supports that:
 - (1) Are for students whose behaviors are unresponsive to low-intensity strategies.
 - (2) Are based on functional behavior assessment (FBA).
 - (3) Are supported by individuals trained to handle such issues.
 - (4) Involve parents in development and ongoing review.

281—14.13(256) Therapeutic classroom. A school district may include therapeutic classrooms as part of its district's or building's tiers of SEBH supports. A therapeutic classroom is designed for the purpose of providing support for any student, with or without an IEP, whose emotional, social, or behavioral needs interfere with the student's ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student's current education environment, with or without supports, including but not limited to the general education classroom. A placement in a therapeutic classroom shall not be permanent or indefinite but shall be reviewed periodically as called for in this rule. For the purpose of this chapter, the word "classroom" is a descriptor of an educational set of services that create the educational environment that may include but is not required to include a separate physical setting from other students.

14.13(1) Continuum of programming. Therapeutic classrooms include the therapeutic programming students may need to support them across a range of educational settings or learning spaces, or both, and are not necessarily standalone or isolated classrooms. Therapeutic classroom supports are part of a district's tiers of SEBH supports.

14.13(2) Therapeutic classroom requirements. For state cost reimbursement and reporting purposes, a therapeutic classroom shall:

- a. Include the following therapeutic components:
 - (1) A multidisciplinary team who collaborates regularly to support design, implementation and decision-making regarding therapeutic program supports including but not limited to an individual qualified to conduct diagnostic assessments and support SEBH programming for individuals with social-emotional concerns;
 - (2) Practices that enhance positive childhood experiences;
 - (3) Clearly articulated and taught behavioral expectations and routines;
 - (4) Regular assessment of social-emotional competencies with targeted individualized instruction, small group social-emotional instruction, or both;
 - (5) Individualized BIPs developed based on FBAs and trauma-informed practice;

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(6) Regular engagement of family to review progress and make decisions for more or less restrictive programming;

(7) Supports for generalization and transition to less restrictive supports/settings since a therapeutic classroom is a temporary intervention. Supports include opportunities to practice social-emotional skills in natural contexts with similar age/grade peers.

b. Be operated by and housed in the school district seeking reimbursement.

c. Have appropriately licensed and certified teacher(s).

d. Follow program standards for the age(s) served and the full extent of the district's comprehensive education program, including:

(1) Preschool programs must follow preschool program standards, as specified in 281—Chapter 16;

(2) Prekindergarten-twelfth grade programs must follow 281—Chapter 12;

(3) Programs that serve students with IEPs must also follow 281—Chapter 41.

e. Not solely consist of any one of the following:

(1) Calming room/space;

(2) Single strategy or program without individualization;

(3) Space/location for disciplinary action;

(4) Seclusion room.

14.13(3) *General education students.* When general education students are served through a therapeutic classroom, the following must occur:

a. The therapeutic classroom must have clear requirements for referral, admission, progress monitoring, and exit that focus on supporting learners to return to general services,

b. Each general education student must have an individualized BIP developed based on an FBA,

c. When a student receives therapeutic services for 50 percent or more of the school day, a team of qualified professionals, the teacher, and the family must review the BIP every 60 days to consider the need for transition to more or less intensive programming,

d. If, at any point, public agencies suspect a disability, the public agencies must request consent for a full and individual evaluation for special education from the parent as required by 281—Chapter 41.

14.13(4) *Special education students.* Districts operating therapeutic classrooms that serve learners with IEPs shall follow 281—Chapter 41, including requirements for education in the least restrictive environment.

14.13(5) *Consortium agreements.* A district may enter into a cost-sharing consortium agreement with one or more school districts or area education agencies to provide therapeutic classroom supports. Districts shall not enter into an agreement to purchase or hold seats in a therapeutic classroom. If a district seeks cost reimbursement for student(s) who attend a therapeutic classroom:

a. The therapeutic classroom shall be housed within the district's boundaries;

b. The district seeking reimbursement shall be fiscally responsible for the therapeutic classroom;

c. The district seeking reimbursement shall be responsible for operating the therapeutic classroom.

14.13(6) *Rule of construction.* A school district is not required to operate a therapeutic classroom; however, a school district is required to ensure therapeutic services are available, whether in-district or otherwise, to students who need those services to access or benefit from an education.

281—14.14(256) *Therapeutic classroom—claims.* A school district may submit claims to the department for the costs of providing therapeutic classroom services and transportation services in accordance with this rule.

14.14(1) *Reimbursement of transportation services.* If the general assembly appropriates moneys for purposes of transportation claims reimbursement in accordance with this subrule, the resident school district may submit a claim to the department for reimbursement for transportation services for a student who is transported to a therapeutic classroom operated by another school district or accredited nonpublic school and located more than 30 miles from the student's designated school or accredited nonpublic school.

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a. Claims are allowable for students enrolled in the school district or in an accredited nonpublic school located in the district boundary and who do not have an assigned special education weighting.

b. Such claims may be allowable when the school districts or school district and accredited nonpublic school have a shared agreement to provide the therapeutic classroom.

c. Claims shall be made to the department of education using an invoice supplied by the department and completed by the school district providing transportation during the school year.

d. Claims must include a listing of actual costs per student transported to a therapeutic classroom, including number of days transported, transportation miles, and other actual costs.

14.14(2) *Claims for reimbursement of services.*

a. By June 15, 2022, and annually by June 15 thereafter, districts may submit a claim for reimbursement of therapeutic classroom services for the prior school year.

b. By July 1 of each year, the department shall draw warrants payable to school districts for such claims.

c. On June 15, 2022, and continuing each June 15 thereafter, districts providing therapeutic classrooms may submit a claim for reimbursement to the department for students served by their therapeutic classroom during the prior school year who have BIPs but no IEP weighting. Districts may submit claims for 1.5 weighting for the number of days they served the student and the number of days in the school district's calendar.

d. School districts will collect student-level data throughout the year and submit it at the end of the year using a department invoice.

e. In order for the school district to submit a claim for reimbursement for students attending an accredited nonpublic school or receiving competent private instruction, the student shall be counted as a shared-time student in the district in which the nonpublic school of attendance is located.

f. Reimbursement will be prorated if claims exceed the amount appropriated.

g. Claims must include: student served in a therapeutic classroom, confirmation the student has a BIP and does not have a weighted IEP for the period claimed, number of days served and the number of days in the school district's calendar.

h. The costs of providing transportation to nonpublic school pupils as provided in this rule shall not be included in the computation of district cost under Iowa Code chapter 257 but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a school district for transporting nonpublic school pupils shall not affect district cost limitations of Iowa Code chapter 257. The reimbursements provided in this rule are miscellaneous income as defined in Iowa Code section 257.2.

281—14.15(256,279,280) Required training. This rule applies to public schools, nonpublic school districts and area education agencies.

14.15(1) An employee must receive training that complies with 281—Chapter 103 prior to using any form of physical restraint or seclusion and includes research-based alternatives to physical restraint and seclusion.

14.15(2) An employee must receive training regarding the least restrictive environment. While there is a presumption that the general education environment is the least restrictive environment, data may overcome that presumption. "General education classroom" is not synonymous with "least restrictive environment." Training must include the process and procedures for:

a. Making placement decisions based on individual student performance data and participation with peers without disabilities; and

b. Reviewing student performance data to determine whether changes need to be made to ensure the individual is being educated in the learner's least restrictive environment.

14.15(3) AEA staff, classroom teachers and school administrators shall receive training prior to using a classroom clear to calm a student. Training shall be reviewed regularly, but no less frequently than once every three school years, and cover the following topics:

a. The rules of this chapter;

b. The school's specific policies and procedures regarding the rules of this chapter;

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- c.* Training on recognizing and responding to incidents that are an imminent threat of bodily injury;
- d.* Student, parent/guardian, and staff notifications and parent follow-up requirements;
- e.* Reporting requirements for incidents of assault and violence resulting in injury or property damage;
- f.* Reporting requirements for referral and transfer to therapeutic classroom(s);
- g.* The school's specific crisis response plan for incidents of imminent threat;
- h.* Staff supports following a crisis or significant event.

14.15(4) Within one year of beginning employment in a teaching position in Iowa, a classroom teacher shall receive training on the prevention of behaviors that present an imminent threat. Training must include the following topics:

- a.* The school's specific policies and procedures for creating learning environments that are safe and supportive.
- b.* Evidence-based culturally responsive approaches to student discipline.
- c.* Evidence-based classroom management strategies that include:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- d.* Universal instruction of social-emotional competencies.
- e.* Engaging families as partners in identifying appropriate supports for learner success.
- f.* Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279).

14.15(5) AEA and school district staff who engage in intervention planning to support supplemental and intensive social-emotional interventions shall receive training on evidence-based interventions for challenging classroom behaviors. Training must include the following topics:

- a.* FBAs;
- b.* Using FBAs to design BIPs;
- c.* Individual safety plans;
- d.* Supports for student reentry to learning following a significant event;
- e.* Supports for teacher implementation of BIPs;
- f.* Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279) that are culturally responsive and trauma responsive;
- g.* Duties and responsibilities of school resource officers and other responders; the techniques, strategies and procedures used by responders; and knowledge of who in the building is trained and authorized in seclusion and restraint;
- h.* Documentation and notification requirements for incidents of seclusion, restraint, classroom clear and transfer/referral to a therapeutic classroom.

281—14.16(256) Department responsibilities, evidence-based standards, guidelines and expectations. By June 30, 2022, the department shall develop, establish, and distribute to all school districts evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person to assist the districts in compliance with this rule. The standards, guidelines, and expectations will be consistent with 281—Chapter 103. The evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that presents an imminent threat of bodily injury will be based on the department's continuous improvement framework to support student social-emotional-behavioral health (SEBH). The director shall consult with the area education agencies to create comprehensive and consistent standards and guidance for professional development relating to successfully educating individuals in the least restrictive

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environment, and for evidence-based interventions consistent with the standards established pursuant to this rule.

ITEM 6. Adopt the following **new 281—Chapter 14**, Division II implementation sentence: This division is intended to implement Iowa Code chapters 256, 279 and 280.

ITEM 7. Reserve rules **281—14.17** to **281—14.19**.

ITEM 8. Adopt the following **new 281—Chapter 14**, Division III heading:

DIVISION III
SCHOOL BEHAVIORAL HEALTH SCREENING AND TELEHEALTH

ITEM 9. Adopt the following **new** rules 281—14.20(280A) to 281—14.24(280A):

281—14.20(280A) Purpose and objectives: contracted behavioral health screening and telehealth. This division describes the responsibilities of Iowa AEAs, public school districts, and accredited nonpublic school districts and behavioral health service providers as required by Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

281—14.21(256B,280A) Definitions. For the purposes of this division, the following definitions apply:

“*Accredited nonpublic school*” means any school, other than a public school, that is accredited pursuant to Iowa Code section 256.11 for any and all levels for grades 1 through 12.

“*Area education agency*” or “*AEA*” means an area education agency established pursuant to Iowa Code chapter 273.

“*Behavioral health screening*” or “*screening*” means a screening and assessment performed using a universal behavioral health screening and assessment tool, approved for use by the department of education in consultation with the department of public health and the department of human services, to identify factors that place children at higher risk for behavioral health conditions, to determine appropriate treatment or intervention, and to identify the need for referral for appropriate services.

