



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; 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.

JACK EWING, Administrative Code Editor
Publications Editing Office (Administrative Code)

Telephone: 515.281.6048
Telephone: 515.281.3355

Email: Jack.Ewing@legis.iowa.gov
Email: AdminCode@legis.iowa.gov

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 Rulemaking 2023

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. 21 '22	Jan. 11 '23	Jan. 31 '23	Feb. 15 '23	Feb. 17 '23	Mar. 8 '23	Apr. 12 '23	July 10 '23
Jan. 4	Jan. 25	Feb. 14	Mar. 1	Mar. 3	Mar. 22	Apr. 26	July 24
Jan. 20	Feb. 8	Feb. 28	Mar. 15	Mar. 17	Apr. 5	May 10	Aug. 7
Feb. 3	Feb. 22	Mar. 14	Mar. 29	Mar. 31	Apr. 19	May 24	Aug. 21
Feb. 17	Mar. 8	Mar. 28	Apr. 12	Apr. 14	May 3	June 7	Sep. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	Apr. 28	May 17	June 21	Sep. 18
Mar. 17	Apr. 5	Apr. 25	May 10	**May 10**	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	May 26	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 9	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	**June 21**	July 12	Aug. 16	Nov. 13
May 10	May 31	June 20	July 5	July 7	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	July 21	Aug. 9	Sep. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 4	Aug. 23	Sep. 27	Dec. 25
June 21	July 12	Aug. 1	Aug. 16	**Aug. 16**	Sep. 6	Oct. 11	Jan. 8 '24
July 7	July 26	Aug. 15	Aug. 30	Sep. 1	Sep. 20	Oct. 25	Jan. 22 '24
July 21	Aug. 9	Aug. 29	Sep. 13	Sep. 15	Oct. 4	Nov. 8	Feb. 5 '24
Aug. 4	Aug. 23	Sep. 12	Sep. 27	Sep. 29	Oct. 18	Nov. 22	Feb. 19 '24
Aug. 16	Sep. 6	Sep. 26	Oct. 11	Oct. 13	Nov. 1	Dec. 6	Mar. 4 '24
Sep. 1	Sep. 20	Oct. 10	Oct. 25	**Oct. 25**	Nov. 15	Dec. 20	Mar. 18 '24
Sep. 15	Oct. 4	Oct. 24	Nov. 8	**Nov. 8**	Nov. 29	Jan. 3 '24	Apr. 1 '24
Sep. 29	Oct. 18	Nov. 7	Nov. 22	**Nov. 22**	Dec. 13	Jan. 17 '24	Apr. 15 '24
Oct. 13	Nov. 1	Nov. 21	Dec. 6	**Dec. 6**	Dec. 27	Jan. 31 '24	Apr. 29 '24
Oct. 25	Nov. 15	Dec. 5	Dec. 20	**Dec. 20**	Jan. 10 '24	Feb. 14 '24	May 13 '24
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Dec. 20	Jan. 10 '24	Jan. 30 '24	Feb. 14 '24	Feb. 16 '24	Mar. 6 '24	Apr. 10 '24	July 8 '24

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
5	Wednesday, August 16, 2023	September 6, 2023
6	Friday, September 1, 2023	September 20, 2023
7	Friday, September 15, 2023	October 4, 2023

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****

ALCOHOLIC BEVERAGES DIVISION[185]

Retail alcohol licenses, amend chs 1, 4, 5, 8, 18; rescind ch 17 IAB 7/26/23 ARC 7049C	Alcoholic Beverages Division Boardroom 1918 Hulsizer Rd. Ankeny, Iowa Video/conference call: meet.google.com/ukf-yhcd-gux	August 15, 2023 2 to 3 p.m.
	Alcoholic Beverages Division Boardroom 1918 Hulsizer Rd. Ankeny, Iowa Video/conference call: meet.google.com/juv-hiog-okj	August 16, 2023 9 to 10 a.m.

COLLEGE STUDENT AID COMMISSION[283]

Future ready Iowa skilled workforce grant program, ch 16 IAB 7/26/23 Regulatory Analysis	475 S.W. Fifth Street, Suite D Des Moines, Iowa	August 16, 2023 4 p.m.
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ECONOMIC DEVELOPMENT AUTHORITY[261]

Tax credit programs, 43.3, 47.3(3), 48.4(1), 116.3(6), 116.6 IAB 7/26/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	August 16, 2023 10 to 10:30 a.m.
Renewable chemical production tax credit, ch 81 IAB 7/26/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	August 16, 2023 9:30 to 10 a.m.

EDUCATION DEPARTMENT[281]

Criteria for grants, ch 7 IAB 8/9/23 Regulatory Analysis	State Board Room Grimes State Office Bldg. Des Moines, Iowa	August 29, 2023 9 to 10 a.m.
Educating homeless children and youth, ch 33 IAB 8/9/23 Regulatory Analysis	State Board Room Grimes State Office Bldg. Des Moines, Iowa	August 29, 2023 9 to 10 a.m.
School breakfast and lunch program; nutritional content standards for other foods and beverages, ch 58 IAB 8/9/23 Regulatory Analysis	State Board Room Grimes State Office Bldg. Des Moines, Iowa	August 29, 2023 9 to 10 a.m.
Gifted and talented programs, ch 59 IAB 8/9/23 Regulatory Analysis	State Board Room Grimes State Office Bldg. Des Moines, Iowa	August 29, 2023 9 to 10 a.m.
Programs for students who are English learners, ch 60 IAB 8/9/23 Regulatory Analysis	State Board Room Grimes State Office Bldg. Des Moines, Iowa	August 29, 2023 9 to 10 a.m.

EDUCATION DEPARTMENT[281](cont'd)

Programs for at-risk early elementary students, ch 65
IAB 8/9/23
Regulatory Analysis

State Board Room
Grimes State Office Bldg.
Des Moines, Iowa

August 29, 2023
9 to 10 a.m.

Standards for school administration manager programs, ch 82
IAB 8/9/23
Regulatory Analysis

State Board Room
Grimes State Office Bldg.
Des Moines, Iowa

August 29, 2023
9 to 10 a.m.

Business procedures and deadlines, ch 99
IAB 8/9/23
Regulatory Analysis

State Board Room
Grimes State Office Bldg.
Des Moines, Iowa

August 29, 2023
9 to 10 a.m.

REVENUE DEPARTMENT[701]

Setoff of debts owed to public agencies, ch 26
IAB 8/9/23 **ARC 7054C**

Rooms 429 and 430
Hoover State Office Bldg.
Google Meet:
meet.google.com/ajx-eicx-hum
Via telephone: 1.502.527.1252
When prompted: 231 953 134?#
Mute telephone or microphone upon entering the meeting

August 29, 2023
9 to 10 p.m.

Capital gain deduction; net income from a farm tenancy agreement covering real property, 302.38, 302.87, 302.88
IAB 7/26/23 **ARC 7050C**

Via video/conference call
Contact Kurt Konek
Des Moines, Iowa
Email: kurt.konek@iowa.gov

August 17, 2023
2 to 3 p.m.
(If requested)

UTILITIES DIVISION[199]

Nonutility services—recordkeeping and cost allocations, ch 33
IAB 8/9/23
Regulatory Analysis

Board Hearing Room
1375 East Court Ave.
Des Moines, Iowa

September 6, 2023
9 a.m.

Nonutility service, ch 34
IAB 8/9/23
Regulatory Analysis

Board Hearing Room
1375 East Court Ave.
Des Moines, Iowa

September 6, 2023
10 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Physician assistants, 24.23(6), 24.25(35), 24.26
IAB 8/9/23
Regulatory Analysis

Iowa Workforce Development
1000 East Grand Ave.
Des Moines, Iowa

August 29, 2023
10 a.m.

The following list will be updated as changes occur.

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

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

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

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Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 7
“Criteria for Grants”

Iowa Code section authorizing rulemaking: 256.7(5)
State or federal law(s) implemented by the rulemaking: Iowa Code section 256.7(9)

Public Hearing

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

August 29, 2023
9 to 10 a.m.

State Board Room
Grimes State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Thomas A. 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

Purpose and Summary

The proposed chapter is designed to provide a fair, transparent, and uniform process for competitive grants issued by the Department. The Department routinely sponsors competitive grants supported by state or federal funds. There have been very few appeals, and the Department’s actions have been upheld on appeal.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Grant applicants and the Department bear the costs of compliance.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa taxpayers will benefit from fair and well-managed competitive grant processes.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The costs of completing a grant application and evaluating a grant application will vary based on the nature of each grant solicitation.
 - Qualitative description of impact:
The chapter ensures fair grant applications and evaluation, which is a qualitative benefit to Iowa’s taxpayers.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
These costs will vary based on the nature of each grant solicitation.

- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The current chapter contains unnecessary and duplicative language.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Department considered repealing the chapter and embedding these protections in each individual grant application; however, the benefits of fairness and transparency may be lost if these provisions, especially appeal rights and procedures, were not adopted as rules.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered repealing the chapter and embedding these provisions in individual competitive grant applications.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department had concerns about procedural and substantive fairness, especially if appeal rights and procedures were not adopted as rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The Department is seeking input on how this chapter could be revised to reduce burden on small businesses; however, the Department's focus is on obtaining the best outcomes and value for Iowa's taxpayers.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7 CRITERIA FOR GRANTS

281—7.1(256,17A) General. To ensure equal access and objective evaluation of applicants for competitive program grant funds made available by the Iowa department of education (department),

grant application materials are to contain, at minimum, specific content. The department develops competitive program grant application packets in accordance with these rules unless in conflict with appropriation language, the Iowa Code, the Iowa Administrative Code, federal regulations, or interagency agreements between the department and other state agencies.

281—7.2(256,17A) Definitions. For the purpose of these rules, the following definitions apply:

“*Competitive program grant*” means the collective activities of a competitive grant funded through the department.

“*Program period*” means the period of time that the department intends to support the program without requiring the recompetition for funds. The program period is specified within the grant application.

“*Service delivery area*” means the defined geographic area for delivery of program services.

281—7.3(256,17A) Grant application contents. All competitive program grant application materials made available by the department are to include the following:

1. Funding source.
2. Program period.
3. Description of eligible applicants.
4. Services to be delivered.
5. Service delivery area.
6. Target population to be served (if applicable).
7. Funding purpose.
8. Funding restrictions.
9. Funding formula (if any).
10. Matching requirement (if any).
11. Reporting requirements.
12. Performance criteria.
13. Need for letters of support or other materials (if applicable).
14. Application due date.
15. Anticipated date of awarding grant.
16. Required components of submitted grant applications.
17. An explanation of the review process and the review criteria to be used by application evaluators, including the number of points allocated per evaluated component.
18. Appeal process in the event an application is denied.

281—7.4(256,17A) Review process. The review process to be followed in determining the amount of funds to be approved for any competitive program grant will be described in the application, including the review criteria and point allocation for each criterion.

7.4(1) The competitive program grant review committee will be determined by the appropriate division administrator. The review committee members will allocate points per review criterion when conducting the review.

7.4(2) In the event competitive program grant applications receive an equal number of points that necessitates a further determination of whether an applicant is to receive a grant, a second review will be conducted by the division administrator or the division administrator’s designee.

281—7.5(290,17A) Appeal of grant denial or termination. Any applicant may appeal the denial of a properly submitted competitive program grant application or the unilateral termination of a competitive program grant to the director of the department.

7.5(1) Appeals are to be:

- a. In writing,
- b. Received within ten working days of the date of the notice of decision, and

c. Based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members.

7.5(2) The hearing and appeal procedures found in 281—Chapter 6 that govern the director’s decisions apply to any appeal of denial or termination.

7.5(3) In the notice of appeal, the grantee will give a short and plain statement of the reasons for the appeal.

7.5(4) The director will issue a decision within a reasonable time, not to exceed 60 days from the date of the hearing.

These rules are intended to implement Iowa Code section 256.9(7).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 33
“Educating Homeless Children and Youth”

Iowa Code section authorizing rulemaking: 256.7(5)
State or federal law(s) implemented by the rulemaking: McKinney-Vento Homeless Assistance Act

Public Hearing

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

August 29, 2023
9 to 10 a.m.

State Board Room
Grimes State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Thomas A. 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

Purpose and Summary

This proposed rulemaking is designed to provide protections, including providing educational stability, for students who are experiencing homelessness and their families.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts will bear the cost of compliance with this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Homeless students and their families will benefit from this proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
This rulemaking provides support to Iowa’s homeless students, including by reducing disruption of educational services. Around 1 percent of Iowa’s students experience homelessness, the fifth lowest percentage in the nation.
 - Qualitative description of impact:
There is a nonquantifiable benefit to students experiencing homelessness of a public policy that clearly articulates their rights. The proposed rulemaking removes outdated and unnecessary language.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The State devotes 1.0 full-time equivalent (FTE) position to support implementation of the current chapter and will retain the same FTE position after adoption of the proposed chapter.

- Anticipated effect on state revenues:

There will be no net effect on state revenues as a result of the changes made in the proposed chapter.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There will be no net cost or benefit as a result of the changes made in the proposed chapter.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are none noted.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered adopting nonregulatory guidance in lieu of rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The State is required to set state policies, which, under Iowa law, is done through the rulemaking process.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33 EDUCATING HOMELESS CHILDREN AND YOUTH

281—33.1(256) Definitions.

“*District of origin*” means the public school district in Iowa in which a child was last enrolled or which a child last attended when permanently housed.

