



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2015

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
6	Wednesday, August 26, 2015	September 16, 2015
7	Friday, September 11, 2015	September 30, 2015
8	Friday, September 25, 2015	October 14, 2015

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, September 8, 2015, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the September 2, 2015, Iowa Administrative Bulletin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Organization and operation of Terrace Hill, 114.1 to 114.8 Notice **ARC 2072C**..... 8/5/15

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Registration of Iowa-foaled horses and Iowa-whelped dogs; adoption of dairy inspection manuals, amendments to chs 62, 68 Filed **ARC 2104C**..... 8/19/15
Participation in grain depositors and sellers indemnity fund—fee exemptions, 92.2 Filed **ARC 2105C**..... 8/19/15

ALCOHOLIC BEVERAGES DIVISION[185]

COMMERCE DEPARTMENT[181]“umbrella”

Tastings; samplings; trade spending, 16.1, 16.7 to 16.9 Notice **ARC 2106C**..... 8/19/15

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

All Iowa opportunity scholarship program, 8.2, 8.4 Notice **ARC 2112C**..... 8/19/15
National Guard educational assistance, 20.1(6)“c” Notice **ARC 2111C**..... 8/19/15
Teach Iowa scholar program—selection criteria, 28.4(1) Notice **ARC 2110C**..... 8/19/15
Governor Terry E. Branstad Iowa state fair scholarship—monetary award, 36.1(4) Notice **ARC 2101C**..... 8/19/15

CORRECTIONS DEPARTMENT[201]

Iowa state industries, 37.2(5), 37.3, 37.4, 37.7, 37.8(1), 37.9 Filed Emergency **ARC 2100C**..... 8/19/15

ECONOMIC DEVELOPMENT AUTHORITY[261]

STEM (science, technology, engineering, and mathematics) internship program, amend ch 104; adopt ch 110 Notice **ARC 2098C**, also Filed Emergency **ARC 2099C**..... 8/19/15

HUMAN SERVICES DEPARTMENT[441]

Habilitation and brain injury and intellectual disability waiver programs—prevocational and supported employment services, amendments to chs 77 to 79, 83 Notice **ARC 2114C**..... 8/19/15
Community-based neurobehavioral rehabilitation residential and intermittent services, 77.52, 78.56, 79.1, 79.3(2)“d” Notice **ARC 2113C**..... 8/19/15
HCBS elderly waiver services—assisted living service, 78.37(18) Notice **ARC 2115C**..... 8/19/15
Services rendered via telehealth, 78.55 Notice **ARC 2096C**..... 8/5/15
Intellectual disability waiver services cost-savings initiative, 79.1(2), 83.66 Notice **ARC 2097C**..... 8/5/15
Threshold for combined claims for inpatient hospital readmissions, 79.1(5)“g”(5) Notice **ARC 2076C**, also Filed Emergency **ARC 2075C**..... 8/5/15
Intellectual disability waiver services—supports intensity scale (SIS) assessment, 83.60, 83.61(2), 83.62(3)“c,” 83.64 Notice **ARC 2095C**..... 8/5/15
Child care program licensure—changes in allowable exemptions, amendments to chs 109, 170 Notice **ARC 2073C**..... 8/5/15
Implementation of preventing sex trafficking and strengthening families Act, amendments to chs 112, 113, 117, 175, 202 Filed **ARC 2069C**..... 8/5/15

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Hospitals—minimum standards for construction, 51.50 Notice **ARC 2080C**..... 8/5/15
Health care facilities—contested cases, fines and citations, 56.3(5), 56.14 to 56.16 Notice **ARC 2081C**..... 8/5/15

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Authorized methods of delivery of notices of cancellation, nonrenewal or termination, 4.24, 20.80, 30.9, 35.9, 39.33, 40.26 Notice **ARC 2078C**..... 8/5/15
Rate-filing deadline for crop-hail insurance, 20.8 Notice **ARC 2103C**..... 8/19/15
Regulation of securities offerings and those who engage in the securities business, amendments to ch 50 Notice **ARC 2079C**..... 8/5/15

IOWA FINANCE AUTHORITY[265]

Low-income housing tax credit program—qualified allocation plan, amendments to ch 12 Notice **ARC 2077C**..... 8/5/15

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Election of vice chair, 1.1 <u>Notice</u> ARC 2093C	8/5/15
Board advisory opinions, 1.2, 1.3 <u>Filed</u> ARC 2088C	8/5/15
Conflict of interest, 1.4 <u>Filed</u> ARC 2090C	8/5/15
Complaint investigation and resolution procedures, 2.1 <u>Filed</u> ARC 2089C	8/5/15
Open meetings, ch 8 <u>Filed</u> ARC 2091C	8/5/15

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Common snipe, Virginia rail and sora, woodcock, ruffed grouse and dove hunting—possession limits, 97.1 to 97.3, 97.6 <u>Filed</u> ARC 2087C	8/5/15
Deer hunting by residents—quotas, permitted broadhead, certification for disability, 106.6(6), 106.7(3), 106.10(1)"b" <u>Filed</u> ARC 2086C	8/5/15

NATURAL RESOURCES DEPARTMENT[561]

State lands volunteer program, ch 13 <u>Filed</u> ARC 2092C	8/5/15
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NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Discipline; contested case procedures, amend ch 4; adopt ch 20 <u>Notice</u> ARC 2109C	8/19/15
Iowa nurse assistance program, ch 19 <u>Notice</u> ARC 2085C	8/5/15

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Chiropractors—continuing education, grounds for discipline, 44.3(2), 45.2(31) <u>Notice</u> ARC 2094C	8/5/15
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PUBLIC HEALTH DEPARTMENT[641]

Reportable diseases, poisonings and conditions; quarantine and isolation, amendments to ch 1 <u>Notice</u> ARC 2083C	8/5/15
Early hearing detection and intervention, amendments to ch 3 <u>Notice</u> ARC 2082C	8/5/15
Iowa physician orders for scope of treatment, ch 145 <u>Notice</u> ARC 2084C	8/5/15

REVENUE DEPARTMENT[701]

Property assessment appeal board, 71.21, ch 126 <u>Filed</u> ARC 2108C	8/19/15
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Voting systems—network security, 22.50 <u>Filed</u> ARC 2074C	8/5/15
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SOIL CONSERVATION DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Division name change; conservation cost-share management practices; general updates, amendments to chs 3 to 5, 11, 12, 16, 20 to 22, 30, 40, 50, 60, 101, 102, 107 <u>Notice</u> ARC 2102C	8/19/15
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TRANSPORTATION DEPARTMENT[761]

Federal motor carrier safety regulations—adoption by reference; licensing, amendments to chs 602, 604, 605, 607 <u>Notice</u> ARC 2070C , also <u>Filed Emergency</u> ARC 2071C	8/5/15
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Iowa reading corps, ch 11 <u>Notice</u> ARC 2107C	8/19/15
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ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

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Representative Lisa Heddens
2401 Westwind Drive
Ames, Iowa 50010

Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 5031

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

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Organization and operation of Terrace Hill, 114.1 to 114.8 IAB 8/5/15 ARC 2072C	Terrace Hill Gift Shop 2300 Grand Ave. Des Moines, Iowa	August 25, 2015 9 to 10 a.m.
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ALCOHOLIC BEVERAGES DIVISION[185]

Tastings; samplings; trade spending, 16.1, 16.7 to 16.9 IAB 8/19/15 ARC 2106C	Division Training Room 1918 S.E. Hulsizer Rd. Ankeny, Iowa	September 11, 2015 10 a.m. (If requested)
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INSURANCE DIVISION[191]

Authorized methods of delivery of notices of cancellation, nonrenewal or termination, 4.24, 20.80, 30.9, 35.9, 39.33, 40.26 IAB 8/5/15 ARC 2078C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	September 3, 2015 10 a.m.
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Rate-filing deadline for crop-hail insurance, 20.8 IAB 8/19/15 ARC 2103C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	September 8, 2015 10 a.m.
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Regulation of securities offerings and those who engage in the securities business, amendments to ch 50 IAB 8/5/15 ARC 2079C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	August 27, 2015 10 a.m.
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IOWA FINANCE AUTHORITY[265]

Low-income housing tax credit program—qualified allocation plan, 12.1, 12.2 IAB 8/5/15 ARC 2077C	Authority Offices 2015 Grand Ave. Des Moines, Iowa	August 25, 2015 1 to 4 p.m.
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NURSING BOARD[655]

Discipline; contested case procedures, amend ch 4; adopt ch 20 IAB 8/19/15 ARC 2109C	Board Office, Suite B 400 S.W. 8th St. Des Moines, Iowa	September 8, 2015 9 a.m.
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Iowa nurse assistance program, ch 19 IAB 8/5/15 ARC 2085C	Board Office, Suite B 400 S.W. 8th St. Des Moines, Iowa	August 25, 2015 9 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Chiropractors—continuing education, grounds for discipline, 44.3(2), 45.2(31) IAB 8/5/15 ARC 2094C	Conference Room 513, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa	August 25, 2015 9 to 9:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Reportable diseases, poisonings and conditions; quarantine and isolation, amendments to ch 1 IAB 8/5/15 ARC 2083C (ICN Network)	Rooms 517 and 518, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa <i>To participate by conference call:</i> Dial 1-866-685-1580 Conference code: 5152815099	August 25, 2015 1 to 2 p.m.
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PUBLIC HEALTH DEPARTMENT[641] (cont'd)

<p>Early hearing detection and intervention, amendments to ch 3 IAB 8/5/15 ARC 2082C</p>	<p>Room 523, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa <i>To participate by conference call:</i> Dial 1-866-685-1580 Conference code: 5152816466#</p>	<p>August 26, 2015 9 to 10 a.m.</p>
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PUBLIC SAFETY DEPARTMENT[661]

<p>Electrician and electrical contractor licensing program; postsecondary electrical education programs; electrical inspection program and inspector qualifications, amendments to chs 501, 502, 505, 550 IAB 7/8/15 ARC 2057C</p>	<p>First Floor Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa</p>	<p>August 20, 2015 10 a.m.</p>
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TRANSPORTATION DEPARTMENT[761]

<p>Federal motor carrier safety regulations—adoption by reference; licensing, amendments to chs 602, 604, 605, 607 IAB 8/5/15 ARC 2070C (See also ARC 2071C)</p>	<p>Motor Vehicle Division Offices 6310 S.E. Convenience Blvd. Ankeny, Iowa</p>	<p>August 28, 2015 10 a.m. (If requested)</p>
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VOLUNTEER SERVICE, IOWA COMMISSION ON[817]

<p>Iowa reading corps, ch 11 IAB 8/19/15 ARC 2107C</p>	<p>Main Conference Room 200 E. Grand Ave. Des Moines, Iowa</p>	<p>September 8, 2015 9 to 10 a.m.</p>
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The following list will be updated as changes occur.

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

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

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

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 Workforce Development Board and Workforce Development Center Administration Division[877]

FEMA DR-4234-IA

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
Iowa Homeland Security and Emergency Management Department (HSEMD)	<p>Hazard Mitigation Grant Program (HMGP) Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA).</p>	<ul style="list-style-type: none"> • State Agencies and Local Governments • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations • Private Non Profit (PNP) Organizations or institutions which operate a PNP facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221(e) • All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP. • All Applicants for a project grant MUST have a FEMA approved local hazard mitigation plan. <p>Application Process:</p> <ul style="list-style-type: none"> - Potential project & planning applicants must complete a Notice of Interest (NOI) Form located on the HSEMD website at: http://www.iowahomelandsecurity.org/grants/HMA.html - NOI Form must be emailed to hsemd.mitigation@iowa.gov. - NOI's will be selected for full application development based on funding availability, the State's priority, and an initial eligibility review. - NOI's will be accepted on a continuous basis or until otherwise notified. <p>For additional information, please contact:</p> <p>Dan Schmitz 515-725-9369 Dennis Harper 515-725-9348</p> <p>Iowa Homeland Security and Emergency Management Department 7900 Hickman Road Windsor Heights, IA 50324</p>	<p>Eligible Project Types</p> <p>Projects may be of any nature that will result in protection to public or private property, including but not limited to:</p> <ul style="list-style-type: none"> • Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity • Construction of safe rooms (tornado and severe wind shelters) • Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, flood-proofing, storm shutters, hurricane clips) • Minor structural hazard control or protection projects that may include vegetation management, storm water management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system • Development of multi-jurisdictional hazard mitigation plans and plan updates <p>Planning Application</p> <p>The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA approved hazard mitigation plan.</p>

ARC 2106C

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 16, “Trade Practices,” Iowa Administrative Code.

The proposed amendments rescind rule 185—16.7(123) as it currently appears and adopt three new rules on tasting, sampling and trade spending in order to separate the subject matter. The proposed amendments define terms and explain each subject matter in greater detail to provide clarity for the reader.

Prior to the filing of this Notice, the proposed amendments were circulated to stakeholders and discussed in a series of working meetings. Comments received as a result of these activities were considered.

Any person or agency may submit written comments concerning the proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tyler Ackerson, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; Internet e-mail address: Ackerson@iowaabd.com.

5. Be received by the Alcoholic Beverages Division no later than 4:30 p.m. on September 8, 2015.

A meeting to hear requested oral presentation is scheduled for Friday, September 11, 2015, at 10 a.m. in the training room at the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments do not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

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

These amendments are intended to implement Iowa Code chapter 123.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **185—16.1(123)**:

“*Brand*” means each alcoholic liquor, wine, beer, or high alcoholic content beer packaged and sold under a separate name, class, type, or kind designation (wine appellation of origin, wine vintage date, alcoholic liquor age, percentage of alcohol, etc.).

“*Product*” means alcoholic liquor, wine, beer, or high alcoholic content beer as defined in Iowa Code chapter 123.

“*Sampling*” means the practice of industry members giving product to a retailer for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Tasting*” means the presentation and serving of a product by industry members or retailers to consumers for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Trade spending*” means the practice of industry members promoting their brand by purchasing alcoholic beverages for consumers where alcoholic beverages are sold and served for on-premises consumption.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

ITEM 2. Rescind rule 185—16.7(123) as follows:

~~**185—16.7(123) Tastings, samplings and trade spending.** An industry member may conduct tastings in a retail establishment, provided that the tasting has the indicia of a tasting and is not a subterfuge to provide a retailer with free merchandise. An industry member may provide samples of alcoholic liquor, wine or beer to a retailer who has not previously purchased the brand from the industry member provided that the quantities of any brand of beer do not exceed 3 gallons; of wine, 3 liters; of alcoholic liquor, 500 milliliters. An industry member may engage in the practice of trade spending (purchasing one round of alcoholic or nonalcoholic beverages for patrons of an on-premises retail establishment). An industry member who engages in trade spending is prohibited from paying the retailer more than the ordinary and customary charge for the beverages.~~

~~This rule is intended to implement Iowa Code section 123.186.~~

ITEM 3. Adopt the following new rules 185—16.7(123), 185—16.8(123) and 185—16.9(123):

185—16.7(123) Tasting.

16.7(1) Restrictions.

a. The amount of product served per person during a tasting shall be limited to the following.

- (1) No more than one half of one fluid ounce of any brand of alcoholic liquor.
- (2) No more than one fluid ounce of any brand of wine.
- (3) No more than two fluid ounces of any brand of beer or high alcoholic content beer.
- (4) No more than two fluid ounces of a mixed drink or cocktail as defined in 185—paragraph 4.5(1)“b.”

b. Product shall not be served to, or allowed to be consumed by, any consumer who is under legal age, intoxicated, or simulating intoxication.

c. Product served during a tasting shall not be served by persons under 18 years of age.

16.7(2) Tastings conducted by an industry member. An industry member may conduct a tasting on licensed and unlicensed premises, subject to the requirements and restrictions provided in this rule.

a. *Licensed premises.*

- (1) A tasting may be conducted on licensed premises where alcoholic beverages are sold or served.
- (2) A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.
- (3) A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.
- (4) An industry member may provide snack foods or hors d’oeuvres for the participants at the tasting.
- (5) Product or food served during a tasting shall either be provided by the industry member or purchased at no more than the ordinary retail price from the license or permit holder on whose premises the tasting is being held.
- (6) Any product or food remaining at the end of a tasting shall be removed from the licensed premises by the industry member.

b. *Unlicensed premises.*

- (1) A tasting of wine, beer, or high alcoholic content beer may be conducted in an unlicensed public place unless prohibited by Iowa Code section 123.46(2) or an applicable ordinance or regulation of the local authority.
- (2) A tasting of alcoholic liquor, wine, beer, or high alcoholic content beer may be conducted in an unlicensed private place as defined in 185—subrule 4.23(4).
- (3) A tasting of alcoholic liquor is prohibited in an unlicensed public place.
- (4) Wine, beer, and high alcoholic content beer served during a tasting shall be obtained from the respective wholesaler.
- (5) An industry member may provide snack foods or hors d’oeuvres for the participants at the tasting.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

(6) Any product or food remaining at the end of a tasting shall be removed from the premises by the industry member.

16.7(3) *Tastings conducted by a retailer.* A retailer licensed or permitted for on- or off-premises consumption may conduct a tasting, subject to the requirements and restrictions provided in this rule.

- a. Product served during a tasting shall be served by a retailer or the retailer's employees or agents.
- b. A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.
- c. A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.
- d. Product served during a tasting shall be legally obtained as prescribed by Iowa Code chapter 123.
- e. An off-premises license or permit holder may conduct a tasting when there is no charge for product or access.
- f. Food may be provided by the retailer for the participants of a tasting.
- g. An industry member may be present at a tasting conducted by a retailer for educational and promotional purposes, and may serve product only with the explicit consent of the retailer.

16.7(4) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

185—16.8(123) Sampling.

16.8(1) *Conditions.* An industry member may give product to a retailer who has not purchased the brand from that industry member within the preceding 12 months.

16.8(2) *Quantity.* Product given to a retailer shall not exceed the following amounts within a calendar year.

- a. Three liters of any brand of alcoholic liquor.
- b. Three liters of any brand of wine.
- c. Three gallons of any brand of beer or high alcoholic content beer.

16.8(3) *Procurement.* An industry member shall obtain alcoholic liquor, wine, beer, or high alcoholic content beer used for sampling from the respective wholesaler.

16.8(4) *Identification.* Each container of product used for sampling shall be clearly labeled with the word "SAMPLE".

16.8(5) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

185—16.9(123) Trade spending. An industry member may engage in the practice of trade spending.

16.9(1) *Advertising.* Trade spending shall be unannounced and unpublicized.

16.9(2) *Quantity.* The industry member shall be limited to purchasing one round of alcoholic beverages or nonalcoholic beverages for patrons of an on-premises retailer.

16.9(3) *Payment.* The industry member shall pay the retailer no more than the ordinary retail price for the alcoholic beverage or nonalcoholic beverage.

16.9(4) *Record keeping.* An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

ARC 2112C

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261.62, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 8, “All Iowa Opportunity Scholarship Program,” Iowa Administrative Code.

The proposed amendments to Chapter 8 clarify the reporting requirements for eligible colleges and universities, refine the ranking of applicants for receipt of awards under the program, define maximum award eligibility under the program, and provide an option for eligibility for awards over a one- or two-year period. The proposed amendments to Chapter 8 reflect changes to Iowa Code section 261.87 that were enacted in 2015 Iowa Acts, House File 658, section 47.

Interested persons may submit comments orally or in writing by 4:30 p.m. on September 8, 2015, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

These amendments are intended to implement Iowa Code chapter 261 as amended by 2015 Iowa Acts, House File 658.

The following amendments are proposed.

ITEM 1. Amend rule **283—8.2(261)**, definition of “Eligible college or university,” as follows:

“*Eligible college or university*” means an Iowa community college, an institution of higher education governed by the state board of regents, or an accredited private institution located in Iowa that meets all eligibility requirements set forth in Iowa Code section 261.9. All eligible colleges and universities must submit annual reports which include student and faculty information, enrollment and employment information, and other information required by the commission as described in Iowa Code ~~sections~~ section 261.9 through 261.16.

ITEM 2. Amend subrule 8.4(2) as follows:

8.4(2) Priority for grants. Only applicants with expected family contributions (EFCs) at or below the average tuition and fees for regent university students for the academic year for which awards are being made will be considered for awards.

a. All eligible renewal applicants will be funded prior to new applicants. Awards to renewal applicants will be made based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached.

b. If funding remains after all eligible renewal students have been awarded, priority will be given to students who participated in federal TRIO programs, ~~participated in federal GEAR UP programs,~~ participated in alternative programs in high school, or graduated from alternative high schools. Awards will be made to students in this category based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached. If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

c. If funding remains after all priority applicants have been awarded, funding will be given to students who participated in federal GEAR UP programs. Awards will be made to students in this category based on EFC levels within the parameters defined by the commission, with students in the

COLLEGE STUDENT AID COMMISSION[283](cont'd)

lowest EFC levels awarded first, followed by awards to students at increasing EFC levels until the maximum EFC level is reached. If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

e. d. If funding is available, awards to remaining eligible applicants will be made based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and, followed by awards to students at increasing EFC levels until the maximum EFC level is reached. If all students in a given EFC level cannot be funded, students will be ranked according to the date the state application was filed.