“*Behavioral health services*” means services provided by a health care professional operating within the scope of the health care professional’s practice which address mental, emotional, medical, or behavioral conditions, illnesses, diseases, or problems.

“*Educational service agency*” means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

“*Health care professional*” means a physician or other health care practitioner licensed, accredited, registered, or certified to perform specified health care services consistent with state law.

“*In-person encounter*” means that the mental health professional and the student are in the physical presence of each other and are in the same physical location during the provision of behavioral health services.

“*Mental health professional*” means the same as defined in Iowa Code section 228.1.

“*Patient*” means a student receiving a behavioral health screening or other behavioral health services in accordance with this chapter.

“*Primary care provider*” means the personal provider trained to provide the first contact and continuous and comprehensive care to a patient and includes but is not limited to any of the following licensed or certified health care professionals who provide primary care: a physician who is a family or general practitioner or a pediatrician, an advanced registered nurse practitioner, or a physician assistant.

“*Provider-patient relationship*” means the relationship between the patient and the mental health professional that meets the requirements for commencement and establishment of a valid provider-patient relationship.

“*Public school*” means any school directly supported in whole or in part by taxation.

“*School*” means any of the following: an accredited nonpublic school, an area education agency, or a public school.

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“*School district*” means a school district described in Iowa Code chapter 274.

“*Student*” means a person enrolled in and attending an accredited nonpublic school or a public school in grades 1 through 12.

“*Telehealth*” means the same as defined in Iowa Code section 514C.34: the delivery of health care services through the use of interactive audio and video. Telehealth does not include the delivery of health care services through an audio-only telephone, electronic mail message, or facsimile transmission.

281—14.22(280A) Behavioral health screenings in school settings.

14.22(1) A school district, an accredited nonpublic school, or an AEA may contract with a mental health professional or a nationally accredited behavioral health care organization in order to provide universal behavioral health screenings to students. If the school district, accredited nonpublic school, or area education agency contracts with mental health professionals to conduct behavioral health screenings, the following applies:

a. The screenings shall be administered with the contracted mental health professional present, using a screener approved by the department, in consultation with the department of public health and the department of human services.

b. The school district, accredited nonpublic school, or AEA that contracts for on-site student behavioral health screenings shall obtain written parent or guardian consent or, in the case of a student who has reached the age of majority, the student’s written consent prior to the student’s participating in each screening.

c. At any point before or during the screening, a student may opt out or discontinue participation in the screening without retribution.

14.22(2) The parental consent shall allow for the mental health professional to disclose the screening results to the school or AEA if there is a credible threat to the health and safety of the student or others and provide the appropriate emergency contact. The parental consent may allow for the mental health professional to disclose screening information to the school or AEA in order to support the student(s) who may need intervention that could be provided through the school.

14.22(3) The school district or AEA shall ensure that the mental health professionals contracted to administer the screeners are qualified to administer the selected behavioral health screener.

14.22(4) The school district or AEA shall have procedures to secure and limit the access to health information to comply with the Health Insurance Portability and Accountability Act (HIPAA) in accordance with parental consent.

14.22(5) If a mental health professional conducts the screening and determines that a student needs additional behavioral health services, the mental health professional:

a. Shall notify the parent or guardian of the student of the results of the screening.

b. May notify the student’s primary care provider, with parent or guardian consent, or the consent of the student who has reached the age of majority.

c. May provide a list of local primary care providers to the parent or guardian if the student does not have a primary care provider.

281—14.23(280A) Establishment of provider-patient relationship for telehealth in school setting.

14.23(1) A school district, accredited nonpublic school, or AEA may provide access to behavioral health services via telehealth on school/AEA premises.

14.23(2) If a mental health professional provides behavioral health services via telehealth on school/AEA premises, the mental health professional shall first establish a valid provider-patient relationship. The provider-patient relationship is established when:

a. The student, with the consent of the student’s parent or guardian when the student has not yet reached the age of majority, seeks help from a mental health professional;

b. The mental health professional agrees to provide treatment of the student; and

c. The student’s parent or guardian agrees to have the student treated by the mental health professional.

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14.23(3) A valid provider-patient relationship may be established through any of the following means:

- a.* An in-person medical interview and physical examination conducted under the standard of care required for an in-person encounter;
- b.* Consultation with a primary care provider who has an established relationship with the patient and who agrees to participate in or supervise the patient's care; or
- c.* Use of interactive audio and video telehealth, if:
 - (1) The standard of care does not require an in-person encounter, in accordance with evidence-based standards of practice and telehealth practice guidelines that address the clinical and technological aspects of telehealth; or
 - (2) The student's parent or guardian is present.

14.23(4) If a provider-patient relationship is established and the student has not yet reached the age of majority, parent or guardian consent shall be obtained prior to the student receiving behavioral health services via telehealth in a school or AEA setting and shall be required each academic year that the student receives telehealth services.

14.23(5) The school district shall maintain any consent form completed by a parent or guardian.

281—14.24(280A) Behavioral health services provided via telehealth in a school setting.

14.24(1) On or after January 1, 2021, a school district, accredited nonpublic school or AEA may provide access to behavioral health services via telehealth on school/AEA premises.

14.24(2) If the school district, accredited nonpublic school or AEA provides access to behavioral health services via telehealth on school/AEA premises, it shall:

- a.* Provide a secure, confidential, and private room for services and the technology necessary to conduct telehealth services.
- b.* Maintain parent or guardian consent forms for each academic year the student receives services.
- c.* Maintain a schedule for student appointments and arrange for student access to the room by a school nurse or other appropriately trained school or AEA agency employee.
- d.* Ensure that no employee is present in the same room as the student during the session or service.
- e.* Provide information to the student participating in telehealth services about how and to whom to report inappropriate behavior by a mental health professional.
- f.* Provide access to the student's parent or guardian to participate in any of the student's telehealth sessions.

14.24(3) The school district, accredited nonpublic school or AEA shall not access any of the student's medical records or be responsible for billing for the telehealth services.

14.24(4) A mental health professional with prescribing authority who provides telehealth services shall not alter the dosage of an existing medication or prescribe any new medication during a telehealth session without prior consultation with the student's parent or guardian.

14.24(5) The mental health professional shall notify the student's parent or guardian of the time and place for each scheduled telehealth session and specify the means available for the parent or guardian to participate in the session.

14.24(6) The mental health or primary care provider shall keep confidential all patient records and shall not share with the school or AEA unless:

- a.* Appropriate release of information is obtained, or
- b.* Shared to prevent a serious and imminent threat to the health and safety of a student or other person, and the mental health professional assesses that the student has intent and ability to carry out the threat.

14.24(7) A public school district, an accredited nonpublic school, an AEA, the boards of directors of a school district or AEA, authorities in charge of accredited nonpublic school, and employees of schools

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or agencies who act reasonably and in good faith shall not be liable for any injury resulting from the provision of voluntary behavioral health screening or behavioral health services.

This division is intended to implement Iowa Code chapter 280A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5740C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to virtual instruction

The State Board of Education hereby rescinds Chapter 15, "Use of Online Learning and Telecommunications for Instruction by Schools," and adopts a new Chapter 15, "Online and Virtual Learning," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 2310.

Purpose and Summary

This revision of Chapter 15 implements the repeal of Iowa Learning Online, expands the use of virtual learning to meet offer-and-teach requirements, and streamlines and modernizes the process for becoming an approved provider for virtual instruction.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5581C**. A public hearing was held on May 11, 2021, at 10 a.m. in the ICN Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing.

One individual provided public comments on behalf of the Urban Education Network and the Rural School Advocates of Iowa.

Comment 1: The commenter suggested that the term "online learning platform" be defined and that the choice of online learning platforms be in the sole discretion of the school district, nonpublic school, or area education agency (AEA).

Response 1: The Department has added a definition of "online learning platform" to rule 281—15.2(256). The definition is substantially similar to that proposed by the commenter. As to the second portion of this comment, the Department has added "online learning platform" to the rule of construction in paragraph 15.12(5)"a." Additionally, the Department has placed the items in that paragraph in alphabetical order.

Comment 2: The commenter suggested adding "unless the course meets one of the exceptions in 15.8(2)" to the end of subrule 15.3(2).

Response 2: Subrule 15.3(2) refers to telecommunications, while the exceptions in subrule 15.8(2) refer to online instruction. The two methods of remote instruction have different statutory underpinnings, so the Department cannot adopt the suggestion. That being said, the use of telecommunications to meet offer-and-teach requirements is clearly allowed, so long as telecommunications is not the exclusive means of course delivery (e.g., the course has an on-ground laboratory or demonstration component).

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Comment 3: The commenter requested that “or appropriate experience” be added to the list of teacher qualifications in paragraph 15.5(3)“b” and wherever else a similar list appears. The commenter stated, “An experienced online teacher from another state, who may be granted Iowa licensure and has experience in online teaching, should not be required to endure additional coursework duplicative of their demonstrated experience.”

Response 3: While the list of teacher qualifications is illustrative and not exhaustive, the suggestion from the commenter is sensible. The Department has added “or relevant experience” to the list of teacher qualifications in paragraph “b” of the following subrules: 15.5(3), 15.6(5), 15.7(2), and 15.8(1).

Comment 4: The commenter requested clarification on what a “private provider” is for purposes of these rules.

Response 4: The request for clarification makes sense. Rule 281—15.2(256) now contains a definition of “private provider.”

Comment 5: The commenter requested adding “or other” before “funds” in subrule 15.8(5) to allow additional funding flexibility. The commenter gave an example of a fund to support instruction in specific subjects (computer science).

Response 5: This suggestion makes sense, and the change has been made. In addition to allowing for other funds, this suggested change will allow opportunities for nonfederal grants, private philanthropy, and other funding sources to expand the availability of resources under rule 281—15.8(256).

Comment 6: The commenter suggested a statement that this chapter is not “meant to prohibit district offerings to their own resident students for purposes of meeting credit recovery, for suspension or expulsion alternatives, for individualized course of study meeting a student’s health or academic needs, or other issues arising at the local district level to meet the individual needs of resident students.”

Response 6: The activities suggested in the comment would be subject to the rules in this chapter (such as employing a licensed teacher), and the sentiment is well founded. For that reason, the Department has added an additional rule of construction, paragraph “e,” to subrule 15.12(5).

Other changes: Based on feedback from a member of the Administrative Rules Review Committee, the Department added subrule 15.12(6), which prohibits a school district, accredited nonpublic school, or AEA from providing a completely online educational program. The Department made clarifying changes to subrules 15.7(4) and 15.12(2) regarding district-operated online schools that do not accept students from other school districts. Those schools may seek Department approval but are not required to do so. A district that operates an online school only for its resident students must still describe this in its comprehensive school improvement plan (paragraph 15.12(2)“a”). The Department added a clarifying internal cross-reference in subrule 15.8(4). Finally, the Department made a clarifying change to subrule 15.9(1) to explain the subrule’s broad scope.

Further rule making: Effective July 1, 2021, 2021 Iowa Acts, Senate File 546, makes changes to eligibility for certain online coursework for students receiving private instruction. The Department will propose corresponding amendments to this chapter in a separate rule making.