“*Guardian*” means a person of majority age with whom a homeless child or youth of school age is living or a person of majority age who has accepted responsibility for the homeless child or youth, whether or not the person has legal guardianship over the child or youth.

“Homeless child or youth” means a child or youth from the age of 3 years through 21 years who meets the definition in Iowa Code section 282.1(2)“a”(2).

“Preschool child” means a child who is three, four, or five years of age before September 15.

“School of origin” means the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool. When the child or youth completes the final grade level served by the school of origin, the term “school of origin” includes the designated receiving school at the next grade level for all feeder schools.

“Unaccompanied homeless youth” means a homeless youth not in the physical custody of a parent or guardian.

281—33.2(256) Responsibilities of school districts. A public school district (district) shall do all of the following:

33.2(1) The district will locate and identify homeless children or youth within the district, whether or not they are enrolled in school.

33.2(2) The district will post, at community shelters and other locations in the district where services or assistance is provided to the homeless, information regarding the educational rights of homeless children and youth and encouraging homeless children and youth to enroll in the public school.

33.2(3) The district will examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children or youth, consistent with these rules. Examination and revision include identifying and removing barriers that prevent such children and youth from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with state, local, and school policies. Examination and revision also include ensuring that homeless children and youth who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the state and local levels. School districts are encouraged to cooperate with agencies and organizations for the homeless to explore comprehensive, equivalent alternative educational programs and support services for homeless children and youth when necessary to implement the intent of these rules.

33.2(4) The district will enact a policy prohibiting the segregation of a homeless child or youth from other students enrolled in the public school district.

33.2(5) The district immediately will enroll a homeless child or youth, pending resolution of any dispute regarding in which school the child or youth should be enrolled.

33.2(6) The district will determine school placement based on the best interests of a homeless child or youth. The district, to the extent feasible, will keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child’s or youth’s parent or guardian. If the child or youth becomes permanently housed during an academic year, enrollment continues in the school of origin for the remainder of that academic year unless the parent or guardian agrees otherwise.

33.2(7) The district will designate as the district’s local educational agency liaison for homeless children and youth an appropriate staff person who is able to and has been trained to carry out the duties specified in 42 U.S.C. Section 11432(g)(6) and coordinates and collaborates with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth.

281—33.3(256) School records; student transfers.

33.3(1) The school records of each homeless child or youth will be maintained so that the records are available in a timely fashion when a child or youth enters a new school district and in a manner consistent with federal statutes and regulations related to student records.

33.3(2) Upon notification that a homeless student intends to transfer out of the district, a school district will immediately provide copies of the student’s permanent and cumulative records, or other evidence of placement or special needs, to the homeless child or youth or the parent or guardian of a homeless child or youth who may take the copies with them.

33.3(3) Upon the enrollment of a homeless child or youth, a school district will accept copies of records, or other evidence of placement provided by the homeless child, youth, or the parent or guardian of the homeless child or youth, for purposes of immediate placement and delivery of education and support services. Thereafter, the receiving school will request copies of the official records from the sending school. The receiving school shall not dismiss or deny further education to the homeless child or youth solely on the basis that the prior school records are unavailable.

281—33.4(256) Immunization.

33.4(1) Consistent with the provisions of Iowa Code section 139A.8 and rules of the department of health and human services, a public school shall not refuse to enroll or exclude a homeless child or youth for lack of immunization records if any of the following situations exist. The parent or guardian of a homeless child or youth or a homeless child or youth:

a. Offers a statement signed by a doctor licensed by the state board of medical examiners specifying that in the doctor's opinion the immunizations required would be injurious to the health and well-being of the child or youth or to any member of the child's or youth's family or household.

b. Provides an affidavit stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the homeless child or youth is a member or adherent, unless the state board of health has determined and the director of health has declared an emergency or epidemic exists.

c. Offers a statement that the child or youth has begun the required immunizations and is continuing to receive the necessary immunizations as rapidly as is medically feasible.

d. States that the child or youth is a transfer student from any other school, and that school confirms the presence of the immunization record.

33.4(2) The school district will make every effort to locate or verify the official immunization records of a homeless child or youth based upon information supplied by the child, youth, parent, or guardian. In circumstances where it is admitted that the homeless child or youth has not received some or all of the immunizations required by state law for enrollment and none of the exemptions listed above is applicable, the district will refer the child, youth, and parent or guardian to the local board of health for the purpose of immunization, and the school is to provisionally enroll the child or youth in accordance with paragraph 33.4(1) "c" or "d" above.

281—33.5(256) Waiver of fees and charges encouraged.

33.5(1) If a child or youth is determined to be homeless as defined by these rules, and is not otherwise eligible for a waiver of fees under 281—Chapter 18, a school district is encouraged, subject to state law, to waive any fees or charges that would present a barrier to the enrollment or transfer of the child or youth, such as fees or charges for textbooks, supplies, or activities.

33.5(2) A homeless child or youth, or the parent or guardian of a homeless child or youth, who believes a school district has denied the child or youth entry to or continuance of an education in the district on the basis that mandatory fees cannot be paid may appeal to the department of education using the dispute resolution mechanism in rule 281—33.8(256).

281—33.6(256) Waiver of enrollment requirements encouraged; placement.

33.6(1) If a homeless child or youth seeks to enroll or to remain enrolled in a public school district, the district is encouraged to waive any requirements, such as mandatory enrollment in a minimum number of courses, which would constitute barriers to the education of the homeless child or youth.

33.6(2) In the event that a school district is unable to determine the appropriate grade or placement for a homeless child or youth because of inadequate, nonexistent, or missing student records, the district will administer tests or utilizes otherwise reasonable means to determine the appropriate grade level for the child or youth.

281—33.7(256) Residency of homeless child or youth.

33.7(1) A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of homeless in these rules is entitled to receive a free, appropriate public education and necessary support services in either of the following:

- a.* The district in which the homeless child or youth is actually residing, or
- b.* The district of origin.

The deciding factor as to which district has the duty to enroll the homeless child or youth is the best interests of the child or youth. In determining the best interests of the child or youth, the district(s), to the extent feasible, will keep a homeless child or youth in the district of origin, except when doing so is contrary to the wishes of the parent or guardian of the child or youth. In the case of an unaccompanied homeless youth, the local educational agency liaison assists in the placement or enrollment decision, taking into consideration the views of the unaccompanied homeless youth. If the child or youth is placed or enrolled in a school other than within the district of origin or other than a school requested by the parent or guardian or unaccompanied homeless youth, the district will provide a written explanation, including notice of the right to appeal under rule 281—33.8(256), to the parent or guardian or unaccompanied homeless youth.

33.7(2) The choice regarding placement is made regardless of whether the child or youth is living with a homeless parent or has been temporarily placed elsewhere by the parent(s); or, if the child or youth is a runaway or otherwise without benefit of a parent or legal guardian, where the child or youth has elected to reside.

33.7(3) Insofar as possible, a school district will not require a homeless student to change attendance centers within a school district when a homeless student changes places of residence within the district.

33.7(4) If a homeless child or youth is otherwise eligible and has made proper application to utilize the provisions of Iowa Code section 282.18 (open enrollment) the child or youth will not be denied the opportunity for open enrollment on the basis of homelessness.

281—33.8(256) Dispute resolution.

33.8(1) If a homeless child or youth is denied access to a free, appropriate public education in either the district of origin or the district in which the child or youth is actually living, or if the child's or youth's parent or guardian believes that the child's or youth's best interests have not been served by the decision of a school district, an appeal may be made to the department of education as follows:

a. If the child is identified as a special education student under Iowa Code chapter 256B, the manner of appeal is by letter from the homeless child or youth, or the homeless child's or youth's parent or guardian, to the department of education as established in Iowa Code section 256B.6 and 281—Chapter 41 and governed by that chapter and the order of the presiding administrative law judge.

b. If the child is not eligible for special education services, the manner of appeal is by letter from the homeless child or youth or the homeless child's or youth's parent or guardian to the director of the department of education or a designated administrative law judge. The provisions of 281—Chapter 6 apply insofar as possible; however, the hearing shall take place in the district where the homeless child or youth is located or at a location convenient to the appealing party.

c. At any time a school district denies access to a homeless child or youth, the district will notify in writing the child or youth and the child's or youth's parent or guardian, if any, of the right to appeal and manner of appeal to the department of education for resolution of the dispute and shall document the notice given. The notice will contain the name, address, and telephone number of the legal services office in the area.

33.8(2) This chapter will be considered by the presiding officer or administrative law judge assigned to hear the case.

33.8(3) Mediation and settlement of the dispute short of hearing are permitted and encouraged.

33.8(4) While dispute resolution is pending, the child or youth is enrolled immediately in the school of choice of the child's parent or guardian or the school of choice of the unaccompanied homeless youth. The school of choice is to be an attendance center either within the district of residence or the district of origin of the child or youth.

281—33.9(256) Transportation of homeless children and youth.

33.9(1) General. A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of homeless in these rules shall not be denied access to a free, appropriate public education solely on the basis of transportation. The necessity for and feasibility of transportation are to be considered, however, in deciding which of two districts would be in the best interests of the homeless child or youth. The dispute resolution procedures in rule 281—33.8(256) apply to disputes arising over transportation issues.

33.9(2) Entitlement. Following the determination of the homeless child's or youth's appropriate school district under rule 281—33.7(256) or 281—33.9(256), transportation will be provided to the child or youth in the following manner:

a. If the appropriate district is determined to be the district in which the child or youth is actually living, transportation for the homeless child or youth is to be provided on the same basis as for any resident child of the district, as established by Iowa Code section 285.1 or local board policy.

b. If the appropriate district is determined to be a district other than the district in which the child or youth is actually living, the district in which the child or youth is actually living (sending district) and the district of origin will agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the receiving district. If these districts are unable to agree upon such method, the responsibility and costs for transportation will be shared equally.

281—33.10(256) School services.

33.10(1) The school district designated for the homeless child's or youth's enrollment will make available to the child or youth all services and assistance, including the following services, on the same basis as those services and assistance are provided to resident pupils:

- a.* Compensatory education;
- b.* Special education;
- c.* English as a second language;
- d.* Career and technical education courses or programs;
- e.* Programs for gifted and talented pupils;
- f.* Health services;
- g.* Preschool (including Head Start);
- h.* Before- and after-school child care;
- i.* Food and nutrition programs;
- j.* School counseling services to advise homeless students and prepare and improve the readiness of such students for college.

33.10(2) A district must include homeless students in its academic assessment and accountability system under the federal Every Student Succeeds Act, P.L. 114-95, and report disaggregated data regarding the academic achievement and graduation rates for homeless children, as set forth in that Act.

These rules are intended to implement the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431, et seq.), as reauthorized December 10, 2015, by Title IX, Part A, of the Every Student Succeeds Act.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 58
 “School Breakfast and Lunch Program;
 Nutritional Content Standards for Other Foods and Beverages”

Iowa Code section authorizing rulemaking: 256.7(5)

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 283A and section 256.7

Public Hearing

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

August 29, 2023
 9 to 10 a.m.

State Board Room
 Grimes State Office Building
 Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Thomas A. 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

Purpose and Summary

The proposed chapter implements federal requirements for school lunch, school breakfast, and other foods and beverages. In the 2018-2019 school year, Iowa schools served 16,700,000 breakfasts and 60,200,000 lunches. Nutritious school meals improve academic, behavioral, and health outcomes for students and families.

The proposed rules eliminate unnecessary and obsolete language by adopting binding federal regulations by reference.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts will bear the cost of compliance with this proposed chapter.
 - Classes of persons that will benefit from the proposed rulemaking:
Students who eat school meals, including students who are eligible for free or reduced price lunches, and their families will benefit from this proposed chapter.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Costs associated with compliance include meal patterns, providing free or reduced price meals, and limitation on collection activities. These costs are supported in part by an allocation from the United States Department of Agriculture and a state appropriation.

- Qualitative description of impact:
The impact will be improved academic, behavioral, and health outcomes for students and families.
- 3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The Department has a bureau dedicated to supporting this chapter. Its activities are supported by state set aside from a federal appropriation and from a state appropriation.
 - Anticipated effect on state revenues:
There will be no net effect on state revenues as a result of the changes made in the proposed chapter.
- 4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
There will be no net cost or benefit as a result of the changes made in the proposed chapter.
- 5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
There are none noted.
- 6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
The Department considered adopting nonregulatory guidance in lieu of a chapter. The Department also considered maintaining the current chapter with updates.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The State is required to establish rules; however, having detailed state rules in addition to federal regulations would have been unnecessary, burdensome, and confusing.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 58 and adopt the following **new** chapter in lieu thereof:

PROGRAMS ADMINISTRATION
TITLE XII

CHAPTER 58

SCHOOL BREAKFAST AND LUNCH PROGRAM; NUTRITIONAL

CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

281—58.1(256,283A) School breakfast and lunch program. The following regulations from the United States Department of Education’s Food and Nutrition Service governing the National School Lunch and School Breakfast programs and effective as of [the effective date of this rulemaking] are incorporated by reference: 7 CFR Parts 210, 215, 220, 225, 226, 227, 235, 240, 245, and 250, as well as related procurement regulations at 2 CFR Sections 200.317 through 200.326.

281—58.2(256) Nutritional content standards for other foods and beverages. The following regulation is incorporated by reference: 7 CFR Section 210.11.

These rules are intended to implement Iowa Code chapter 283A and sections 256.7(29) and 256.9(51).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 59
“Gifted and Talented Programs”

Iowa Code section authorizing rulemaking: 257.42(4)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 257.42 et seq.