ITEM 3. Amend subrule 8.4(3) as follows:

8.4(3) Maximum award. All Iowa opportunity scholarships are provided during the traditional nine-month academic year, which is generally defined as September through May. Students attending eligible colleges and universities may receive no more than four full-time or eight part-time semesters of all Iowa opportunity scholarships.

a. The maximum award for full-time students will be the lesser of:

- (1) The amount of financial need demonstrated by the student as calculated by the commission,
- (2) One-half of the average tuition and fees for regent university students for the award year, or the
- (3) The tuition and fees paid by the student, whichever is less.

b. A student may request that the student's maximum four semesters of award eligibility be provided during the first two semesters of enrollment. A student making this request will be eligible for only two semesters and will be awarded no more than the lesser of:

- (1) The amount of financial need demonstrated by the student as calculated by the commission,
- (2) The annual average tuition and fees at regent universities, or
- (3) An amount equal to double the tuition and fees paid by the student during the first year of eligibility.

c. The maximum award for a full-time recipient student will not be affected by the ranking system used to prioritize grants. A part-time recipient student will receive a prorated award, as defined by the commission, based on the number of hours for which the student is enrolled.

ITEM 4. Rescind subrule **8.4(6)**.

ITEM 5. Renumber subrule **8.4(7)** as **8.4(6)**.

ARC 211C

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261.86, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 20, “Iowa National Guard Educational Assistance Program,” Iowa Administrative Code.

The proposed amendment to Chapter 20 revises the maximum benefit a National Guard member may receive under the program from eight semesters of study to a maximum of 120 credit hours of study. The proposed amendment to Chapter 20 reflects changes to Iowa Code section 261.86 that were enacted in 2015 Iowa Acts, Senate File 130, section 1.

Interested persons may submit comments orally or in writing by 4:30 p.m. on September 8, 2015, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of these rules.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

After analysis and review of this rule making, the Commission finds that there is no impact on jobs. This amendment is intended to implement Iowa Code section 261.86 as amended by 2015 Iowa Acts, Senate File 130, section 1.

The following amendment is proposed.

Amend paragraph **20.1(6)“c”** as follows:

c. A qualified ~~full-time~~ student may receive benefits for no more than ~~8 semesters~~ 120 credit hours of undergraduate study ~~or the quarter or trimester equivalent.~~ ~~A qualified part-time student may receive benefits for no more than 16 semesters of undergraduate study or the quarter or trimester equivalent.~~ All credit hours within a term of enrollment to which educational assistance was applied must be reported to the commission within the state-defined payment period.

ARC 2110C**COLLEGE STUDENT AID COMMISSION[283]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 261.62, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 28, “Teach Iowa Scholar Program,” Iowa Administrative Code.

The proposed amendment to Chapter 28 changes the order of selection criteria under the program.

Interested persons may submit comments orally or in writing by 4:30 p.m. on September 8, 2015, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Amend subrule 28.4(1) as follows:

28.4(1) Selection criteria. All applicants meeting the eligibility requirements will be considered for funding. In the event that all on-time applicants cannot be funded with the available appropriation, criteria for selection of recipients will be prioritized as follows:

- a.* Award renewal status;
- ~~*b.* Iowa resident status;~~
- ~~*e.* *b.*~~ Graduation date, grouped by academic year, with the most recent academic year graduates given priority;
- ~~*d.* *c.*~~ Prioritized annual ranking of eligible teaching fields by the department, with the highest ranking fields being served first, if information is available;
- ~~*e.* *d.*~~ Prioritized annual ranking of regional need within eligible teaching fields by the department, with the highest ranking regions being served first within each ranked eligible teaching field, if information is available;
- e.* Iowa resident status;
- f.* Date of application.

ARC 2101C

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261.62, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 36, “Governor Terry E. Branstad Iowa State Fair Scholarship Program,” Iowa Administrative Code.

The proposed amendment to Chapter 36 provides an increase in the number of awards that can be made under the program and increases the maximum amounts of awards.

Interested persons may submit comments orally or in writing by 4:30 p.m. on September 8, 2015, to the Executive Director, Iowa College Student Aid Commission, 430 East Grand Avenue, Third Floor, Des Moines, Iowa 50309-1920; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Amend subrule 36.1(4) as follows:

36.1(4) Monetary award.

a. Up to ~~four ten~~ awards ~~ranging from \$500 to \$1,000, not to exceed \$5,000 per award,~~ will be awarded annually. No student shall receive more than the student’s established financial need.

b. A scholarship of up to ~~\$2,000~~ \$5,000 will be awarded each year to the Iowa state fair queen.

c. The Governor Terry E. Branstad Iowa state fair scholarship fund will be established in the office of the state treasurer.

ARC 2098C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 15.106A, 2014 Iowa Acts, chapter 1132, section 12, and 2015 Iowa Acts, Senate File 510, division XI, the Economic Development Authority proposes to amend Chapter 104, “Innovative Businesses Internship Program,” and to adopt new Chapter 110, “STEM Internship Program,” Iowa Administrative Code.

The Legislature, in 2014 Iowa Acts, chapter 1132, directed the Authority to establish a STEM internship component as part of the previously established Innovative Businesses Internship Program. The Legislature, in 2015 Iowa Acts, Senate File 510, amended both the STEM internship component and the innovative businesses component. The rules in Chapter 110 establish the program to provide STEM internship assistance to Iowa employers and describe the manner in which the Authority intends to implement and administer the program. The amendments to Chapter 104 make changes to the Innovative Businesses Internship Program in conformance with the legislative amendments.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Interested persons may submit comments on these amendments on or before September 8, 2015. Comments may be submitted to Kristin Hanks-Bents, Economic Development Authority, 200 E. Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-0440; e-mail kristin.hanks-bents@iowa.gov.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2099C**. The content of that submission is incorporated by reference.

These amendments are intended to implement 2014 Iowa Acts, chapter 1132, section 12, and Iowa Code section 15.411 as amended by 2015 Iowa Acts, Senate File 510, division XI.

ARC 2114C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

These amendments implement the changes in employment service definitions as provided by the Centers for Medicaid and Medicare Services (CMS) in its September 16, 2011, Informational Bulletin and in the CMS 2015 Technical Guide.

These amendments also change the provider qualifications, scope of services, duration, limitation and reimbursement methodologies for the home- and community-based services (HCBS) prevocational and supported employment services within the habilitation services program and the intellectual disability (ID) and brain injury (BI) waivers.

Any interested person may make written comments on the proposed amendments on or before September 8, 2015. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code chapter 249A.

The following amendments are proposed.

ITEM 1. Rescind subrule 77.25(8) and adopt the following **new** subrule in lieu thereof:

77.25(8) Prevocational habilitation.

a. The following providers may provide prevocational services:

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

(2) An agency that is accredited by the Council on Quality and Leadership.

(3) An agency that is accredited by the International Center for Clubhouse Development.

(4) An agency that is certified by the department to provide prevocational services under:

1. The home- and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A); or

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

- (1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.
- (2) Member vacation, sick leave and holiday compensation.
- (3) Procedures for payment schedules and pay scale.
- (4) Procedures for provision of workers' compensation insurance.
- (5) Procedures for the determination and review of commensurate wages.

c. Direct support staff providing prevocational services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

- (1) A person providing direct support without line-of-sight supervision shall be at least 18 years of age and possess a high school diploma or equivalent degree. A person providing direct support with line-of-sight supervision shall be 16 years of age or older.
- (2) A person providing direct support shall not be an immediate family member of the member.
- (3) A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment service training through the College of Direct Support, College of Employment Services online training program.

ITEM 2. Rescind subrule 77.25(9) and adopt the following **new** subrule in lieu thereof:

77.25(9) Supported employment habilitation.

a. The following agencies may provide supported employment services:

- (1) An agency that is certified by the department to provide supported employment services under:
 1. The home- and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A); or
 2. The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).
- (2) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

- (3) An agency that is accredited by the Council on Accreditation.
- (4) An agency that is accredited by the Joint Commission.
- (5) An agency that is accredited by the Council on Quality and Leadership.
- (6) An agency that is accredited by the International Center for Clubhouse Development.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

- (1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.
- (2) Member vacation, sick leave and holiday compensation.
- (3) Procedures for payment schedules and pay scale.
- (4) Procedures for provision of workers' compensation insurance.
- (5) Procedures for the determination and review of commensurate wages.

c. Direct support staff providing individual or small-group supported employment or long-term job coaching services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) Individual supported employment: bachelor's degree in (or commensurate experience in) human resources, marketing, sales or business. The person must also hold a certified employment support professional credential from the Association of People Supporting Employment First or must earn this credential within 12 months of hire.

(2) Long-term job coaching: associate degree, or high school diploma or equivalent and two years' experience in delivering services and supports. The person must also hold or obtain, within 12 months of hire, nationally recognized certification in job training and coaching.

(3) Small-group supported employment: A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of

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employment services training through the College of Direct Support, College of Employment Services online training program. The person must also hold or obtain, within 12 months of hire, nationally recognized certification in job training and coaching.

ITEM 3. Rescind subrule 77.37(16) and adopt the following **new** subrule in lieu thereof:

77.37(16) Supported employment providers.

a. The following agencies may provide supported employment services:

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider, a community employment service provider, or a provider of a similar service.

(2) An agency that is accredited by the Council on Accreditation for similar services.

(3) An agency that is accredited by the Joint Commission for similar services.

(4) An agency that is accredited by the Council on Quality and Leadership for similar services.

(5) An agency that is accredited by the International Center for Clubhouse Development.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

(1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.

(2) Member vacation, sick leave and holiday compensation.

(3) Procedures for payment schedules and pay scale.

(4) Procedures for provision of workers' compensation insurance.

(5) Procedures for the determination and review of commensurate wages.

c. Individuals may not provide supported employment services except when the services are purchased through the consumer choices option.

d. Direct support staff providing individual or small-group supported employment or long-term job coaching services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) Individual supported employment: bachelor's degree in (or commensurate experience in) human resources, marketing, sales or business. The person must also hold a certified employment support professional credential from the Association of People Supporting Employment First or must earn this credential within 12 months of hire.

(2) Long-term job coaching: associate degree, or high school diploma or its equivalent and two years' experience in delivering services and supports. The person must also hold or obtain, within 12 months of hire, nationally recognized certification in job training and coaching.

(3) Small-group supported employment: A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training through the College of Direct Support, College of Employment Services online training program. The person must also hold or obtain, within 12 months of hire, nationally recognized certification in job training and coaching.

ITEM 4. Rescind subrule 77.37(26) and adopt the following **new** subrule in lieu thereof:

77.37(26) Prevocational service providers.

a. Providers of prevocational services must be accredited by one of the following:

(1) The Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

(2) The Council on Quality and Leadership accreditation in supports for people with disabilities.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

(1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.

(2) Member vacation, sick leave and holiday compensation.

(3) Procedures for payment schedules and pay scale.

(4) Procedures for provision of workers' compensation insurance.

(5) Procedures for the determination and review of commensurate wages.

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c. Direct support staff providing prevocational services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) A person providing direct support without line-of-sight supervision shall be at least 18 years of age and possess a high school diploma or equivalent. A person providing direct support with line-of-sight supervision shall be 16 years of age or older.

(2) A person providing direct support shall not be an immediate family member of the member.

d. A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training through the College of Direct Support, College of Employment Services online training program.

ITEM 5. Rescind subrule 77.39(15) and adopt the following **new** subrule in lieu thereof:

77.39(15) Supported employment providers.

a. The following agencies may provide supported employment services:

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider, a community employment service provider or a provider of a similar service.

(2) An agency that is accredited by the Council on Accreditation for similar services.

(3) An agency that is accredited by the Joint Commission for similar services.

(4) An agency that is accredited by the Council on Quality and Leadership for similar services.

(5) An agency that is accredited by the International Center for Clubhouse Development.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

(1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.

(2) Member vacation, sick leave and holiday compensation.

(3) Procedures for payment schedules and pay scale.

(4) Procedures for provision of workers' compensation insurance.

(5) Procedures for the determination and review of commensurate wages.

c. Individuals may not provide supported employment services except when the services are purchased through the consumer choices option.

d. Direct support staff providing individual or small-group supported employment or long-term job coaching services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

(1) Individual supported employment: bachelor's degree in (or commensurate experience in) human resources, marketing, sales or business. The person must also hold a certified employment support professional credential from the Association of People Supporting Employment First or must earn this credential within 12 months of hire.

(2) Long-term job coaching: associate degree, or high school diploma or its equivalent and two years' experience in delivering services and supports. The person must also hold or obtain, within 12 months of hire, nationally recognized certification in job training and coaching.

(3) Small-group supported employment: A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training through the College of Direct Support, College of Employment Services online training program. The person must also hold or obtain, within 12 months of hire, nationally recognized certification in job training and coaching.

ITEM 6. Rescind subrule 77.39(22) and adopt the following **new** subrule in lieu thereof:

77.39(22) Prevocational services providers.

a. Providers of prevocational services must be accredited by one of the following:

(1) The Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

(2) The Council on Quality and Leadership accreditation in supports for people with disabilities.

b. Providers responsible for the payroll of members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

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- (1) Subminimum wage laws and regulations, including the Workforce Investment Opportunity Act.
- (2) Member vacation, sick leave and holiday compensation.
- (3) Procedures for payment schedules and pay scale.
- (4) Procedures for provision of workers' compensation insurance.
- (5) Procedures for the determination and review of commensurate wages.

c. Direct support staff providing prevocational services shall meet the following minimum qualifications in addition to other requirements outlined in administrative rule:

- (1) A person providing direct support without line-of-sight supervision shall be at least 18 years of age and possess a high school diploma or equivalent. A person providing direct support with line-of-sight supervision shall be 16 years of age or older.
- (2) A person providing direct support shall not be an immediate family member of the member.
- (3) A person providing direct support shall, within 6 months of hire or within 6 months of [the effective date of this subrule], complete at least 9.5 hours of employment services training through the College of Direct Support, College of Employment Services online training program.

ITEM 7. Adopt the following **new** definitions in subrule **78.27(1)**:

"Career exploration," also referred to as "career planning," means a person-centered, comprehensive employment planning and support service that provides assistance for waiver program participants to obtain, maintain or advance in competitive employment or self-employment. Career exploration is a focused, time-limited service engaging a participant in identifying a career direction and developing a plan for achieving competitive, integrated employment at or above the state's minimum wage. The outcome of this service is documentation of the participant's stated career objective and a career plan used to guide individual employment support.

"Career plan" means a written plan documenting the member's stated career objective and used to guide individual employment support services for achieving competitive, integrated employment at or above the state's minimum wage.

"Customized employment" means an approach to supported employment which individualizes the employment relationship between employees and employers in ways that meet the needs of both. Customized employment is based on an individualized determination of the strengths, needs, and interests of the person with a disability and is also designed to meet the specific needs of the employer. Customized employment may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of the individual with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

"Individual employment" means employment in the general workforce where the member interacts with the general public to the same degree as nondisabled persons in the same job, and for which the member is paid at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by persons without disabilities.

"Individual placement and support" means an evidence-based supported employment model that helps people with mental illness to seek and obtain employment.

"Integrated community employment" means work (including self-employment) for which an individual with a disability is paid at or above minimum wage and not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by employees who are not disabled, where the individual interacts with other persons who are not disabled to the same extent as others who are in comparable positions, and which presents opportunities for advancement that are similar to those for employees who are not disabled. In the case of an individual who is self-employed, the business results in an income that is comparable to the income received by others who are not disabled and are self-employed in similar occupations.

"Supported self-employment" includes services and supports that assist the participant in achieving self-employment through the operation of a business; however, Medicaid funds may not be used to

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defray the expenses associated with starting up or operating a business. Assistance for self-employment may include aid to the individual in identifying potential business opportunities; assistance in the development of a business plan, including potential sources of business financing and other assistance in developing and launching a business; identification of the supports necessary for the individual to operate the business; and ongoing assistance, counseling and guidance once the business has been launched.

ITEM 8. Rescind subrule 78.27(9) and adopt the following new subrule in lieu thereof:

78.27(9) *Prevocational service habilitation.* “Prevocational services” means services that provide career exploration, learning and work experiences, including volunteer opportunities, where the member can develop non-job-task-specific strengths and skills that lead to paid employment in individual community settings.

a. Scope. Prevocational services are provided to persons who are expected to be able to join the general workforce with the assistance of supported employment. Prevocational services are intended to develop and teach general employability skills relevant to successful participation in individual employment. These skills include but are not limited to the ability to communicate effectively with supervisors, coworkers and customers; an understanding of generally accepted community workplace conduct and dress; the ability to follow directions; the ability to attend to tasks; workplace problem-solving skills and strategies; general workplace safety and mobility training; the ability to navigate local transportation options; financial literacy skills; and skills related to obtaining employment.

Prevocational services include career exploration activities to facilitate successful transition to individual employment in the community. Participation in prevocational services is not a prerequisite for individual or small-group supported employment services.

(1) Career exploration. Career exploration activities are designed to develop a career plan and facilitate the member’s experientially based, informed choice regarding the goal of individual employment. Career exploration may be authorized for up to 34 hours, to be completed over a 90-day period in the member’s local community or nearby communities and may include but is not limited to the following activities: business tours, informational interviews, job shadows, benefits information, assistive technology assessment, and attendance at career fairs or other job exploration events.

(2) Expected outcome of service.

1. The expected outcome of prevocational services is individual employment in the general workforce, or self-employment, in a setting typically found in the community, where the member interacts with individuals without disabilities, other than those providing services to the member or other individuals with disabilities, to the same extent that individuals without disabilities in comparable positions interact with other persons; and for which the member is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

2. The expected outcome of the career exploration activity is a written career plan that will guide employment services which lead to community employment or self-employment for the member.

b. Setting. Prevocational services shall take place in community-based nonresidential settings.

c. Concurrent services. A member’s individual service plan may include two or more types of nonresidential habilitation services (e.g., individual supported employment, long-term job coaching, small-group supported employment, prevocational services, and day habilitation); however, more than one service may not be billed during the same period of time (e.g., the same hour).

d. Exclusions. Prevocational services payment shall not be made for the following:

(1) Services that are available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available to the individual for the service under these programs shall be maintained in the service plan of each member receiving prevocational services.

(2) Services available to the individual that duplicate or replace education or related services defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.).

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(3) Compensation to members for participating in prevocational services.

(4) Support for members volunteering in for-profit organizations or businesses or volunteering to benefit the service provider.

(5) The provision of vocational services delivered in facility-based settings where individuals are supervised for the primary purpose of producing goods or performing services or where services are aimed at teaching skills for specific types of jobs rather than general skills.

(6) A prevocational service plan with the goal or purpose of the service documented as maintaining or supporting the individual in continuing prevocational services or any employment situation similar to sheltered employment.

e. Limitations.

(1) Time limitation for members starting prevocational services. For members starting prevocational services after [the effective date of this subrule], participation in these services is limited to 24 calendar months. This time limit can be extended to continue beyond 24 months if one or more of the following conditions apply:

1. The member is working in individual or small-group community employment for at least the number of hours per week desired by the member and as identified in the member's current service plan; or

2. The member is working in individual or small-group community employment for less than the number of hours per week identified in the member's current service plan and has a defined employment goal to increase the number of hours the member is working; or

3. The member is actively engaged in seeking individual or small-group supported employment, or self-employment, or similar services funded through another identifiable funding source documented in the member's service plan; and evidence of a plan to obtain individual employment through one of these funding sources is submitted with the request for prior authorization; or

4. The member has requested supported employment services and has been denied or placed on a waiting list within the past 24 months by another identifiable funding source; or

5. The member has been receiving supported employment service for at least 12 of the past 24 months without obtaining individual or small-group employment, and evidence of this is submitted with the request for prior authorization; or

6. The member is participating in career exploration activities as described in subparagraph 78.27(9) "a"(1).

(2) Time limitation for members enrolled in prevocational services. For members enrolled in prevocational services on or before [the effective date of this subrule], participation in these services is limited to 90 days beyond the completion of the career exploration activity including the development of the career plan described in subparagraph 78.27(9) "a"(1). This time limit can be extended as stated in paragraphs 78.27(9) "e"(1) "1" through "6." If the criteria in paragraphs 78.27(9) "e"(1) "1" through "6" do not apply, the member will not be reauthorized to continue prevocational services.

ITEM 9. Rescind subrule 78.27(10) and adopt the following **new** subrule in lieu thereof:

78.27(10) Supported employment services.

a. Individual supported employment. Individual supported employment involves supports provided to, or on behalf of, the member that enable the member to obtain and maintain individual employment. Services are provided to members who need support because of their disabilities.

(1) Scope. Individual supported employment services are services provided to, or on behalf of, the member that enable the member to obtain and maintain an individual job in competitive employment, customized employment or self-employment in an integrated work setting in the general workforce.

(2) Expected outcome of service. The expected outcome of this service is sustained employment, or self-employment, paid at or above the minimum wage or the customary wage and level of benefits paid by an employer, in an integrated setting in the general workforce, in a job that meets personal and career goals. Successful transition to long-term job coaching, if needed, is also an expected outcome of this service. An expected outcome of supported self-employment is that the member earns income that

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is equal to or exceeds the average income for the chosen business within a reasonable period of time, not to exceed 36 months.