Adoption of Rule Making

This rule making was adopted by the State Board on June 11, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making action is adopted:

Rescind 281—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
ONLINE AND VIRTUAL LEARNING

281—15.1(256) Purpose. It is the purpose of this chapter to give guidance and direction for the use of telecommunications as an instructional tool and online learning in one or more courses as an instructional delivery method. This chapter is applicable in whole or in part to school districts, accredited nonpublic schools, and area education agencies for delivery of instruction and support for students enrolled in kindergarten through grade 12.

281—15.2(256) Definitions.

“Accredited nonpublic school” means a nonpublic school accredited pursuant to Iowa Code section 256.11.

“Appropriately licensed and endorsed” means possession of current and valid licensure by the Iowa board of educational examiners to practice at a prescribed educational level in a specified content area.

“Area education agency” or *“AEA”* refers to a political subdivision organized pursuant to Iowa Code chapter 273.

“Class size” refers to the total group taught during a time period by a teacher or teaching team with students at one or more sites.

“Delivered primarily over the Internet” means more than 50 percent of the course content or instruction or both is delivered using the Internet.

“Department” means the department of education.

“Director” means the director of the department of education.

“Exclusive instruction” means without the use of any other form of instructional delivery.

“Good faith effort” means the same as defined in Iowa Code section 279.19A(9).

“Online learning” and *“online coursework”* mean educational instruction and content which are delivered primarily over the Internet. “Online learning” and “online coursework” do not include print-based correspondence education, broadcast television or radio, videocassettes, or stand-alone educational software programs that do not have a significant Internet-based instructional component.

“Online learning platform” means a set of services by which students access course content and by which students and teachers connect and communicate.

“Online school” refers to a district or nonpublic school providing educational instruction and course content delivered primarily over the Internet for a group of students for whom this method of delivery is the primary method of education. “Online school” also refers to a school for which a district accepts open enrollment for the express purpose of attendance at the online school and that has received permission from the department to operate.

“Participating school district or accredited nonpublic school” means a school district or accredited nonpublic school that is providing online learning or online coursework.

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“*Private provider*” means, for purposes of this chapter, any public or private entity that is not a school district, an accredited nonpublic school, or an AEA.

“*School district*” means a political subdivision organized pursuant to Iowa Code chapter 274.

“*Telecommunications*” means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications. “Telecommunications” does not include online learning.

281—15.3(256) Telecommunications for instruction.

15.3(1) *Applicability.* This rule applies to all AEAs, school districts, nonpublic schools, community colleges, and institutes of higher education using telecommunications to serve students in kindergarten through grade 12.

15.3(2) *Course eligibility.* Telecommunications may be employed as a means to deliver any course, including a course required for accreditation by the department, provided it is not the exclusive means of instructional delivery.

15.3(3) *Appropriately licensed and endorsed teachers.* Instruction provided by telecommunications must be taught by an appropriately licensed and endorsed teacher. When the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originate, the curriculum received at a remote site shall be under the supervision of a licensed teacher.

a. The licensed teacher at the originating site may provide supervision of students at a remote site, or the school district in which the remote site is located may provide for supervision at the remote site.

b. For the purposes of this subrule, “supervision” means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

281—15.4 Reserved.**281—15.5(256) Online learning—private providers.**

15.5(1) *Online learning model established.* An online learning program model is established by the director, pursuant to Iowa Code section 256.9, that provides districts and nonpublic schools with a list of approved online providers. The online learning program model requires that approved providers meet criteria for approval and further provides for the following:

a. Use of funds available for online learning for program development, implementation, and innovation.

b. Creation and maintenance of a statewide infrastructure that supports online learning.

c. Online administration of online course assessments.

d. Criteria for school districts or schools to use when choosing providers of online learning.

15.5(2) *Use of approved private providers.* At the discretion of the school board or authorities in charge of an accredited nonpublic school, after consideration of circumstances created by necessity, convenience, and cost-effectiveness, courses developed by private providers may be utilized by the school district or school in implementing a high-quality online learning program.

15.5(3) *Approval criteria.* The department shall maintain a list of approved online providers that provide course content through an online learning platform whose content and delivery meets the following requirements:

a. Courses are taught by teachers licensed under Iowa Code chapter 272.

b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, comparable coursework, or relevant experience.

c. Courses provide access to rigorous, high-quality content and instructional materials aligned with Iowa core content standards and blended learning.

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- d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.
- e. The provider supplies coursework customized to the needs of the student.
- f. The provider offers a means for a student to demonstrate competency in completed online coursework.
- g. Courses provide online content and instruction evaluated on the basis of student learning outcomes.

15.5(4) Approval process. Private providers of online course content or full-time online instruction shall apply for approval to offer such services to Iowa school districts and accredited nonpublic schools a minimum of once every three years on forms provided by the department. Applications to provide services may be received at any time; however, the department will give preference to applications received no later than May 1 during the year prior to the school year in which the provider intends to provide services. Applications received by the deadline of May 1 will be answered no later than June 1. An approved provider shall also apply in each year that any of the following apply:

- a. The provider has substantially altered the courses or content offered by either adding or subtracting grade levels or subjects.
- b. The provider has substantially altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c. The provider has substantially altered the evaluation of student learning used in the system.
- d. The provider has substantially altered the online learning content or delivery in any other way that may reasonably be considered material to a school district considering the use of a private provider.

281—15.6(256) Online learning provided by area education agencies.

15.6(1) Online learning program delivered by area education agencies. Subject to an appropriation of funds by the general assembly for this purpose, AEAs may provide an online learning program to deliver distance education to Iowa's secondary students, including students receiving independent private instruction, competent private instruction, or private instruction by a nonlicensed person under Iowa Code chapter 299A. An AEA may provide an online learning program separately, in collaboration with other AEAs, or in partnership with school districts and accredited nonpublic schools.

15.6(2) Student participation. To participate in an online learning program offered by an AEA, a student must be enrolled in a participating school district or accredited nonpublic school or be receiving private instruction under Iowa Code chapter 299A.

15.6(3) District responsibility. The school district or accredited nonpublic school in which the student is enrolled is responsible for:

- a. Recording a student's program coursework grades in the student's permanent record.
- b. Awarding high school credit for program coursework.
- c. Issuing a high school diploma to a student enrolled in the district or school who participates and completes coursework under the program.
- d. Identifying a site coordinator to serve as a student advocate and as a liaison between the program staff and teachers and the school district or accredited nonpublic school.

15.6(4) Cost. School districts and accredited nonpublic schools shall pay to AEAs the actual cost of providing coursework under an online learning program offered in accordance with this rule.

15.6(5) Course content and delivery. Content and delivery provided by an online learning program established pursuant to this rule must meet the following requirements:

- a. Courses are taught by teachers licensed under Iowa Code chapter 272.
- b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, comparable coursework, or relevant experience.
- c. Courses provide access to rigorous, high-quality content and instructional materials aligned with Iowa core content standards and blended learning.

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d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.

e. Grades in online courses are based, at a minimum, on whether a student mastered the subject, demonstrated competency, and met the standards established by the school district. Grades may be conferred only by teachers licensed under Iowa Code chapter 272.

15.6(6) Private instruction. This rule applies to students receiving independent private instruction as defined in Iowa Code section 299A.1(2) “b,” competent private instruction under Iowa Code section 299A.2, or private instruction by a nonlicensed person under Iowa Code section 299A.3. To participate in an online learning program offered by an area education agency, a student receiving private instruction under Iowa Code chapter 299A shall take whatever steps are necessary to enroll with the student’s district of residence. The coursework offered by AEAs pursuant to this subrule must be taught and supervised by a teacher licensed under Iowa Code chapter 272 who has online learning experience, and the course content must meet the requirements established by rule pursuant to Iowa Code section 256.7(32) “c.”

281—15.7(256) Online learning program provided by a school district—online schools.

15.7(1) Online learning program provided by a school district. A school district may provide an online learning program delivered primarily over the Internet which operates as an online school. Such a program shall do all of the following with regard to instruction and content:

a. Monitor and verify full-time student enrollment, timely completion of graduation requirements, course credit accrual, and course completion.

b. Monitor and verify student progress and performance in each course through a school-based assessment plan that includes submission of coursework and security and validity of testing components.

c. Conduct parent-teacher conferences.

d. Administer assessments required by the state to all students in a proctored setting and pursuant to state law.

15.7(2) Course content and delivery. Content and delivery provided by an online learning program established pursuant to this rule must meet the following requirements:

a. Courses are taught by teachers licensed under Iowa Code chapter 272.

b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, comparable coursework, or relevant experience.

c. Courses provide access to rigorous, high-quality content and instructional materials aligned with the Iowa core content standards and blended learning.

d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.

e. Grades in online courses are based, at a minimum, on whether a student mastered the subject, demonstrated competency, and met the standards established by the school district. Grades may be conferred only by teachers licensed under Iowa Code chapter 272.

15.7(3) Approval criteria. The department shall maintain a list of approved school districts that provide course content through an online learning platform whose content and delivery meets the requirements of subrule 15.7(2).

15.7(4) Approval process. School district providers of online course content or full-time online instruction shall apply for approval to offer such services to Iowa districts and accredited nonpublic schools a minimum of once every three years on forms provided by the department. If a school district is providing full-time online instruction only to its resident students and not to any other students, the school district need not seek approval; however, the school district must ensure it meets the requirements of subrules 15.7(1) and 15.7(2). Applications must be received by the department no later than January 1 during the year prior to the school year in which the provider intends to provide

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services. Applications received by the deadline of January 1 will be answered no later than February 1. An approved provider under this rule shall also apply in each year that any of the following apply:

- a. The provider has substantially altered the courses or content offered by either adding or subtracting grade levels or subjects.
- b. The provider has substantially altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c. The provider has substantially altered the evaluation of student learning used in the system.
- d. The provider has substantially altered the online learning content or delivery in any other way that may reasonably be considered material to a district considering the use of a private provider.

281—15.8(256) Online learning provided by a school district or nonpublic school—courses.

15.8(1) *Course content and delivery.* A school district or nonpublic school may provide an online learning program to deliver online learning and online coursework to students attending the district or school. Such a program must meet the following content and delivery requirements:

- a. Courses are taught by teachers licensed under Iowa Code chapter 272.
- b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, comparable coursework, or relevant experience.
- c. Courses provide access to rigorous, high-quality content and instructional materials aligned with Iowa core content standards and blended learning.
- d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.
- e. Grades in online courses are based, at a minimum, on whether a student mastered the subject, demonstrated competency, and met the standards established by the school district. Grades may be conferred only by teachers licensed under Iowa Code chapter 272.

15.8(2) *Use to meet general accreditation standards.* Any course that is not part of the offer-and-teach requirements for grades 9 through 12 may be provided by an area education agency, by the school district or accredited nonpublic school, or through an online learning platform or online exchange offered by the department in collaboration with area education agencies, school districts, or nonpublic schools. Online courses may be used to meet offer-and-teach requirements for grades 9 through 12 under the following circumstances:

a. Iowa Code sections 256.11(5) “a” through “e” and 256.11(5) “g” through “j” do not apply for up to two specified subjects for any district or accredited nonpublic school if any of the following apply:

- (1) The school district or accredited nonpublic school makes every reasonable and good faith effort to employ a teacher licensed under Iowa Code chapter 272 for the specified subject and is unable to employ such a teacher.
- (2) Fewer than ten students typically register for instruction in the specified subject at the school district or accredited nonpublic school.

b. In addition, a school district or nonpublic school may exceed the two-subject limitation for the purpose of providing world language, personal finance literacy, and computer science coursework online if either subparagraph 15.8(2) “a”(1) or 15.8(2) “a”(2) applies.

c. In addition to paragraphs 15.8(2) “a” and “b,” a school district or nonpublic school may apply for an annual waiver of the requirements of Iowa Code section 256.11(5) for up to two specified subjects. The school district or nonpublic school must prove to the satisfaction of the department that the school district or accredited nonpublic school has made every reasonable effort, but is unable to meet requirements to offer and teach the courses for which a waiver is sought. A school district or accredited nonpublic school may apply for a waiver each year. Waiver applications are due no later than January 15 the year prior to the school year during which the waiver is requested.