Public Hearing

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

August 29, 2023
9 to 10 a.m.

State Board Room
Grimes State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Thomas A. Mayes
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Email: thomas.mayes@iowa.gov

Purpose and Summary

The proposed rulemaking implements state requirements for gifted education. Eight percent of Iowa public school enrollment, or 38,471 students, has been identified as gifted and talented in the 2022-23 school year.

The rulemaking eliminates several instances where statutory text was reproduced verbatim. The Department proposes reducing a large number of restrictive terms. The Department resequenced and consolidated certain subrules to improve readability. The Department removed certain language (the reference to what a program teacher-coordinator is entitled to do) from the subrule concerning staff qualifications because that matter is within the jurisdiction of the Board of Educational Examiners.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts will bear the cost of compliance with the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Students who are identified as gifted, as well as their teachers and families, will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

The costs associated with the rulemaking are addressed with categorical funding in the State's school funding formula. For the 2021-22 school year, the state allocation was \$32,438,638, with a statewide required local match of \$10,812,872, for a total of \$43,251,510.

- Qualitative description of impact:

The rulemaking is expected to improve academic, behavioral, and health outcomes for students and families.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department has 1.0 full-time equivalent position dedicated to implementing both the current Chapter 59 and this proposed rulemaking that rescinds and replaces Chapter 59.

- Anticipated effect on state revenues:

There will be no net effect on state revenues as a result of the changes made in the proposed chapter.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There is no net cost or benefit between the current and proposed rules.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are none noted.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered adopting nonregulatory guidance in lieu of rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The State is required to establish rules. Consequently, the Department sought to have less burdensome and more flexible rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 59 and adopt the following **new** chapter in lieu thereof:

CHAPTER 59
GIFTED AND TALENTED PROGRAMS

281—59.1(257) General principles. Gifted and talented programs shall be provided by a school district and may be made available to eligible students as a cooperative effort between school districts or through cooperative arrangements between school districts and other educational agencies. It is the responsibility of school districts to ensure that the programs comply with state statute and this chapter.

281—59.2(257) Definitions. For the purposes of this chapter, the following definitions apply.

“*Department*” means the department of education.

“*Gifted and talented children*” means the same as defined in Iowa Code section 257.44. For purposes of that section, the following definitions apply.

1. “Creative thinking” refers to students who have advanced insight, outstanding imagination and innovative reasoning ability. Such students possess outstanding ability to integrate seemingly unrelated information in formulating unique ideas, insights, solutions, or products.

2. “General intellectual ability” refers to students who can learn at a faster pace, master higher levels of content and handle abstract concepts at a significantly higher level than expected, given the student’s chronological age and experiences.

3. “Leadership ability” refers to those students who possess outstanding potential or demonstrated ability to exercise influence on decision making. These students may be consistently recognized by their peers, may demonstrate leadership behavior through school and nonschool activities or may evidence personal skills and abilities that are characteristic of effective leaders.

4. “Specific ability aptitude” refers to those students who have exceptionally high achievement or potential and a high degree of interest in a specific field of study.

5. “Visual or performing arts ability” refers to students who demonstrate or indicate potential for outstanding aesthetic production or creativity in areas such as art, dance, music, drama, and media production.

“*Program budget*” is a budget consisting of a listing of the estimated direct program expenditures, by function and object, that are necessary to accomplish the goals of the program in meeting the needs of identified students, along with a listing of the sources of revenue and, if necessary, the amounts of fund balance to be applied.

281—59.3(257) Program plan. The program plan submitted by school districts will include the elements set forth in Iowa Code section 257.43.

281—59.4(257) Responsibilities of school districts. A school district’s program under this chapter shall meet the following criteria.

59.4(1) Development of goals and objectives. A school district will establish goals and objectives for the following:

- a. Curriculum and instructional strategies.
- b. Student outcomes.
- c. Program management and administration.
- d. Program development.

59.4(2) Development of curriculum and instructional strategies. The program of instruction will consist of content and teaching strategies that reflect the accelerative pace, intellectual processes and creative abilities that characterize gifted and talented students. A linkage among the selection of students, the anticipated student outcomes and the special instructional programs will be evident. Learning activities will provide for the development of skills that are beyond the scope of the regular classroom, introduce advanced concepts and contents, and offer students a greater latitude of inquiry

than would be possible without the specialized instructional program. Specialized instructional activities are those not ordinarily found in the regular school program and may include the following:

a. A special curriculum supplementing the regular curriculum, using a high level of cognitive and affective concepts and processes.

b. Flexible instructional arrangements, such as special classes, seminars, resource rooms, independent study, student internships, mentorships, research field trips, and research centers.

59.4(3) *Student enrollment.* Students will be involved in a gifted and talented program for a sufficient portion of the regularly scheduled school time to ensure that projected student outcomes are likely to be achieved.

59.4(4) *Personalized education plan.* Best practice dictates that the services provided for each student placed in a gifted and talented program be contained in a written, personalized gifted and talented plan. Personalized education plans should be in writing and reviewed at periodic intervals in accordance with the changing needs of the student. The following items are suggested for inclusion in a student's personalized education plan, but this is neither a mandatory nor an exhaustive list:

a. Relevant background data, assessment of present needs and projections for future needs. Relevant information may include the student's leadership ability, interest inventories, learning characteristics, and learning goals.

b. The nature and extent of the gifted and talented services provided to the student, including indirect services, such as consultative services or other supportive assistance provided to a regular classroom teacher. Other services may include modifications to curriculum and acceleration of the student's curriculum.

c. Personnel responsible for the services provided to the student, as well as those responsible for monitoring and evaluating the student's progress.

59.4(5) *Student identification criteria and procedures.* Students will be placed in a gifted and talented program in accordance with systematic and uniform identification procedures that encompass all grade levels and that are characterized by the following:

a. Identification will be for the purpose of determining the appropriateness of placement in a gifted and talented program, rather than for categorically labeling a student.

b. The decision to provide a student with a gifted and talented program will be based on a comprehensive appraisal of the student, consideration of the nature of the available gifted and talented program and an assessment of actual and potential opportunities within the student's regular school program.

c. Multiple criteria will be used in identifying a student, with no single criteria eliminating a student from participation. Criteria will combine subjective and objective data, including data with direct relevance to program goals, objectives and activities.

d. In the event that the number of eligible students exceeds the available openings, participants will be selected according to the extent to which they can benefit from the program.

e. Each identified student's progress will be reviewed at least annually to consider modifications in program or student placement.

59.4(6) *Evaluation.* The school district will give attention to the following in its evaluation design:

a. Evaluation of gifted and talented programs will be for the purpose of measuring program effects and providing information for program improvement.

b. Evaluation should be conducted for each program level where objectives have been established.

c. Both cognitive and affective components of student development should be evaluated.

d. Evaluation findings should report results based on actual accomplishments by the gifted and talented students or their teachers, which are a direct result of the project, program, or activity.

59.4(7) *Staff utilization plan.* Staff will be deployed to ensure quality gifted and talented programs by employing the following procedures:

a. A designated staff person will be responsible for the overall program coordination throughout the school district.

b. The teaching staff of the gifted and talented program should work with the regular classroom teachers to assess, plan, carry out instruction, and evaluate outcomes.

c. Coordination time will be made available to staff providing gifted and talented programs to allow staff to perform professional responsibilities.

59.4(8) *Staff professional development.* Periodic professional development will be offered for all classroom teachers to maintain and update understandings and skills about individualizing programs for identified gifted and talented students. A staff development plan for personnel responsible for gifted and talented programs will be provided and will be based upon the assessed needs of the gifted and talented instructional and supervisory personnel.

59.4(9) *Qualifications of personnel.* Instructional personnel providing programs for gifted and talented students should have preservice or in-service preparation in gifted and talented education that is commensurate with the extent of their involvement in the gifted and talented program. The gifted and talented program teacher-coordinator will hold an endorsement allowing the holder to serve as a teacher or a coordinator of programs for the gifted and talented from the prekindergarten level through grade 12.

59.4(10) *Fiscal and accountability principles.*

a. When programs are jointly provided by two or more school districts or by a school district in cooperation with another educational agency, the budget will specify how each cooperating school district or agency will determine the portion of the program costs to be provided by each school district or agency and will provide a budget that specifies the contribution of each school district or agency.

b. Gifted and talented categorical funding will be used only for expenditures directly related to providing the gifted and talented program described in the program plan. Appropriate expenditures, inappropriate expenditures, and financial management provisions are set forth in 281—Chapter 98.

c. School districts will include and identify the detail of financial transactions related to gifted and talented resources, expenditures, and carryforward balances on their certified annual report, using the account coding appropriate to the gifted and talented program as defined by Uniform Financing Accounting for Iowa School Districts and area education agencies. Each school district will certify its certified annual report following the close of the fiscal year but no later than September 15.

281—59.5(257) Responsibilities of area education agencies.

59.5(1) When a written request is received from one or more local school boards, an area education agency will establish and operate a gifted and talented advisory council under Iowa Code sections 257.48 and 257.49.

59.5(2) Staff of the area education agency will cooperate with school districts in the identification and placement of gifted and talented students. Cooperation may include:

- a. Assisting local school district personnel in the interpretation of available student data.
- b. Assistance in the development of the identification plan.
- c. Providing for psychological testing in individual cases when available data contains significant inconsistencies or in other circumstances when additional data may be necessary for determining the appropriateness of the student placement.

281—59.6(257) Responsibilities of the department. The department will review documentation submitted by school districts and area education agencies regarding the school districts' and area education agencies' gifted and talented programs and financial transactions. The department may request that the staff of the auditor of state conduct an independent program audit to verify that the gifted and talented programs conform to a school district's program plans. The department will provide technical assistance to school districts and to area education agencies in the development of gifted and talented programs.

These rules are intended to implement Iowa Code sections 257.42 through 257.49.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 60
“Programs for Students Who Are English Learners”

Iowa Code sections authorizing rulemaking: 256.7(31)“c,” 257.31(5)“j” and 280.4
State or federal law(s) implemented by the rulemaking: Iowa Code section 280.4

Public Hearing

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

August 29, 2023
9 to 10 a.m.

State Board Room
Grimes State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Thomas A. 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

Purpose and Summary

This proposed rulemaking implements state and federal requirements for the education of English learners. The percentage of K-12 English learner students was 6.6 percent for public schools and 4.2 percent for nonpublic schools for the 2021-2022 school year.

The proposed chapter provides a reduced regulatory footprint by eliminating obsolete language, updating other language, and providing clearer guidance for nonpublic schools that serve English learners.

Iowa Code section 280.4 requires nonpublic schools to serve English learners; however, current Chapter 60 purports to require nonpublic schools to serve English learners only if those services could be provided by public school districts. This proposed chapter would require nonpublic schools to serve all English learners; however, the standard would be minor adjustments. This requirement and standard are consistent with other laws where nonpublic schools are expected to provide services (e.g., Section 504 of the Rehabilitation Act of 1973).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts will bear the cost of compliance with this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Students who are identified as English learners, as well as their teachers and families, will benefit from this proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The costs associated with this rulemaking are addressed with categorical funding in the State's school funding formula.

- Qualitative description of impact:

This rulemaking will improve academic, behavioral, and health outcomes for students and families.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department has 1.0 full-time equivalent (FTE) position dedicated to implementing the current chapter and will retain the same FTE position after adoption of the proposed chapter.

- Anticipated effect on state revenues:

There will be no net effect on state revenues as a result of the changes made in the proposed chapter.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There is no net cost or benefit between current and proposed rules.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are none noted.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered adopting nonregulatory guidance in lieu of rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The State is required to establish rules; however, the Department sought to have less burdensome and more flexible rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 60 and adopt the following **new** chapter in lieu thereof:

CHAPTER 60
PROGRAMS FOR STUDENTS WHO ARE ENGLISH LEARNERS

281—60.1(280) Definitions. As used in these rules, the following definitions apply:

“Bilingual instruction” refers to a program of instruction in English and the native language of the student designed to enable students to become proficient in English and in academic content areas at an age- and grade-appropriate level.

“Educational and instructional model” means an instructional model, strategy, method, or skill that provides a framework of instructional approaches to guide decision making about teaching and learning. Based on the needs of particular students, “educational and instructional model” may include a specific set of instructional services or a fully developed curriculum or other supplementary services.

“English as a second language” refers to a structured language acquisition program designed to teach English to students whose native language is other than English, until the student demonstrates a functional ability to speak, read, write, and listen to English language at the age- and grade-appropriate level.

“English learner” means the same as defined in Iowa Code section 280.4(1) “b.”

“Fully English proficient” means the same as defined in Iowa Code section 280.4(1) “b.”

“Intensive student” means the same as defined in Iowa Code section 280.4(1) “b.”

“Intermediate student” means the same as defined in Iowa Code section 280.4(1) “b.”

“Research-based” means based on a body of research showing that the educational and instructional model, or other educational practice, has a high likelihood of improving teaching and learning. To determine whether research meets this standard for purposes of this chapter, research reports are reviewed for the following:

1. The specific population studied;
2. Research that involves the application of rigorous, systematic, and objective procedures to obtain reliable results and provide a basis for valid inferences relevant to education activities and programs;
3. Whether the research employs systematic, empirical methods that draw on observation or experiment;
4. Reliance on measurement or observational methods that provide reliable and valid data;
5. Inclusion of rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions or inferences drawn;
6. Description of the magnitude of the impact on student learning results; and
7. Inclusion of the level of the review of the study.