(3) **Setting.** Individual supported employment services shall take place in integrated work settings. For self-employment, the member's home can be considered an integrated work setting. Employment in the service provider's organization (not including a sheltered workshop or similar type of work setting where members are paid for the production of goods or services) can be considered employment in an integrated work setting in the general workforce if the employment occurs in a work setting where interactions are predominantly with coworkers or business associates who do not have disabilities or with the general public.

(4) Individual employment strategies include but are not limited to: customized employment, individual placement and support, and supported self-employment. Service activities are individualized and may include any combination of the following:

1. Benefits planning.
2. Career exploration (e.g., tours, informational interviews, job shadows).
3. Employment assessment.
4. Assistive technology assessment.
5. Trial work experience.
6. Person-centered employment planning.
7. Development of visual/traditional résumés.
8. Job-seeking skills training and support.
9. Outreach to prospective employers on behalf of the member (e.g., job development; negotiation with prospective employers to customize, create or carve out a position for the member; employer needs analysis).
10. Job analysis (e.g., work site assessment or job accommodations evaluation).
11. Identifying and arranging transportation.
12. Career advancement services (e.g., assisting a member in making an upward career move or seeking promotion from an existing employer).
13. Re-employment services (if necessary due to job loss).
14. Financial literacy and asset development.
15. Other employment support services deemed necessary to enable the member to obtain employment.
16. Systematic instruction and support during initial on-the-job training.
17. Engagement of natural supports during initial period of employment.
18. Implementation of assistive technology solutions during initial period of employment.
19. Transportation of the member during service hours.

(5) **Self-employment.** Individual employment may also include support to establish a viable self-employment opportunity, including home-based self-employment. An expected outcome of supported self-employment is that the member earns income that is equal to or exceeds the average income for the chosen business within a reasonable period of time. In addition to the activities listed under subparagraph 78.27(10) "a"(4), assistance to establish self-employment may include:

1. Aid to the member in identifying potential business opportunities.
 2. Assistance in the development of a business plan, including identifying potential sources of business financing and other assistance in developing and launching a business.
 3. Identification of the long-term supports necessary for the individual to operate the business.
- b. Long-term job coaching.* Long-term job coaching is support provided to, or on behalf of, the member that enables the member to maintain an individual job in competitive employment, customized employment or self-employment in an integrated work setting in the general workforce.

(1) **Scope.** Long-term job coaching services are provided to or on behalf of members who need support because of their disabilities and who are unlikely to maintain and advance in individual employment absent the provision of supports. Long-term job coaching services shall provide individualized and ongoing support contacts at intervals necessary to promote successful job retention and advancement.

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(2) Expected outcome of service. The expected outcome of this service is sustained employment paid at or above the minimum wage in an integrated setting in the general workforce, in a job that meets the member's personal and career goals. An expected outcome of supported self-employment is that the member earns income that is equal to or exceeds the average income for the chosen business within a reasonable period of time.

(3) Setting. Long-term job coaching services shall take place in integrated work settings. For self-employment, the member's home can be considered an integrated work setting. Employment in service provider's organization (not including a sheltered workshop or similar type of work setting) can be considered employment in an integrated work setting in the general workforce if the employment occurs in a work setting where interactions are predominantly with coworkers or business associates who do not have disabilities, or with the general public, and if the position would exist within the provider's organization were the provider not being paid to provide the job coaching to the member.

(4) Service activities. Long-term job coaching services are designed to assist the member with learning and retaining individual employment, resulting in workplace integration, and which allows for the reduction of long-term job coaching over time. Services are individualized and may include any combination of the following activities with or on behalf of the member:

1. Job analysis.
2. Job training and systematic instruction.
3. Training and support for use of assistive technology/adaptive aids.
4. Engagement of natural supports.
5. Transportation coordination.
6. Job retention training and support.
7. Benefits planning and ongoing support.
8. Supports for career advancement.
9. Financial literacy and asset development.
10. Employer consultation and support.
11. Negotiation with employer on behalf of the member (e.g., accommodations; employment conditions; access to natural supports; and wage and benefits).
12. Other workplace support services may include services not specifically related to job skill training that enable the waiver member to be successful in integrating into the job setting.
13. Transportation of the member during service hours.

(5) Self-employment long-term job coaching. Self-employment long-term job coaching may include support to maintain a self-employment opportunity, including home-based self-employment. In addition to the activities listed under subparagraph 78.27(10) "b"(4), assistance to maintain self-employment may include:

1. Ongoing identification of the supports necessary for the individual to operate the business;
2. Ongoing assistance, counseling and guidance to maintain and grow the business; and
3. Ongoing benefits support.

c. *Small-group supported employment.* Small-group supported employment services are training and support activities provided in regular business or industry settings for groups of two to eight workers with disabilities. The outcome of this service is sustained paid employment experience, skill development, career exploration and planning leading to referral for services to obtain individual integrated employment or self-employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(1) Scope. Small-group supported employment services must be provided in a manner that promotes integration into the workplace and interaction between members and people without disabilities (e.g., customers, coworkers, natural supervisors) in those workplaces. Examples include but are not limited to mobile crews and other business-based workgroups employing small groups of workers with disabilities in employment in integrated business settings; and small-group activities focused on career exploration and planning, discovery, or development of strengths and skills that contribute to successful participation in individual community employment.

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(2) Expected outcome of service. Small-group supported employment services are expected to enable the member to make reasonable and continued progress toward individual employment. Participation in small-group supported employment services is not a prerequisite for individual supported employment services. The expected outcome of the service is sustained paid employment and skill development which leads to individual employment in the community.

(3) Setting. Small-group supported employment services shall take place in integrated, community-based nonresidential settings separate from the member's residence.

(4) Service activities. Small-group supported employment services may include any combination of the following activities:

1. Employment assessment.
2. Person-centered employment planning.
3. Job placement (limited to service necessary to facilitate hire into individual employment paid at minimum wage or higher for a member in small-group supported employment who receives an otherwise unsolicited offer of a job from a business where the member has been working in a mobile crew or enclave).
4. Job analysis.
5. On-the-job training and systematic instruction.
6. Job coaching.
7. Transportation planning and training.
8. Benefits information.
9. Career planning services leading to career advancement outcomes.
10. Other workplace support services may include services not specifically related to job skill training that enable the waiver member to be successful in integrating into the individual or community setting.

11. Transportation of the member during service hours.

d. Service requirements for all supported employment services.

(1) Community transportation options (e.g., transportation provided by family, coworkers, carpools, volunteers, self or public transportation) shall be identified by the member's interdisciplinary team and utilized before the service provider provides the transportation to and from work for the member. If none of these options are available to a member, transportation between the member's place of residence and the employment or service location may be included as a component part of supported employment services.

(2) Personal care or personal assistance and protective oversight may be a component part of supported employment services, but may not comprise the entirety of the service.

(3) Activities performed on behalf of a member receiving long-term job coaching or individual or small-group supported employment shall not comprise the entirety of the service.

(4) Concurrent services. A member's individual service plan may include two or more types of nonresidential services (e.g., individual supported employment, long-term job coaching, small-group supported employment, prevocational services, and day habilitation); however, more than one service may not be billed during the same period of time (e.g., the same hour).

(5) Integration requirements. In the performance of job duties, the member shall have regular contact with other employees or members of the general public who do not have disabilities, unless the absence of regular contact with other employees or the general public is typical for the job as performed by persons without disabilities.

(6) Compensation. Members receiving these services are compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. For supported self-employment, the member earns income that is equal to or exceeds the average income for the chosen business within a reasonable period of time, not to exceed 36 months. For small-group supported employment, if the member is not compensated at or above minimum wage, the compensation to the member shall be in accordance with all applicable state and federal labor laws and regulations.

e. Limitations. Supported employment services are limited as follows:

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(1) Total monthly costs of supported employment may not exceed the monthly cap on the cost of waiver services set for the individual waiver program.

(2) In absence of a monthly cap on the cost of waiver services, the total monthly cost of all supported employment services may not exceed \$3,029.00 per month.

(3) Individual supported employment is limited to 240 units per calendar year.

(4) Long-term job coaching is limited in accordance with 441—subrule 79.1(2).

(5) Small-group supported employment is limited to 160 units per week.

f. Exclusions. Supported employment services payments shall not be made for the following:

(1) Services that are available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that the service is not available to the individual under these programs shall be maintained in the service plan of each member receiving individual supported employment or long-term job coaching services.

(2) Incentive payments, not including payments for coworker supports, made to an employer to encourage or subsidize the employer's participation in a supported employment program.

(3) Subsidies or payments that are passed through to users of supported employment programs.

(4) Training that is not directly related to a member's supported employment program.

(5) Services involved in placing and stabilizing members in day activity programs, work activity programs, sheltered workshop programs or other similar types of vocational or prevocational services furnished in specialized facilities that are not a part of the general workplace.

(6) Supports for placement and stabilization in volunteer positions or unpaid internships. Such volunteer learning and unpaid training activities that prepare a person for entry into the general workforce are addressed through prevocational services and career exploration activities.

(7) Tuition for education or vocational training.

(8) Individual advocacy that is not related to integrated individual employment participation or is not member-specific.

(9) Medicaid funds may not be used to defray the expenses associated with starting up or operating a business.

ITEM 10. Rescind subrule 78.41(7) and adopt the following **new** subrule in lieu thereof:

78.41(7) Supported employment services. Supported employment services are service activities provided pursuant to subrule 78.27(10).

ITEM 11. Rescind subrule 78.41(13) and adopt the following **new** subrule in lieu thereof:

78.41(13) Prevocational services. Prevocational services are service activities provided pursuant to subrule 78.27(9).

ITEM 12. Rescind subrule 78.43(4) and adopt the following **new** subrule in lieu thereof:

78.43(4) Supported employment services. Supported employment services are service activities provided pursuant to subrule 78.27(10).

ITEM 13. Rescind subrule 78.43(11) and adopt the following **new** subrule in lieu thereof:

78.43(11) Prevocational services. Prevocational services are service activities provided pursuant to subrule 78.27(9).

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ITEM 14. Amend subrule **79.1(2)**, provider category “HCBS waiver services providers,” by rescinding paragraphs “19” and “23” and adopting the following **new** paragraphs in lieu thereof:

Provider category	Basis of reimbursement	Upper limit
19. Supported employment:		
Individual supported employment	Fee schedule	Fee schedule in effect 12/16/15. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.
Long-term job coaching	Fee schedule	Fee schedule in effect 12/16/15. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.
Small-group supported employment (2 to 8 individuals)	Fee schedule	Fee schedule in effect 12/16/15. Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.
23. Prevocational services, including career exploration	Fee schedule	Fee schedule in effect 12/16/15.

ITEM 15. Amend subrule **79.1(2)**, provider category “Home- and community-based habilitation services,” as follows:

Provider category	Basis of reimbursement	Upper limit
Home- and community-based habilitation services:		
1. to 3. No change.		
4. Prevocational habilitation <u>Career exploration</u>	See 79.1(24)“d” <u>Fee schedule</u>	Effective 7/1/13: \$13.47 per hour or \$48.22 per day. Fee schedule in effect 12/16/15.
5. Supported employment:		
Activities to obtain a job:		
<u>Job development</u>	See 79.1(24)“d”	\$909 per unit (job placement). Maximum of two units per 12 months.

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Provider category	Basis of reimbursement	Upper limit
<u>Individual supported employment</u>	<u>Fee schedule</u>	<u>Fee schedule in effect 12/16/15. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.</u>
Employer development	See 79.1(24)“d”	\$909 per unit (job placement). Maximum of two units per 12 months
<u>Long-term job coaching</u>	<u>Fee schedule</u>	<u>Fee schedule in effect 12/16/15. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.</u>
Enhanced job search	See 79.1(24)“d”	Effective 7/1/13: Maximum of \$8.75 per 15-minute unit and 104 units per 12 months.
<u>Small-group supported employment (2 to 8 individuals)</u>	<u>Fee schedule</u>	<u>Fee schedule in effect 12/16/15. Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed \$3,029.00 per month.</u>
Supports to maintain employment	See 79.1(24)“d”	Effective 7/1/13: \$1.55 per 15-minute unit for services in an enclave setting; \$4.95 per 15-minute unit for personal care; and \$8.75 per 15-minute unit for all other services. Total not to exceed \$2,883.71 per month. Maximum of 160 units per week.

ITEM 16. Amend subrule 79.1(15), introductory paragraph, as follows:

79.1(15) *HCBS retrospectively limited prospective rates.* This methodology applies to reimbursement for HCBS supported community living; HCBS family and community support services; ~~HCBS supported employment enhanced job search activities;~~ and HCBS interim medical monitoring and treatment when provided by an HCBS-certified supported community agency.

ITEM 17. Rescind subparagraphs **79.1(24)“a”(4)** and **(5)**.

ITEM 18. Renumber subparagraph **79.1(24)“a”(6)** as **79.1(24)“a”(4)**.

ITEM 19. Amend **441—Chapter 83**, preamble, as follows:

Medicaid waiver services are services provided to maintain persons who would otherwise require care in a medical institution in their own homes or communities ~~who would otherwise require care in medical institutions~~, including support for working age persons (aged 18 to 65) to seek and maintain employment in the community. Provision of these services must be cost-effective. Services are limited to certain targeted client groups for whom a federal waiver has been requested and approved. Services provided through the waivers are not available to other Medicaid recipients as the services are beyond the scope of the Medicaid state plan.

ITEM 20. Amend subrule 83.61(1) as follows:

83.61(1) *Eligibility criteria.* All of the following criteria must be met. The person must:

a. to f. No change.

g. For individual supported employment and long-term job coaching services:

(1) Be at least 16 years of age.

(2) ~~Rescinded IAB 7/1/98, effective 7/1/98.~~

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~~(3)~~ (2) ~~Not be eligible for supported employment service funding under Public Law 94-142 or for the Rehabilitation Act of 1973.~~ The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

~~(4)~~ (3) Not reside in a medical institution.

(4) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.

h. For small-group supported employment services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.

(4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.

(5) Not reside in a medical institution.

i. For prevocational services:

(1) Be at least 16 years of age.

(2) The services must not be available to the member through one of the following:

1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or

2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(3) Not reside in a medical institution.

~~h.~~ j. Choose HCBS intellectual disability waiver services rather than ICF/ID services.

~~i.~~ k. To be eligible for interim medical monitoring and treatment services the consumer member, must be:

(1) Under the age of 21;

(2) Currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. (The home health aide services for which the consumer is eligible must be maximized before the consumer accesses interim medical monitoring and treatment.);

(3) Residing in the consumer's family home or foster family home; and

(4) In need of interim medical monitoring and treatment as ordered by a physician.

~~j.~~ l. Be assigned an HCBS intellectual disability payment slot pursuant to subrule 83.61(4).

~~k.~~ m. For residential-based supported community living services, meet all of the following additional criteria:

(1) Be less than 18 years of age.

(2) Be preapproved as appropriate for residential-based supported community living services by the bureau of long-term care. Requests for approval shall be submitted in writing to the DHS Bureau of Long-Term Care, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, and shall include the following:

1. Social history;

2. Case history that includes previous placements and service programs;

3. Medical history that includes major illnesses and current medications;

4. Current psychological evaluations and consultations;

5. Summary of all reasonable and appropriate service alternatives that have been tried or considered;

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6. Any current court orders in effect regarding the child;
 7. Any legal history;
 8. Whether the child is at risk of out-of-home placement or the proposed placement would be less restrictive than the child's current placement for services;
 9. Whether the proposed placement would be safe for the child and for other children living in that setting; and
 10. Whether the interdisciplinary team is in agreement with the proposed placement.
- (3) Either:
1. Be residing in an ICF/ID;
 2. Be at risk of ICF/ID placement, as documented by an interdisciplinary team assessment pursuant to paragraph 83.61(2)“a”; or
 3. Be a child whose long-term placement outside the home is necessary because continued stay in the home would be a detriment to the health and welfare of the child or the family, and all service options to keep the child in the home have been reviewed by an interdisciplinary team, as documented in the service file.
- ~~l.~~ n. For day habilitation, be 16 years of age or older.
- ~~m.~~ o. For the consumer choices option as set forth in 441—subrule 78.41(5)₂ not be living in a residential care facility.

ITEM 21. Adopt the following **new** paragraphs **83.82(1)“n”** to **“p”**:

- n.* For individual supported employment and long-term job coaching services:
- (1) Be at least 16 years of age.
 - (2) The services must not be available to the member through one of the following:
 1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or
 2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).
 - (3) Not reside in a medical institution.
 - (4) Have documented in the waiver service plan a goal to achieve or to sustain individual employment and an expectation that this service will result in this outcome.
- o.* For small-group supported employment services:
- (1) Be at least 16 of age.
 - (2) The services must not be available to the member through one of the following:
 1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or
 2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).
 - (3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment.
 - (4) Have documented in the waiver service plan that the choice to receive individual supported employment services was offered and explained in a manner sufficient to ensure informed choice, after which the choice to receive small-group supported employment services was made.
 - (5) Not reside in a medical institution.
- p.* For prevocational services:
- (1) Be at least 16 of age.
 - (2) The services must not be available to the member through one of the following:
 1. Special education and related services as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); or
 2. A program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).
 - (3) Have documented in the waiver service plan a goal to achieve or to sustain individual employment and an expectation that this service will result in community employment.

ARC 2113C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments implement the provider qualifications, scope of services and reimbursement methodology for community-based neurobehavioral rehabilitation residential and intermittent services.

The Department entered into an agreement with Community NeuroRehab in 2010 to provide community-based neurobehavioral rehabilitation services for adults who have experienced a brain injury co-occurring with a mental health diagnosis, as an alternative to costly out-of-state facility-based neurobehavioral rehabilitation, hospitalization, institutionalization, incarceration or homelessness. The Department has been funding these services through exception to policy while administrative rules were being developed with a stakeholder group representing brain injury professionals. These services yield a cost savings to the state for members who would otherwise have been admitted to out-of-state facility-based services for neurobehavioral rehabilitation.

Any interested person may make written comments on the proposed amendments on or before September 8, 2015. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 441—77.52(249A):

441—77.52(249A) Community-based neurobehavioral rehabilitation services.**77.52(1) Definitions.**

“*Assessment*” means the review of the current functioning of the member using the service in regard to the member’s situation, needs, strengths, abilities, desires, and goals.

“*Brain injury*” means a diagnosis in accordance with rule 441—83.81(249A).

“*Health care*” means the services provided by trained and licensed health care professionals to restore or maintain the member’s health.

“*Intermittent community-based neurobehavioral rehabilitation services*” means services provided to a Medicaid member on an as-needed basis to support the member and the member’s family or caregivers to assist the member to increase adaptive behaviors, decrease maladaptive behaviors, and adapt and accommodate to challenging behaviors to support the member to remain in the member’s own home and community.

“*Member*” means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

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“Neurobehavioral rehabilitation” refers to a specialized category of neurorehabilitation provided by a multidisciplinary team that has been trained in, and delivers, services individually designed to address cognitive, medical, behavioral and psychosocial challenges, as well as the physical manifestations of acquired brain injury. Services concurrently work to optimize functioning at personal, family and community levels by supporting the increase of adaptive behaviors, decrease of maladaptive behaviors and adaptation and accommodation to challenging behaviors to support a member to maximize the member’s independence in activities of daily living and ability to live in the member’s home and community.

“Program” means a set of related resources and services directed to the accomplishment of a fixed set of goals for eligible members.

“Standardized assessment” means a valid, reliable, and comprehensive functional assessment tool(s) or process, or both, approved by the department for use in the assessment of a member’s needs.

77.52(2) Eligible providers. The following agencies may provide community-based neurobehavioral rehabilitation residential and intermittent services:

a. An organization that is accredited by a department-approved, nationally recognized accreditation organization as a specialty brain injury rehabilitation service provider.

b. Agencies not accredited by a department-approved, nationally recognized accreditation organization as a specialty brain injury rehabilitation service provider that have applied for accreditation within the last 16 months to provide services may be enrolled. However, an organization that has not received accreditation within 16 months after application shall no longer be a qualified provider.

77.52(3) Provider standards. All community-based neurobehavioral rehabilitation service providers shall meet the following criteria:

a. The organization meets the outcome-based standards for community-based neurobehavioral rehabilitation service providers as follows:

(1) The organization shall provide high-quality supports and services to members.

(2) The organization shall have a defined mission commensurate with members’ needs, desires, and abilities.

(3) The organization shall be fiscally sound and shall establish and maintain fiscal accountability.

(4) The program administrator shall be a certified brain injury specialist trainer (CBIST) through the Academy of Certified Brain Injury Specialists or a certified brain injury specialist under the direct supervision of a CBIST or a qualified brain injury professional as defined in rule 441—83.81(249A) with additional certification as approved by the department.

(5) A minimum of 75 percent of the organization’s administrative and direct care personnel shall meet one of the following criteria:

1. Have a bachelor’s degree in a human services-related field;

2. Have an associate’s degree in human services with two years of experience working with individuals with brain injury;

3. Be an individual who is in the process of seeking a degree in the human services field with two years of experience working with individuals with brain injury; or

4. Be a certified brain injury specialist or have other brain injury certification as approved by the department.

(6) The organization shall have qualified personnel trained in the provision of direct care services to people with a brain injury. The training must be commensurate with the needs of the members served. Employees shall receive training and demonstrate competency in performing assigned duties and in all interactions with members, including but not limited to:

1. Promotion of a program structure and support for persons served so they can re-learn or regain skills for community inclusion and access.