15.8(3) *Delivery options for general accreditation standards.*

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a. If a district or accredited nonpublic school uses any of the options under subrule 15.8(2), the courses may be delivered by the following methods: by an area education agency under Iowa Code section 273.16, or by the school district or accredited nonpublic school.

b. If offered by the school district or accredited nonpublic school, the specified subject or course shall be offered through any of the following means:

(1) An online learning platform if the course is developed by the school district or accredited nonpublic school itself or is developed by a partnership or consortium of schools that have developed the course individually or cooperatively. A partnership or consortium of schools may include two or more school districts or accredited nonpublic schools, or any combination thereof.

(2) A private provider approved under subrule 15.5(4).

(3) An online learning platform or online exchange offered, subject to the initial availability of federal funds, by the department in collaboration with one or more area education agencies or in partnership with school districts and accredited nonpublic schools.

15.8(4) Private instruction. The online learning platform described in subparagraph 15.8(3) “b”(3) may deliver distance education to students, including students receiving independent private instruction as defined in Iowa Code section 299A.1(2) “b,” competent private instruction under Iowa Code section 299A.2, or private instruction by a nonlicensed person under Iowa Code section 299A.3, provided such students register with the school district of residence and the coursework offered by the online learning platform is taught and supervised by a teacher licensed under Iowa Code chapter 272 who has online learning experience, and the course content meets the requirements established by rule pursuant to Iowa Code section 256.7(32) “c.”

15.8(5) Coordination and costs. The department and the area education agencies operating online learning programs pursuant to Iowa Code section 273.16 shall coordinate to ensure the most effective use of resources and delivery of services. Federal or other funds, if available, may be used to offset what would otherwise be costs to school districts for participation in the program.

281—15.9(256) Open enrollment. Content and delivery provided online pursuant to rule 281—15.5(256), 281—15.6(256), 281—15.7(256) or 281—15.8(256) may be provided to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.9(1) Courses. A school district may provide individual courses it developed, or any other courses developed pursuant to this chapter (including courses developed by private providers), delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.9(2) Termination. If a student’s participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district shall, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

281—15.10(256) Online learning—access by students receiving private instruction. Students enrolled in private instruction pursuant to Iowa Code chapter 299A may participate in online instruction pursuant to subrules 15.6(6) and 15.8(4). The individual providing instruction to a student under Iowa Code chapter 299A as described in Iowa Code section 299A.1(1) shall receive the student’s score for completed program coursework.

281—15.11(256,256B) Online learning—students with disabilities.

15.11(1) Children with disabilities may not be categorically excluded from admission to online learning programs or from enrollment in online coursework.

15.11(2) Whether an online course or online learning is appropriate to a child with a disability must be determined by the child’s needs, not by the child’s assigned weighting under Iowa Code section 256B.9. If a child’s individualized education program (IEP) goals cannot be met in online learning, with or without supplementary aids and services or modifications, online learning is not appropriate to the child.

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15.11(3) If a child's IEP team determines that online learning is inappropriate to the child, the child's parents are entitled to prior written notice pursuant to rule 281—41.503(256B,34CFR300) and to have available to them the procedural safeguards provided under rule 281—41.504(256B,34CFR300).

15.11(4) When a child with an IEP seeks open enrollment into an online learning program, the child's IEP team shall determine whether the child meets the open enrollment requirements under 281—Chapter 17. In addition, the child's IEP team, together with representatives of the resident and receiving districts and the relevant area education agencies, shall determine whether the receiving district is able to provide an appropriate online education to the child, either with or without supplementary aids and services or modifications. Any dispute about whether the receiving district's program is appropriate shall be resolved pursuant to 281—Chapter 17. The child shall remain in the child's resident district while any dispute about the appropriateness of the receiving district's program is pending.

281—15.12(256) Department general supervision of telecommunications and online learning.

15.12(1) *Nature of general supervision.* The department shall exercise general supervision over compliance with this chapter and shall offer advice and technical assistance to foster compliance and improved outcomes. This shall be accomplished by department staff, the state board of education, and the education telecommunications council.

15.12(2) *Data collection and reporting.*

a. Each school district and accredited nonpublic school shall include in its comprehensive school improvement plan a list and description of the online coursework offered by the school district or accredited nonpublic school to which the student is enrolled.

b. Online schools. A school district providing educational instruction and course content delivered primarily over the Internet that is required to seek approval under subrule 15.7(4) shall annually submit to the department, in the manner prescribed by the department, data that includes but is not limited to the following:

- (1) Student achievement and demographic characteristics.
- (2) Retention rates.
- (3) The percentage of enrolled students' active participation in extracurricular activities.
- (4) Academic proficiency levels, consistent with requirements applicable to all school districts and accredited nonpublic schools in this state.
- (5) Academic growth measures, which shall include either of the following:
 1. Entry and exit assessments in, at a minimum, math and English for elementary and middle school students, and additional subjects, including science, for high school students.
 2. State-required assessments that track year-over-year improvements in academic proficiency.
- (6) Academic mobility. To facilitate the tracking of academic mobility, school districts shall request the following information from the parent or guardian of a student enrolled in educational instruction and course content that are delivered primarily over the Internet:
 1. For a student newly enrolling, the reasons for choosing such enrollment.
 2. For a student terminating enrollment, the reasons for terminating such enrollment.
- (7) Student progress toward graduation. Measurement of such progress shall account for specific characteristics of each enrolled student, including but not limited to age and course credit accrued prior to enrollment in educational instruction and course content that are delivered primarily over the Internet, and shall be consistent with evidence-based best practices.

c. Department responsibilities. The department shall compile and review the data collected pursuant to this subrule and shall submit its findings and recommendations for the continued delivery by school districts of educational instruction and course content delivered primarily over the Internet in a report to the general assembly by January 15 annually.

15.12(3) *Accreditation criteria.* All online courses and programs shall meet existing accreditation standards.

15.12(4) *Prohibited activities.* A rebate for tuition or fees paid or any other dividend or bonus moneys for enrollment of a child shall not be offered or provided directly or indirectly by a school

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district, school, or private provider to the parent or guardian of a pupil who enrolls in a school district or school to receive educational instruction and course content delivered primarily over the Internet.

15.12(5) Rules of construction.

a. Nothing in this chapter shall be construed to require a school district, accredited nonpublic school, or AEA to use a particular assessment, curricular material, online learning platform, provider, or textbook.

b. Unless otherwise required by a state or federal law protecting students with disabilities, or in accordance with a proclamation of public health disaster emergency issued by the governor pursuant to Iowa Code section 29C.6, nothing in this chapter shall be construed to require a school district or accredited nonpublic school to offer continuous remote learning, to maintain a program of continuous remote learning, to deliver instruction primarily over the Internet, to continue delivering instruction primarily over the Internet, or to become or remain an approved provider of online learning.

c. Schools may use virtual learning or online learning for days of inclement weather to the extent permitted by the Iowa Code.

d. The Iowa learning online (ILO) initiative was repealed by 2020 Iowa Acts, chapter 1107, section 10. Any remaining references to ILO in any department policy, document, or procedure shall be construed to comply with this chapter until that policy, document, or procedure is amended, corrected, rescinded, or repealed.

e. This chapter shall be broadly construed to allow school districts, accredited nonpublic schools, and AEAs to meet the needs of individual students and the local community.

15.12(6) Prohibition on offering a completely online educational program. Unless specifically authorized by statute or by a governor's proclamation on a temporary basis, no school district, accredited nonpublic school, or AEA shall provide a completely online educational program, including completely online instruction for a particular grade. All school districts, accredited nonpublic schools, and AEAs must maintain a physical presence for their educational programs.

These rules are intended to implement Iowa Code sections 256.7(32), 256.9(55), 256.11(17), 256.41, and 256.43.

[Filed 6/11/21, effective 8/4/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5741C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to instructional course for drinking drivers

The State Board of Education hereby amends Chapter 21, "Community Colleges," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321J.22.

Purpose and Summary

This rule making updates language to accommodate both in-person and online delivery of the instructional course for drinking drivers. During the past year, a significant portion of the courses were

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delivered online due to the pandemic. Additionally, online delivery of the course was permitted under certain circumstances (e.g., medical necessity). These amendments ensure consistency between the two formats.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5583C**. A public hearing was held on May 11, 2021, at 8 a.m. in the ICN Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board on June 11, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 21.31(3) as follows:

21.31(3) Individuals who reside outside the state of Iowa and who are required by the state of Iowa to take a course for drinking drivers shall have the opportunity to take the course in another state, provided:

~~a. The~~ the out-of-state course is comparable to those courses approved to be offered in the state of Iowa.

~~b. The course is delivered in a classroom setting and not online.~~

ITEM 2. Amend subrule 21.31(5), introductory paragraph, as follows:

21.31(5) An instructional course, including allowable delivery formats, shall be approved by the department of education in consultation with the community colleges, substance abuse treatment programs licensed under Iowa Code chapter 125, the Iowa department of public health, and the Iowa department of corrections. The course shall ~~be delivered in a classroom setting with~~ consist of at least 12 hours of instructional time. In-person instruction shall be delivered over a minimum of a two-day period. ~~The course may be offered~~ in blocks not to exceed 4 hours with a minimum of a 30-minute break between blocks. Each student ~~in the class shall receive an individual workbook, and workbooks~~

EDUCATION DEPARTMENT[281](cont'd)

attending a course shall be provided with the appropriate course materials necessary to complete the course, which shall not be reused. The course shall be taught by an instructor certified by the curriculum provider to teach the course. Each course of instruction shall establish the following:

ITEM 3. Amend subrule 21.32(1) as follows:

21.32(1) Each person enrolled in an instructional course for drinking drivers shall pay to the community college or a substance abuse treatment program licensed under Iowa Code chapter 125 a tuition fee of \$140 for the approved 12-hour course, plus a reasonable ~~book~~ course materials fee. The court may allow an offender to combine the required course with a program that incorporates jail time. Reasonable fees may be assessed for costs associated with lodging, meals, and security.

[Filed 6/11/21, effective 8/4/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5742C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to educator preparation programs

The State Board of Education hereby amends Chapter 79, "Standards for Practitioner and Administrator Preparation Programs," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 2356.

Purpose and Summary

Chapter 79 outlines the standards and program requirements that all traditional educator preparation programs must meet to be approved to prepare educators in Iowa. Compliance with these standards is required and is evaluated during each educator preparation program's approval review. The standards are also applied in an annual reporting system. This rule making updates the standards to remain current with United States Department of Education regulations and align with Board of Educational Examiners rules for licensure, and incorporates requirements in 2020 Iowa Acts, Senate File 2356, section 1.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5582C**. A public hearing was held on May 11, 2021, at 8:30 a.m. in the ICN Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board on June 11, 2021.