281—60.2(280) School district responsibilities.

60.2(1) Student identification and assessment. A school district shall use the following criteria in determining a student’s eligibility:

a. To determine the necessity of conducting an English language assessment, the district includes a home language survey as part of the registration process. If the answers to the home language survey indicate the prominent use of another language in the home, the student is assessed by the district using the state-approved English language proficiency screener assessment to determine eligibility for language development services. A student scoring proficient is not eligible for services. If a student does not score proficient on the screener assessment, the student is determined to be an English learner.

b. The student is assessed annually on the state’s approved summative English language proficiency assessment aligned to the state’s English language proficiency standards in order to determine progress and attainment of English. A consistent plan of evaluation that includes ongoing evaluation of student progress will be developed and implemented by the district for each student so identified.

60.2(2) Staffing. Teachers in an English as a second language (ESL) program will possess a valid Iowa teaching license and an ESL endorsement.

60.2(3) English learner placement. Placement of students identified as English learners will be in accordance with the following:

a. Content classes. Students will be placed in classes with age-appropriate peers. Students will be provided instructional strategies to support content learning at all levels of language proficiency.

b. English learner program placement.

(1) Students enrolled in a program for English learners receive systematic English language instruction designed to allow meaningful access to the district's educational programs.

(2) When students of different age groups or educational levels are combined in the same class, the school ensures that the instruction given is appropriate to each student's level of educational attainment. Programs will be research-based and grounded in sound language acquisition theory.

(3) A program of bilingual instruction may include the participation of students whose native language is English.

(4) A student exits the English language development program upon scoring proficient on the state-approved annual summative English language proficiency assessment.

(5) All district instructional staff and area education agency (AEA) staff responsible for implementing the educational and instructional models defined in rule 281—60.1(280) receive such professional development as may be necessary to implement those educational and instructional models. Such professional development is delivered in accordance with 281—Chapter 83, including qualification of providers. In determining whether providers meet the standards in 281—Chapter 83, the following nonexhaustive factors may be considered, as they are relevant to the particular professional development to be provided:

1. ESL endorsement or equivalent;
2. Five years of ESL teaching experience; or
3. A graduate degree in teaching English to speakers of other languages or in a related field.

60.2(4) Research-based educational and instructional models. Districts will utilize research-based educational and instructional models as defined in rule 281—60.1(280) with English learners so that such students may acquire English proficiency and meet high academic standards.

281—60.3(280) Department responsibility. The department of education will provide technical assistance to school districts, including advising and assisting schools in planning, implementation, and evaluation of programs for English learners.

281—60.4(280) Nonpublic school participation.

60.4(1) General. A nonpublic school provides services under this chapter; however, the standard for services, if the nonpublic school does not receive services pursuant to subrule 60.4(2), is minor adjustments to curriculum and instruction.

60.4(2) Public school services. English as a second language and transitional bilingual programs offered by a public school district are available to students attending an accredited nonpublic school located within the district. The district obtains funding for such students in accordance with rule 281—60.5(280).

281—60.5(280) Funding.

60.5(1) Weighting. Weighting for English learners is set forth in Iowa Code section 280.4(3). A student's eligibility for additional weighting is transferable to another district of residence.

60.5(2) Supplemental aid or modified supplemental amount. In addition to weighting, the school budget review committee (SBRC) may grant supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting or for costs in excess of the weighting to provide instruction to English learners above the costs of regular instruction.

a. A school district of residence may apply to the SBRC by the date specified in rule 289—6.3(257) for supplemental aid or a modified supplemental amount for an unusual need for funding beyond the

amount generated from weighting for students identified as English learners who are provided instruction beyond the regular instruction. The eligible supplemental aid or modified supplemental amount will be calculated as the total actual English learner program expenditures for the previous year, reduced by the English learner funding generated in the previous budget year based on the English learner count on the certified enrollment in the previous year, and reduced by any other grants, carryover, or other resources provided to the district for this program.

b. A district of residence may apply to the SBRC for supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting no later than December 1 following the date specified in Iowa Code section 257.6(1) for the certified enrollment. The supplemental aid or modified supplemental amount will be calculated by multiplying the number of resident students identified as English learners who are provided instruction beyond the regular instruction, and who are being served beyond the five years of weighting on the certified enrollment, by the weighting provided under subrule 60.5(1), multiplied by the district cost per pupil in the current year.

c. The SBRC will act on the requests described in paragraphs 60.5(2) “*a*” and “*b*” no later than its March regular meeting. If the SBRC grants the district’s request for supplemental aid or a modified supplemental amount, the department of management will increase the district’s budget authority by that amount.

The SBRC may require the district to appear at a hearing to discuss its request for supplemental aid or a modified supplemental amount.

60.5(3) *Use of funds.* English learner funding is categorical funding and follows the general provisions in 281—Chapter 98. Appropriate expenditures for the English learner program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. Appropriate and inappropriate expenditures are set forth in 281—Chapter 98.

60.5(4) *Annual reporting.* Districts will include and identify the detail of financial transactions related to English learner resources, expenditures, and carryforward balances on their certified annual report, using the account coding appropriate to the English learner program as defined by the Uniform Financial Accounting Manual for Iowa LEAs and AEAs. Each district submits its certified annual report following the close of the fiscal year but no later than September 15.

These rules are intended to implement Iowa Code sections 256.7(31) “*c*,” 257.31(5) “*j*” and 280.4.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 65
“Programs for At-Risk Early Elementary Students”

Iowa Code section authorizing rulemaking: 279.51

State or federal law(s) implemented by the rulemaking: Iowa Code section 279.51

Public Hearing

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

August 29, 2023
9 to 10 a.m.

State Board Room
Grimes State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Thomas A. 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

Purpose and Summary

The proposed rulemaking is intended to provide additional supports to school districts in supporting early elementary at-risk students.

In the proposed rulemaking, the Department updates language and reduces unnecessary and burdensome language, including removal of a midyear reporting requirement.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts will bear the cost of compliance with the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Early elementary students who are identified as at risk, as well as their teachers and families, will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The costs associated with the rulemaking are addressed with a nearly \$4 million standing appropriation. The proposed rulemaking does not alter that funding.
 - Qualitative description of impact:
The rulemaking is expected to improve academic, behavioral, and health outcomes for students and families.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The Department has 0.5 full-time equivalent position dedicated to implementing both the current Chapter 65 and this proposed rulemaking that rescinds and replaces Chapter 65.
 - Anticipated effect on state revenues:
There is no net effect between the current and proposed rules.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
There is no net cost or benefit between the current and proposed rules.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
There are none noted.
6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
The Department considered adopting nonregulatory guidance in lieu of rules. The Department also considered incorporating the rules into the grant application.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The State is required to establish rules. Consequently, the Department sought to have less burdensome and more flexible rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 65 and adopt the following **new** chapter in lieu thereof:

CHAPTER 65 PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

281—65.1(279) Definitions.

“*At-risk student*” means, for purposes of this chapter, a student in early elementary grades who is eligible for free or reduced price meals.

“*Awardee*” means a public school district designated to receive the at-risk early elementary school award funds for buildings serving early elementary grades with a high percentage of at-risk students.

“*Department*” means the department of education.

“*Early elementary grades*” means kindergarten through grade three.

281—65.2(279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the department will grant awards to districts for buildings serving early elementary grades with a high percentage of at-risk students. Using a formula determined by the department and consistent with Iowa Code section 279.51(1) “c,” the department will distribute awards based on the number of early elementary students in the identified buildings serving a high percentage of at-risk students.

281—65.3(279) Award acceptance process. The department will notify eligible districts of the opportunity to be granted an award for a three-year cycle. A district will make formal acceptance using forms issued and procedures established by the department, and by an official with vested authority to approve the acceptance.

281—65.4(279) Awardee responsibilities. Each year, the awardee will complete reports on forms provided by the department, including the following:

1. An initial report, including a proposed budget and expected outcomes.
2. An end-of-the-year report, including total expenditures and a statement of impact on expected outcomes.

281—65.5(279) Allowable expenditures. School districts will provide, at a minimum, the activities set forth in Iowa Code section 279.51(1) “c.” Additional allowable expenditures include salaries and benefits for teachers and paraeducators, and activities and materials to improve academic achievement. These funds are to be used for instruction, activities, and materials that are in addition to the regular school curricula for children participating in these programs, and only to be used in the building for which the award is made. Inappropriate uses of award funding include indirect costs or use charges, operational or maintenance costs, capital expenditures, student transportation other than that which is directly related to the activities and materials described in this rule, or administrative costs. Moneys received are subject to the general provisions described in 281—Chapter 98.

281—65.6(279) Evaluation. The awardee will cooperate with the department and provide requested information to determine how well the outcomes in rule 281—65.4(279) are being met. Statewide leadership teams will review final reports and provide useful feedback about buildings to awardees. This feedback will include information about innovative components to building programs. Buildings demonstrating innovation will be given preference the following grant cycle.

281—65.7(279) Budget revisions. The department may grant approval to an awardee for any revisions in the proposed budget in excess of 10 percent of a line item, provided the revisions do not increase the total amount of the award.

281—65.8(279) Termination.

65.8(1) Termination for convenience. The award may be terminated, in whole or in part, upon agreement of both parties, concerning the termination conditions, the effective date, and in the case of partial termination, the portion to be terminated. The awardee shall cancel as many outstanding obligations as possible and not incur new obligations for the terminated portion after the effective date of termination.

65.8(2) Termination for cause.

a. The award may be terminated, in whole or in part, at any time before the date of completion, whenever the department determines that the awardee has failed to comply substantially with the conditions of the award. The awardee will be notified in writing by the department of the reasons for

the termination and the effective date. The awardee shall cancel as many outstanding obligations as possible and not incur new obligations for the terminated portion after the effective date of termination.

b. The department will administer the at-risk early elementary school awards contingent upon the availability of state funds. If there is a lack of funds necessary to fulfill the fiscal responsibility of the awards, the awards are to be terminated or renegotiated. The department may terminate or renegotiate an award upon 30 days' notice when there is a reduction of funds by executive order.

65.8(3) *Responsibility of awardee at termination.* Within 45 days of the effective date of award termination, the awardee will supply the department with a financial statement detailing all program expenditures up to the effective date of the termination. The awardee will be solely responsible for all expenditures after the effective date of termination.

281—65.9(279) Appeals from terminations. Any awardee aggrieved by a unilateral termination of an award may appeal the decision to the director of the department in writing within 30 days of the decision to terminate.

65.9(1) *Form of appeal.* In the notice of appeal, the awardee will give a short and plain statement of the reason for the appeal.

65.9(2) *Appeal procedures.* The hearing procedures found at 281—Chapter 6 will apply to appeals of terminated awards. The director will issue a decision within a reasonable time, not to exceed 120 days from the date of hearing.

65.9(3) *Grounds for reversal.* Termination of an award under this chapter may be reversed only if the awardee proves the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members.

65.9(4) *Mandatory denial of appeal.* In lieu of a decision on the merits of an appeal, the director of the department will deny an appeal if the director finds any of the following:

- a.* The appeal is untimely;
- b.* The appellant lacks standing to appeal;
- c.* The appeal is not in the necessary form or is based upon frivolous grounds;
- d.* The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties; or
- e.* The termination of the award was beyond the control of the department due to lack of available funds.

These rules are intended to implement Iowa Code section 279.51.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 82
“Standards for School Administration Manager Programs”

Iowa Code sections authorizing rulemaking: 256.7(5) and 256.7(30)“b”
State or federal law(s) implemented by the rulemaking: Iowa Code section 256.7(30)“b”

Public Hearing

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

August 29, 2023
9 to 10 a.m.

State Board Room
Grimes State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Thomas A. 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

Purpose and Summary

The rulemaking provides standards for approval of practitioner preparation programs that prepare individuals to serve as school administration managers (SAMs).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
SAM practitioner programs will bear the cost of compliance with the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
SAMs and the schools that employ them will benefit from preparation by programs that meet the standards set by the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is relatively minimal quantitative impact on SAM practitioner preparation programs, which produce about five SAMs per year under the current rules.
 - Qualitative description of impact:
The Department discerns no qualitative impact of the proposed rulemaking.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The costs to the Department and to other state agencies have been minimal under the current rules, and the Department anticipates costs to remain minimal under the proposed rulemaking.

- Anticipated effect on state revenues:

The Department anticipates no effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The current rules contain language that is obsolete, unclear and repetitive. The proposed rules will be easier for the Department, potential SAMs, and SAM preparation programs to understand and apply.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly methods noted.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered rescinding the chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The chapter is required by statute. The Department's focus was on providing increased usability and flexibility. The Department also proposes removing a rule on fees, which is not supported by the underlying statute.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Neither the current rules nor the proposed rules have an impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 82 and adopt the following **new** chapter in lieu thereof:

CHAPTER 82 STANDARDS FOR SCHOOL ADMINISTRATION MANAGER PROGRAMS

281—82.1(272) Definitions.

“*Coach*” means a person who provides regularly scheduled coaching visits to SAM/administrator teams.

“*Department*” means the department of education.

“*Director*” means the director of the department of education.

“*Organization*” means a professional organization offering an approved training program and support for SAMs.

“*SAM*” means school administration manager.

“*School administration manager*” means a person or persons who are authorized to assist a school administrator in performing noninstructional administrative duties.

“*School administration manager program*” means a program of SAM training and preparation that leads to authorization to practice as a school administration manager.

“*State board*” means the Iowa state board of education.