2. Compensatory strategies to assist in managing ADLS (activities of daily living).

3. Quality of life issues.

4. Behavioral supports and identification of antecedent triggers.

5. Health and medication management.

6. Dietary and nutritional programming.

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7. Assistance with identifying and utilizing assistive technology.
8. Substance abuse and addiction issues.
9. Self-management and self-interaction skills.
10. Flexibility in programming to meet members' individual needs.
11. Teaching adaptive and compensatory strategies to address cognitive, behavioral, physical, psychosocial and medical needs.
12. Community accessibility and safety.
13. Household maintenance.
14. Service support to the member's family or support system related to the member's neurobehavioral care.
 - b.* The organization provides training and supports to its personnel. Training shall be provided before direct service provision and must be ongoing. At a minimum the training includes the following:
 - (1) Completion of the department-approved brain injury training modules.
 - (2) Member rights.
 - (3) Confidentiality and privacy.
 - (4) Dependent adult and child abuse prevention and mandatory reporter training.
 - (5) Individualized rehabilitation treatment plans.
 - (6) Major mental health disorder basics.
 - c.* Within 30 days of commencement of direct service provision, employees shall complete cardiopulmonary resuscitation (CPR) training, a first aid course, and universal precautions training.
 - d.* Within the first six months of commencement of direct service provision, employees shall complete training required by 441—subparagraph 78.54(3)“a”(6).
 - e.* Within 12 months of the commencement of direct service provision, employees shall complete a department-approved, nationally recognized certified brain injury specialist training.
 - f.* The organization shall have in place an outcome management system which measures the efficiency and effectiveness of service provision, including members' preadmission location of service, length of stay, discharge location, reason for discharge, member and stakeholder satisfaction, and access to services.
 - g.* The organization shall have in place a systematic, organization-wide, planned approach to designing, measuring, evaluating, and improving the level of its performance. The organization shall be required to:
 - (1) Measure and analyze organizational activities and services quarterly.
 - (2) Conduct satisfaction surveys with members, family members, employees and stakeholders, and share the information with the public.
 - (3) Conduct an internal review of member service records at regular intervals.
 - (4) Track major and minor incident data according to subrule 77.37(8) and unexpected occurrences involving death or serious physical or psychological injury, or the risk thereof; and analyze the data to identify trends annually to ensure the health and safety of members served by the organization.
 - (5) Continuously identify areas in need of improvement.
 - (6) Develop a plan to address the identified areas in need of improvement.
 - (7) Implement the plan, document the results, and report to the governing body annually.
 - h.* The organization shall have in place written policies and procedures and a personnel training program for the identification and reporting of child and dependent adult abuse to the department pursuant to 441—Chapters 175 and 176.
 - i.* The organization's governing body shall have an active role in the administration of the organization.
 - j.* The organization's governing body shall receive and use input from local community stakeholders, members participating in services, and employees and shall provide oversight that ensures the provision of high-quality supports and services to members.
 - k.* The organization shall implement the following outcome-based standards for rights and dignity:
 - (1) Members are valued.

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(2) The member and the member's treatment team mutually develop an individualized service plan that takes into account the member's individual strengths, barriers and interests. The service plan shall include goals which are based on the member's need for services and shall address the neurobehavioral challenges and environmental needs as identified in the member's individual standardized comprehensive functional neurobehavioral assessment.

(3) The member's progress towards treatment goals is evaluated regularly and no less than quarterly. Treatment plans are reviewed regularly, but not less than quarterly, and are revised as the member's status or needs change to reflect the member's progress and response to treatment.

(4) The member and the member's legal representative have the right to file grievances regarding the provider's implementation of the organizational standards, or its employee's or contractual person's action which affects the member. The provider shall provide to members the policies and procedures for member grievances and appeals at the commencement of services and annually thereafter.

(5) When a member has a guardian or legal representative, the guardian or legal representative shall provide informed consent to treat and consent for any restrictive interventions that may be required to protect the health or safety of the member. Restrictive interventions include but are not limited to:

1. Restraint, including chemical restraint, manual restraint or mechanical restraint;
 2. Alarms added to a member's natural environment including doors, windows, refrigerators, cabinets, and other home appliances and fixtures;
 3. Exclusionary time out;
 4. Intensive staffing for control of behavior;
 5. Limited access or contingency access to preferred items or activities naturally available in the member's environment;
 6. Reprimand;
 7. Response cost; and
 8. Use of psychotropic medications to control the occurrence of an unwanted behavior.
- (6) Members receive individualized services.
- (7) Members or their legal representatives provide written consent regarding which personal information is shared and with whom.
- (8) Members receive assistance with accessing financial management services as needed.
- (9) Members receive assistance with obtaining preventive, appropriate and timely medical and dental care.
- (10) The member's living environment is reasonably safe and located in the community.
- (11) The member's desire for intimacy is respected and supported.

ITEM 2. Adopt the following **new** rule 441—78.56(249A):

441—78.56(249A) Community-based neurobehavioral rehabilitation services. Payment will be made for community-based neurobehavioral rehabilitation services that do not duplicate other services covered in this chapter.

78.56(1) Definitions.

“Assessment” means the review of the current functioning of the member using the service in regard to the member's situation, needs, strengths, abilities, desires, and goals.

“Brain injury” means a diagnosis in accordance with rule 441—83.81(249A).

“Health care” means the services provided by trained and licensed health care professionals to restore or maintain the member's health.

“Intermittent community-based neurobehavioral rehabilitation services” are provided to a Medicaid member on an as-needed basis to support the member and the member's family or caregivers to assist the member to increase adaptive behaviors, decrease maladaptive behaviors, and adapt and accommodate to challenging behaviors to support the member to remain in their own home and community.

“Member” means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

“Neurobehavioral rehabilitation” refers to a specialized category of neurorehabilitation provided by a multidisciplinary team that has been trained in, and delivers, services individually designed to address

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cognitive, medical, behavioral and psychosocial challenges, as well as the physical manifestations of acquired brain injury. Services concurrently work to optimize functioning at personal, family and community levels, by supporting the increase of adaptive behaviors, decrease of maladaptive behaviors and adaptation and accommodation to challenging behaviors to support a member to maximize the member's independence in activities of daily living and ability to live in the member's home and community.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals for eligible members.

"Standardized assessment" means a valid, reliable, and comprehensive functional assessment tool(s) or process, or both, approved by the department for use in the assessment of a member's individual needs.

78.56(2) Member eligibility. To be eligible to receive community-based neurobehavioral rehabilitation services, a member shall meet the following criteria:

a. Brain injury diagnosis. To be eligible for community-based neurobehavioral rehabilitation services, the member must have a brain injury diagnosis as set forth in rule 441—83.81(249A).

b. Risk factors. The member has the following risk factors:

(1) The member is exhibiting neurobehavioral symptoms in such frequency or severity that the member has undergone or is currently undergoing treatment more intensive than outpatient care and is currently hospitalized, institutionalized, incarcerated or homeless or is at risk of hospitalization, institutionalization, incarceration or homelessness; or

(2) The member has a history of presenting with neurobehavioral or psychiatric symptoms resulting in at least one episode that required professional supportive care other than hospitalization, institutionalization, incarceration or homelessness.

c. Need for assistance. The member exhibits neurobehavioral symptoms in such frequency, severity or intensity that community-based neurobehavioral rehabilitation is required.

d. Needs assessment. The member shall have a standardized comprehensive functional neurobehavioral assessment reviewed or completed by a licensed neuropsychologist, neurologist, M.D., or D.O. The neurobehavioral assessment shall document the member's need for community-based neurobehavioral rehabilitation, and the medical services unit of the Iowa Medicaid enterprise has determined that the member is in need of specialty neurobehavioral rehabilitation services.

e. Standards for assessment. Each member will have had a department-approved, standardized comprehensive functional neurobehavioral assessment completed within the 90 days prior to admission. Each needs assessment will include the assessment of a member's individual physical, emotional, cognitive, medical and psychosocial residuals related to the member's brain injury, which must include the following:

(1) Identification of the neurobehavioral needs that put the member at risk, including but not limited to verbal aggression, physical aggression, self-harm, unwanted sexual behavior, cognitive and or behavioral perseveration, wandering or elopement, lack of motivation, lack of initiation or other unwanted social behaviors not otherwise specified.

(2) Identification of triggers of unwanted behaviors and the member's ability to self-manage the member's symptoms.

(3) The member's rehabilitation and medical care history to include medication history and status.

(4) The member's employment history and the member's barriers to employment.

(5) The member's dietary and nutritional needs.

(6) The member's community accessibility and safety.

(7) The member's access to transportation.

(8) The member's history of substance abuse.

(9) The member's vulnerability to exploitation and history of risk of exploitation.

(10) The member's history and status of relationships, natural supports and socialization.

f. Emergency admission. In the event that emergency admission is required, the assessment shall be completed within ten calendar days of admission.

78.56(3) Covered services.

a. Service setting.

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(1) Community-based neurobehavioral residential rehabilitation services are provided to a member living in a three-to-five-bed residential care facility with a specialized license designation issued by the department of inspections and appeals; or

(2) Community-based neurobehavioral intermittent rehabilitation services are provided to a member living in the member's own residence in the community.

(3) No payment shall be made for community-based neurobehavioral rehabilitation when provided in a medical institution such as an intermediate care facility for persons with intellectual disabilities, nursing facility or skilled nursing facility.

b. Community-based neurobehavioral rehabilitation residential services identified in the treatment plan may include:

(1) Prescriptive programming to maintain and advance progress made in rehabilitation;

(2) Modifying or adapting the member's environment to improve overall functioning;

(3) Assistance in obtaining preventative, appropriate and timely medical and dental care;

(4) Compensatory strategies to assist in managing ADLS (activities of daily living);

(5) Assistance with coordinating and obtaining physical, oral, or mental health care and any other professional services necessary to the member's health and well-being;

(6) Behavioral and cognitive programming and supports;

(7) Medication management and consultation with pharmacy;

(8) Health and wellness management including dietary and nutritional programming;

(9) Progressive physical strengthening, fitness and retraining;

(10) Assistance with obtaining and use of assistive technology;

(11) Sobriety support development;

(12) Assistance with the self-identification of antecedent triggers;

(13) Assistance with preparation for transition to less intensive services including accessing the community;

(14) Flexibility in programming to meet individual needs;

(15) Assistance with re-learning coping and compensatory strategies;

(16) Support and assistance in seeking substance abuse and co-occurring disorders services;

(17) Support and assistance with obtaining legal consultation and services;

(18) Assistance with community accessibility and safety;

(19) Assistance with re-learning household maintenance;

(20) Assistance with recreational and leisure skill development;

(21) Assistance with the development and application of self-advocacy skills to navigate the service system;

(22) Opportunities to learn about brain injury and individual needs following brain injury;

(23) Support for carrying out the member's individual goals in the rehabilitation treatment plan;

(24) Assistance with pursuit of education and employment goals;

(25) Protective oversight in the residential setting and community;

(26) Assistance and education to family, providers and other support system interests that are supporting the member receiving neurobehavioral rehabilitation services;

(27) Transitional support and training;

(28) Transportation essential to the attainment of the member's individual goals in the rehabilitation treatment plan;

(29) Promotion of a program structure and support for members served so they can re-learn or regain skills for maximum independence, community access, and integration.

c. Community-based neurobehavioral rehabilitation intermittent services identified in the treatment plan may occur in the member's own home with or on behalf of the member and may include:

(1) Promotion of a program structure and support for members served so they can re-learn or regain skills for maximum community inclusion and access;

(2) Modifying or adapting the member's environment to improve overall functioning;

(3) Compensatory strategies to assist in managing ADLS (activities of daily living);

(4) Behavioral supports;

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- (5) Assistance with obtaining and use of assistive technology;
- (6) Assistance with the self-identification of antecedent triggers;
- (7) Flexibility in programming to meet the member's individual needs;
- (8) Assistance with re-learning coping and compensatory strategies;
- (9) Assistance with the development and application of self-advocacy skills to navigate the service system;
- (10) Support for carrying out the member's individual goals in the rehabilitation treatment plan;
- (11) Assistance and education to family, providers and other support system interests that are supporting the member receiving community-based neurobehavioral rehabilitation services;
- (12) Transitional support and training;
- (13) Transportation essential to the attainment of the member's individual goals in the rehabilitation treatment plan.

d. Approval of treatment plan. The community-based neurobehavioral services provider shall submit the proposed plan of care, the results of the member's formal assessment, and medical documentation supporting a brain injury diagnosis to the Iowa Medicaid enterprise (IME) medical services unit for approval before providing the services.

e. Initial treatment plan. Within 30 days of admission, the provider shall submit the member's treatment plan to the IME medical services unit.

- (1) The IME medical services unit will approve the provider's treatment plan if:
 - 1. The treatment plan conforms to the medical necessity requirements in subrule 78.55(4);
 - 2. The treatment plan is consistent with the written diagnosis and treatment recommendations made by a licensed medical professional that is a licensed neuropsychologist or neurologist, M.D., or D.O.;
 - 3. The treatment plan is sufficient in amount, duration, and scope to reasonably achieve its purpose;
 - 4. The provider can demonstrate that the provider possesses the skills and resources necessary to implement the plan; and
 - 5. The treatment plan does not exceed 180 days in duration.

(2) A treatment summary detailing the member's response to treatment during the previous approval period must be submitted when approval for subsequent plans is requested.

f. Subsequent plans. The IME medical services unit may approve a subsequent neurobehavioral rehabilitation treatment plan that conforms to the conditions of medical necessity pursuant to subrule 78.56(4) and to the conditions pursuant to subrule 78.56(3).

- g.* Quality review. The IME medical services unit may perform the quality review to evaluate:
- (1) The time elapsed from referral to rehabilitation treatment plan development;
 - (2) The continuity of treatment;
 - (3) The length of stay per member;
 - (4) The affiliation of the medical professional recommending services with the neurobehavioral rehabilitation services provider;
 - (5) Gaps in service;
 - (6) The results achieved;
 - (7) Member and stakeholder satisfaction;
 - (8) The provider's compliance with standards listed in rule 441—77.54(249A).

78.56(4) Medical necessity. Nothing in this rule shall be deemed to exempt coverage of community-based neurobehavioral rehabilitation services from the requirement that services be medically necessary. "Medically necessary" means that the service is:

- a.* Consistent with the diagnosis and treatment of the member's condition;
 - b.* Required to meet the medical needs of the member and is needed for reasons other than the convenience of the member or the member's caregiver;
 - c.* Is the least costly type of service that can reasonably meet the medical needs of the member;
- and

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d. Is in accordance with the standards of good medical practice. The standards of good practice for each field of medical and remedial care covered by the Iowa Medicaid program are those standards of good practice identified by:

- (1) Knowledgeable Iowa clinicians practicing or teaching in the field; and
- (2) The professional literature regarding best practices in the field.

78.56(5) Documentation standards. Community-based neurobehavioral rehabilitation service providers shall maintain service provision records, financial records, and clinical records in accordance with the provisions of rule 441—79.3(249A).

ITEM 3. Adopt the following **new** provider category in subrule **79.1(2)** as follows:

Provider category	Basis of reimbursement	Upper limit
Community-based neurobehavioral rehabilitation services	Fee schedule, see 79.1(28)	Residential: Limit in effect as of June 30 each year plus CPI-U for the preceding 12-month period ending June 30. Intermittent \$21.11 per 15-minute unit.

ITEM 4. Adopt the following **new** subrule 79.1(28):

79.1(28) Reimbursement for community-based neurobehavioral rehabilitation residential services and community-based neurobehavioral rehabilitation intermittent services.

a. New providers. Providers who are newly enrolled shall be paid prospective rates based on projected reasonable and proper costs of operation based on the statewide average rate paid to community-based neurobehavioral rehabilitation service providers in effect June 30 each fiscal year.

b. Established providers. After establishment of the initial rate for a provider, the rate will be adjusted annually, effective July 1 each year. The provider's new rate shall be the previously established rate adjusted by the consumer price index for all urban consumers for the preceding 12-month period ending June 30, not to exceed the limit in effect June 30.

ITEM 5. Adopt the following **new** subparagraph **79.3(2)“d”(42)**:

(42) Community-based neurobehavioral rehabilitation residential services and community-based neurobehavioral rehabilitation intermittent services.

1. Department-approved standardized neurobehavioral assessment tool;
2. Community-based neurobehavioral treatment order;
3. Treatment plan;
4. Clinical records documenting diagnosis and treatment history;
5. Progress or status notes;
6. Service notes or narratives;
7. Procedure, laboratory, or test orders and results;
8. Therapy notes including but not limited to occupational therapy, physical therapy, and speech-language pathology services as applicable;
9. Medication administration records.

ARC 2115C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4 and 42 U.S.C. § 1396n(d), the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

This amendment changes the name of the “assisted living on-call” service to the “assisted living” service pursuant to direction from the Centers for Medicare and Medicaid Services (CMS).

This amendment also revises the description of the service to agree with the CMS-approved description, including references to consumer-directed attendant care (CDAC) agreements.

The amendment includes the CMS requirement for a documented daily assisted living encounter with the member.

This amendment complies with additional service requirements and the revised service name and definition as directed by CMS through CMS approval of the elderly waiver amendment IA 4155.R04.02. CMS approved the amendment on November 17, 2014, effective March 1, 2013.

Any interested person may make written comments on the proposed amendment on or before September 8, 2015. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

This amendment is intended to implement Iowa Code section 249A.4 and 42 U.S.C. § 1396n(d).

The following amendment is proposed.

Rescind subrule 78.37(18) and adopt the following **new** subrule in lieu thereof:

78.37(18) Assisted living service. The assisted living service includes unanticipated and unscheduled personal care and supportive services that are furnished to waiver participants who reside in a homelike, noninstitutional setting. The service includes the 24-hour on-site response capability to meet unpredictable member needs as well as member safety and security through incidental supervision. Assisted living service is not reimbursable if performed at the same time as any service included in an approved consumer-directed attendant care (CDAC) agreement.

a. A unit of service is one day.

b. A day of assisted living service is billable only if both the following requirements are met:

(1) The member was present in the facility during that day’s bed census.

(2) The assisted living provider has documented at least one assisted living service encounter for that day, in accordance with rule 441—79.3(249A). The documentation must include the member’s response to the service. The documented assisted living service cannot also be an authorized CDAC service.

ARC 2103C**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 515F.15, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 20, “Property and Casualty Insurance,” Iowa Administrative Code.

Iowa Code chapter 515F, among other things, regulates insurance rates and authorizes the Iowa Insurance Commissioner to adopt rules related to the filing and reporting of rates.

The proposed amendment to Chapter 20 changes the deadline for crop-hail insurance rate filings from March 15 to January 31 of each year, to better coordinate with filing deadlines for federal crop-hail insurance. In addition, a parenthetical implementation citation and a grammatical error are corrected.

The Division intends that this amendment will become effective November 18, 2015.

Any interested person may make written suggestions or comments on the proposed amendment on or before September 8, 2015. Such written materials should be directed to Tom O’Meara, Iowa Insurance Division, Product and Producer Regulation, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-5014; e-mail tom.omeara@iid.iowa.gov.

Also, there will be a public hearing on September 8, 2015, at 10 a.m., at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

The Insurance Division’s general waiver provisions in 191—Chapter 4 apply to these rules.

This amendment will impose no fiscal impact on the State.

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

This amendment is intended to implement Iowa Code chapter 515F.

The following amendment is proposed.

Amend rule 191—20.8(515A) as follows:

191—20.8(~~515A~~ 515F) Rate filings for crop-hail insurance. Rate filings for crop-hail insurance shall be submitted on or before ~~March 15~~ January 31 of each calendar year. Each company may file one set of rates per policy plan per calendar year which shall remain in effect throughout the current crop year. In the absence of a new filing, rates on file from the previous year will remain in effect. Each filing shall be accompanied by a cover letter, synopsis sheet and supporting data which ~~justifies~~ justify the filed rate.

ARC 2109C**NURSING BOARD[655]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 4, “Discipline,” and to adopt a new Chapter 20, “Contested Cases,” Iowa Administrative Code

The proposed amendments to Chapter 4:

- Clarify the action the Board can take on complaint files.
- Clarify the use of peer review.
- Update language pertaining to ARNPs by replacing the word “registration” with “license.”
- Reorganize and update the grounds for discipline to include the statutory basis for each ground and to include disciplinary grounds formerly set forth only in Iowa Code section 147.55 or 152.10, specifically the grounds set forth in Iowa Code sections 147.55(4) through 147.55(9) and 152.10(2).
 - Move the content of paragraphs 4.6(3)“c” through “g” to subrule 4.6(11) as paragraphs “a” through “e.”
 - Update and clarify provisions on behavior which constitutes unethical conduct or practice harmful or detrimental to the public under Iowa Code section 147.55, including the addition of disciplinary grounds for improper prescribing, improper safeguarding and wastage of medication, and professional boundaries violations.
 - Add a reference in rule to the disciplinary ground for practicing with an inactive license or without a license or pursuant to Iowa Code sections 147.2 and 147.10.
 - Add the disciplinary ground related to the Board’s new Iowa Nurse Assistance Program.
 - Add disciplinary grounds related to the failure to comply with a Board investigation or subpoena and for threatening or harassing behavior toward Board staff or an agent of the Board.
 - Update and clarify the sanctions available to the Board.
 - Strike rules related to contested case proceedings. The content of the rules is relocated in new Chapter 20, which governs all types of contested case proceedings, including nondisciplinary proceedings.