Fiscal Impact

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

EDUCATION DEPARTMENT[281](cont'd)

Jobs Impact

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

Waivers

No waiver of these standards is permitted.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making actions are adopted:

ITEM 1. Rescind the definitions of "ISSL" and "Regional accreditation" in rule **281—79.2(256)**.

ITEM 2. Adopt the following **new** definition of "Institutional accrediting agency" in rule **281—79.2(256)**:

"Institutional accrediting agency" means an institutional accrediting agency recognized by the U.S. Department of Education. Agencies include regional and national accreditors. The department will maintain a web link to a list of currently approved accreditors on the department's practitioner preparation web page.

ITEM 3. Amend rule 281—79.4(256) as follows:

281—79.4(256) Criteria for practitioner preparation programs. Each institution seeking approval by the state board of its programs of practitioner preparation, including those programs offered by distance delivery models or at off-campus locations, must be regionally accredited by an institutional accrediting agency recognized by the U.S. Department of Education and shall file evidence of the extent to which each program meets the standards contained in this chapter by means of a written self-evaluation report and an evaluation conducted by the department. The institution shall demonstrate such evidence by means of a template developed by the department and through a site visit conducted by the department. After the state board has approved the practitioner preparation programs of an institution, students who complete the programs and are recommended by the authorized official of that institution will be issued the appropriate license and endorsement(s).

ITEM 4. Amend rule 281—79.9(256) as follows:

281—79.9(256) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the curricula of an institution's approved practitioner preparation program. When an institution proposes a revision which exceeds the primary scope of its programs, including revisions which significantly change the delivery model(s), the revisions shall become operative only after having been approved by the state board. Approval of any institution's application for adding the dyslexia specialist endorsement must include approval by the Iowa reading research center.

[Filed 6/11/21, effective 8/4/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5730C**HISTORICAL DIVISION[223]****Adopted and Filed****Rule making related to terminology**

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

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

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5610C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on June 9, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making action is adopted:

HISTORICAL DIVISION[223](cont'd)

Amend subrule 1.5(5) as follows:

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

a. and b. No change.

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

d. to f. No change.

[Filed 6/10/21, effective 8/4/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5728C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to waivers

The Human Services Department hereby amends Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

This rule making adds the reserve capacity slot criteria from the home- and community-based services (HCBS) waiver applications to the intellectual disability (ID) waiver and the children's mental health (CMH) waiver and reduces the minimum amount of time that a member must be in an institutional stay to qualify for a reserved capacity slot under the brain injury (BI) waiver from six months to four months.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 7, 2021, as **ARC 5550C**. No public comments were received. One change from the Notice has been made. The State reserves payment slots for each waiver year. The waiver year has changed to October 1 to September 30 (previously it was July 1 to June 30) based on the last renewal approved for Iowa by the Centers for Medicare and Medicaid (CMS). Because of this, the reference to "July 1 to June 30" in new paragraph 83.123(1)"e" in Item 3 has been changed to "October 1 to September 30."

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 10, 2021.

Fiscal Impact

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

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

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** paragraph **83.61(4)“d”**:

d. The state reserves payment slots each waiver year (July 1 to June 30) for use by children who must reside outside the family home in a residential-based supported community living licensed residential care facility. The state also reserves payment slots each waiver year (July 1 to June 30) for use by members living in an ICF/ID, nursing facility, or out-of-state placement, or transitioning from the Money Follows the Person Grant, who choose to access services in the intellectual disability waiver program and leave the ICF/ID, nursing facility, or out-of-state placement to live in the community.

(1) Applicants who currently reside in an ICF/ID or nursing facility and have resided in that setting for four or more months may request a reserved capacity slot through the intellectual disability waiver.

(2) Applicants shall be allocated a reserved capacity slot on the basis of the date the request is received by the income maintenance worker or the waiver slot manager.

(3) In the event that more than one request for a reserved capacity slot is received at one time, applicants shall be allocated the next available reserved capacity slot on the basis of the month of birth, January being month one and the lowest number.

(4) Persons who do not fall within the available reserved capacity slots shall have the person's name maintained on the reserved capacity slot waiting list. As reserved capacity slots become available at the beginning of the next waiver year, persons shall be selected from the reserved capacity slot waiting list to utilize the number of approved reserved capacity slots based on the person's order on the waiting list.

ITEM 2. Amend paragraph **83.82(4)“d”** as follows:

d. Applicants who currently reside in a community-based neurobehavioral rehabilitation residential setting, an intermediate care facility for persons with an intellectual disability (ICF/ID), a skilled nursing facility, or an ICF and have resided in that setting for ~~six~~ four or more months may request a reserved capacity slot through the brain injury waiver.

(1) to (3) No change.

ITEM 3. Adopt the following **new** paragraph **83.123(1)“e”**:

e. The state reserves payment slots each waiver year (October 1 to September 30) for use by members living in a state of Iowa mental health institute (MHI), a psychiatric residential treatment facility (PRTF), or an out-of-state facility placement who choose to access services in the children's mental health waiver program and leave the MHI, PRTF, or out-of-state placement to live within their family home. For the purpose of reserved capacity within the children's mental health waiver program, an MHI is defined in Iowa Code section 226.1 and a PRTF is defined in 42 CFR 483.352.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Applicants who currently reside in an MHI, PRTF, or out-of-state placement and have resided in that setting for four or more months may request a reserved capacity slot through the children's mental health waiver program.

(2) Applicants shall be allocated a reserved capacity slot on the basis of the date the request is received by the income maintenance worker or the waiver slot manager.

(3) In the event that more than one request for a reserved capacity slot is received at one time, applicants shall be allocated the next available reserved capacity slot on the basis of the month of birth, January being month one and the lowest number.

(4) Persons who do not fall within the available reserved capacity slots shall have their names maintained on the reserved capacity slot waiting list. As reserved capacity slots become available at the beginning of the next waiver year, persons shall be selected from the reserved capacity slot waiting list to utilize the number of approved reserved capacity slots based on their order on the waiting list.

[Filed 6/10/21, effective 9/1/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5729C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to payment for transportation

The Human Services Department hereby amends Chapter 151, "Juvenile Court Services Directed Programs," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 232.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 270.4.

Purpose and Summary

2020 Iowa Acts, Senate File 2284, was enacted by the 88th Session of the Iowa General Assembly and signed by Governor Reynolds on June 17, 2020. This Act relates to matters involving the State Board of Regents and the institutions it governs. Iowa Code section 270.4 was amended to eliminate obligations to counties and institutions for transportation costs of students enrolled in the School for the Deaf and the Braille and Sight Saving School. Chapter 151 is being amended to remove an exclusion for transportation, effectively allowing payment for transportation. Clothing and medical expenses remain the responsibility of counties and institutions, so those will remain in the rule as an exclusion. For reference, the excluded costs in subparagraph 151.22(2)"b"(6) are as follows:

- Payment by counties: Iowa Code section 263.12,
- Braille and Sight Saving School expenses: Iowa Code section 269.2, and
- Clothing and prescriptions for the School for the Deaf: Iowa Code section 270.4.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5585C**. No public comments were received. No changes from the Notice have been made.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 10, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

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

The following rule-making action is adopted:

Amend paragraph **151.22(2)“b”** as follows:

b. All charges for which the county is obligated by statute to pay including:

(1) to (5) No change.

(6) Clothing, ~~transportation~~, and medical or other service provided to persons attending the Iowa Braille and ~~Sight-Saving~~ Sight Saving School, the Iowa School for the Deaf, or the ~~state hospital school for severely handicapped children at Iowa City~~ University of Iowa Stead Family Children's Hospital for which the county becomes obligated to pay pursuant to Iowa Code sections 263.12, 269.2, and 270.4 to 270.7.

(7) and (8) No change.

[Filed 6/10/21, effective 9/1/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5723C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to standards for electrician and electrical contractor licensing

The Electrical Examining Board hereby amends Chapter 500, “Electrician and Electrical Contractor Licensing Program—Organization and Administration,” Chapter 502, “Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures, and Fees,” and Chapter 506,

PUBLIC SAFETY DEPARTMENT[661](cont'd)

“Military Service, Veteran Reciprocity, and Spouses of Active Duty Service Members for Electricians and Electrical Contractors,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 272C and section 103.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 272C and section 103.6.

Purpose and Summary

These amendments update the standards for electrician and electrical contractor licensing in keeping with 2020 Iowa Acts, House File 2627, signed into law by the Governor on June 25, 2020. This law relaxed the licensing requirements for several professions, including those of electrical contractor and electrician. These amendments relax the standards for reciprocity, disqualifying convictions, fee structure, and military spouses as they relate to electrician and electrical contractor licensing.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5587C**. The Administrative Rules Review Committee (ARRC) reviewed the Notice at its May 7, 2021, meeting. Representative Rick Olson made comments regarding the burden of proof on applicants for licensure and whether the language in the rule aligned with statutory law. The Board and the Department consulted with the Attorney General’s office for advice on the matter. No other comments were received.

Several changes have been made from the Notice. The definition of “special residential electrician” has been stricken because that type of license no longer exists, and outdated references to the special residential electrician license have been stricken from paragraph 502.2(6)“d.” In response to Representative Olson’s comments during the ARRC meeting, the Department has added language to paragraph 502.8(1)“c” on the advice of counsel. In paragraph 502.8(2)“c,” the word “is” was deleted from the phrase “is rehabilitated” for consistency with language in paragraph 502.8(1)“c.” Apart from two minor punctuation corrections, no other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on June 1, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have the authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 661—10.222(17A).

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 661—500.2(103) as follows:

661—500.2(103) Definitions. The following definitions apply to all rules adopted by the electrical examining board.

“Approved by the board” means the approval of any item, test or procedure by the electrical examining board by adoption of a resolution at a meeting of the board, provided that the approval has not been withdrawn by a later resolution of the board. A list of any such items, tests, or procedures that have been approved by the board is available from the board office or from the board ~~Web site~~ website.

“Board” means the electrical examining board created under ~~2007 Iowa Acts, chapter 197, section 12~~ Iowa Code section 103.2.

“Complete criminal record” means the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“Conviction” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“Department” means the department of public safety.

“Directly relates” or “directly related” means either that the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession; or that the circumstances under which an offense was committed are customary to the profession.

“Disqualifying conviction” or “disqualifying offense” means a conviction directly related to the practice of the profession.

“Division” means the fire marshal division of the department of public safety.

“Documented experience” means experience which an applicant for licensing has completed and which has been documented by the applicant’s completion and submission of a sworn affidavit or other evidence required by the board.

“Eligibility determination” means the process by which a person who has not yet submitted a completed license application may request that the board determine whether one or more of the person’s convictions are disqualifying offenses that would prevent the individual from receiving a license or certification.

“Emergency installation” means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or man-made disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work, and may be performed prior to submission of a request for permit or request for inspection. A request for permit and request for inspection, if required by rule 661—552.1(103), shall be made as soon as practicable and, in any event, no more than 72 hours after the installation is completed.

“Executive secretary” means the executive secretary appointed by the board.