“*Trainer*” means a person with responsibility for providing approved training for school administration managers.

281—82.2(272) Organizations eligible to provide a school administration manager training program. Approved professional organizations engaged in the preparation and training of SAMs that meet the standards contained in this chapter may obtain and maintain state board approval of the organizations’ training programs for SAMs. Only approved programs may recommend candidates for SAM authorization.

281—82.3(272) Approval of training programs. The state board’s approval of an organization’s training program is based on the recommendation of the director after study of the evidence about the program in terms of the standards contained in this chapter. The department will seek maximum flexibility in the design of systems allowed to meet the goals of this program.

82.3(1) Approval, if granted, will be for a term of seven years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

82.3(2) If approval is not granted, the applicant organization will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the organization will be given the opportunity to present factual information concerning its program at a regularly scheduled meeting of the state board, no later than three months following the board’s decision.

82.3(3) Programs may be granted conditional approval upon review of appropriate documentation. In such an instance, the program will receive a full review after one year or, in the case of a new program, at the point at which candidates demonstrate mastery of standards for authorization.

82.3(4) The standards herein apply regardless of delivery mode of the training.

82.3(5) All programs in existence prior to July 31, 2013, are deemed to meet program standards without having to submit an application for review.

281—82.4(272) Governance and resources standard. To be an approvable organization, an organization’s governance structure and resources adequately support the training of SAMs to meet professional, state, and organizational standards in accordance with the following provisions:

82.4(1) The organization provides sufficient trainers, coaches, and administrative, clerical, and technical staff to plan and deliver a quality SAM program.

82.4(2) Resources are available to support professional development opportunities for trainers of SAMs.

82.4(3) Resources are available to support technological and instructional needs to enhance trainer and authorized SAM learning.

281—82.5(272) Trainer and coach standard. An approved organization’s trainer and coach qualifications and performance facilitate the professional development of SAMs.

281—82.6(272) Assessment system and organization evaluation standard. An organization’s assessment system monitors individual candidate performance and uses the performance data in concert with other information to evaluate and improve the organization and its program. The actual annual evaluation of each SAM is performed by the administrator or the administrator’s designee, and the evaluation is conducted in accordance with the standards set forth in rule 281—82.7(272). The organization will annually report data to the department, as determined by the department. The

department will periodically conduct a survey of schools or facilities that employ authorized SAMs to ensure that the schools' and facilities' needs are adequately met by the programs and the approval process herein.

281—82.7(272) School administration manager knowledge and skills standards and criteria. SAMs will demonstrate the content knowledge and professional knowledge and skills in accordance with the following standards and supporting criteria.

82.7(1) Standard 1. Each SAM will demonstrate an understanding of the instructional and management codes and how to best support the SAM's administrator in instructional leadership. If a SAM is also employed as a secretary or administrative assistant, the SAM's job responsibilities will be modified as established by the school district.

82.7(2) Standard 2. Each SAM will attend an approved training program at the onset of the SAM's hire. The training for the SAM and administrator will include the following:

- a. Background information on SAMs.
- b. Understanding of the instructional and management descriptors.
- c. Introduction and practice using approved time-tracking software.
- d. First responders and delegation responsibilities.
- e. Job responsibilities and variations.
- f. Daily meeting protocols.
- g. Training of office staff on communication with others.
- h. Use of reflective questions.
- i. Understanding of conflict resolution skills.
- j. Action planning for building implementation and timelines.
- k. SAM/administrator rubric process.

82.7(3) Standard 3. Each SAM will demonstrate competence in technology appropriate to the SAM's position.

82.7(4) Standard 4. Each SAM will demonstrate appropriate personal skills. The SAM:

- a. Is an effective communicator with all stakeholders, including but not limited to colleagues, community members, parents, and students.
- b. Works effectively with employees, students, and other stakeholders.
- c. Maintains confidentiality when dealing with student, parent, and staff issues.
- d. Clearly understands the administrator's philosophy of behavior expectations and consequences.
- e. Maintains an environment of mutual respect, rapport, and fairness.
- f. Participates in and contributes to a school culture that focuses on change in teacher practices and improved student learning by supporting the administrator in the administrator's instructional leadership role.

82.7(5) Standard 5. Each SAM will fulfill professional responsibilities as established by the SAM's school district.

82.7(6) Standard 6. Each SAM will engage in professional growth that continuously improves the SAM's skills of professional inquiry and learning.

281—82.8(272) Monitoring and continued approval. Upon request by the department, programs will make periodic reports, which include basic information necessary to maintain up-to-date data of the SAM program and to carry out research studies relating to SAMs. Every seven years or sooner if deemed necessary by the director, an organization will file a written self-evaluation of its SAM program. Any action for continued approval or denial of approval will be approved by the state board.

281—82.9(272) Approval of program changes and flexibility of programs. Upon application by an organization, the director may approve minor additions to or changes within the organization's approved SAM program. When an organization proposes a revision that exceeds the primary scope of the organization's program, the revision becomes operative only after approval by the state board. Districts may have a variety of programs and job descriptions that meet the standards of a SAM system but must

receive permission to make changes to those programs in the manner prescribed. The department will seek maximum flexibility in systems allowed to meet the goals of this program. Essential components of any approved SAM program include readiness, data collection of administrator time, ongoing training of the program administrator, use of time-tracking software and ongoing coaching for participants in the program.

These rules are intended to implement Iowa Code sections 256.7(30)“b,” 272.1(12), and 272.31(3).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 99
“Business Procedures and Deadlines”

Iowa Code chapters authorizing rulemaking: 24, 256, 257, 285, and 291
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 24, 256, 257, 285, and 291

Public Hearing

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

August 29, 2023
9 to 10 a.m.

State Board Room
Grimes State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Thomas A. 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

Purpose and Summary

This proposed rulemaking is designed to support timely and accurate financial filings by Iowa’s school districts and area education agencies. Late or inaccurate filings burden the Department and other state agencies in calculating and making payments for the next budget year.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowa’s school districts and area education agencies will bear the costs of the rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa’s taxpayers will benefit from compliance with the rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The rulemaking will encourage timely and accurate fiscal filings and will provide support and enforcement mechanisms.
 - Qualitative description of impact:
Consolidating all critical deadlines and providing a common mechanism for support and enforcement will increase ease of understanding by school business officials and the general public.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The costs will be borne by the Department, the Department of Management, and the School Budget Review Committee. Those costs will vary based on the number and nature of untimely or inaccurate filings.

- Anticipated effect on state revenues:
There is no expected impact on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The current Chapter 99 has unnecessary and restrictive language that detracts from the chapter.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Department considered alternatives to this chapter; however, prior to the adoption of the current Chapter 99, delinquent financial filings were more frequent and more severe.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
The Department considered rescinding the chapter and replacing it with user guides or processing manuals.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
Recent experience prior to the adoption of the current Chapter 99 would suggest that the absence of this chapter, with its methods of support and enforcement, would result in increased delinquent and inaccurate fiscal filings.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no known impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 99 and adopt the following **new** chapter in lieu thereof:

CHAPTER 99 BUSINESS PROCEDURES AND DEADLINES

281—99.1(257) Definitions.

“*Area education agency*” or “*AEA*” means a school corporation organized under Iowa Code chapter 273.

“*Basis of accounting*” means the accrual/modified accrual accounting basis under generally accepted accounting principles (GAAP) as defined by the governmental accounting standards board (GASB), as of [publication date of notice of intended action].

“*Basis of budgeting*” means the accrual/modified accrual budgeting basis under GAAP as defined by the GASB, as of [publication date of notice of intended action].

“*SBRC*” means the school budget review committee appointed pursuant to Iowa Code section 257.30.

“*School district*” means a school corporation organized under Iowa Code chapter 274.

“*Unique*” means highly unusual, extraordinary; unparalleled.

“*Unusual*” means not usual or common; rare; constituting or occurring as an exception; not ordinary or average; affecting very few school districts or AEA.

“*Usual*” means that which past experience has shown to be normal or common or is anticipated to become normal or common, hence an expected or predictable event; that which affects more than just a few school districts or AEA.

281—99.2(256,257,285,291) Submission deadlines. It is the responsibility of the administrative officials and board members to submit information and materials as requested by the department of education, department of management, any other state agency, or any federal agency. Reports shall be filed electronically if an electronic format is available.

99.2(1) All school districts will submit program plans, reports, or data collections in the manner, by the procedures, and on the dates set by statute or by the department of education. Plans, reports, and data collections will include the following:

Vehicle Information System	September 1
Annual Transportation Report	September 15
Certified Annual Report (CAR-COA)	September 15
Special Education Supplement	September 15
Facilities, Elections & Save Report	September 30
Certified Enrollment Report/PEACE	October 15
Certified Supplementary Weighting Report	October 15
School Board Officers Report	November 1
Annual Audit Report	March 31
Certified Budget	April 15

99.2(2) All AEA will submit program plans, reports, or data collections in the manner, by the procedures, and on the dates set by statute or by the department of education. Plans, reports, and data collections will include the following:

Certified Annual Report (CAR-COA)	September 15
Facilities Report	September 30
Certified Supplementary Weighting Report	October 15
School Board Officers Report	November 1
Proposed Budget	March 15
Annual Audit Report	March 31

99.2(3) If any plan, report, or data collection has not been received by the due date of the form or by the due date of a valid extension granted by the department of education, the following procedure will apply:

- a.* The superintendent of the school district or the administrator of the area education agency, and the president of the applicable board, will be notified of the unfiled report and the number of days it is past due.
- b.* The state board of education, the SBRC, or the Iowa board of educational examiners may be notified of the school districts or AEAs that were not timely in filing one or more reports.
- c.* The SBRC may implement the procedures described in 289—subrule 6.3(5).

281—99.3(257) Good cause for late submission.

99.3(1) The department of education may, upon request, allow a school district or AEA to submit reports, data collections, or program plans after the due dates listed in rule 281—99.2(256,257,285,291) for good cause.

a. Good cause includes illness or death of a school district or AEA staff member involved in developing the program plan or submitting the report or data collection; acts of God; technological problems at the department lasting at least seven days within the final two weeks prior to the deadline that prevent access necessary for the plan, report, or data collection submission; or unforeseeable unusual or unique circumstances, which, in the opinion of the director of the department, constitute sufficient cause for allowing submission of program plans, reports, or data collections after the published due date.

b. Good cause does not include consequences of local time management or administrative decisions or when districts and AEAs have timed out or have encountered system overloads within the final three days before the due date.

99.3(2) A school district or AEA requesting permission to submit a program plan, report, or data collection after the published due date will notify the department staff member responsible for receiving the plan, report, or data collection as soon as possible upon determining that the district or AEA will not be able to meet the deadline, but no sooner than two weeks prior to the due date and no later than two days prior to the due date. When an extension of the submission deadline is allowed, the department will establish a date by which the school district or AEA will submit the plan, report, or data collection. Permission to submit a program plan, report, or data collection after the published due date expires upon receipt of the submission by the department and does not carry over into subsequent application or reporting cycles.

281—99.4(24,256,257,291) Budgets, accounting, and reporting. The school district or AEA will budget on the GAAP basis of budgeting. School districts and AEAs will use the chart of accounts defined in the Uniform Financial Accounting Manual for Iowa LEAs and AEAs (UFA manual). The school district or AEA will maintain its financial records and prepare financial reports, including the Certified Annual Report, in the manner and by the procedures set by the departments of education and management in the UFA manual and GAAP. School districts and AEAs will use the chart of accounts defined in the UFA manual. The UFA manual is based on the Financial Accounting for Local and State School Systems published by the United States Department of Education, as of [publication date of notice of intended action]. If GAAP permits a choice of reporting methods for transactions, or if GAAP conflicts with the UFA manual, the department of education staff will determine a uniform method of reporting to be used by all school districts and AEAs.

These rules are intended to implement Iowa Code chapters 24, 256, 257, 285 and 291.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 33
“Nonutility Services—Recordkeeping and Cost Allocations”

Iowa Code section authorizing rulemaking: 476.79

State or federal law(s) implemented by the rulemaking: Iowa Code section 476.78

Public Hearing

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

September 6, 2023
9 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Utilities Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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

Purpose and Summary

The purpose of Chapter 33 is to inform rate-regulated utilities and other interested persons of the records required and standards and methods for cost allocations when nonutility services are offered by rate-regulated utilities. This proposed rulemaking updates the rules with the adoption of a new Chapter 33 pursuant to Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Rate-regulated utilities with nonutility services will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Customers of rate-regulated utilities that offer the same service and other interested persons will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The review of Chapter 33 is part of the everyday work of the Board, so there is no additional impact to the Board, economic or otherwise. The rate-regulated utility may have costs due to the filing requirements. An interested person may be impacted if the person chooses to hire an attorney. There are no costs to see the public information filed in the Board’s electronic filing system.
 - Qualitative description of impact:
This chapter ensures fair allocation of costs when a rate-regulated utility has a nonutility service.
3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
There are no additional costs to any agency other than the normal everyday costs of operation of the Board.
 - Anticipated effect on state revenues:
There is no anticipated effect on state revenues.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
There is a huge benefit in ensuring the costs are allocated accurately where there is a monopoly rate-regulated utility involved. There are minimal costs involved in administering the chapter. Inaction would likely be detrimental because there would be no market or regulatory factors.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
The Board does not believe there are any less costly methods of addressing the purpose of this chapter.
6. Alternative methods considered by the agency:
- Description of any alternative methods that were seriously considered by the agency:
Inaction was considered by the Board.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
Inaction is not feasible due to the monopoly, anticompetitive market.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is not a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33 NONUTILITY SERVICES—RECORDKEEPING AND COST ALLOCATIONS

199—33.1(476) Applicability. This chapter applies to all rate-regulated public utilities.