In addition, the rules in new Chapter 20:

- Include rules regarding access to the investigative file and dissemination of public records in a contested case proceeding.
- Contain only those definitions from Chapter 4 that are relevant to contested cases.
- Address the applicability of the Iowa Rules of Civil Procedure and specific discovery procedures available to the parties in a contested case proceeding.
- Clarify the substance of a combined statement of charges/settlement agreement, a notice of hearing, a statement of charges, and a settlement agreement.
- Clarify that legal representation of the public interest is provided by the Office of the Attorney General.
 - Clarify who the presiding officer is in contested cases.
 - Update procedures for prehearing conferences and continuance requests.
 - Clarify the evidentiary standards applicable to contested cases.
 - Include procedures for requesting a stay.
 - Clarify procedures governing requests for reinstatement.

Any interested person may make written comments or suggestions on or before September 8, 2015. Such written materials should be directed to the Executive Director, Iowa Board of Nursing,

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RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685 or e-mailed to rules.comments@iowa.gov. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at 400 S.W. 8th Street, by appointment.

Also, there will be a public hearing on September 8, 2015, at 9 a.m. at the Board of Nursing office, 400 S.W. 8th Street, Suite B, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments were approved by the Board on July 15, 2015.

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

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

These amendments are intended to implement Iowa Code chapters 17A, 147, 152, 272C, and 272D.

The following amendments are proposed.

ITEM 1. Amend **655—Chapter 4** as follows:

CHAPTER 4
DISCIPLINE

655—4.1(17A,147,152,272C) Board authority. The board of nursing may discipline a registered nurse, a licensed practical nurse or an advanced registered nurse practitioner for any grounds stated in Iowa Code chapters 147, 152, and 272C and 272D, or rules promulgated thereunder.

655—4.2(17A,147,152,272C) Complaints and investigations. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a licensee.

4.2(1) In accordance with Iowa Code section 272C.3(1) “c,” the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for licensee discipline.

4.2(2) The executive director, or an authorized designee, may review and investigate any complaint information received, in order to determine the probability that a violation of Iowa law or administrative rule has occurred.

655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

4.3(1) The executive director or designee may, upon the written request of a board investigator or on the executive director’s own initiative, subpoena books, papers, records and other real evidence which are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

4.3(2) A written request for a subpoena or the executive director’s written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.3(3) Each subpoena shall contain the following:

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- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address and telephone number of the executive director or designee;
- f. The date of issuance;
- g. A return of service.

4.3(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.3(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.3(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.3(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

655—4.4(17A,147,152,272C) Board action. The board shall review complaints and investigative conclusions materials and do one of the following:

4.4(1) ~~1. Close the investigative complaint case without action.~~

4.4(2) ~~2. Request further inquiry, including peer review.~~

4.4(3) ~~3. Appoint a peer review committee to assist with the investigation.~~ Issue a confidential letter of warning to the licensee. A letter of warning is not formal disciplinary action and is not a public document.

4.4(4) ~~4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6~~ file a statement of charges or approve a combined statement of charges and settlement agreement.

655—4.5(17A,147,152,272C) Peer review committee. ~~The board may establish a peer review committee to assist with the investigative process when deemed necessary.~~ Any case may be referred to peer review for evaluation of the professional services rendered by the licensee.

4.5(1) ~~The committee board shall determine if the conduct of the licensee conforms to minimum standards of acceptable and prevailing practice of nursing and submit a report of its findings to the board~~ enter into a contract with peer reviewers to provide peer review services. The board or board staff shall determine which peer reviewer(s) will review a case and what investigative information shall be referred to a peer reviewer.

4.5(2) ~~The board shall review the committee's findings and proceed with action available under rule 655—4.4(17A,147,152,272C).~~ Peer reviewers shall review the information provided by the board and provide a written report to the board. The written report shall contain an opinion of the peer reviewer regarding whether the licensee conformed to minimum standards of acceptable and prevailing practice of nursing and the rationale supporting the opinion.

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~~4.5(3) The peer review committee shall observe the confidentiality requirements imposed by Iowa Code section 272C.6. Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).~~

~~4.5(4) The board shall review the committee's findings and proceed with action available under rule 655—4.4(17A,147,152,272C).~~

655—4.6(17A,147,152,272C) Grounds for discipline. A licensee may be disciplined for failure to comply with the rules promulgated by the board and for any wrongful act or omission related to nursing practice, licensure or professional conduct.

4.6(1) In accordance with Iowa Code section 147.55(1), behavior which constitutes fraud in procuring a license may include, but need not be limited to, the following:

a. Falsification of the application, credentials, or records submitted to the board for licensure or license renewal as a registered nurse, licensed practical nurse, or ~~registration as an~~ advanced registered nurse practitioner.

b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or ~~registration as an~~ advanced registered nurse practitioner.

c. Impersonating any applicant in any examination for licensure as a registered nurse, ~~or~~ licensed practical nurse, ~~or advanced registered nurse practitioner.~~

4.6(2) In accordance with Iowa Code section 147.55(2), professional incompetency may include, but need not be limited to, the following:

a. Lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.

b. Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other nurses in the state of Iowa acting in the same or similar circumstances.

c. Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.

d. Willful or repeated failure to practice nursing with reasonable skill and safety.

e. Willful or repeated failure to practice within the scope of current licensure or level of preparation.

f. Failure to meet the standards as defined in 655—Chapter 6, Iowa Administrative Code.

g. Failure to meet the standards as defined in 655—Chapter 7, Iowa Administrative Code.

~~*g-h.* Failure to comply with the requirements of Iowa Code chapter 139A.~~

4.6(3) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession may include, but need not be limited to, the following:

a. Oral or written misrepresentation relating to degrees, credentials, licensure status, records and applications.

b. Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

~~*e.* Failing to provide written notification of a change of address to the board within 30 days of the event.~~

~~*d.* Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory or country.~~

~~*e.* Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction wherein it occurred.~~

~~*f.* Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.~~

~~*g.* Failing to submit verification of compliance with continuing education requirements or exceptions for the period of time being audited.~~

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4.6(4) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following:

- a. Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.
- b. Allowing another person to use one's nursing license for any purpose.
- c. Failing to comply with any rule promulgated by the board related to minimum standards of nursing.
- d. Improper delegation of nursing services, functions, or responsibilities.
- e. Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.
- f. Committing an act which causes physical, emotional, or financial injury to the patient or client.
- ~~g. Engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or client.~~
- ~~h. g.~~ Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.
- ~~i. h.~~ Violating the confidentiality or privacy rights of the patient or client.
- ~~j. i.~~ Discriminating against a patient or client because of age, sex, race, ethnicity, national origin, creed, illness, disability, sexual orientation or economic or social status.
- ~~k. j.~~ Failing to assess, accurately document, evaluate, or report the status of a patient or client.
- ~~l. k.~~ Misappropriating medications, property, supplies, or equipment of the patient, client, or agency.
- ~~m. l.~~ Fraudulently or inappropriately using or permitting the use of prescription blanks, or obtaining or attempting to obtain prescription medications under false pretenses, or assisting others to obtain or attempt to obtain prescription medication under false pretenses.
- ~~n. m.~~ Practicing nursing while under the influence of alcohol, marijuana, or illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications.
- ~~o. n.~~ Being involved in the unauthorized manufacture, ~~possession, or~~ distribution, or use of a controlled substance.
- ~~p.~~ Being involved in the unauthorized possession or use of a controlled substance.
- ~~q. p.~~ Pleading guilty to or being convicted of a crime related to the profession of nursing, or conviction of any crime that would affect the licensee's ability to practice nursing, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction wherein the action occurred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
- ~~r. q.~~ Engaging in behavior that is contradictory to professional decorum.
- ~~s. r.~~ Failing to report suspected wrongful acts or omissions committed by a licensee of the board.
- ~~t. s.~~ Failing to comply with an order of the board.
- ~~u. t.~~ Prescribing, dispensing, administering, or distributing drugs in an unsafe manner.
- ~~v. u.~~ Prescribing, dispensing, administering or distributing drugs without accurately documenting it or without assessing, evaluating, or instructing the patient or client.
- ~~w. v.~~ Prescribing, dispensing, administering or distributing drugs to individuals who are not patients or are outside the licensee's specialty area.
- ~~x. w.~~ Engaging in verbal or physical conduct which interferes with another health care worker's performance or creates an intimidating, hostile, or offensive work environment.
- ~~y. x.~~ Failing to properly safeguard or secure medications.
- ~~z. y.~~ Failing to properly document or perform medication wastage.

4.6(5) For purposes of this subrule, "patient" is defined to include the patient and the patient's family or caretakers who are present with the patient while the patient is under the care of the licensee. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following professional boundaries violations:

- a. Sexual contact with a patient, regardless of patient consent.

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b. Making lewd, suggestive, demeaning, or otherwise sexual comments to a patient, regardless of patient consent.

c. Initiating, or attempting to initiate, a sexual, emotional, social, or business relationship with a patient, regardless of patient consent.

d. Soliciting, borrowing, or misappropriating money or property from a patient, regardless of patient consent.

e. Divulging personal information to a patient for nontherapeutic purposes, regardless of patient consent.

f. Engaging in a sexual, emotional, social, or business relationship with a former patient when there is a risk of exploitation or harm to the patient, regardless of patient consent.

4.6(6) In accordance with Iowa Code section 147.55(4), habitual intoxication or addiction to the use of drugs may include, but need not be limited to, the following:

a. Excessive use of alcohol which may impair a licensee's ability to practice the profession with reasonable skill and safety.

b. Excessive use of drugs which may impair a licensee's ability to practice the profession with reasonable skill and safety.

4.6(7) In accordance with Iowa Code section 147.55(5), conviction of a crime related to the profession or occupation of the licensee or conviction of any crime that would affect the licensee's ability to practice within a profession means the following:

a. Pleading guilty to or being convicted of a crime related to the profession of nursing, or conviction of any crime that would affect the licensee's ability to practice nursing, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction wherein the action occurred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

b. Reserved.

4.6(8) In accordance with Iowa Code section 147.55(6), fraud in representation as to skill or ability.

4.6(9) In accordance with Iowa Code section 147.55(7), use of untruthful or improbable statements in advertisements.

4.6(10) In accordance with Iowa Code section 147.55(8), willful or repeated violations of provisions of Iowa Code chapter 147, 152, or 272C.

4.6(11) In accordance with Iowa Code section 147.55(9), other acts or offenses as specified by board rule, including the following:

a. Failing to provide written notification of a change of address to the board within 30 days of the event.

b. Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory or country.

c. Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction where it occurred.

d. Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.

e. Failing to respond to the board during a board audit or submit verification of compliance with continuing education requirements or exceptions, within the time period provided.

f. Failing to respond to the board during a board audit or submit verification of compliance with training in child or dependent adult abuse identification and reporting or exceptions, within the time period provided.

g. Failing to respond to the board during a board audit or submit verification of compliance with the requirements for the supervision of fluoroscopy set forth in 655—subrule 7.2(2) or exceptions, within the time period provided.

h. Failing to respond to or comply with a board investigation or subpoena.

i. Engaging in behavior that is threatening or harassing to the board, board staff, or agents of the board.

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j. Violating an initial agreement or contract with the Iowa nurse assistance program committee.

4.6(12) In accordance with Iowa Code section 147.2 or 147.10:

a. Engaging in the practice of nursing in Iowa prior to licensure or not pursuant to the nurse licensure compact.

b. Engaging in the practice of nursing in Iowa on an inactive license.

4.6(13) In accordance with Iowa Code section 152.10(2):

a. Continued practice while knowingly having an infectious or contagious disease which could be harmful to a patient's welfare.

b. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse or advanced registered nurse practitioner revoked or suspended or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence of such fact. "Certified copy" means a complete and accurate copy of a document, as verified by the board or the agency providing that document. "Certified copy" includes an electronic version of a document provided to another agency or individual by the board, or received from another agency, so long as the electronic record is:

- (1) Obtained directly from the official Web site of the board or other agency;
- (2) Regularly updated by the board or the other agency in accordance with standard practice;
- (3) Accessible as a "read only" document;
- (4) Properly safeguarded to prevent the document from being altered; and
- (5) Certified from another agency in accordance with the laws applicable in that jurisdiction.

c. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority in another state which has adopted the nurse licensure compact contained in Iowa Code section 152E.1 or the advanced practice registered nurse compact contained in Iowa Code section 152E.3 and which has communicated information relating to such action pursuant to the coordinated licensure information system established by the compact. If the action taken by the licensing authority occurs in a jurisdiction which does not afford the procedural protections of Iowa Code chapter 17A, the licensee may object to the communicated information and shall be afforded the procedural protections of Iowa Code chapter 17A.

d. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice nursing.

e. Being adjudicated mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

f. Inability to practice nursing with reasonable skill and safety by reason of illness or as a result of a mental or physical condition.

655—4.7(17A,147,152,272C) Sanctions. A sanction is a disciplinary action by the board which resolves a contested case. The board may impose one or more of the following:

1. Revocation.
2. Suspension.
3. Restriction on engaging in specified procedures or acts.
- ~~3.~~ 4. Probation.
5. Order a physical, mental or substance abuse evaluation, alcohol or drug screening, or clinical competency evaluation.

4. 6. Civil penalty. A fine may be imposed in accordance with Iowa Code section 272C.3(2) "e." Assessment of a fine shall be specified in the order and may not exceed a maximum amount of \$1,000. Fines may be incurred for:

- Practicing without an active license: \$50 for each calendar month or part thereof, beginning on the date that a license enters inactive status.

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• ~~Obtaining a license by falsification of continuing education records~~ Failing to respond to the board during a board audit or to submit verification of compliance with the continuing education requirements or exceptions: \$50 for each contact hour falsified that is not verified.

• ~~Violating rule 655—4.6(17A,147,152,272C): an amount deemed appropriate.~~

~~5. 7. Continuing Additional~~ education, reexamination, or both.

~~6. 8. Citation and warning.~~

~~9. Such other sanctions allowed by law as may be appropriate.~~

~~655—4.8(17A,147,152,272C) Panel of specialists.~~ The board may appoint a panel of nurses who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee shall appoint the presiding officer.

~~4.8(1) The executive director shall set the date, time, and location of the hearing and make proper notification to all parties.~~

~~4.8(2) The panel of specialists shall:~~

~~a.—Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.~~

~~b.—Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.~~

~~c.—Receive opening statements from the parties.~~

~~d.—Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the licensee.~~

~~e.—Question the witnesses.~~

~~f.—Receive closing statements from the parties.~~

~~g.—Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.~~

~~655—4.9(17A,147,152,272C) Informal settlement.~~ Pursuant to the provisions of Iowa Code sections 17A.10, 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to filing charges or the commencement of contested case proceedings. The executive director or a designee may negotiate with the licensee regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

~~655—4.10~~~~655—4.8(17A,147,152,272C) Voluntary surrender.~~ A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board. A voluntary surrender, when accepted by the board, has the same force and effect as an order of revocation.

~~655—4.11(17A,147,152,272C) Application for reinstatement.~~ Any person whose license to practice nursing has been suspended or revoked by order of the board or has been voluntarily surrendered may apply for reinstatement. A request for reinstatement must be accomplished in accordance with the terms and conditions specified in the board's order and filed in conformance with these rules.

~~4.11(1) If the license was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be filed until one year has elapsed from the date of the order. Persons who have failed to satisfy the terms and conditions imposed by the board shall not be entitled to reinstatement.~~

~~4.11(2) The respondent shall initiate proceedings for licensure reinstatement by making application to the board. The application shall be subject to the same rules of procedure as other contested cases before the board. The person filing the application for reinstatement shall immediately serve a copy upon the attorney for the state of Iowa and shall in the same manner serve any additional documents filed in connection with the application.~~

~~4.11(3) The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or voluntary surrender no~~

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~~longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the applicant's assertion that the basis for the revocation, suspension, or voluntary surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to: medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation; statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the applicant.~~

~~4.11(4) The executive director or an appointed designee shall review the application for reinstatement and determine if it conforms to the requirements imposed by these rules. Applications failing to comply with these requirements will be denied. Such denial shall be in writing, stating the grounds, and may be appealed to the board in compliance with the provisions of Iowa Code chapter 17A.~~

~~4.11(5) Applications not denied for failure to conform to the requirements imposed by these rules shall be set for hearing before the board. The hearing shall be a contested case hearing within the meaning of Iowa Code section 17A.12, and the order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions may be imposed. The applicant shall be provided a license reinstatement packet containing an application, a continuing education report form, fingerprint cards, and a statement of the fees as defined in rule 655—3.1(17A,147,152,272C).~~

~~655—4.12(17A,147,152,272C) Licensee review committee.~~ In accordance with the provisions of Iowa Code section 272C.3(1)“k,” the board shall appoint a licensee review committee for the purpose of evaluating and monitoring licensees who self-report physical or mental impairments. The committee shall be comprised of the executive director or designee, a representative with chemical dependency or mental health treatment experience, and a recovering nurse with at least five consecutive years of sobriety.

~~4.12(1) Eligibility for referral to the committee shall be determined by the executive director in accordance with the following criteria:~~

- ~~a. The licensee must self-report the impairment.~~
- ~~b. The licensee must submit an evaluation summary, diagnosis, or other evidence which supports a determination that an impairment exists.~~
- ~~c. There must be no indication of practice-related problems.~~
- ~~d. There must be no documented violation of law or board rules related to impairment-associated behaviors.~~
- ~~e. There must be no record of prior board sanction for impairment-related problems.~~

~~4.12(2) The committee shall meet as necessary in order to interview potential participants, develop consensual agreements for new referrals, review licensee compliance, and determine eligibility for continued monitoring.~~

~~4.12(3) Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensed individual in writing.~~

~~4.12(4) The licensee must consent to the conditions proposed by the review committee in order to participate in this program.~~

~~4.12(5) Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for possible disciplinary action.~~

~~4.12(6) Information in possession of the licensee review committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6.~~

~~655—4.13(17A,147,152,272C) Contested case proceedings.~~ Contested case proceedings before the board of nursing are held in accordance with the provisions of Iowa Code chapter 17A. The following

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rules apply to board activities initiated upon a determination of probable cause that result in the issuance of a notice of hearing. Any adverse agency action to limit or revoke the multistate licensure privilege granted under the provisions of the nurse licensure compact shall be conducted as a contested case proceeding.

655—4.14(17A,152E) Definitions. Except where otherwise specifically defined by law:

“Adverse action” means a home or remote state action.

“Certified copy,” as used in the statutes and rules administered by the board, means a complete and accurate copy of a document, as verified by the board or the agency providing that document. “Certified copy” includes an electronic version of a document provided to another agency or individual by the board, or received from another agency, so long as the electronic record is:

1. — Obtained directly from the official Web site of the board or other agency;
2. — Regularly updated by the board or the other agency in accordance with standard practice;
3. — Accessible as a “read only” document;
4. — Properly safeguarded to prevent the document from being altered; and
5. — Certified from another agency in accordance with the laws applicable in that jurisdiction.

“Contested case” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

“Home state” means the party state, which is the nurse’s primary state of residence.

“Home state action” means any administrative, civil, equitable, or criminal action permitted by the home state’s laws which are imposed on a nurse by the home state’s licensuring board or other authority, including actions against an individual’s license such as revocation, suspension, probation, or any other action which affects a nurse’s authorization to practice.

“Issuance” means the date of mailing of a decision or order or date of delivery if service is by other means, unless another date is specified in the order.

“Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“Presiding officer” means the chairperson of the board or designee.

“Proposed decision” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board of nursing did not preside.

“Remote state” means a party state, other than the home state, where either of the following applies:

1. — Where the patient is located at the time nursing care is provided.
2. — In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing care is located.

“Remote state action” means either of the following:

1. — Any administrative, civil, equitable, or criminal action permitted by a remote state’s laws which is imposed on a nurse by the remote state’s licensing board or other authority, including actions against an individual’s multistate licensure privilege to practice in the remote state.

2. — Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

655—4.15(17A) Time requirements.

4.15(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.15(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

655—4.16(17A) Notice of hearing. The board shall issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

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~~4.16(1)~~ The date, time, and location of the hearing shall be set by the chairperson or the executive director. The licensee shall be notified at least 30 days prior to the scheduled hearing.

~~4.16(2)~~ Notification shall be in writing delivered either by personal service as in civil actions or by restricted certified mail with return receipt requested. When service cannot be accomplished in such a manner:

a.—An affidavit shall be prepared outlining the measures taken to attempt service and shall become a part of the file when a notice cannot be delivered by personal service or certified mail, return receipt requested.

b.—Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last known residence of the licensee. The newspaper will be selected by the executive director or a designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

655—4.17(17A) Presiding officer. Disciplinary hearings shall be conducted by the board pursuant to Iowa Code section 272C.6.