“Farm” means land, buildings and structures used for agricultural purposes, including but not limited to the storage, handling, and drying of grain and the care, feeding, and housing of livestock.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

“Final agency action” means the issuance, denial, suspension, or revocation of a license. If an action is subject to appeal, “final agency action” has occurred when the administrative appeal process provided for in 661—Chapter 503 has been exhausted or when the deadline for filing an appeal has expired.

“Full-time” means a minimum of 1,700 hours of work in a one-year period.

“Issuing jurisdiction” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

“Registered apprenticeship program” means an electrical apprenticeship program registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or an electrical apprenticeship program registered with a state agency whose registration program is accepted by the Bureau of Apprenticeship and Training in lieu of direct registration with the Bureau of Apprenticeship and Training.

“Residential electrical work” means electrical work in a residence in which there are no more than four living units within the same building and includes work to connect and work within accessory structures, which are structures no greater than 3,000 square feet in floor area, not more than two stories in height, the use of which is incidental to the use of the dwelling unit or units, and located on the same lot as the dwelling unit or units.

“Routine maintenance” means the repair or replacement of existing electrical apparatus or equipment of the same size and type for which no changes in wiring are made. The performance of routine maintenance in itself does not require a person to obtain or hold a license as an electrician or electrical contractor.

“Special residential electrician” means a person who holds a current special electrician license with a residential endorsement.

“Transferring jurisdiction” means the specific issuing jurisdiction on which an applicant relies to seek licensure in Iowa by verification under this chapter.

ITEM 2. Amend **661—Chapter 500**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 197~~ Iowa Code chapters 103 and 272C.

ITEM 3. Amend rule 661—502.2(103) as follows:

661—502.2(103) License requirements.

502.2(1) and **502.2(2)** No change.

502.2(3) A class A master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. Has completed one year of experience as a licensed journeyman electrician, and has passed a supervised written examination for master electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application; or

b. As of December 31, 2007, held a current valid license as a master electrician issued by a political subdivision in Iowa, the issuance of which required passing a supervised written examination approved by the board, and one year of experience as a journeyman electrician; or

c. Holds a current class B master electrician license and has passed a supervised written examination for master electrician approved by the board with a score of ~~75~~ 70 or higher within 24 months of submission of a new application.

502.2(4) No change.

502.2(5) A residential master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who ~~meets one of the following requirements:~~ holds

a. ~~Holds~~ a current residential electrician or journeyman electrician license, has 2,000 hours of verified experience as a residential electrician or a journeyman electrician, and has passed a residential master electrician examination approved by the board; ~~or~~ with a score of 70 or higher within 24 months of submission of a new application.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~b. Holds a current special electrician license with a residential endorsement, has 4,000 hours of verified experience, and has passed a residential master electrician examination approved by the board.~~

502.2(6) A class A journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. Has successfully completed a registered apprenticeship program, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 70 or higher within 24 months of submission of a new application, and has completed four years of experience as an apprentice electrician.

b. Holds a current class B journeyman electrician license and has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 70 or higher within 24 months of submission of a new application.

c. Holds a current electrician license in another state, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 70 or higher within 24 months of submission of a new application, and has satisfied the sponsorship requirements for testing for a journeyman class A license by providing evidence of all of the following:

(1) Current licensure as a journeyman or master electrician from another state which required passing a test sponsored by that state.

(2) Completion of 18 hours of continuing education units approved by the board.

(3) Completion of 1,000 hours of work in Iowa as an unclassified person.

d. Holds a current license issued by the board, excluding a special electrician license ~~other than special residential electrician license~~; has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 70 or higher within 24 months of submission of a new application; has completed 54 hours of continuing education approved by the board; and has completed 16,000 hours of electrical work while licensed by the board, except as a special electrician ~~other than a special residential electrician~~, as verified by a master electrician licensed by the board. The 16,000 hours must include at least the following minimum number of hours of work on commercial or industrial installations in the categories indicated: 500 hours of preliminary work, 2,000 hours of rough-in work, 2,000 hours of finish work, 2,000 hours of lighting and service work, 500 hours of troubleshooting, and 500 hours of motor control work. At least 4,000 hours of the 16,000 hours must have been completed by the applicant within the five years immediately preceding the submission date of the application.

EXCEPTION: On or before December 31, 2019, a maximum of 10,000 of the required 16,000 hours of verified work experience may have been completed between January 1, 2000, and December 31, 2007, without licensure from the board or from any political subdivision.

e. Holds a current license issued by the board as a residential electrician or residential master electrician, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 70 or higher within 24 months of submission of a new application, and has completed 4,000 hours of work on commercial or industrial electrical installations while licensed by the board, as verified by a master electrician licensed by the board. The 4,000 hours must include at least the following minimum numbers of hours in the categories indicated: 100 hours of preliminary work, 500 hours of rough-in work, 500 hours of finish work, 500 hours of lighting and service work, 100 hours of troubleshooting, and 100 hours of motor control work.

f. Holds a current license issued by the board, has satisfactorily completed an approved postsecondary electrical education program, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 70 or higher within 24 months of submission of a new application, and, subsequent to beginning the postsecondary electrical education program, has completed at least 6,000 hours of electrical work while licensed by the board, as verified by a master electrician licensed by the board.

502.2(7) No change.

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502.2(8) A residential electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

a. to d. No change.

e. Has successfully completed a registered residential electrician apprenticeship program and passed a supervised written residential electrician examination approved by the board with a score of 75 70 or higher within 24 months of submission of a new application.

502.2(9) A special electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets the qualifications for any endorsement entered on the license. Each special electrician license shall carry one or more endorsements as specified in paragraphs “*a*” through “~~*d.*~~” “*c.*”

a. Endorsement 1, “Irrigation System Wiring,” shall be included on a special electrician license if the licensee requests it and has passed a supervised examination approved by the board or has completed two years, or 4,000 hours, of documented experience in the wiring of irrigation systems.

b. Endorsement 2, “Disconnecting and Reconnecting Existing Air Conditioning and Refrigeration Systems,” shall be included on a special electrician license if the licensee requests it and has passed a supervised examination approved by the board or has completed two years of documented experience in the disconnecting and reconnecting of existing air conditioning and refrigeration systems.

NOTE: An individual who holds any of the following licenses issued by the plumbing and mechanical systems board established pursuant to Iowa Code section 105.3 is not required to hold a license issued by the electrical examining board in order to perform disconnection and reconnection of existing air conditioning and refrigeration systems:

1. Master HVAC refrigeration.
2. Journeyman HVAC refrigeration.
3. Master mechanical.
4. Journeyman mechanical.

c. Endorsement 3, “Sign Installation,” shall be included on a special electrician license if the licensee requests that it be included. This endorsement does not authorize a licensee to connect power to a sign that has a voltage greater than 220V and an ampere rating greater than 20 amps. Initial installation or upgrading of the branch circuits supplying power to the sign shall be completed by a licensed master electrician or by a licensed journeyman electrician under the supervision of a master electrician.

~~*d.* Endorsement 4, “Residential Electrician,” shall be included on a special electrician license if the licensee requests it and has passed a supervised written examination approved by the board or has completed four years of documented experience performing residential electrical work. A political subdivision may, by enactment of an ordinance filed with the board prior to its effective date, require that a special electrician performing work authorized by this endorsement be supervised by a master electrician. Special electrician licenses with “residential electrician” endorsements shall not be issued after December 31, 2010. Renewals of special electrician licenses with “residential electrician” endorsements shall not be issued after December 31, 2013.~~

502.2(10) to 502.2(13) No change.

502.2(14) Reciprocal journeyman licensing. A journeyman class A license may be issued, without examination, to a person who holds a license from another state provided that:

a. The board has entered into an agreement with the other state providing for reciprocal issuance of licenses and that the agreement recognizes the equivalency of the examination required for the license issued by the other state and the examination required for the Iowa license to be issued; and

b. The applicant has successfully completed a supervised written examination approved by the other state with a score of 75 70 or higher in order to obtain the license from the other state; and

c. to e. No change.

502.2(15) Reciprocal master licensing. A master class A license may be issued, without examination, to a person who holds an equivalent license from another state provided that:

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a. The board has entered into an agreement with the other state providing for reciprocal issuance of licenses and that the agreement recognizes the equivalency of the examination required for the license issued by the other state and the examination required for the Iowa license to be issued; and

b. The applicant has successfully completed a supervised written examination approved by the other state, with a score of ~~75~~ 70 or higher, in order to obtain the license from the other state; and

c. to e. No change.

ITEM 4. Adopt the following new subrules 502.3(7) and 502.3(8):

502.3(7) The fee for submitting a petition for eligibility determination as defined in subrule 502.8(2) is \$25.

502.3(8) The board shall waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

ITEM 5. Amend subrule 502.4(5) as follows:

502.4(5) ~~The applicant may be denied a license if the applicant has previously been convicted of a criminal offense involving, but not limited to, fraud, misrepresentation, arson or theft, or if the applicant is currently delinquent in paying employment taxes to the state of Iowa or the United States. If the denial is based upon conviction of a criminal offense, the board shall examine the specific circumstances of the offense and may grant the license if, in the judgment of the board, sufficient time has passed since the conviction and there is no further evidence of criminal conduct on the part of the applicant has been convicted of a disqualifying offense in the courts of this state or another state, territory, or country. A file-stamped copy of the final order or judgment of conviction or plea of guilty in this state or another state constitutes conclusive evidence of the conviction.~~

ITEM 6. Amend rule 661—502.5(103) as follows:

661—502.5(103) License application.

502.5(1) Any person seeking a license from the board shall submit a completed application to the board accompanied by the applicable fee payable by check, money order, or warrant to the Iowa Department of Public Safety. The memo area of the check should read "Electrician Licensing Fees." The application shall be submitted on the form prescribed by the board, which may be obtained from the board office.

502.5(2) Upon receipt of a completed application, the board executive secretary or designee has discretion to:

a. Authorize the issuance of a license, certification, or examination application.

b. Refer the application to a committee of the board for review and consideration when the board executive secretary determines that matters raised in or revealed by the application, including but not limited to prior criminal history, chemical dependence, competency, physical or psychological illness, professional liability claims or settlements, professional disciplinary history, education or experience, are relevant in determining the applicant's qualifications for a license, certification, or examination. Matters that may justify referral to a committee of the board include, but are not limited to:

(1) Prior criminal history, which is reviewed and considered in accordance with Iowa Code chapter 272C and rule 661—502.8(272C).

(2) Chemical dependence.

(3) Competency.

(4) Physical or psychological illness or disability.

(5) Judgments entered on, or settlements of, claims, lawsuits, or other legal actions related to the profession.

(6) Professional disciplinary history.

(7) Education or experience.

502.5(3) Following review and consideration of an application referred by the board executive secretary, the committee may at its discretion:

a. Authorize the issuance of the license, certification, or examination application.

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- b. Recommend to the board denial of the license, certification, or examination application.
- c. Recommend to the board issuance of the license or certification under certain terms and conditions or with certain restrictions.
- d. Refer the license, certification, or examination application to the board for review and consideration without recommendation.

502.5(4) Following review and consideration of a license, certification, or examination application referred by the committee, the board shall:

- a. Authorize the issuance of the license, certification, or examination application;
- b. Deny the issuance of the license, certification, or examination application; or
- c. Authorize the issuance of the license or certification under certain terms and conditions or with certain restrictions.