199—33.2(476) Definitions. All terms used in this chapter are defined in Iowa Code section 476.72 unless further defined in this chapter.

“Exception time reporting” means when an employee works predominantly in either utility or nonutility operations and only reports time worked in the less predominant area.

“Filing threshold” means that the summation of an electric or gas utility’s revenues recorded in FERC accounts 415 and 417 equals 3 percent of a utility’s operating revenues recorded in FERC account 400, or the summation of a water utility’s revenues from nonutility service equals 3 percent of the utility’s operating revenues. The revenues in these accounts will be as recorded in the annual FERC Form 1 for electric and combination utilities, FERC Form 2 for gas utilities, and similar National Association of Regulatory Utility Commissioners (NARUC) accounts for water, sanitary sewage, or storm water drainage service utilities.

“Fully distributed cost” means a costing approach that fully allocates all current and embedded costs to determine the revenue contribution of utility and nonutility services.

“Incidental activities” means activities that are so closely related to the provision of utility services and limited in scale that it is impracticable to identify separately the costs of such activities.

“Net book value” means the original purchase price net of depreciation.

“Nonproductive work time” means time for which an employee is paid but which is not specifically attributable either to utility or to nonutility operations.

“Positive time reporting” means when productive work time is accounted for and allocated to utility operations or nonutility operations.

“Study time reporting” means when periodic studies are done to determine the amount of productive work time being spent on utility versus nonutility operations.

“Utility operating revenues” means the dollar amounts recorded in FERC account 400, or similar NARUC account, for water, sanitary sewage, or storm water drainage service utilities.

199—33.3(476) Availability of records.

33.3(1) *Separate records.* A rate-regulated public utility receiving revenues for providing nonutility service shall keep and render to the board separate records on the nonutility service.

33.3(2) *Records to be maintained.* The records maintained for each nonutility service and made available for inspection include the following: documents depicting accounts payable and vouchers; purchase orders; time sheets; journal entries; source and supporting documents for all transactions; a description of methods used to allocate revenues, expenses, and investments between utility and nonutility operations, including supporting detail; and copies of all filings required by other state and federal agencies.

33.3(3) *Method of inspection.* The records for each nonutility service will be made available to the board at the principal place of business of the public utility. Notwithstanding rule 199—18.3(476), upon receipt of a formal request in writing from the board for information, the public utility shall produce the requested information within seven days. Upon a showing of good cause, the board may approve additional time for response.

199—33.4(476) Costing methodology. Costs will be allocated between utility and nonutility operations using fully distributed cost.

33.4(1) *Cost causation for utility assets.* Each utility identifies for each asset utilized directly or indirectly, in whole or in part, in the provision of nonutility services:

- a. The type of asset;
 - b. The use of the asset;
 - c. The proportional utilization of the asset between utility operations and nonutility operations;
- and
- d. The characteristics of the asset that allow proper allocation.

33.4(2) *Cost causation for utility expenses.* Each utility identifies for each expense account wherein any expense related, directly or indirectly, to the provision of nonutility services is recorded:

- a. The function causing the expense to be incurred;

- b. The procedure used in performing the function;
 - c. The proportional utilization of the function between utility operations and nonutility operations;
- and
- d. The characteristics of the cost that allow proper allocation.

33.4(3) Time reporting. Positive time reporting will be used whenever possible; when it is not possible, exception time reporting or study time reporting may be used. Nonproductive work time will be allocated between utility and nonutility operations in proportion to the allocation of productive work time.

199—33.5(476) Cost allocation manuals. Every rate-regulated public utility equaling or exceeding the filing threshold in any calendar year shall file with the board a cost allocation manual on or before September 1 of the following year. If the utility has not changed its cost allocation manual since the last filing, the utility files a letter with the board to that effect. In the event the utility has made only minor changes to its manual to reflect new accounts or new affiliates or has modified language, the utility may file only the pages affected together with a cover letter explaining the pages being filed. A utility excused from filing a cost allocation manual for any of the foregoing reasons will comply with the other requirements of this rule.

33.5(1) Contents of manuals. Each cost allocation manual contains the following information:

- a. *Nonutility services.* A list, the location, and description of all nonutility services.
- b. *Incidental activities.* A summary of incidental activities conducted by the utility.
- c. *Resource identification.* An identification of the assets and expenses involved directly or indirectly, in whole or in part, in the provision of nonutility services as identified in subrules 33.4(1) and 33.4(2).

- d. *Allocation methodology.* A description of the cost allocation methodology, including an overview, explanation, and justification of the details provided in response to paragraphs 33.5(1) “e” through “h” below.

- e. *Allocation rationale.* A statement identifying, for each asset and expense account and subaccount identified in compliance with subrules 33.4(1) and 33.4(2), the basis for allocating costs in the account or subaccount to utility and nonutility operations, including any allocation factor used by the utility for this purpose.

- f. *Accounts and records.* A description of each account and record used by the utility for financial recordkeeping for nonutility services, including all subaccounts.

- g. *Allocation factors.* A paragraph containing, for each allocation factor identified in compliance with paragraph 33.5(1) “e,” an explanation of how the allocation factor is calculated, a description of each study and analysis used in developing the allocation factor, and the frequency with which each allocation factor is recalculated.

- h. *Time reporting methods.* A paragraph indicating the type of time reporting (positive, exception, or study) used for each reporting organization (e.g., executive, residential sales, and external affairs) and providing a description of how the identified type of time reporting is performed in that reporting organization.

- i. *Training.* A description of the training programs used by the utility to implement and maintain its cost allocation process.

- j. *Update process.* A description of the procedures used by the utility to:

- (1) Determine when an update is needed;
- (2) Develop the update; and
- (3) Provide the update to the board.

33.5(2) Annual filing and acceptance of manuals. The following procedure is used for the annual filing and acceptance of manuals.

- a. *Filing.* A utility meeting the filing threshold will file a manual on or before September 1 of each year following a year during which the utility met the threshold.

- b. *Notice.* At the time of the initial filing and whenever a manual is updated, each utility mails or delivers a written notice to consumer advocate, local trade associations, and customers who have notified

the utility in writing of their interest in the cost allocation manual. Notice to customers may be provided by means agreed to between the public utility and the customer. The notice will state that an objection may be filed with the board within 60 days of the filing of the manual with the board. The utility shall promptly provide copies of the manual upon request.

c. Objections. Any interested person may file with the board an objection to a cost allocation manual within 60 days of the filing date.

d. Docketing. If the board finds that reasonable grounds exist to investigate the manual, the board may docket the filing for investigation. At the time of docketing, the board will set a procedural schedule that includes a date for an oral presentation and an opportunity to file comments. If the board finds that there is no reason to investigate, the board issues an order stating the reasons for the board's decision within 90 days of the date of filing.

e. Acceptance of manuals. The board may accept, reject, or modify a utility's manual. However, any board decision is for accounting purposes only and is not binding in any other proceeding.

33.5(3) Updating of manuals. All affected sections and pages of a utility's manual are updated and filed with the board within 60 days of any of the following conditions:

a. A new nonutility business is commenced or acquired, or an existing nonutility business is eliminated or divested;

b. An affiliate relationship changes;

c. Operations affecting nonutility businesses change sufficiently to warrant a new allocation method; or

d. Accounting practices change.

33.5(4) Reporting requirements—accounting tables. Companies filing cost allocation manuals should include in their annual reports tables showing for each account identified in compliance with subrules 33.4(1) and 33.4(2) the following: (a) the account total; (b) the amount allocated to nonutility services; (c) the amount allocated to utility services; and (d) the value of the allocation factors used to allocate costs to utility and nonutility services. Such tables are to be accompanied by a signed statement by an officer of the utility and an independent auditor certifying that, for the year covered by the report, the utility has complied with its cost allocation manual and that the data reported fairly reflect the actual operations of the utility.

199—33.6(476) Standards for costing service transfers within a regulated subsidiary or utility.

33.6(1) Nonutility service provided to regulated subsidiary or utility. The utility or its regulated subsidiary shall pay for a nonutility service provided to it by an affiliate at the price actually charged to nonaffiliates. If no such price is available, the service is priced at the lower of fully distributed cost, the price actually charged to affiliates, or the market price for comparable services.

33.6(2) Service provided by the utility to nonutility operations. A utility that provides utility service to a nonutility affiliate charges such affiliate the tariffed price or, if a tariffed price is not available, charges the fully distributed cost of the service.

199—33.7(476) Standards for costing asset transfers within a regulated subsidiary or utility.

33.7(1) If an asset that is a direct cost of nonutility operations becomes a cost of utility operations, the asset is transferred or allocated to utility operations at the lesser of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

33.7(2) If an asset that is a direct cost of utility operations becomes a cost of nonutility operations, the asset will be transferred or allocated to the nonutility operations at the greater of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets.

These rules are intended to implement Iowa Code sections 476.72 through 476.83.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 34
“Nonutility Service”

Iowa Code section authorizing rulemaking: 476.79
State or federal law(s) implemented by the rulemaking: Iowa Code section 476.80

Public Hearing

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

September 6, 2023
10 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Utilities Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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

Purpose and Summary

The purpose of Chapter 34 is to ensure competitors are allowed access to certain services when a rate-regulated utility engages in systematic marketing efforts for a nonutility service. The Board is proposing to rescind Chapter 34 pursuant to Executive Order 10 and evaluating whether to readopt the chapter, the text of which is shown below.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Rate-regulated utilities with nonutility service that undertake systematic marketing and competitors will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Competitors of rate-regulated utilities that offer the same nonutility service and other interested persons will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The review of Chapter 34 is part of the everyday work of the Board, so there is no additional economic impact to the Board. An interested person may be impacted if the person chooses to hire an attorney or if a competitor chooses to invoke rules 199—34.4(476) and 199—34.5(476) and pay the rate-regulated utility directly, in which case the rate-regulated utility may incur some costs. There are no costs to see the public information filed in the Board’s electronic filing system.
 - Qualitative description of impact:

This chapter ensures fair competition and access to information if legal requirements are met and reasonable compensation is paid.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no additional costs to any agency other than the normal everyday costs of operation of the Board.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There is a huge benefit in furthering competition where there is a monopoly rate-regulated utility involved. For administering the chapter, there are minimal costs involved. Inaction would likely be detrimental because there would be no market or regulatory factors.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board does not believe there are any less costly methods of addressing the purpose of this chapter.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Inaction was considered by the Board.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Inaction is not feasible due to the monopoly, anticompetitive market.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Unless a small business is a competitor that meets the legal requirements, there is not a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 34 and adopt the following new chapter in lieu thereof:

CHAPTER 34 NONUTILITY SERVICE

199—34.1(476) Statement of purpose. A public utility that engages in a systematic marketing effort, other than on an incidental or casual basis, to promote the availability of a nonutility service from the public utility will allow competitors access to certain services.

199—34.2(476) Definition—systematic marketing effort. In determining whether activity constitutes a “systematic marketing effort, other than on an incidental or casual basis,” the board will consider whether the effort is regular or irregular, recurring or nonrecurring, and active or passive in nature and whether the effort is done on a comprehensive basis. Factors to be considered include, but are not limited to, the types and number of media used; the frequency, extent, and duration of the marketing effort; the amount of marketing expenses incurred; and whether the public utility appeared to intend to increase significantly its market share.

199—34.3(476) Engaged primarily in providing the same competitive nonutility services in the area—defined. A person “engaged primarily in providing the same competitive nonutility services in the area” when the person on an ongoing basis sells or leases equipment or products or offers services, accounting for at least 60 percent of the person’s gross business revenue, which are functionally interchangeable with and considered similar by the public to the nonutility service provided by a public utility in the same identifiable geographic area where the public utility provides utility service.

199—34.4(476) Charges permitted. A person meeting the requirements of rule 199—34.3(476) is permitted to use, to the same extent utilized by the public utility for its nonutility service in connection with nonutility services, the customer lists, billing and collection system, and mailing system of the public utility company engaged in a systematic marketing effort, other than on an incidental or casual basis. The person will be charged for the cost or expense incurred by the public utility in providing access to its systems and its lists, and the cost or expense will not be greater than the charge, fee, or cost imposed upon or allocated to the provision of nonutility service by the utility for the similar use of the systems.

199—34.5(476) Procedures for utilization of billing and collection system.

34.5(1) When a person meeting the requirements of rule 199—34.3(476) uses the billing and collection system of a public utility, the public utility shall promptly remit to that person all funds collected by the public utility on behalf of the person.

34.5(2) Where a customer makes a partial payment and owes both a public utility and a person(s) meeting the requirements of rule 199—34.3(476) for services or goods provided, the payment received is allocated first to the regulated utility bill plus tax, unless otherwise allocated by the customer. Any balance remaining after payment of the utility bill plus tax is allocated between the public utility for any unpaid nonutility services and any other person(s) utilizing the utility’s billing system according to the ratio of the amount billed by each unless otherwise allocated by the customer. A public utility shall not disconnect a customer’s utility service for nonpayment of a bill for nonutility services.

A person shall not use a public utility’s billing and collection system to bill and receive payments only from customers who are habitually delinquent or who have failed or refused to make payment to the person.

These rules are intended to implement Iowa Code sections 476.78, 476.80, and 476.81.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 24
“Physician Assistants”

Iowa Code section authorizing rulemaking: 96.11
State or federal law(s) implemented by the rulemaking: 2022 Iowa Acts, House File 803

Public Hearing

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

August 29, 2023
10 a.m.

Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Workforce Development Department (IWD) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jeffrey Koncsol
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.725.5400
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

This proposed rulemaking implements 2022 Iowa Acts, House File 803, which allowed physician assistants, in addition to physicians, to provide certain documentation for claimants requesting unemployment insurance benefits.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Claimants that will need to obtain documentation from physicians or physician assistants will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Claimants that are able to obtain documentation from physician assistants instead of just physicians will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The burden reduction should allow claimants to receive documentation in a more efficient and cost-effective manner.
 - Qualitative description of impact:
The burden on claimants will be decreased because it will allow the claimants to rely on the services of physician assistants and not just physicians, potentially saving the claimants time and money.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no anticipated additional costs for the State since the process for reviewing documentation from physicians is already in place.
 - Anticipated effect on state revenues:
There is no anticipated effect on state revenues because the processes currently exist.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Failure to update the rules will not only result in IWD's failure to comply with Iowa law but will potentially require claimants to spend more time and money to obtain the required documentation.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
There are no less costly or intrusive methods. This change is less intrusive than the current rule.
6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
There was no alternative seriously considered because other options, such as reliance on self-certification of medical conditions preventing an individual from working, would not be cost-effective due to the increased number of IWD staff that would be required to investigate and verify the claims.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
If IWD were to rely on claimant self-certification, as opposed to certification obtained from a medical professional, costs for investigations into these certifications would increase and claimants could be faced with overpayments after receiving benefits if the medical reason was inaccurate or failed to satisfy IWD rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no impact to small businesses. Allowing claimants to self-certify may result in an increase of claims, with or without merit, that could result in small businesses paying a higher amount and rate of unemployment tax.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 24.23(6) as follows:

24.23(6) If an individual has a medical report on file submitted by a physician or a physician assistant, stating such individual is not presently able to work.

ITEM 2. Amend subrule 24.25(35) as follows:

24.25(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician or physician assistant;
- b. Obtain certification of release for work from a licensed and practicing physician or physician assistant;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician or physician assistant; or
- d. No change.

ITEM 3. Amend paragraph **24.26(6)“a”** as follows:

a. *Nonemployment related separation.* The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician or physician assistant. Upon recovery, when recovery was certified by a licensed and practicing physician or physician assistant, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

ITEM 4. Amend subrule 24.26(9) as follows:

24.26(9) The claimant left employment upon the advice of a licensed and practicing physician or physician assistant for the sole purpose of taking a family member to a place having a different climate and subsequently returned to the claimant's regular employer and offered to perform services, but the claimant's regular or comparable work was not available. However, during the time the claimant was at a different climate the claimant shall be deemed to be unavailable for work notwithstanding that during the absence the claimant secured temporary employment. (Family is defined as: wife, husband, children, parents, grandparents, grandchildren, foster children, brothers, brothers-in-law, sisters, sisters-in-law, aunts, uncles or corresponding relatives of the classified employee's spouse or other relatives of the classified employee or spouse residing in the classified employee's immediate household.)

ARC 7054C

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rulemaking related to the setoff program
and providing an opportunity for public comment**

The Revenue Department hereby proposes to adopt new Chapter 26, “Setoff of Debts Owed to Public Agencies,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in 2020 Iowa Acts, House File 2565, and 2020 Iowa Acts, House File 2641, division VI.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2020 Iowa Acts, House File 2565, and 2020 Iowa Acts, House File 2641, division VI.

Purpose and Summary

The primary purpose of the proposed rulemaking is to implement 2020 Iowa Acts, House File 2565. That legislation sets forth the statutory authority that will transition the setoff program from the Department of Administrative Services (DAS) to the Iowa Department of Revenue (IDR). The setoff program allows public agencies, including but not limited to state agencies, clerks of court, and municipalities, to collect debt by intercepting payments owed by a public agency to a citizen and applying those payments to qualifying debt.

House File 2565 transferred the setoff program from DAS to IDR. 2020 Iowa Acts, House File 2641, section 73, amended the effective date of House File 2565 to the later date of January 1, 2021, or the effective date of rules adopted by IDR implementing House File 2565, which are proposed herein. All Iowa Code citations within the new rules are to those sections as enacted by House File 2565.

IDR’s authority to administer setoffs will be under Iowa Code section 421.65. IDR is required to promulgate rules to describe the priority of payment when multiple agencies within the same priority group make a claim to the same setoff payment. IDR is also required to promulgate rules to describe the frequency of certifications of debt by public agencies submitting debt to the program and to establish a minimum debt submission amount by rule.

These rules establish procedures and requirements for participating agencies. The rules require that public agencies submitting debt to the program enter into a memorandum of understanding with IDR, set forth details about debt balances and notifications of changes of such balances, describe challenge processes and requests for division of the setoff payment, contemplate a transition period, and provide an explanation and examples about the fee paid by public agencies for use of the setoff system.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa. There is no cost to the State other than the costs that result from the statute and the need for the Department to develop a system to operate the setoff program as a result of the statute. Development of the system is well underway. Additionally, Iowa Code section 421.65 requires that public agencies pay a fee for the use of the setoff system. Details regarding the fee and the fee amount are set forth in the proposed rules.

Jobs Impact

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

Waivers

REVENUE DEPARTMENT[701](cont'd)

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on August 29, 2023. Comments should be directed to:

Nick Behlke
Iowa Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

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

August 29, 2023 9 to 10 a.m.	Rooms 429 and 430 Hoover State Office Building Des Moines, Iowa Google Meet: meet.google.com/ajx-eicx-hum Via telephone: 1.502.527.1252 When prompted: 231 953 134?# Mute telephone or microphone upon entering the meeting
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Participants attending the meeting in person will need to be escorted to the meeting room. 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 rulemaking.

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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Adopt the following **new** 701—Chapter 26:

CHAPTER 26
SETOFF OF DEBTS OWED TO PUBLIC AGENCIES

701—26.1(421) Minimum qualifying debt amounts accepted. Before a qualifying debt may be submitted by a public agency to the setoff program, the amount of the qualifying debt must be \$50 or more. The minimum amount is the total of all qualifying debt(s) owed to one public agency by one obligor.

This rule is intended to implement Iowa Code section 421.65.

REVENUE DEPARTMENT[701](cont'd)

701—26.2(421) Minimum setoff amount. If the balance of a qualifying debt, according to the records of the department, reaches an amount that is less than \$50, the debt will be removed from the setoff program. The minimum amount is the total of all qualifying debt(s) owed to one public agency by one obligor.

This rule is intended to implement Iowa Code section 421.65.

701—26.3(421) Memorandum of understanding required. Before a public agency may submit qualifying debt to the department for setoff, that public agency shall enter into a memorandum of understanding with the department. The department will reject any debts submitted by a public agency prior to the execution date of the memorandum of understanding. Prior to entering into a memorandum of understanding with the department, the public agency shall provide any relevant information required by the department.

This rule is intended to implement Iowa Code section 421.65.

701—26.4(421) Certification to the department.

26.4(1) At the time a qualifying debt is submitted to the department for setoff, the public agency must certify to the department the information required by Iowa Code section 421.65(2) “a,” the amount of each obligor’s liability to the public agency, the date the debt became qualifying debt, that all liabilities submitted constitute qualifying debt, and any other relevant information required by the department.

26.4(2) In the event that there are existing liabilities in the setoff program when the public agency submits new qualifying debt for setoff, the public agency shall certify, as described in subrule 26.4(1), all qualifying debt placed in the setoff program, including qualifying debt that was previously placed in the setoff program. Qualifying debt that is not certified in the manner required by the department may be removed from the setoff program.

This rule is intended to implement Iowa Code section 421.65.

701—26.5(421) Notification of change in status of debt. Each public agency that has submitted a qualifying debt for participation in the setoff program shall timely notify the department of any change in the status of the public agency’s individual debts submitted to the setoff program. This notification shall be made at the time described in the memorandum of understanding. A change in status may come from invalidation of the liability, reduction of the liability, receipt of notice of bankruptcy, or other factors.

This rule is intended to implement Iowa Code section 421.65.

701—26.6(421) Multiple claims—priority of payment. In the case of multiple claims to public payments, priority shall be determined pursuant to the priority provisions found in Iowa Code section 421.65(4). Among claims entitled to the same priority pursuant to the priority provisions found in Iowa Code section 421.65(4), priority shall be determined by the date the debt became a qualifying debt, with higher priority assigned to liabilities that first became qualifying debt. If multiple claims entitled to the same priority became qualifying debt on the same day, priority shall be determined by the date and time that the liability was first submitted to the department for setoff, with higher priority assigned to liabilities first submitted.

This rule is intended to implement Iowa Code section 421.65.

701—26.7(421) Challenges.

26.7(1) Challenges may be submitted to the department via the manner described on the challenge notice furnished to the obligor by the department pursuant to Iowa Code section 421.65(2) “e.” Challenges shall be submitted within 15 days of the date of the notice. Challenges may be initiated only by an obligor.

26.7(2) Upon receipt of a challenge, the department will contact the obligor to schedule a review conference.

26.7(3) The department shall notify the public agency of the challenge. The public agency shall provide the department with any relevant information that the department requests for the challenge.

26.7(4) The public agency shall hold the setoff funds until final disposition of the challenge.

REVENUE DEPARTMENT[701](cont'd)

26.7(5) During the review conference, the department will review the information. After the review conference, the department will issue a determination based on the preponderance of the available information.

26.7(6) Successful challenges. The department shall notify a public agency of a successful challenge. At the direction of the department, the public agency shall refund all or a portion of the setoff amount to the obligor or return all or a portion of the setoff amount to the department. The public agency must adhere to the department's determination and has no appeal opportunity. In the event of a successful challenge, the department shall retain the fee paid by the public agency for use of the setoff program.

26.7(7) Unsuccessful challenges. The department shall notify a public agency of an unsuccessful challenge.

26.7(8) In the event of an unsuccessful setoff challenge, an obligor may file an action in district court as described in Iowa Code section 421.65(3) "f." The defendant shall be the public agency with an additional copy of such petition to be served upon the office of the attorney general. Neither the department nor any department officials or employees shall be named as parties in such a district court action. The public agency shall be responsible for any defense and costs.

26.7(9) The date and time of filing a challenge shall be computed in accordance with rule 701—7.4(17A).

This rule is intended to implement Iowa Code section 421.65.

701—26.8(421) Requests for division of a public payment subject to setoff.

26.8(1) Requests for division of a public payment subject to setoff may be submitted to the department via the manner described on the challenge notice furnished to the obligor by the department pursuant to Iowa Code section 421.65(2) "e." Requests for division shall be submitted within 15 days of the date of the notice. Requests for division may be made only by an obligor or co-payee of the public payment.

26.8(2) The obligor or co-payee requesting the division of a payment must submit to the department the obligor's or co-payee's full name and social security number or similar identifying information for an obligor or co-payee who does not have a social security number.

26.8(3) The department shall notify a public agency of a successful request for division. At the direction of the department, the public agency shall divide a jointly or commonly owned right to payment and refund the applicable setoff amount in the manner determined by the department. The public agency must adhere to the department's determination and has no appeal opportunity. In the event of a successful request for division, the department shall retain the fee paid by the public agency for use of the setoff program.

26.8(4) Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

26.8(5) The date and time of filing a request for division shall be computed in accordance with rule 701—7.4(17A).

This rule is intended to implement Iowa Code section 421.65.

701—26.9(421) Transition period. Any setoff for which the public payment is made available to the public agency prior to the effective date of Iowa Code section 421.65 shall be governed by the statute, rules, and procedures related to Iowa Code section 8A.504, even if such procedures continue after the effective date of Iowa Code section 421.65.

This rule is intended to implement Iowa Code section 421.65.

701—26.10(421) Fees.

26.10(1) A fee of \$7 shall be paid by participating public agencies to the department for each setoff. The public agency shall be charged the fee each time a public payment is set off and applied to the public agency's qualifying debt. The fee shall be taken by the department out of the setoff funds before the department transfers such funds to the public agency.

REVENUE DEPARTMENT[701](cont'd)

26.10(2) The fee shall not be collected by the public agency via the setoff program unless it is a qualifying debt as defined in Iowa Code section 421.65(1) “d.”

26.10(3) The department shall retain the fee regardless of the outcome of any challenge or requests for division of public payments.

26.10(4) Examples.

EXAMPLE 1: Setoff fee is not qualified debt: Debtor A owes \$100 of qualified debt to Public Agency Z and \$200 of qualified debt to Public Agency Y. Public Agency Z submits \$100 to the setoff program, and Public Agency Y submits \$207 to the setoff program (\$200 of qualified debt and \$7 for the setoff fee). The department would accept the placement from Public Agency Z and would try to match public payments for setoff. The department would reject the placement from Public Agency Y and not match it with public payments. Additionally, the department would grant any challenges for setoff fees that were rolled up and resubmitted to the setoff program.

EXAMPLE 2: Setoff fee is not refundable: Debtor A successfully challenges a setoff placed by Public Agency Z for \$100. Public Agency Z will return \$100 to Debtor A. The department will not return the fee to Public Agency Z.

EXAMPLE 3: Setoff fee is credited against qualified debt: Debtor A owes \$100 of qualified debt to Public Agency Z. Public Agency Z submits \$100 to the setoff program. The setoff program matches a \$50 public payment with Debtor A. The department will distribute \$43 to Public Agency Z and keep \$7 for the setoff fee, and Debtor A will have a remaining balance of \$50.