~~4.17(1)~~ The chairperson of the board shall designate the presiding officer in accordance with the provisions of section 17A.11. For nondisciplinary proceedings, any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing.

~~4.17(2)~~ The executive director may deny the request upon a finding that one or more of the following apply:

a.—Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b.—There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c.—The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d.—The demeanor of the witness is likely to be dispositive in resolving the disputed factual issues.

e.—Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f.—The request was not timely filed.

g.—The request is not consistent with a specified statute.

h.—The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

~~4.17(3)~~ The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

~~4.17(4)~~ All rulings by an administrative law judge are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

~~4.17(5)~~ Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

655—4.18(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

655—4.19(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

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655—4.20(17A) Disqualification.

4.20(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.*—Has a personal bias or prejudice concerning a party or a representative of a party;
- b.*—Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.*—Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.*—Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.*—Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.*—Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g.*—Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.20(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation or the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 4.20(3) and 4.32(9).

4.20(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.20(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.20(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 655—4.34(17A).

655—4.21(17A) Consolidation—severance.

4.21(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

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~~4.21(2) Severance.~~ The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

655—4.22(17A) Pleadings.

~~4.22(1) Pleadings may be required by rule, by notice of hearing, or by order of the presiding officer.~~

~~4.22(2) Petition.~~

~~a.~~ Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

~~b.~~ A petition shall state in separately numbered paragraphs the following:

- ~~(1) The persons or entities on whose behalf the petition is filed;~~
- ~~(2) The particular provisions of statutes and rules involved;~~
- ~~(3) The relief demanded and the facts and laws relied upon for such relief; and~~
- ~~(4) The name, address and telephone number of the petitioner and the petitioner's attorney.~~

~~4.22(3) Answer.~~ An answer may be filed within 20 days of service of the petition. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

~~An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.~~

~~An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person.~~

~~Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.~~

655—4.23(17A) Service and filing of pleadings and other papers.

~~4.23(1) When service required.~~ Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

~~4.23(2) Service—how made.~~ Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

~~4.23(3) Filing—when required.~~ After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board.

~~4.23(4) Filing—when made.~~ Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first class mail or state interoffice mail to that office, so long as there is proof of mailing.

~~4.23(5) Proof of mailing.~~ Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail or state interoffice mail.

(Date)

(Signature)

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655—4.24(17A) Discovery.

4.24(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.24(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.24(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.24(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

655—4.25(17A,272C) Issuance of subpoenas in a contested case.

4.25(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas may be issued by the executive director or designee upon written request. A request for a subpoena of mental health records must confirm that the conditions described in subrule 4.3(1) have been satisfied prior to the issuance of the subpoena.

4.25(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a.*—The name, address and telephone number of the person requesting the subpoena;
- b.*—The name and address of the person to whom the subpoena shall be directed;
- c.*—The date, time and location at which the person shall be commanded to attend and give testimony;
- d.*—Whether the testimony is requested in connection with a deposition or hearing;
- e.*—A description of the books, papers, records or other real evidence requested;
- f.*—The date, time and location for production or inspection and copying; and
- g.*—In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.25(3) Each subpoena shall contain, as applicable, the following:

- a.*—The caption of the case;
- b.*—The name, address and telephone number of the person who requested the subpoena;
- c.*—The name and address of the person to whom the subpoena is directed;
- d.*—The date, time and location at which the person is commanded to appear;
- e.*—Whether the testimony is commanded in connection with a deposition or hearing;
- f.*—A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.*—The date, time and location for production or inspection and copying;
- h.*—The time within which the motion to quash or modify the subpoena must be filed;
- i.*—The signature, address and telephone number of the executive director or designee;
- j.*—The date of issuance;
- k.*—A return of service.

4.25(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

4.25(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the

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board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

~~4.25(6)~~ Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

~~4.25(7)~~ A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

~~4.25(8)~~ If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

655—4.26(17A) Motions.

~~4.26(1)~~ No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

~~4.26(2)~~ Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

~~4.26(3)~~ The presiding officer may schedule oral argument on any motion.

~~4.26(4)~~ Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

655—4.27(17A) Prehearing conference.

~~4.27(1)~~ Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board office to all parties. For good cause the presiding officer may permit variances from this rule.

~~4.27(2)~~ Each party shall bring to the prehearing conference:

a.— A final list of witnesses the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names;

b.— A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them; and

c.— Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

~~4.27(3)~~ In addition to the requirements of subrule 4.27(2), the parties at a prehearing conference may:

a.— Enter into stipulations of law or fact;

b.— Enter into stipulations on the admissibility of exhibits;

c.— Identify matters which the parties intend to request be officially noticed;

d.— Enter into stipulations for waiver of any provision of law; and

e.— Consider any additional matters which will expedite the hearing.

~~4.27(4)~~ Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

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~~655—4.28(17A) Continuances.~~ The executive director shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

~~A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive director only in situations involving extenuating, extraordinary, or emergency circumstances.~~

~~655—4.29(17A) Hearing procedures.~~

~~4.29(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.~~

~~4.29(2) All objections shall be timely made and stated on the record.~~

~~4.29(3) Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.~~

~~4.29(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.~~

~~4.29(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.~~

~~4.29(6) Witnesses may be sequestered during the hearing.~~

~~4.29(7) The presiding officer shall conduct the hearing in the following manner:~~

~~a.—The presiding officer shall give an opening statement briefly describing the nature of the proceedings;~~

~~b.—The parties shall be given an opportunity to present opening statements;~~

~~c.—Parties shall present their cases in the sequence determined by the presiding officer;~~

~~d.—Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;~~

~~e.—When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.~~

~~655—4.30(17A) Evidence.~~

~~4.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.~~

~~4.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.~~

~~4.30(3) Evidence in the proceeding shall be confined to those issues to which the parties received notice prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.~~

~~4.30(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.~~

~~4.30(5) Any party may object to specific evidence or may request limits on scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.~~

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~~4.30(6)~~ Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an order of proof and inserted in the record.

655—4.31(17A) Default.

~~4.31(1)~~ If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

~~4.31(2)~~ Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

~~4.31(3)~~ Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 655—4.36(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit from a person with personal knowledge of each such fact attached to the motion.

~~4.31(4)~~ The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

~~4.31(5)~~ Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

~~4.31(6)~~ "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

~~4.31(7)~~ A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 655—4.34(17A).

655—4.32(17A) Ex parte communication.

~~4.32(1)~~ Prohibited communications.— Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case, except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.20(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

~~4.32(2)~~ Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

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~~4.32(3)~~ Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

~~4.32(4)~~ To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 655—4.23(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call, which includes all parties or their representatives.

~~4.32(5)~~ Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

~~4.32(6)~~ The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 4.20(1) or other law and they comply with subrule 4.32(1).

~~4.32(7)~~ Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 655—4.29(17A).

~~4.32(8)~~ Disclosure of prohibited communications. A presiding officer who received a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

~~4.32(9)~~ Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

~~4.32(10)~~ The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the board’s executive director for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

~~655—4.33(17A) Recording costs.~~ Upon request, the board of nursing shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of such recording, unless otherwise provided by law.

~~655—4.34(17A) Final decision.~~ When the board presides over reception of the evidence at the hearing, its decision is a final decision.

~~4.34(1)~~ When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact shall be considered by the board at the earliest practicable time. The decision of the board is a final decision.

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~~4.34(2)~~ A final decision in a contested case proceeding shall be in writing and include findings of fact and conclusions of law, separately stated.

~~a.~~ Findings of fact shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.

~~b.~~ The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact.

~~c.~~ Conclusions of law shall be supported by cited authority or by a reasoned opinion.

~~4.34(3)~~ The decision or order shall be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12 as amended by 1998 Iowa Acts, chapter 1202.

~~4.34(4)~~ The final decision is a public record pursuant to Iowa Code section 272C.6(4).

655—4.35(17A) Appeals.

~~4.35(1) Appeal by party.~~ Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance, in accordance with Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202.

~~4.35(2) Review.~~ The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

~~4.35(3) Notice of appeal.~~ An appeal of a decision or order is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

~~a.~~ The parties initiating the appeal;

~~b.~~ The proposed decision or order appealed from;

~~c.~~ The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

~~d.~~ The relief sought;

~~e.~~ The grounds for relief.

~~4.35(4) Requests to present additional evidence.~~ A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 15 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

~~4.35(5) Scheduling.~~ The board of nursing shall issue a schedule for consideration of the appeal.

~~4.35(6) Briefs and arguments.~~ Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present an oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

655—4.36(17A) Applications for rehearing.

~~4.36(1) By whom filed.~~ Any party to a contested case proceeding may file an application for rehearing from a final order.

~~4.36(2) Content of application.~~ An application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, upon showing good cause, the applicant requests an opportunity to submit additional evidence.

~~4.36(3) Time of filing.~~ The application shall be filed with the board office within 20 days after issuance of the final decision.

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~~4.36(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.~~

~~4.36(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.~~

~~655—4.37(17A) **No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.~~

~~655—4.38(17A) **Emergency adjudicative proceedings.**~~

~~4.38(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:~~

~~a.—Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;~~

~~b.—Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;~~

~~c.—Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;~~

~~d.—Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and~~

~~e.—Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.~~

~~4.38(2) *Issuance.*~~

~~a.—The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:~~

~~(1) Personal delivery;~~

~~(2) Certified mail, return receipt requested, to the last address on file with the agency;~~

~~(3) Certified mail to the last address on file with the agency;~~

~~(4) First class mail to the last address on file with the agency; or~~

~~(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.~~

~~b.—To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.~~

~~4.38(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.~~

~~4.38(4) *Completion of proceedings.* Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.~~

~~These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 147.55, 152.10, 272C.4, 272C.5, 272C.6, and 272C.9.~~

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ITEM 2. Adopt the following new 655—Chapter 20:

CHAPTER 20
CONTESTED CASES

655—20.1(17A,272C) Scope and applicability. This chapter applies to contested case proceedings conducted by the Iowa board of nursing.

655—20.2(17A,272C) Definitions. Except where otherwise specifically defined by law:

“*Board*” means a quorum of members of the Iowa board of nursing.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5), including but not limited to licensee disciplinary proceedings, adverse agency action to limit or revoke the multistate licensure privilege granted under the provisions of the nurse licensure compact, license denial proceedings, and license reinstatement proceedings.

“*Issuance*” means the date of mailing of a decision or order, or date of delivery if service is by other means, unless another date is specified in the order.

“*Party*” means the state of Iowa, as represented by the office of the attorney general, and the respondent or applicant.

“*Probable cause*” means a reasonable ground for belief in the existence of facts warranting the specified proceeding.

655—20.3(17A,272C) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34). For good cause, the presiding officer may lengthen or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before lengthening or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

655—20.4(17A,272C) Applicability of Iowa Rules of Civil Procedure. Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

655—20.5(17A,272C) Combined statement of charges and settlement agreement. Upon a determination by the board that probable cause exists to take public disciplinary action, the board and the licensee may enter into a combined statement of charges and settlement agreement.

20.5(1) No licensee is entitled to be offered a combined statement of charges and settlement agreement.

20.5(2) Entering into a combined statement of charges and settlement agreement is completely voluntary.

20.5(3) The combined statement of charges and settlement agreement shall include a brief statement of the charges, the circumstances that led to the charges, and the terms of settlement.

20.5(4) A combined statement of charges and settlement agreement shall constitute the commencement and resolution of a contested case proceeding. By entering into a combined statement of charges and settlement agreement, the licensee waives the right to a contested case hearing on the matter.

20.5(5) A combined statement of charges and settlement agreement is a permanent public record open for inspection under Iowa Code chapter 22.

655—20.6(17A,272C) Notice of hearing.

20.6(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service, as provided in the Iowa Rules of Civil Procedure; or

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- b. Certified restricted mail, return receipt requested; or
- c. Signed acknowledgment accepting service; or
- d. When service cannot be accomplished using the above methods:
 - (1) An affidavit shall be prepared outlining the measures taken to attempt service; and
 - (2) Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the respondent. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

20.6(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;
- e. Identification of all parties, including the name, address and telephone number of the assistant attorney general representing the state;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing settlement;
- h. Identification of the presiding officer;
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11, that the presiding officer be an administrative law judge;
- j. Notification of the time period in which the respondent may file an answer; and
- k. Notification of the respondent's right to request a closed hearing, if applicable.

20.6(3) Public record. Notices of hearing are permanent public records open for inspection under Iowa Code chapter 22.

655—20.7(17A,272C) Statement of charges. In the event the board finds there is probable cause for taking public disciplinary action against a licensee, the board shall file a statement of charges. The statement of charges shall be incorporated within the notice of hearing. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense. Every statement of charges prepared by the board shall be reviewed by the office of the attorney general before it is filed. Statements of charges are permanent public records open for inspection under Iowa Code chapter 22.

655—20.8(13,272C) Legal representation. Following the issuance of a notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in the contested case. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

655—20.9(17A,272C) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case shall be the board. When acting as presiding officer, the board may request that an administrative law judge perform certain functions as an aid to the board, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, and drafting the written decision for review by the board.

655—20.10(17A,272C) Presiding officer in a nondisciplinary contested case.

20.10(1) Any party in a nondisciplinary contested case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of the notice of hearing.

20.10(2) The board may deny the request only upon a finding that one or more of the following apply:

- a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

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- b.* An administrative law judge is unavailable to hear the case within a reasonable time.
- c.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- f.* The request was not timely filed.
- g.* The request is not consistent with a specified statute.

20.10(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least 10 days prior to hearing if an administrative law judge will not be available.

655—20.11(17A,272C) Disqualification.

20.11(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party.
- b.* Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties. If the licensee elects to appear before the board in the investigative process, the licensee waives this provision.
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties.
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years.
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case.
- f.* Has a spouse or relative within the third degree of relationship who:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case.
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

20.11(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include:

- a.* General direction and supervision of assigned investigators;
- b.* Unsolicited receipt of information which is relayed to assigned investigators;
- c.* Review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or
- d.* Exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 20.11(3) and 20.28(8).

By electing to participate in an appearance before the board, the licensee waives any objection to a board member’s both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that the board member “personally investigated” the matter under this provision.

20.11(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary,

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that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

20.11(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 20.11(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11(3). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The individual against whom disqualification is asserted shall make the initial determination as to whether disqualification is required. If the individual elects not to disqualify, the board shall make the final determination as to disqualification of that individual as part of the record in the case.

655—20.12(17A,272C) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

655—20.13(17A,272C) Telephone or electronic proceedings. The presiding officer may resolve prehearing matters by telephone conference in which all parties have an opportunity to participate. Contested case hearings will generally not be held by telephone or electronic means in the absence of consent by all parties under compelling circumstances. Nothing shall prohibit a witness from testifying by telephone or electronic means pursuant to paragraph 20.26(3) "b."

655—20.14(17A,272C) Consolidation—severance.

20.14(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

20.14(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

655—20.15(17A,272C) Appearance. The respondent or applicant may be represented by an attorney. The attorney must file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney must fully comply with Iowa Court Rule 31.14.

655—20.16(17A,272C) Answer. An answer may be filed within 20 days of service of the notice of hearing and statement of charges. An answer shall specifically admit, deny, or otherwise answer all material allegations of the statement of charges to which it responds. It shall state any facts supporting any affirmative defenses and contain as many additional defenses as the respondent may claim. An answer shall state the name, address and telephone number of the person filing the answer. Any allegation in the statement of charges not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

655—20.17(17A,272C) Filing and service of documents.

20.17(1) Filing—when required. After the notice of hearing, all documents in a contested case proceeding shall be filed with the board.

20.17(2) Filing—how made. Filing shall be made by delivering or mailing the document to the board office located at 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685.

20.17(3) Filing—when made. A document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to the board office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

20.17(4) Service—when required. Except as otherwise provided by law, every document filed in a contested case proceeding shall be simultaneously served upon each of the parties of record to the

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proceeding, including the assistant attorney general representing the state. Except for an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

20.17(5) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order, so long as there is proof of mailing.

20.17(6) Electronic service. Service may be made upon a party or attorney by electronic mail (e-mail) if the person consents in writing in that case to be served in that manner. The written consent shall specify the e-mail address for such service. The written consent may be withdrawn by written notice served on the parties or attorneys.

20.17(7) Proof of mailing/e-mailing. Proof of mailing/e-mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail, state interoffice mail, or e-mail when permitted by 655 IAC 20.17(6).

(Date)

(Signature)

655—20.18(272C) Investigative file. The board's investigative file is available to the respondent or applicant upon request only after the commencement of a contested case and only prior to the resolution of the contested case. A licensee who elects to enter into a combined statement of charges and settlement agreement is not entitled to request the investigative file. In accordance with Iowa Code section 272C.6(4), information contained within an investigative file is confidential and may only be used in connection with the disciplinary proceedings before the board.

655—20.19(17A,272C) Discovery.

20.19(1) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

20.19(2) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

20.19(3) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceedings or impose an undue hardship.

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20.19(4) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

20.19(5) Discovery shall be served on all parties to the contested case proceeding but shall not be filed with the board.

20.19(6) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within 10 days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

20.19(7) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

655—20.20(17A,272C) Issuance of subpoenas in a contested case.

20.20(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas shall be issued by the executive director or designee upon a written request that complies with the requirements of this rule. A request for a subpoena of mental health records must confirm that the conditions described in subrule 20.20(3) have been satisfied prior to the issuance of the subpoena. The executive director or designee may refuse to issue a subpoena if the request does not comply with the requirements of this rule.

20.20(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a.* The name, address and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date, time and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested and the date, time and location for production or inspection and copying; and
- f.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 20.20(3) have been satisfied.

20.20(3) In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a.* The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;
- b.* Adequate safeguards have been established to prevent unauthorized disclosure;
- c.* An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d.* An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

20.20(4) Each subpoena shall contain, as applicable, the following:

- a.* The caption of the case;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time and location for production or inspection and copying;
- h.* The time within which the motion to quash or modify the subpoena must be filed;

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- i.* The signature, address and telephone number of the executive director or designee;
- j.* The date of issuance;
- k.* A return of service.

20.20(5) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

20.20(6) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

20.20(7) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

20.20(8) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director in accordance with subrule 20.17(5) a notice of appeal within 10 days after service of the decision of the administrative law judge.

20.20(9) If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

655—20.21(17A,272C) Motions.

20.21(1) No technical form for motions is required. Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

20.21(2) Any party may file a written response to a motion within 10 days after the motion is served, unless the time period is lengthened or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

20.21(3) The presiding officer may schedule oral argument on any motion.

20.21(4) Motions pertaining to the hearing must be filed and served at least 10 days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or the presiding officer.

20.21(5) Dispositive motions, such as motions for summary judgment or motions to dismiss, must be filed with the board and served on all parties to the contested case proceeding at least 30 days prior to the scheduled hearing date, unless otherwise ordered or permitted by the presiding officer. Any party may file a written response to a dispositive motion within 10 days after the motion is served, unless the time for response is otherwise lengthened or shortened by the presiding officer.

655—20.22(17A,272C) Prehearing conferences.

20.22(1) Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director, who may request that an administrative law judge conduct the prehearing conference. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed not less than 7 days prior to the hearing date, unless authorized by the person conducting the prehearing conference. A prehearing conference shall be scheduled not less than 3 business days prior to the hearing date.

20.22(2) Each party shall be prepared to discuss the following subjects at the prehearing conference:

a. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not

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listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

b. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. The entry of a scheduling order to include deadlines for completion of discovery.

d. Stipulations of law or fact.

e. Stipulations on the admissibility of exhibits.

f. Identification of matters which the parties intend to request be officially noticed.

g. Consideration of any additional matters which will expedite the hearing.

20.22(3) Prehearing conferences shall be conducted by telephone unless otherwise ordered.

20.22(4) A party must seek intra-agency appeal to the board of prehearing rulings made by an administrative law judge in order to adequately exhaust administrative remedies. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of hearing, whichever is first.

655—20.23(17A,272C) Continuances. Unless otherwise provided, requests for continuance shall be filed with the board.

20.23(1) A written request for a continuance shall:

a. Be made at the earliest possible time and no less than 7 days before the hearing except in cases of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's attorney.

20.23(2) No request for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may allow an oral application for continuance at the contested case hearing only in the event of an unanticipated emergency.

20.23(3) The presiding officer or the executive director has the authority to grant or deny a request for a continuance in accordance with this subrule. The executive director or an administrative law judge may enter an order granting an uncontested request for a continuance. Upon consultation with the board chair, the executive director or an administrative law judge may deny an uncontested request for a continuance or may rule on a contested request for continuance.

20.23(4) In determining whether to grant a continuance, the presiding officer or the executive director may require documentation of any grounds for continuance and may consider:

a. Prior continuances;

b. The interests of all parties;

c. The public interest;

d. The likelihood of settlement;

e. The existence of an emergency;

f. Any objection;

g. Any applicable time requirements;

h. The existence of a conflict in the schedules of counsel, parties, or witnesses;

i. The timeliness of the request; and

j. Other relevant factors.

655—20.24(17A,272C) Settlement agreements.

20.24(1) A contested case may be resolved by settlement agreement. Settlement negotiations may be initiated by any party at any stage of a contested case. No party is required to participate in the settlement process.

20.24(2) If the respondent initiates or consents to settlement negotiations, the assistant attorney general prosecuting the case may discuss settlement with the board chair without violating the prohibition

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against ex parte communications in Iowa Code section 17A.17 and without disqualifying the board chair from participating in the adjudication of the contested case. The full board shall not be involved in settlement negotiations until a proposed settlement agreement executed by the respondent is submitted to the board for approval.