502.5(5) The committee or board may require an applicant to appear for an interview before the committee or the full board as part of the application process.

ITEM 7. Adopt the following new rules 661—502.8(272C) to 661—502.10(272C):

661—502.8(272C) Use of criminal convictions in eligibility determinations and initial licensing decisions.

502.8(1) *License application.* Unless an applicant for licensure petitions the board for an eligibility determination, the applicant's convictions will be reviewed when the board receives a completed license application.

a. Full disclosure required. An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

b. Documentation and personal statement. An applicant with one or more convictions must submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

c. Rehabilitation. An applicant must, as part of the license application, submit all evidence of rehabilitation that the applicant wishes to be considered by the board. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15. An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

d. Nonrefundable fees. Any application fees will not be refunded if the license is denied.

502.8(2) *Eligibility determination.* An individual who has not yet submitted a completed license application may petition the board for an eligibility determination. An individual with criminal convictions is not required to petition the board for an eligibility determination before applying for a license. To petition the board for an eligibility determination, a petitioner must submit all of the following:

- a. A completed eligibility determination form, which is available on the board's website;*
- b. The complete criminal record for each of the petitioner's convictions;*
- c. A personal statement regarding whether each conviction directly relates to the practice of the profession and why the board should find the petitioner rehabilitated;*
- d. All evidence of rehabilitation that the petitioner wants the board to consider; and*
- e. Payment of a nonrefundable fee in the amount of \$25.*

502.8(3) *Appeal.* A petitioner found ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The department's rules governing contested case proceedings apply unless otherwise specified in this rule. If the petitioner or applicant fails to file a timely appeal, the board's written decision will become a final order.

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a. Presiding officer. The presiding officer will be the board. However, any party to an appeal of a license denial or ineligibility determination may file a written request, in accordance with rule 661—10.306(17A), requesting that the presiding officer be an administrative law judge. Additionally, the board may, on its own motion, request that an administrative law judge be assigned to act as presiding officer. An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case proceeding under this rule must possess a Juris Doctor degree. When an administrative law judge serves as the presiding officer, the decision rendered will be a proposed decision.

b. Burden. The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense. If the office of the attorney general satisfies this burden by a preponderance of the evidence, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

c. Judicial review. A petitioner or applicant must appeal an ineligibility determination or a license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

502.8(4) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

661—502.9(272C) Licensure by verification. Licensure by verification is available under the following circumstances.

502.9(1) Eligibility. A person may seek licensure by verification if all of the following criteria are satisfied:

- a.* The person is licensed, certified, or registered in at least one other issuing jurisdiction;
- b.* The person has been licensed, certified, or registered by another issuing jurisdiction for at least one year;
- c.* The scope of practice in the transferring jurisdiction is substantially similar to the scope of practice in Iowa;
- d.* The person's license, certification, or registration is in good standing in all issuing jurisdictions in which the person holds a license, certificate, or registration; and
- e.* The person either:
 - (1) Establishes residency in the state of Iowa pursuant to rule 701—38.17(422); or
 - (2) Is married to an active duty member of the military forces of the United States and is accompanying the member on an official permanent change of station.

502.9(2) Board application. The applicant must submit all of the following:

- a.* A completed application for licensure by verification.
- b.* Payment of the appropriate fee or fees.
- c.* A verification form completed by the transferring jurisdiction, verifying that the applicant's license, certificate, or registration in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the transferring jurisdiction to the board.
- d.* Proof of current Iowa residency, or proof of the military member's official permanent change of station. To demonstrate Iowa residency, the applicant shall submit proof that:
 - (1) The applicant currently maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the calendar year; and
 - (2) One or more of the following:
 1. The applicant claims a homestead credit or military tax exemption on a home in Iowa, or
 2. The applicant is registered to vote in Iowa, or

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3. The applicant maintains an Iowa driver's license, or
4. The applicant does not reside in an abode in any other state for more days of the calendar year than the individual resides in Iowa.
- e. Documentation of the applicant's complete criminal record, including the applicant's personal statement regarding whether each offense directly relates to the practice of the profession.
- f. A copy of any relevant disciplinary documents, if another issuing jurisdiction has taken disciplinary action against the applicant.

502.9(3) *Applicants with prior discipline.* If another issuing jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person whose license was revoked, or a person who voluntarily surrendered a license, in another issuing jurisdiction is ineligible for licensure by verification.

502.9(4) *Applicants with pending licensing complaints or investigations.* If an Iowa applicant is concurrently subject to a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another issuing jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

661—502.10(272C) Licensure by work experience in jurisdictions without licensure requirements.

502.10(1) *Work experience.*

a. An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a license to practice the profession may be considered to have met the applicable educational and training requirements if the person has at least three years of full-time work experience within the four years preceding the date of application for initial licensure. For each application submitted under this rule, the board will determine whether the applicant's prior work experience was substantially similar in nature and scope to a training or education program typically applicable for the license sought.

b. The applicant must satisfy all other license requirements, including passing any required examinations, to receive a license.

502.10(2) *Required documentation.* An applicant seeking to substitute work experience in lieu of satisfying applicable education or training requirements bears the burden of providing all of the following by submitting relevant documents as part of a completed license application:

a. Proof of current residency in the state of Iowa pursuant to rule 701—38.17(17A), or proof of the military member's official permanent change of station. To demonstrate Iowa residency, the applicant shall submit proof that:

(1) The applicant currently maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the calendar year; and

(2) One or more of the following:

1. The applicant claims a homestead credit or military tax exemption on a home in Iowa, or

2. The applicant is registered to vote in Iowa, or

3. The applicant maintains an Iowa driver's license, or

4. The applicant does not reside in an abode in any other state for more days of the calendar year than the individual resides in Iowa.

b. Proof of three or more years of full-time work experience within the four years preceding the application for Iowa licensure, which demonstrates that the work experience was substantially similar in nature and scope to a training or education program typically applicable for the license sought. Proof of work experience may include, but is not limited to:

(1) A letter from the applicant's prior employer or employers documenting the applicant's dates of employment and scope of practice;

(2) Paychecks or pay stubs; or

(3) If the applicant was self-employed, business documents filed with the secretary of state or other applicable business registry or regulatory agency in the other jurisdiction.

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c. Proof that the applicant's work experience involved a substantially similar scope of practice to the practice in Iowa, which must include:

- (1) A written statement by the applicant detailing the scope of practice and stating how the work experience correlates to an applicable apprenticeship program approved by the United States Department of Labor; and
- (2) Business or marketing materials detailing the services provided.

d. Proof that the other jurisdiction did not require a license to practice the profession, which may include:

- (1) Copies of applicable laws;
- (2) Materials from a website operated by a governmental entity in that jurisdiction; or
- (3) Materials from a nationally recognized professional association applicable to the profession.

ITEM 8. Amend **661—Chapter 502**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 197~~ Iowa Code chapters 103 and 272C.

ITEM 9. Amend **661—Chapter 506**, title, as follows:

~~MILITARY SERVICE, AND VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY SERVICE MEMBERS FOR ELECTRICIANS AND ELECTRICAL CONTRACTORS~~

ITEM 10. Rescind the definition of "Spouse" in rule **661—506.1(272C)**.

ITEM 11. Amend subrules 506.3(1) and 506.3(2) as follows:

506.3(1) A veteran ~~or a spouse~~ with an electrical license in another jurisdiction may apply for licensure in Iowa through reciprocity, based on the reciprocity procedures for licensed electricians as set out in the administrative rules in effect at the time that the application is made, and in compliance with any agreements with other jurisdictions regarding reciprocity. A veteran ~~or a spouse~~ must pass any examinations required for licensure to be eligible for licensure through reciprocity. A fully completed application for licensure submitted by a veteran ~~or a spouse~~ under this subrule shall be given priority and shall be expedited.

506.3(2) An application shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary histories and, if applicable, a criminal history background check. In addition, the applicant shall provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2) ~~or spouse of an active duty service member of the military forces of the United States~~.

ITEM 12. Adopt the following new rule 661—506.4(272C):

661—506.4(272C) Spouses of military members. A person who is married to an active duty member of the military forces of the United States, and who is accompanying the member on an official permanent change of station, may seek licensure by verification in accordance with rule 661—502.9(272C).

[Filed 6/1/21, effective 8/4/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5733C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rule making related to interest expense deduction adjustments**

The Revenue Department hereby amends Chapter 40, “Determination of Net Income,” Chapter 53, “Determination of Net Income,” and Chapter 59, “Determination of Net Income,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 422.7, 422.35 and 422.61 and 2021 Iowa Acts, Senate File 619.

Purpose and Summary

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

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5612C**. No public comments were received. References to the contingencies affecting Iowa’s conformity with the federal interest expense limitations in Iowa Code sections 422.7(60)“b” and 422.35(27)“b” have been removed from the rules, because after publication of the Notice, those two Iowa Code sections were repealed by 2021 Iowa Acts, Senate File 619, which was signed by Governor Reynolds on June 16, 2021. Some minor technical changes have been made from the Notice as well.

Adoption of Rule Making

This rule making was adopted by the Department on June 9, 2021.

Fiscal Impact

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

Jobs Impact

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

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Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making actions are adopted:

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

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

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

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

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

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

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

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

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

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

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

b. Special rules for partnerships and S corporations.

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

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

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

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

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

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

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

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

a. *Applicable limitation.* For tax year 2019, Iowa conforms to the 30 percent limitation on the business interest expense deduction imposed by IRC Section 163(j). Because of Iowa's fixed

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

EXAMPLE 4: Taxpayer Z has an adjusted taxable income (ATI) of \$100,000 for tax year 2019 and \$80,000 in deductible business interest expense. For federal purposes, Z's business interest expense deduction is limited to \$50,000 (50 percent of ATI) under the CARES Act. However, because Iowa only conforms to the 30 percent limitation imposed by the TCJA, and not the higher CARES Act limitation for 2019, Z's Iowa business interest expense deduction for the year is limited to \$30,000. Z will report this difference by entering a negative \$20,000 adjustment on IA 101, line 3 (Z may have additional adjustments on this line if the current year federal deduction included amounts carried forward from 2018).

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

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

40.85(4) Tax years beginning on or after January 1, 2020. For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation.

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

b. Carryforward.

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

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

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

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

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

40.85(5) Partners and partnerships.

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

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

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

b. Partner-level adjustments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Special rules for partnerships and S corporations.

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

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

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

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

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

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

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

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

EXAMPLE 3: XYZ Corp. has an adjusted taxable income (ATI) of \$100,000 for tax year 2019 and \$80,000 in deductible business interest expense. For federal purposes, XYZ Corp.'s business interest

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

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

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

53.29(4) Tax years beginning on or after January 1, 2020. For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation.

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

b. Carryforward.

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

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

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the company's current-year business interest expense deduction, and the IA 163A to determine the total amount of 2019 disallowed Iowa interest expense amounts, which may be deducted in full on QRS, Inc.'s 2020 Iowa return.