EXAMPLE 4: Setoff fee is taken per distribution:

Public Agency Z places \$100 for Debtor A. The setoff program matches one public payment. The department would take one setoff fee when it distributes the funds to Public Agency Z.

Public Agency Z places \$100 for Debtor A. The setoff program matches two public payments from two different sources. The department would take two setoff fees when it distributes the funds to Public Agency Z.

Public Agency Z places \$100 for Debtor A and \$100 for Debtor B. The setoff program matches one public payment for Debtor A and one public payment for Debtor B. The department would take two setoff fees when it distributes the funds to Public Agency Z.

This rule is intended to implement Iowa Code section 421.65.

ARC 7053C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Rulemaking related to deer hunting

The Natural Resource Commission (Commission) hereby amends Chapter 106, “Deer Hunting by Residents,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455A.5(6)“a,” 481A.39 and 481A.48.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 481A.38, 481A.39 and 481A.48.

Purpose and Summary

Chapter 106 governs deer hunting by residents in the state of Iowa. This chapter regulates deer hunting and sets forth season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements.

This rulemaking adopts three amendments to Chapter 106. First, two counties are added and two counties are removed from the list of counties available for general deer licenses.

Second, Lucas County is added to the list of counties eligible to participate in the population management January antlerless-deer-only season.

Third, antlerless-deer-only county quotas are modified to increase harvest in southern Iowa, where the wild herd is above population goals, and also in north central Iowa, where wild herds have recovered to a level that can sustain additional antlerless harvest. Conversely, quotas are modified in far western Iowa to decrease harvest where populations are below goals and hunter effort is waning.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on April 5, 2023, as **ARC 6977C**. A public hearing was held on April 25, 2023, at 12 noon via video/conference call. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Commission finds that the normal effective date of this rulemaking, 35 days after publication, should be waived and the rulemaking made effective on July 17, 2023, because this rulemaking confers a benefit to and removes a restriction on sportsmen and -women hunting in this state by making quota changes that create more and different deer hunting opportunities.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on July 13, 2023.

Fiscal Impact

This rulemaking has no negative fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

NATURAL RESOURCE COMMISSION[571](cont'd)

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

Waivers

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking became effective on July 17, 2023.

The following rulemaking action is adopted:

ITEM 1. Amend paragraph **106.1(1)“a”** as follows:

a. *General deer licenses.* General deer licenses shall be valid for taking deer in one season selected at the time the license is purchased. General deer licenses shall be valid for taking deer of either sex except in Buena Vista, Calhoun, Cherokee, Clay, Crawford, Dickinson, Emmet, ~~Humboldt~~, Ida, ~~Kossuth~~, Lyon, O’Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, ~~and~~ Sioux, and Woodbury Counties during the first regular gun season when the general deer license will be valid for taking deer with at least one forked antler. Paid general deer licenses shall be valid statewide except where prohibited in deer population management zones established under 571—Chapter 105. Free general deer licenses shall be valid for taking deer of either sex only on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

ITEM 2. Amend paragraph **106.1(6)“a”** as follows:

a. *Population management season.* Licenses for the population management January antlerless-deer-only season may be issued for the following counties: Allamakee, Appanoose, Decatur, Lucas, Monroe, Wayne, and Winneshiek. Population management January antlerless-deer-only licenses shall be issued for a county only when a minimum of 100 antlerless-deer-only licenses, as described in subrule 106.6(6), remain unsold in that county as of the third Monday in December. If 100 or more antlerless-deer-only licenses remain unsold for a given county as of the third Monday in December, those remaining antlerless-deer-only licenses shall be made available for the population management January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in subrule 106.6(6) is met.

ITEM 3. Amend subrule 106.6(6) as follows:

106.6(6) Antlerless-deer-only licenses. Paid antlerless-deer-only licenses will be available by county as follows:

County	Quota	County	Quota	County	Quota
Adair	1200	Floyd	150	Monona	500 <u>250</u>
Adams	1000	Franklin	0 <u>100</u>	Monroe	2500
Allamakee	3800	Fremont	0	Montgomery	500 <u>300</u>
Appanoose	2700 <u>2800</u>	Greene	100	Muscatine	900
Audubon	0	Grundy	0	O’Brien	0
Benton	325	Guthrie	2350	Osceola	0

NATURAL RESOURCE COMMISSION[571](cont'd)

County	Quota	County	Quota	County	Quota
Black Hawk	0	Hamilton	0 <u>100</u>	Page	300 <u>150</u>
Boone	400 <u>500</u>	Hancock	0 <u>100</u>	Palo Alto	0
Bremer	300	Hardin	0 <u>100</u>	Plymouth	0
Buchanan	400	Harrison	500 <u>250</u>	Pocahontas	0
Buena Vista	0	Henry	1050	Polk	1350
Butler	200	Howard	450	Pottawattamie	500 <u>250</u>
Calhoun	0	Humboldt	0	Poweshiek	200
Carroll	0	Ida	0	Ringgold	1600
Cass	300 <u>200</u>	Iowa	450	Sac	0
Cedar	775	Jackson	1100	Scott	200
Cerro Gordo	0 <u>100</u>	Jasper	400	Shelby	0
Cherokee	0	Jefferson	1500	Sioux	0
Chickasaw	375	Johnson	950	Story	150
Clarke	2400	Jones	1100	Tama	300
Clay	0	Keokuk	500	Taylor	1500
Clayton	4000	Kossuth	0	Union	1400
Clinton	400	Lee	1700 <u>1800</u>	Van Buren	2300 <u>2400</u>
Crawford	0	Linn	850	Wapello	1600
Dallas	2100 <u>1900</u>	Louisa	775	Warren	3000
Davis	1900 <u>2000</u>	Lucas	2500	Washington	1000 <u>1200</u>
Decatur	2400 <u>2500</u>	Lyon	0	Wayne	2700
Delaware	950 <u>1100</u>	Madison	3300	Webster	0 <u>100</u>
Des Moines	900 <u>1000</u>	Mahaska	475	Winnebago	0
Dickinson	0	Marion	2050	Winneshiek	2700
Dubuque	1200	Marshall	150	Woodbury	0
Emmet	0	Mills	150 <u>0</u>	Worth	0
Fayette	2500	Mitchell	100	Wright	0 <u>100</u>

[Filed Emergency After Notice 7/17/23, effective 7/17/23]

[Published 8/9/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/23.

ARC 7056C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Adopted and Filed****Rulemaking related to rules review**

The Economic Development Authority hereby rescinds Chapter 4, “Workforce Development Accountability System,” Chapter 27, “Neighborhood Stabilization Program,” Chapter 32, “Tax Credits for Economic Development Region Revolving Loan Fund,” Chapter 34, “Welcome Center Program,” Chapter 35, “Regional Tourism Marketing Grant Program,” Chapter 37, “City Development Board,” Chapter 40, “Iowa Jobs Main Street Program,” Chapter 41, “Community Development Fund,” Chapter 46, “Endow Iowa Grants Program,” Chapter 70, “Port Authority Grant Program,” Chapter 78, “Small Business Disaster Recovery Financial Assistance Program,” Chapter 79, “Disaster Recovery Business Rental Assistance Program,” and Chapter 164, “Use of Marketing Logo,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 15.108, 15.109, 15.271, 15.272, 15E.304, 84A.5 and 99F.11; 2010 Iowa Acts, Senate File 2389; 2001 Iowa Acts, House File 718; and 2006 Iowa Acts, House File 2782.

Purpose and Summary

Pursuant to Part IV of Executive Order 10, the Authority has been directed to adopt this rulemaking. The Authority is rescinding chapters that are outdated or redundant.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on May 17, 2023, as **ARC 7020C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Authority Board on July 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Review by Administrative Rules Review Committee

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

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

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

Effective Date

This rulemaking will become effective on September 13, 2023.

The following rulemaking action is adopted:

- ITEM 1. Rescind and reserve **261—Chapter 4.**
- ITEM 2. Rescind and reserve **261—Chapter 27.**
- ITEM 3. Rescind and reserve **261—Chapter 32.**
- ITEM 4. Rescind and reserve **261—Chapter 34.**
- ITEM 5. Rescind and reserve **261—Chapter 35.**
- ITEM 6. Rescind and reserve **261—Chapter 37.**
- ITEM 7. Rescind and reserve **261—Chapter 40.**
- ITEM 8. Rescind and reserve **261—Chapter 41.**
- ITEM 9. Rescind and reserve **261—Chapter 46.**
- ITEM 10. Rescind and reserve **261—Chapter 70.**
- ITEM 11. Rescind and reserve **261—Chapter 78.**
- ITEM 12. Rescind and reserve **261—Chapter 79.**
- ITEM 13. Rescind and reserve **261—Chapter 164.**

[Filed 7/21/23, effective 9/13/23]

[Published 8/9/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/23.

ARC 7057C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rulemaking related to employer child care tax credit

The Economic Development Authority hereby adopts new Chapter 57, "Employer Child Care Tax Credit," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 237A.31.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 237A.31 as amended by 2023 Iowa Acts, Senate File 181.

Purpose and Summary

Iowa Code section 237A.31 as amended by 2023 Iowa Acts, Senate File 181, establishes an employer child care tax credit. The credit is equal to the proportion of the federal employer-provided child care tax credit for which the employer was eligible in the same tax year attributable to expenditures made in Iowa. The aggregate amount of tax credits authorized annually is \$2 million.

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The new Chapter 57 describes how the proportion of the federal credit attributable to expenditures in Iowa will be calculated and outlines the application process for the credit.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on June 14, 2023, as **ARC 7039C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Authority Board on July 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa beyond the impact of the legislation implemented.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on September 13, 2023.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** 261—Chapter 57:

CHAPTER 57
EMPLOYER CHILD CARE TAX CREDIT

261—57.1(237A) Definitions.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Department*” means the Iowa department of revenue.

“*Federal credit*” means the federal employer-provided child care tax credit provided in Section 45F of the Internal Revenue Code.

“*Qualified child care expenditure*” means the same as defined in Section 45F of the Internal Revenue Code.

“*Qualified child care facility*” means the same as defined in Section 45F of the Internal Revenue Code.

“*Qualified child care resource and referral expenditure*” means the same as defined in Section 45F of the Internal Revenue Code.

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“*Tax credit*” means the amount a taxpayer may claim against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

261—57.2(237A) Authorization of tax credits.

57.2(1) An employer child care tax credit is authorized pursuant to Iowa Code section 237A.31 as amended by 2023 Iowa Acts, Senate File 181.

57.2(2) The proportion of a taxpayer’s federal credit attributable to expenditures made in Iowa equals the ratio that the sum of the amount described in paragraph 57.2(2)“a” bears to the sum total of the amount described in paragraph 57.2(2)“b.” The ratio shall be expressed as a percentage rounded to the nearest hundredth percent.

a. The qualified child care expenditures paid or incurred with respect to a qualified child care facility in Iowa, plus qualified child care resource and referral expenditures paid or incurred with respect to Iowa employees.

b. The qualified child care expenditures and qualified child care resource and referral expenditures.

261—57.3(237A) Application and issuance process.

57.3(1) The authority will develop a standardized application pertaining to the authorization and distribution of tax credits. The application will request information relating to the taxpayer’s eligibility for the federal credit, the proportion of the federal credit attributable to expenditures made by the taxpayer in Iowa as calculated pursuant to subrule 57.2(2), and any other information required by the authority. The certified public accountant (CPA) examination conducted pursuant to rule 261—57.4(237A) shall be submitted with the application.

57.3(2) A taxpayer shall submit an application for the credit within 90 calendar days of the end of the tax year during which qualified child care expenditures and qualified child care resource and referral expenditures are paid or incurred.

57.3(3) The authority shall issue tax credit certificates in the order the applications are determined complete and qualified until the maximum aggregate amount of tax credits that may be authorized pursuant to Iowa Code section 237A.31(3)“a” is reached. Applications for tax credits received in excess of the maximum aggregate amount of tax credits available each fiscal year will be denied by the authority. An application that can be partially approved without exceeding the maximum aggregate amount of tax credits may be approved as to the portion less than the maximum amount and denied as to the portion greater than the maximum amount.

57.3(4) The authority will issue a tax credit certificate to an approved taxpayer in an amount that represents the maximum amount of tax credit the taxpayer may claim. To receive the tax credit, the taxpayer shall file a claim with the department in accordance with any applicable administrative rules adopted by the department. An approved taxpayer’s tax credit may be subject to reduction in such circumstances described by any applicable rules adopted by the department.

261—57.4(237A) CPA examination.

57.4(1) A taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the taxpayer’s qualified child care expenditures and qualified child care resource and referral expenditures in accordance with the American Institute of Certified Public Accountants’ statements on standards for attestation engagements. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601.

57.4(2) The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA’s professional judgment, the qualified child care expenditures paid or incurred with respect to a qualified child care facility in Iowa and qualified child care resources and referral expenditures paid or incurred with respect to Iowa employees are eligible for a tax credit pursuant to Iowa Code section 237A.31 and all rules adopted by the authority and by the department pursuant to Iowa Code section 237A.31 in all material respects. The documents reviewed by the CPA shall

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be provided to the authority upon request. The authority may deny a tax credit application if such documents are requested and are not provided to the authority within 60 days.

These rules are intended to implement Iowa Code section 237A.31 as amended by 2023 Iowa Acts, Senate File 181.

[Filed 7/21/23, effective 9/13/23]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/9/23.