20.24(3) By signing the proposed settlement agreement, the respondent authorizes an assistant attorney general to have ex parte communications with the board related to the terms of the proposed settlement. If the board fails to approve the proposed settlement agreement, it shall be of no force or effect to either party and shall not be admissible at hearing. Upon rejecting a proposed settlement agreement, the board may suggest alternative terms of settlement, which the respondent is free to accept or reject.

20.24(4) A settlement agreement is a permanent public record open for inspection under Iowa Code chapter 22.

655—20.25(17A,272C) Hearing procedures in contested cases.

20.25(1) The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions.

20.25(2) When, in the opinion of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

20.25(3) An applicant or respondent has the right to participate or to be represented in all hearings related to the applicant's or respondent's case. Any applicant or respondent may be represented by an attorney at the party's own expense.

20.25(4) All objections shall be timely made and stated on the record.

20.25(5) Subject to terms prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, submit briefs, and engage in oral argument.

20.25(6) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

20.25(7) All rulings by an administrative law judge who acts either as presiding officer or as an aid to the board are subject to appeal to the board. While a party may seek immediate board review of rulings made by an administrative law judge when the administrative law judge is sitting with and acting as an aid to the board or panel of specialists during a hearing, such immediate review is not required to preserve error for judicial review.

20.25(8) Conduct of hearing. The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The board members and administrative law judge have the right to question a witness. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

20.25(9) The hearing shall be open to the public unless the respondent requests that the hearing be closed, in accordance with Iowa Code section 272C.6(1). At the request of either party, or on the board's own motion, the presiding officer may issue a protective order to protect documents which are privileged or confidential by law.

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655—20.26(17A,272C) Evidence.**20.26(1) General.**

a. Relevant evidence is admissible, subject to the discretion of the presiding officer. Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

b. The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

c. Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

d. Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

e. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

20.26(2) Exhibits.

a. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. If admitted, copies of documents should be distributed to individual board members and the administrative law judge. Unless prior arrangements have been made, the party seeking admission of a document should arrive at the hearing prepared with sufficient copies of the document to distribute to opposing parties, board members, the administrative law judge, and witnesses who are expected to examine the document. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

b. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

c. An original is not required to prove the content of a writing, recording, or photograph. Duplicates or photocopies are admissible. Any objection related to the authenticity of an exhibit shall go to the weight given to that exhibit and not preclude its admissibility.

20.26(3) Witnesses.

a. Witnesses may be sequestered during the hearing.

b. Subject to the terms prescribed by the presiding officer and the limitations in Iowa Rule of Civil Procedure 1.704, parties may present the testimony of witnesses in person, by telephone, by videoconference, by affidavit, or by written or video deposition. If a witness is providing testimony in person, by telephone, or by videoconference, use of any deposition is limited by Iowa Rule of Civil Procedure 1.704.

c. Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions to the client to prevent a misstatement from being entered into the record.

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d. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

655—20.27(17A,272C) Default.

20.27(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

20.27(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

20.27(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 655—20.30(17A,272C). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit from a person with personal knowledge of each such fact. The affidavit(s) must be attached to the motion.

20.27(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

20.27(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have 10 days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

20.27(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.971.

20.27(7) A decision by an administrative law judge granting or denying a motion to vacate is subject to appeal to the board within 20 days.

20.27(8) If a motion to vacate is granted and no timely appeal to the board has been filed, the presiding officer shall issue a rescheduling order setting a new hearing date and the contested case shall proceed accordingly.

655—20.28(17A,272C) Ex parte communication.

20.28(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case, except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 20.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

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20.28(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

20.28(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

20.28(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 655—20.17(17A,272C) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call which includes all parties or their representatives.

20.28(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

20.28(6) The executive director or designee may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the executive director or designee is not disqualified from participating in the making of a proposed or final decision under subrule 20.11(1) or other law and the executive director or designee complies with subrule 20.28(1).

20.28(7) Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party should notify other parties prior to initiating such contact with the presiding officer when feasible.

20.28(8) A presiding officer who received a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within 10 days after notice of the communication.

20.28(9) Promptly after being assigned to serve as presiding officer, the presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

20.28(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the board’s executive director for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

655—20.29(17A,272C) Recording. Contested case hearings shall be recorded by electronic means or by a certified shorthand reporter. A party may request that a hearing be recorded by a certified shorthand reporter instead of through electronic means by filing a request with the board at least 14 days in advance of the hearing. Parties who request that a hearing be recorded by a certified shorthand reporter rather than by electronic means shall bear the cost of the certified shorthand reporter. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. If the request for the hearing record is made as a result of a petition for judicial review, the party who filed the petition shall be considered the requesting party.

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655—20.30(17A,272C) Proposed decisions. Decisions issued by an administrative law judge in nondisciplinary cases are proposed decisions. A proposed decision issued by an administrative law judge becomes a final decision if not timely appealed or reviewed in accordance with this rule.

20.30(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

20.30(2) Review. The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

20.30(3) Exhaustion. A party must timely seek intra-agency appeal of a proposed decision in order to adequately exhaust administrative remedies.

20.30(4) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or an attorney for that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order which is being appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

20.30(5) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

20.30(6) Scheduling. The board shall issue a schedule for consideration of the appeal.

20.30(7) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

20.30(8) Record. The record on appeal or review shall be the entire record made before the administrative law judge.

655—20.31(17A,272C) Final decisions.

20.31(1) A final decision of the board shall include findings of fact and conclusions of law. When the board presides over the reception of the evidence at the hearing, its decision is a final decision.

20.31(2) The board may charge a fee to the licensee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board.

20.31(3) Final decisions shall be served on the respondent or applicant using one of the following methods:

- a. Personal service, as provided in the Iowa Rules of Civil Procedure, or
- b. Certified mail, return receipt requested, or
- c. Signed acknowledgment accepting service, or
- d. When service cannot be accomplished using the above methods:
 - (1) An affidavit shall be prepared outlining the measures taken to attempt service; and
 - (2) The final decision shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the respondent.
- e. If the respondent or applicant is represented by an attorney, the final decision shall be mailed to the attorney. The attorney may waive the requirement to serve the respondent or applicant through a written acknowledgment that the attorney is accepting service on behalf of the client. The state shall be served by first-class mail or state interoffice mail.

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20.31(4) A final decision is a permanent public record open for inspection under Iowa Code chapter 22, in accordance with Iowa Code section 272C.6(4).

655—20.32(17A,272C) Applications for rehearing.

20.32(1) *Who may file.* Any party to a contested case proceeding may file an application for rehearing from a final order.

20.32(2) *Content of application.* An application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, upon showing good cause, the applicant requests an opportunity to submit additional evidence. A party may request the taking of additional evidence after the issuance of a final order only by establishing that:

- a. The evidence is material; and
- b. The evidence arose after the completion of the original hearing; or
- c. Good cause exists for failure to present the evidence at the original hearing; and
- d. The party has not waived the right to present additional evidence.

20.32(3) *Time of filing.* The application shall be filed with the board office within 20 days after issuance of the final decision.

20.32(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

20.32(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

20.32(6) *Only remedy.* Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

655—20.33(17A,272C) Stays of agency actions.

20.33(1) *When available.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy. The petition must be filed within 30 days of the issuance of the final order, or if a party filed a request for rehearing that was denied, the petition must be filed within 30 days after the request for rehearing was denied or deemed denied.

20.33(2) *When granted.* The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay. In determining whether to grant a stay, the presiding officer shall consider the following factors:

- a. The extent to which the applicant is likely to prevail when the board or court finally disposes of the matter;
- b. The extent to which the applicant will suffer irreparable injury if relief is not granted;
- c. The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings;
- d. The extent to which the public interest relied on by the board is sufficient to justify the board's action in the circumstances.

20.33(3) *Exhaustion required.* A party must petition the board for a stay pursuant to this rule prior to requesting a stay from the district court in a judicial review proceeding.

655—20.34(17A,272C) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

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655—20.35(17A,272C) Emergency adjudicative proceedings.

20.35(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

20.35(2) Issuance.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately served on persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal service, as provided in the Iowa Rules of Civil Procedure, or
- (2) Certified restricted mail, return receipt requested, or
- (3) Signed acknowledgment accepting service.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

20.35(3) Notice. Unless the written emergency adjudicative order is served personally on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone and electronic mail the persons who are required to comply with the order.

20.35(4) Proceedings. Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for hearing. After issuance of an emergency adjudicative order, the licensee subject to the emergency adjudicative order may request a continuance of the hearing at any time by filing a request with the board. The state may only file a request for a continuance in compelling circumstances. Nothing in this subrule shall be construed to eliminate the opportunity to resolve the matter with a settlement agreement.

20.35(5) Public record. An emergency adjudicative order is a permanent public record open for inspection under Iowa Code chapter 22.

655—20.36(17A,147,272C) Application for reinstatement. Any person whose license to practice nursing has been revoked or has been voluntarily surrendered may apply for reinstatement. An application for reinstatement must be made in accordance with the terms specified in the board's order of revocation or order accepting the voluntary surrender. Any person whose license to practice nursing has been suspended and the board order imposing the suspension indicates that the respondent must apply for and receive reinstatement may apply for reinstatement in accordance with the terms specified in the board's order. All applications for reinstatement must be filed in accordance with this rule.

20.36(1) If the order for revocation, suspension, or surrender did not establish terms for reinstatement, an initial application for reinstatement may not be filed until at least one year has elapsed from the date of issuance of the order. Persons who have failed to satisfy the terms imposed by the board order revoking, suspending, or surrendering a license shall not be entitled to apply for reinstatement.

NURSING BOARD[655](cont'd)

20.36(2) Reinstatement proceedings shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original contested case in which the license was revoked, suspended, or surrendered. The person filing the application for reinstatement shall immediately serve a copy upon the office of the attorney general and shall serve any additional documents filed in connection with the application.

20.36(3) The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the respondent's assertion that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to: medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation; statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the respondent.

20.36(4) The executive director or designee shall review the application for reinstatement and determine if it conforms to the terms established in the board order that revoked, suspended, or surrendered the license and the requirements imposed by this rule. Applications failing to comply with the specified terms or with the requirements in this rule will be denied. Such denial shall be in writing, stating the grounds, and may be appealed by requesting a hearing before the board.

20.36(5) Applications not denied for failure to conform to the terms established in the board order that revoked, suspended, or surrendered the license or requirements imposed by this rule may be set for hearing before the board. The hearing shall be a contested case hearing within the meaning of Iowa Code section 17A.12, and the order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms may be imposed. Nothing shall prohibit the board from entering into a stipulated order granting reinstatement with or without terms in the absence of a hearing.

20.36(6) A nurse whose license is reinstated must complete the requirements for license reactivation in order to receive an active license.

20.36(7) An order granting or denying reinstatement is a permanent public record open for inspection under Iowa Code chapter 22.

655—20.37(17A,22,272C) Dissemination of public records. All documents identified in this chapter as permanent public records open for inspection under Iowa Code chapter 22 are reported to NURSYS® and national databanks in accordance with applicable reporting requirements. In addition, these documents may be posted on the board's Web site, published in the board's newsletter, distributed to national or state associations, transmitted to mailing lists or news media, issued in conjunction with a press release, or otherwise disseminated.

655—20.38(17A) Judicial review. Judicial review of a final order of the board may be sought in accordance with the terms of Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 147, 152, 152E and 272C.

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SOIL CONSERVATION DIVISION[27]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 161A.4(1), the Division of Soil Conservation hereby gives Notice of Intended Action to amend Chapter 3, “Contested Case Proceedings and Practice,” Chapter 4, “Declaratory Orders,” Chapter 5, “Agency Procedure for Rule Making,” Chapter 10, “Iowa Financial Incentive Program for Soil Erosion Control,” Chapter 11, “Conservation Practices Revolving Loan Fund,” Chapter 12, “Water Protection Practices—Water Protection Fund,” Chapter 16, “Water Quality Initiative,” Chapter 20, “Iowa Soil 2000 Program,” Chapter 21, “Water Quality Protection Projects—Water Protection Fund,” Chapter 22, “Soil and Water Resource Conservations Plans,” Chapter 30, “Agricultural Drainage Wells—Alternative Drainage System Assistance Program,” Chapter 40, “Coal Mining,” Chapter 50, “Iowa Abandoned Mined Land Reclamation Program,” Chapter 60, “Minerals Program,” Chapter 101, “Organization and Purpose,” Chapter 102, “Rules of Practice,” and Chapter 107, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The proposed amendments reflect the change of name of the Soil Conservation Division to the Division of Soil Conservation and Water Quality pursuant to 2015 Iowa Acts, House File 634. The proposed amendments conform each soil and water conservation district’s limitation for conservation cost-share management practices to the language in the appropriations bill (2015 Iowa Acts, Senate File 494). The proposed amendments also make technical updates and remove outdated language.

Any interested persons may make written suggestions or comments on the proposed amendments on or before September 8, 2015. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendments are subject to the Division’s general waiver provisions.

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

These amendments are intended to implement 2015 Iowa Acts, House File 634 and Senate File 494.

The following amendments are proposed.

ITEM 1. Amend rule 27—3.1(17A,161A) as follows:

27—3.1(17A,161A) Scope and applicability. In lieu of the words “(agency name)” insert “the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship”.

ITEM 2. Amend rule 27—3.2(17A,161A) as follows:

27—3.2(17A,161A) Definitions. Insert the following definitions in alphabetical order:

“*Committee*” means the state soil conservation committee established at Iowa Code section 161A.4.

“*Department*” means the department of agriculture and land stewardship.

“*Director*” means the director of the division of soil conservation and water quality, department of agriculture and land stewardship.

“*Division*” means the division of soil conservation and water quality, department of agriculture and land stewardship.

“*Secretary*” means the Iowa secretary of agriculture.

In lieu of the words “(designate official)” insert “person designated by the director to preside over a contested case including, but not limited to, an administrative law judge with the department of

SOIL CONSERVATION DIVISION[27](cont'd)

inspections and appeals”. In lieu of the words “(agency name)” insert “the division of soil conservation and water quality, department of agriculture and land stewardship”.

ITEM 3. Amend subrule 3.12(3) as follows:

3.12(3) In lieu of the words “(specify office and address)” insert “Director’s Office, Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”. In lieu of the words “(agency name)” insert “division”.

ITEM 4. Amend **27—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A as amended by 1998 Iowa Acts, ~~chapter 1202~~, and Iowa Code ~~chapter~~ 161A.

ITEM 5. Amend rule 27—4.1(17A,161A) as follows:

27—4.1(17A,161A) Petition for declaratory order. In lieu of the words “(designate agency)” the first time the words are used, insert “division of soil conservation and water quality, department of agriculture and land stewardship (hereinafter referred to as “the division”)”. In lieu of the words “(designate agency)” the subsequent times the words are used, insert “division”. In lieu of the words “(designate office)” insert “Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319.” In lieu of the words “(AGENCY NAME)” insert “DIVISION OF SOIL CONSERVATION AND WATER QUALITY, DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP”.

ITEM 6. Amend subrule 4.3(3) as follows:

4.3(3) In lieu of the words “(designate office)” insert “the division director’s office”. In lieu of the words “(designate agency)” insert “the division”. In lieu of the words “(AGENCY NAME)” insert “DIVISION OF SOIL CONSERVATION AND WATER QUALITY, DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP”. Delete paragraph “6” and insert in lieu thereof “6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.”

ITEM 7. Amend rule 27—4.5(17A,161A) as follows:

27—4.5(17A,161A) Inquiries. In lieu of the words “(designate official by full title and address)” insert “the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”.

ITEM 8. Amend subrule 4.6(2) as follows:

4.6(2) In lieu of the words “(specify office and address)” insert “the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”. In lieu of the words “(agency name)” insert “division”.

ITEM 9. Amend subrule 4.8(1) as follows:

4.8(1) In lieu of the words “(designate agency head)” insert “the director of the division of soil conservation and water quality”.

ITEM 10. Amend **27—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A as amended by 1998 Iowa Acts, ~~chapter 1202~~, and Iowa Code ~~chapter~~ 161A.

ITEM 11. Amend rule 27—5.1(17A,161A) as follows:

27—5.1(17A,161A) Applicability. In lieu of the word “agency” insert “the division of soil conservation and water quality, department of agriculture and land stewardship (hereinafter referred to as “the division”)”.

SOIL CONSERVATION DIVISION[27](cont'd)

ITEM 12. Amend subrule 5.3(2) as follows:

5.3(2) In lieu of the words “(commission, board, council, director)” insert “director of the division of soil conservation and water quality”.

ITEM 13. Amend subrule 5.5(1) as follows:

5.5(1) In lieu of the words “(identify office and address)” insert “the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”.

ITEM 14. Amend subrule 5.11(1) as follows:

5.11(1) In lieu of the words “(specify the office and address)” insert “the Director of the Division of Soil Conservation and Water Quality, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”.

ITEM 15. Amend subrule 5.13(2) as follows:

5.13(2) In lieu of the words “(agency head)” insert “director of the division of soil conservation and water quality”.

ITEM 16. Amend **27—Chapter 5**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A as amended by 1998 Iowa Acts, ~~chapter 1202~~, and Iowa Code ~~chapter~~ 161A.

ITEM 17. Amend rule 27—10.10(161A) as follows:

27—10.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship₂, in accordance with the policies of the state soil conservation committee in implementing the state’s financial incentive program for soil erosion control. It also establishes standards and guidelines to which the soil conservation districts shall conform in fulfilling their responsibilities under this program.

ITEM 18. Amend rule **27—10.20(161A)**, definitions of “Appropriations,” “Committee” and “Division,” as follows:

“*Appropriations*” means those funds appropriated from the general fund of the state and provided the division of soil conservation and water quality for funding the various incentive programs for soil erosion control.

“*Committee*” or “*state soil conservation committee*” means the committee established by Iowa Code section 161A.4; as the policymaking body of the division of soil conservation and water quality.

“*Division*” means the division of soil conservation and water quality as established and maintained by the department pursuant to Iowa Code section 159.5(15) and administered pursuant to Iowa Code chapter 161A.

ITEM 19. Amend rule 27—10.33(161A), introductory paragraph, as follows:

27—10.33(161A) Appeals and reviews. A landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may, as appropriate, review the order with the district commissioners or the division of soil conservation and water quality. Appeals to the state soil conservation committee may be made by the district, a landowner or a farm operator following a review by the division director or the director’s designee.

ITEM 20. Amend subrule 10.33(2) as follows:

10.33(2) Review with the division of soil conservation and water quality. After having unsuccessfully met with the district commissioners, a landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may file a written request for review with the division. The division review shall be conducted by the division director or the director’s designee. This proceeding

SOIL CONSERVATION DIVISION[27](cont'd)

shall be informal. A landowner or farm operator shall request the review with the division in writing within 30 days following the review with the district.

ITEM 21. Amend rule 27—10.41(161A), introductory paragraph, as follows:

27—10.41(161A) Appropriations. The department of agriculture and land stewardship, division of soil conservation and water quality, has received appropriations for conservation cost sharing since 1973 and appropriations to fund certain incentive programs for soil erosion control since 1979. Funds are appropriated each year by the general assembly.

ITEM 22. Amend subrule **10.41(1)**, first unnumbered paragraph, as follows:

~~Up~~ The first \$15,000 allocated to each district and up to 30 percent of the amount remaining in a district's original and supplemental allocation may be used for the establishment of practices listed in subrules 10.82(1) and 10.82(2).

ITEM 23. Amend rule **27—10.41(161A)**, implementation sentence, as follows:

~~This rule is intended to implement Iowa Code chapter 161A; 1994 Iowa Acts, chapter 1198, section 1, subsection 4, paragraphs "b," "c," and "d"; 1995 Iowa Acts, chapter 216, section 1, subsection 4, paragraphs "b," "c," and "d"; 1996 Iowa Acts, chapter 1214, section 1, subsection 4, paragraphs "b," "c," and "d"; and 1997 Iowa Acts, House File 708, section 1, subsection 4, paragraphs "b," "c," and "d."~~

ITEM 24. Amend rule 27—10.52(161A), introductory paragraph, as follows:

27—10.52(161A) Publicly owned lakes. The division of soil conservation and water quality maintains the funds that are distributed to the publicly owned lakes program. These funds may be used to provide cost sharing not to exceed 75 percent of the approved cost of soil conservation practices on watersheds above publicly owned lakes and reservoirs. The division will allocate these program funds to eligible districts in steps identified as original allocation, recall of unobligated funds, and reallocation.

ITEM 25. Amend rule 27—10.54(161A), introductory paragraph, as follows:

27—10.54(161A) Mandatory program. The division of soil conservation and water quality maintains the funds that are distributed to the mandatory cost-share program. These funds are used to provide cost sharing to landowners who are required to establish permanent soil and water conservation practices as the result of a district's administrative order or a court order.