(2) Addition to income for prior-year federal carryforward amounts deducted in the current year. When current-year interest expense is limited at the federal level, the disallowed business interest expense is carried forward to be deducted in future years for federal purposes, when certain conditions are met. See Treas. Reg. Section 1.163(j)-1(b)(10) for the definition of "disallowed business interest expense." Iowa law allows taxpayers to fully deduct current-year business interest expense, and no amounts are carried forward for Iowa purposes. Disallowed business interest expense carryforward amounts from prior years, including excess business interest expense allocated to a partner in a prior year, cannot be deducted for Iowa purposes except as described in subparagraph 53.29(4)"b"(1). All prior-year disallowed business interest expense carryforward amounts deductible under IRC Section 163(j) in the current year at the federal level, including excess business interest expense allocated to a partner in a prior year, must be added back in computing the taxpayer's Iowa income for the year.

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

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

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

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

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

53.29(5) Partners and partnerships.

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

b. Partner-level adjustments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

59.31(2) Tax year 2018. For tax years beginning on or after January 1, 2018, but before January 1, 2019 (tax year 2018), Iowa conforms with the IRC in effect on January 1, 2015, meaning the 30 percent

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limitation on the business interest expense deduction first imposed by IRC Section 163(j) under Public Law 115-97 (TCJA) does not apply for Iowa purposes.

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

b. Special rules for partnerships and S corporations.

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

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

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

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

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

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

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

REVENUE DEPARTMENT[701](cont'd)

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

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

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

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

59.31(4) Tax years beginning on or after January 1, 2020. For tax years beginning on or after January 1, 2020, Iowa does not conform with the IRC Section 163(j) business interest expense deduction limitation.

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

b. Carryforward.

(1) Special one-time carryforward catch-up (tax year 2020 only). For tax years beginning on or after January 1, 2020, but before January 1, 2021 (tax year 2020), taxpayers who filed a 2019 Iowa return are permitted to deduct all interest expense deduction amounts that were disallowed and carried forward under IRC Section 163(j) for Iowa purposes in tax year 2019. This deduction shall be calculated and reported on the taxpayer's 2020 Iowa income tax return using form IA 163A. Excess business interest

REVENUE DEPARTMENT[701](cont'd)

expense amounts carried over from tax year 2018 at the federal level shall not be deducted for Iowa tax purposes in tax year 2020.

EXAMPLE 5: In 2019, X Bank had \$100,000 in current-year business interest expense. X Bank's business interest expense deduction was limited to \$50,000 for federal purposes and limited to \$30,000 for Iowa purposes due to Iowa's nonconformity with the CARES Act for that year. See paragraph 59.31(3) "a." In 2020, X Bank is again subject to an IRC Section 163(j) limitation and is not permitted to deduct any prior-year carryforward amounts for federal purposes. However, because Iowa does not conform to the IRC Section 163(j) limitation for 2020, X Bank may deduct all of the company's current-year business interest expense and all \$70,000 (\$100,000 - \$30,000) of X Bank's disallowed Iowa interest expense carried over from 2019. X Bank must complete the IA 163 in order to calculate the company's current-year business interest expense deduction, and the IA 163A to determine the total amount of 2019 disallowed Iowa interest expense amounts, which may be deducted in full on X Bank's 2020 Iowa return.

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

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

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

59.31(5) Partners and partnerships.

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

b. *Partner-level adjustments.*

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

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

REVENUE DEPARTMENT[701](cont'd)

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

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

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

[Filed 6/11/21, effective 8/4/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5725C

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

Adopted and Filed

Rule making related to waivers

The Soil Conservation and Water Quality Division hereby amends Chapter 8, "Waiver or Variance of Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 159.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

This rule making implements 2020 Iowa Acts, House File 2389, by removing references to "variances" within Chapter 8 and updating the process by which the Division publishes rule waivers.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5576C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Division on May 28, 2021.

SOIL CONSERVATION AND WATER QUALITY DIVISION[27](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 27—Chapter 8.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend 27—Chapter 8, title, as follows:

~~WAIVER OR VARIANCE OF RULES~~

ITEM 2. Amend rule 27—8.1(17A,161A) as follows:

27—8.1(17A,161A) Definition. For purposes of this chapter, a “~~waiver or variance~~” means action by the division which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 27—8.4(17A,161A) as follows:

27—8.4(17A,161A) Criteria for ~~waiver or variance~~. In response to a petition completed pursuant to rule 27—8.6(17A,161A), the division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend rule 27—8.12(17A,161A) as follows:

27—8.12(17A,161A) ~~Summary reports~~ Submission of waiver information. ~~Semiannually, the division shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the division shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the division's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this

SOIL CONSERVATION AND WATER QUALITY DIVISION[27](cont'd)

~~report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

[Filed 6/2/21, effective 8/4/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5726C

VETERINARY MEDICINE BOARD[811]

Adopted and Filed

Rule making related to work experience in jurisdictions without licensure requirements

The Board of Veterinary Medicine hereby amends Chapter 8, "Auxiliary Personnel," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 169.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2627.

Purpose and Summary

New rule 811—8.12(272C) implements 2020 Iowa Acts, House File 2627, by providing the Board with the ability to register a veterinary technician who is moving to Iowa from another jurisdiction that does not license or register these types of positions. An individual who holds at least three years of work experience in another state is eligible to register in Iowa more easily under this rule.

This rule establishes application procedures including documentation of the individual's prior work experience, proof of passing the national and state veterinary technician examinations, verification that the work in another state was similar in scope to what Iowa requires in order to register an individual, and proof of Iowa residency.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 10, 2021, as **ARC 5433C**. A public hearing was held on March 5, 2021, at 1 p.m. in the Wallace State Office Building, along with a conference call option. No one attended the public hearing.

Comments were received that opposed the proposed rule making, arguing that "work experience" should not be an allowable pathway to certification in Iowa. However, 2020 Iowa Acts, House File 2627, requires this option.

After reviewing written comments, the Board removed self-employment as a pathway for the sufficient "work experience" to qualify for certification under the adopted rule. Self-employment for veterinary technicians is not allowed in Iowa.

Adoption of Rule Making

This rule making was adopted by the Board on May 27, 2021.

Fiscal Impact

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

VETERINARY MEDICINE BOARD[811](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 811—Chapter 14.

Review by Administrative Rules Review Committee

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

Effective Date

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

The following rule-making action is adopted:

Adopt the following **new** rule 811—8.12(272C):

811—8.12(272C) Applicants with work experience in jurisdictions without licensure requirements.

8.12(1) *Work experience.* An applicant for initial registration who has relocated to Iowa from another jurisdiction that did not require a professional license/registration to practice in the profession may be considered to have met any educational and training requirements if the person has at least three years of work experience with a scope of practice substantially similar to that of the profession for which registration in Iowa is sought. The three years of work experience must be within the four years preceding the date of application for initial registration. The applicant must satisfy all other requirements, including passing any required examinations, to receive a license.

8.12(2) *Board application.* The applicant must submit the following:

- a. A completed application for registration through work experience.
- b. Payment of the application fee.
- c. Proof of passing both the veterinary technician national examination and Iowa's veterinary technician state examination.

8.12(3) *Required documentation.* An applicant who wishes to substitute work experience in lieu of satisfying applicable education or training requirements shall carry the burden of providing all of the following by submitting relevant documents as part of a completed registration application:

- a. Proof of Iowa residency, which may include one or more of the following:
 - (1) A residential mortgage, lease, or rental agreement;
 - (2) A utility bill;
 - (3) A bank statement;
 - (4) A paycheck or pay stub;
 - (5) A property tax statement;
 - (6) A document issued by the federal or state government;
 - (7) Any other board-approved document that reliably confirms Iowa residency.
- b. Proof of three or more years of work experience within the four years preceding the application for registration, which may include one or more of the following:
 - (1) A letter from the applicant's prior employer documenting the dates of employment;
 - (2) Paychecks or pay stubs; or
 - (3) Any other board-approved evidence of sufficient work experience.

VETERINARY MEDICINE BOARD[811](cont'd)

c. Proof that the work experience was in a practice with a scope of practice substantially similar to that for the registration sought in Iowa, which must include:

- (1) A written statement by the applicant detailing the scope of practice; and
- (2) Business or marketing materials detailing the services provided.

d. Proof that a professional license/registration was not required in the other state, which may include:

- (1) Copies of applicable laws;
- (2) Materials from a website operated by a governmental entity; or
- (3) Materials from a national professional association.

[Filed 6/2/21, effective 8/9/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

ARC 5727C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rule making related to contested case proceedings

The Workforce Development Department hereby amends Chapter 26, "Contested Case Proceedings," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

These amendments remove language allowing the presiding officer to vacate a decision, reopen the record, and schedule a new hearing once a decision has been issued. The existing language can result in situations where a party simultaneously appeals the decision of the presiding officer to the Employment Appeal Board (EAB) and requests a reopening of the record to the Appeals Bureau.

The current language is problematic for three main reasons. First, the existing rule can cause duplication of work or delay in final case resolution, or both, if a party simultaneously files a request to reopen the record and appeals to the EAB. Second, the existing rule causes unnecessary confusion for a party who disagrees with a decision from the Administrative Law Judge. These amendments will make it clear that the proper course of action for such a party before a decision is issued is to request that the record be reopened, while the proper course of action after a decision has been issued is to appeal the decision to the EAB. Finally, these amendments will alleviate confusion for parties who mistakenly believe a request to reopen the record has the same legal effect as filing an appeal and therefore fail to file an appeal after a request to reopen the record is denied.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5561C**. No public comments were received. In Item 2, a minor grammatical change was made, inserting dashes surrounding the phrase "in appropriate cases."

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Adoption of Rule Making

This rule making was adopted by the Department on June 3, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 26.8(3) as follows:

26.8(3) If, for good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. ~~If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.~~

“Good cause” for purposes of this rule is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include, but are not limited to, death, sudden illness, or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling) or other circumstances evidencing an emergency situation which was beyond the party's control and was not reasonably foreseeable. Examples of circumstances that do not constitute good cause include, but are not limited to, a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

ITEM 2. Amend subrule 26.8(5) as follows:

26.8(5) If good cause for postponement or reopening has not been shown, the presiding officer ~~shall~~ may make a decision based upon whatever evidence is properly in the record ~~or—in appropriate cases—may enter default as set forth in rule 871—26.14(17A,96).~~

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

ITEM 3. Amend subrule 26.14(6), introductory paragraph, as follows:

26.14(6) If one or more parties which received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if no decision has been issued and if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

ITEM 4. Amend subrule 26.14(7), introductory paragraph, as follows:

26.14(7) If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if no decision has been issued and if the absent party makes a request in writing to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

[Filed 6/3/21, effective 8/4/21]

[Published 6/30/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.

PUBLIC HEARINGS: POSSIBLE USE OF TELEPHONIC OR ELECTRONIC FORMAT DUE TO COVID-19

To protect public health and promote efficient government operations during the COVID-19 outbreak, the format of a public hearing on a Notice of Intended Action (NOIA) scheduled and published in the Iowa Administrative Bulletin (IAB) may be changed, without further publication in the IAB, from an in-person hearing at a physical location to a hearing conducted solely via telephonic or electronic means. For information on whether the format of a public hearing as published in the IAB has changed and how to participate telephonically or electronically in such a hearing, see the Internet site of the relevant agency or contact the agency directly using the contact information published in the NOIA. See also section 62 of the Governor's proclamation of disaster emergency issued June 25, 2021: <https://governor.iowa.gov/sites/default/files/documents/COVID%20Disaster%20Proclamation%20-%206.25.2021.pdf>.