ITEM 26. Amend rule 27—10.95(161A) as follows:

27—10.95(161A) Forms. Standard forms, applications, and agreements used by the applicant and recipient of financial incentives for soil erosion control as outlined in these rules are provided by the division. Copies of all forms, applications, and agreements are available from the soil conservation district office located in each county. Copies are also available from the division at the following address: Division of Soil Conservation and Water Quality, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

ITEM 27. Amend **27—Chapter 10**, implementation sentence, as follows:

~~Rules in Chapter 10~~ These rules are intended to implement Iowa Code chapter 161A; 1994 Iowa Acts, chapter 1198, section 1, subsection 4, paragraphs "b," "c," and "d"; 1995 Iowa Acts, chapter 216, section 1, subsection 4, paragraphs "b," "c," and "d"; 1996 Iowa Acts, chapter 1214, section 1, subsection 4, paragraphs "b," "c," and "d"; and 1997 Iowa Acts, House File 708, section 1, subsection 4, paragraphs "b," "c," and "d."

ITEM 28. Amend rule 27—11.10(161A) as follows:

27—11.10(161A) Authority and scope. ~~The Iowa general assembly appropriated to the former Iowa department of soil conservation \$1 million in 1983, \$750,000 in 1984, and \$99,000 in 1985 to establish a conservation practices revolving loan fund.~~

SOIL CONSERVATION DIVISION[27](cont'd)

These rules provide procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in administering the conservation practices revolving loan fund and the standards and guidelines to which the soil and water conservation districts shall conform in all contracts under this program.

ITEM 29. Amend rule 27—12.10(161C) as follows:

27—12.10(161C) Authority and scope. This chapter establishes procedures and standards to be followed by soil and water conservation districts and the division of soil conservation and water quality of the Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing water protection practices through the water protection fund created in Iowa Code section 161C.4, ~~unnumbered paragraph 1, and subsection 2.~~ This account shall be used to establish water protection practices with individual landowners including, but not limited to, woodland establishment and protection, establishment of native grasses and forbs, sinkhole management, agricultural drainage well management, streambank stabilization, grass waterway establishment, stream buffer strip establishment, and erosion control structure construction. ~~Twenty-five percent of funds appropriated to the water protection practices account plus any additional appropriations for reforestation shall be used for woodland establishment and protection and establishment of native grasses and forbs.~~

ITEM 30. Amend rule 27—16.2(161A), definition of “Division,” as follows:

“*Division*” means the division of soil conservation and water quality, department of agriculture and land stewardship.

ITEM 31. Amend 27—Chapter 16, implementation sentence, as follows:

These rules are intended to implement 2013 Iowa Acts, House File 648, section 20, and Senate File 435, sections 8; and 10, ~~60 and 61~~ and Iowa Code sections 466B.42 and 466B.45.

ITEM 32. Amend rule 27—20.10(161A) as follows:

27—20.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing the Iowa Soil 2000 Program goal of satisfactorily controlling erosion on all Iowa land. It also establishes standards and guidelines which the soil conservation districts will use in fulfilling their responsibilities under this program.

ITEM 33. Amend subrule 20.50(9) as follows:

20.50(9) Distribution of conservation agreement records. Copies of the soil conservation agreement and any revisions or terminations thereto shall be provided to the landowner, the division of soil conservation and water quality and the district case file.

ITEM 34. Amend rule 27—20.70(161A), definition of “Conservation folder,” as follows:

“*Conservation folder*” is defined in Iowa Code section 161A.42 to mean compiled information concerning the topography, soil composition, natural or artificial drainage characteristics and other pertinent factors concerning a particular farm unit, which are necessary to the preparation of a sound and equitable conservation agreement for that farm unit. The specific items to be contained in a conservation folder shall be prescribed by administrative rules of the division of soil conservation and water quality. The division shall provide by rule that an updated farm plan prepared for a particular farm unit within 10 years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit.

SOIL CONSERVATION DIVISION[27](cont'd)

ITEM 35. Amend the parenthetical implementation statute for rules in **27—Chapter 21** by striking “72GA,ch1189” and inserting “161A” in lieu thereof.

ITEM 36. Amend rule 27—21.10(161A) as follows:

27—21.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation ~~of the~~ and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing water quality protection projects through the water protection fund created in Iowa Code chapter 161C ~~pursuant to 1988 Iowa Acts, chapter 1189~~. These projects will protect the state’s groundwater and surface water from point and nonpoint sources of contamination, including but not limited to, agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants. Water protection fund resources will provide administrative, operational, and personnel support for the projects, and funds for management and structural measures to address identified water quality problems.

ITEM 37. Amend rule 27—21.62(161A) as follows:

27—21.62(161A) Content of project reports. All project reports will contain the following credit: “This project is supported in part or in total by the department of agriculture and land stewardship, division of soil conservation and water quality, through funds of the water protection fund.”

ITEM 38. Amend **27—Chapter 21**, implementation sentence, as follows:

These rules are intended to implement ~~1988 Iowa Acts, chapter 1189 and Iowa Code section 99E.32, subsection 3, as amended by 1988 Iowa Acts, chapter 1268, section 5, new paragraph “p.”~~ Iowa Code chapter 161A.

ITEM 39. Amend rule 27—22.10(161A) as follows:

27—22.10(161A) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing the development of soil and water resource conservation plans in all soil and water conservation districts in Iowa and developing a comprehensive soil and water resource conservation plan for the state of Iowa. It establishes standards and guidelines which the soil and water conservation districts will use in fulfilling their responsibilities under this program.

ITEM 40. Amend rule 27—30.10(159,161A,455H) as follows:

27—30.10(159,161A,455H 460) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing the agricultural drainage wells — alternative drainage system assistance program ~~established by 1997 Iowa Acts, chapter 193, and chapter 215, section 16~~. This program provides financial assistance for closing agricultural drainage wells and constructing alternative drainage systems that are part of a drainage district. These rules establish the assistance program, provide for the allocation of assistance funds, and establish procedures and standards for eligibility to receive assistance under the program.

SOIL CONSERVATION DIVISION[27](cont'd)

ITEM 41. Amend rule 27—30.11(159,161A,455H), parenthetical implementation statute, as follows:

27—30.11(159,161A,455H 460) Rules are severable.

ITEM 42. Amend rule 27—30.20(159,161A,455H), parenthetical implementation statute, as follows:

27—30.20(159,161A,455H 460) Definitions.

ITEM 43. Amend rule 27—30.20(161A,460), definition of “Division,” as follows:
“*Division*” means the division of soil conservation and water quality of the department of agriculture and land stewardship.

ITEM 44. Amend rule 27—30.30(159,161A,455H) as follows:

27—30.30(159,161A,455H 460) Appropriations. Funds for the agricultural drainage wells alternative drainage system assistance program are appropriated to the division of soil conservation, Iowa department of agriculture and land stewardship, beginning July 1, 1997. The following amounts, or so much thereof as is necessary, have been appropriated to the alternative drainage system assistance fund:

1. For the fiscal year beginning July 1, 1997, and ending June 30, 1998: \$1,500,000.
2. For the fiscal year beginning July 1, 1998, and ending June 30, 1999: \$1,500,000.

Moneys shall be used to provide financial assistance under the program and to defray expenses by the division in administering the program. However, not more than 1 percent of the fund may be used to defray administrative expenses of the division. Moneys which are unobligated at the end of the fiscal year shall not revert but will be available during subsequent fiscal years of the program. Moneys earned as income, including interest, from the fund shall remain in the fund until expended, notwithstanding Iowa Code section 12C.7.

ITEM 45. Amend rule 27—30.31(159,161A,455H), parenthetical implementation statute, as follows:

27—30.31(159,161A,455H 460) Other funds.

ITEM 46. Amend rule 27—30.40(159,161A,455H), introductory paragraph, as follows:

27—30.40(159,161A,455H 460) Allocation of funds. Funds will be allocated by the division for specific agricultural drainage well closure and alternative drainage system improvement projects. Allocations shall be 75 percent of the estimated cost of installing the alternative drainage system improvements as defined by Iowa Code section 468.3, except as limited by the total allocation provision of subrule 30.40(2). Allocations of financial assistance funds will be in accordance with either subrule 30.40(1) or subrule 30.40(2).

SOIL CONSERVATION DIVISION[27](cont'd)

ITEM 47. Rescind and reserve subrules **30.40(1)** and **30.40(2)**.

ITEM 48. Amend rule 27—30.50(159,161A,455H), parenthetical implementation statute, as follows:

27—30.50(159,161A,455H 460) Eligibility.

ITEM 49. Amend rule 27—30.60(159,161A,455H), parenthetical implementation statute, as follows:

27—30.60(159,161A,455H 460) Payment of financial assistance.

ITEM 50. Amend rule 27—30.70(159,161A,455H), parenthetical implementation statute, as follows:

27—30.70(159,161A,455H 460) Compliance procedures and reviews.

ITEM 51. Amend 27—**Chapter 30**, implementation sentence, as follows:

These rules implement ~~1997 Iowa Acts, chapter 193, and chapter 215, section 16~~ Iowa Code chapter 460.

ITEM 52. Amend rule 27—40.1(17A,207), introductory paragraph, as follows:

27—40.1(17A,207) Authority and scope. The following sets forth the rules and procedures through which the department of agriculture and land stewardship, division of soil conservation and water quality, will implement the regulatory program pursuant to Iowa Code chapter 207 and the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA).

ITEM 53. Amend subrule 40.1(2) as follows:

40.1(2) The following general word substitutions are made in all incorporated federal regulations except as otherwise indicated:

“Act” refers to Iowa Code chapter 207.

“Administrator” is to be substituted for “director”, “regional director”, and “secretary”.

“Division of soil conservation and water quality” is to be substituted for “department”, “the office”, “OSM”, “OSMRE”, “office of surface mining reclamation and enforcement”, “regulatory authority”, “State regulatory program”, and “regulatory program”.

“These rules” is to be substituted for “chapter” and “subchapter”.

ITEM 54. Amend subrule 40.5(1) as follows:

40.5(1) Delete from 30 CFR 705.5 the definition for “State regulatory authority” and insert the following definition in lieu thereof:

“State regulatory authority” means the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, or its authorized representative.

ITEM 55. Amend rule 27—50.10(207), introductory paragraph, as follows:

27—50.10(207) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee, to participate in the federal abandoned mined land and reclamation program as established in the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and Iowa Code chapter 207.

ITEM 56. Amend subrule 50.190(1) as follows:

50.190(1) Availability of forms. Copies of forms utilized in the AML program are available at the following address: Division of Soil Conservation and Water Quality, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

SOIL CONSERVATION DIVISION[27](cont'd)

ITEM 57. Amend rule 27—60.10(208) as follows:

27—60.10(208) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee, in implementing the requirements of Iowa Code chapter 208 to ensure reclamation upon completion of mining operations for gypsum, clay, stone, sand, gravel, and other ores or mineral solids, except coal.

Information and forms can be obtained by contacting: Mines and Minerals Bureau, Division of Soil Conservation and Water Quality, Wallace State Office Building, Des Moines, Iowa 50319. Telephone: (515)242-5003 or (515)281-6142.

ITEM 58. Amend rule 27—60.12(208), definitions of “Administrator” and “Division,” as follows:

“*Administrator*” means the administrator of the division of soil conservation and water quality, or a designee.

“*Division*” means the division of soil conservation and water quality within the department of agriculture and land stewardship.

ITEM 59. Amend subrule 60.40(4) as follows:

60.40(4) Certificates of deposit. Certificates of deposit posted as bond shall be made payable to the State of Iowa, Division of Soil Conservation and Water Quality AND (Operator). All interest earned shall be paid to the operator.

ITEM 60. Amend rule 27—101.3(466A) as follows:

27—101.3(466A) Staff. The division of soil conservation and water quality of the department of agriculture and land stewardship shall provide administrative support to the board to aid in the completion of its duties.

ITEM 61. Amend rule 27—102.1(466A), definition of “Division,” as follows:

“*Division*” means the division of soil conservation and water quality within the department of agriculture and land stewardship as established in Iowa Code section 161A.4.

ITEM 62. Amend rule 27—107.10(17A,22) as follows:

27—107.10(17A,22) Personally identifiable information. Agency records include project applications, reports, and board actions to approve or deny payment. This information is collected pursuant to the authority of Iowa Code ~~Supplement~~ chapter 466A and is stored in the watershed improvement review board files in the division of soil conservation and water quality. Any personally identifiable information contained in these records shall be confidential.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA

Public Notice

NOTICE OF OFFICIAL CONTRACT LIMITATION AMOUNT ADJUSTMENT FOR THE PERIOD COMMENCING SEPTEMBER 1, 2015, AND ENDING AUGUST 31, 2016

In accordance with Iowa Code section 8D.11, subsection 1, paragraph “c,” the Iowa Telecommunications and Technology Commission’s (Iowa Communications Network) Executive Director hereby publishes the official adjusted contract limitation amount for the period commencing on September 1, 2015, and ending on August 31, 2016, of \$2,294,751.30.

The adjusted contract limitation amount becomes effective on September 1, 2015. The amount was determined by applying the formula specified in the statute. According to the federal Department of

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA(cont'd)

Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 0.1 percent from June 2014 to June 2015.

Pursuant to Iowa Code section 8D.11, subsection 1, paragraph “c,” this notice is exempt from the rule-making process in Iowa Code chapter 17A.

Questions with respect to this notice should be directed to:

Ric Lumbard, Executive Director
Iowa Telecommunications and Technology Commission
400 E. 14th Street
Des Moines, Iowa 50319
Telephone: (515)725-4910
E-mail: ric.lumbard@iowa.gov

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for August is 4.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

Table with 2 columns: Description and Maximum Rate. Rows include 74A.2 Unpaid Warrants (Maximum 6.0%) and 74A.4 Special Assessments (Maximum 9.0%).

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

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

New official state interest rates, effective August 11, 2015, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

Table with 2 columns: Term and Minimum Rate. Rows include 7-31 days, 32-89 days, 90-179 days, 180-364 days, One year to 397 days, and More than 397 days, all with a minimum rate of .05% except for More than 397 days at .20%.

TREASURER OF STATE(cont'd)

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

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

ARC 2107C VOLUNTEER SERVICE, IOWA COMMISSION ON[817]

Notice of Intended Action

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

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

Pursuant to the authority of 2015 Iowa Acts, House File 488, section 2, and Iowa Code section 17A.3, the Iowa Commission on Volunteer Service hereby gives Notice of Intended Action to adopt new Chapter 11, “Iowa Reading Corps,” Iowa Administrative Code.

The overall goal of the Iowa Reading Corps program is to ensure Iowa Reading Corps members are using evidence-based literacy instruction. Iowa Reading Corps is designed to benefit students from prekindergarten to third grade who are not proficient in reading or who are at risk of becoming not proficient in reading. The Iowa Reading Corps program will provide Iowa Reading Corps AmeriCorps members with the tools needed for literacy instruction to meet goals set by the Commission and Department of Education.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on September 8, 2015. Interested persons may submit written comments by contacting Kristin Honz, Iowa Commission on Volunteer Service, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3097; or e-mail Kristin.Honz@iowa.gov.

The Commission will hold a public hearing on September 8, 2015, from 9 to 10 a.m. to receive comments on these rules. The public hearing will be held in the Main Conference Room, Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa.

These rules are not subject to waiver.

The Commission does not expect any fiscal impact.

After analysis and review of this rule making, the Commission anticipates that approximately 60 positions will be created pursuant to these rules.

These rules are intended to implement 2015 Iowa Acts, House File 488, section 2.

The following amendment is proposed.

Adopt the following **new** 817—Chapter 11:

CHAPTER 11 IOWA READING CORPS

817—11.1(15H) Purpose and program description. The purpose of the Iowa reading corps program is to provide Iowa reading corps AmeriCorps members with a data-based, problem-solving model of literacy instruction to use in tutoring students from prekindergarten to third grade who are not proficient in reading or who are at risk of becoming not proficient in reading. The program shall use models of early literacy instruction reviewed and approved by the Iowa department of education pursuant to Iowa Code section 256.9(53)“c.” Iowa reading corps grants will give support, on a competitive basis, to AmeriCorps programs in Iowa that utilize AmeriCorps funding awarded by the commission and other funds received in the community programs account established pursuant to 2015 Iowa Acts, House File 488, section 2. The program is established under the authority of the Iowa commission on volunteer

VOLUNTEER SERVICE, IOWA COMMISSION ON[817](cont'd)

service in collaboration with the Iowa department of education pursuant to Iowa Code chapter 15H as amended by 2015 Iowa Acts, House File 488.

This rule is intended to implement 2015 Iowa Acts, House File 488, section 2.

817—11.2(15H) Applications. Appropriate forms and applications for grants and eligibility preapproval are available from the commission at www.volunteeriowa.org.

This rule is intended to implement 2015 Iowa Acts, House File 488, section 2.

817—11.3(15H) Program eligibility criteria. The commission and department of education will establish criteria consistent with federal regulations to ensure the alignment of the program with the goals outlined in Iowa Code section 256.9(53)“c” and 281—Chapter 62. Any program determined eligible for inclusion as an Iowa reading corps program must ensure that it meets standards outlined by the department of education in 281—Chapter 62, with the exception of existing early literacy-focused and single school district AmeriCorps programs operating in the 2014-2015 school year. These existing programs, upon request to the commission, will be granted conditional eligibility for inclusion for the 2015-2016 school year to provide adequate time for the programs to be evaluated and to make adjustments deemed necessary for the alignment of the program with the goals outlined in 2015 Iowa Acts, House File 488, section 2. Once a program is granted conditional eligibility, the program will be considered preapproved and eligible for the 2016-2017 application. In subsequent years, all applicants must be preapproved by the department of education as eligible to compete for Iowa reading corps grants.

This rule is intended to implement 2015 Iowa Acts, House File 488, section 2.

817—11.4(15H) Grant criteria. Beginning with the 2016-2017 program year applications, the commission will establish criteria and funding priorities consistent with federal regulations and the goals of the department of education and the commission. Preapproval of applicant eligibility shall be sought as outlined in 817—11.3(15H). Applicants will be considered either in conjunction with the regular AmeriCorps grant process or, in certain cases, through special competitions outlined and announced by the commission. At a minimum, the criteria will include the following:

1. Goals and objectives of the project;
2. Qualifications of the applicant to manage funds;
3. For new and returning applicants, letters of local support verifying coordination and community cooperation;
4. Total project budget;
5. For previous grantees, evidence of ability to submit timely and accurate reports;
6. Description and time line of planned activities;
7. Description of the applicant organization, including staffing pattern;
8. Documentation of the applicant’s ability to provide the required local match;
9. Program performance and evaluation results and outcomes; and
10. Demonstration of the project’s alignment with literacy program goals and strategies developed by the department of education, the local school districts served, and the Iowa reading research center.

This rule is intended to implement 2015 Iowa Acts, House File 488, section 2.

817—11.5(15H) Designated funds. A percentage of grant funding may be designated by the commission to address specific underserved or high-need geographic areas or schools. In advance of the competition, the commission may also set a minimum amount available for reading corps grants financed with state, federal and private funds, as well as any minimum or maximum funding amounts for individual applicants based on program need and the service territory of the communities described, and past performance of use of funds, if applicable. The commission may also give priority to programs that serve underserved or high-need areas or schools.

This rule is intended to implement 2015 Iowa Acts, House File 488, section 2.

VOLUNTEER SERVICE, IOWA COMMISSION ON[817](cont'd)

817—11.6(15H) Application process for new grants.

11.6(1) Request for application. The commission shall issue a request for applications, which shall include program criteria and application forms for the applicable fiscal year.

11.6(2) Application time frame. The applicant shall submit the completed application to the commission according to the time line identified in the request for application.

11.6(3) Application review process. Applications will be reviewed by a grant review committee, which is composed of members of the commission grant review committee, individuals with expertise in youth programming, and citizens of Iowa. Using the criteria in rule 817—11.4(15H), the committee will review the applications based on the appropriateness and merit of the projects.

11.6(4) Notification. Applicants whose projects have been selected for funding shall be notified by the commission.

This rule is intended to implement 2015 Iowa Acts, House File 488, section 2.

817—11.7(15H) Administration of grants.

11.7(1) Contracts. The commission shall prepare contractual agreements for the grants.

a. The contract shall be executed by the executive director of the commission and the duly authorized official of the project.

b. The contract shall include due dates and the process for the submission of the progress reports and financial reports.

11.7(2) Reporting. All grant recipients shall submit progress and financial reports to the commission.

11.7(3) Availability of funds. A separate request for applications will be issued only when there are available funds for this program. To the extent allowable by federal regulations, Iowa reading corps will always be an acceptable program model for annual AmeriCorps grants and will be listed in the annual AmeriCorps program request for applications.

This rule is intended to implement 2015 Iowa Acts, House File 488, section 2.

817—11.8(15H) Reversion of funds. Grant funds not expended by the project closeout date shall revert to the commission and the community programs account established pursuant to 2015 Iowa Acts, House File 488, section 2.

This rule is intended to implement 2015 Iowa Acts, House File 488, section 2.

ARC 2100C

CORRECTIONS DEPARTMENT[201]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 904.804, the Department of Corrections amends Chapter 37, "Iowa State Industries," Iowa Administrative Code.

With these amendments, Iowa State Industries is correcting the filing of Adopted and Filed **ARC 2056C** (IAB 7/8/15) by rescinding its contents and restoring verbatim the text of Chapter 37 that was in effect prior to July 8, 2015.

Pursuant to Iowa Code section 17A.4(3), the Department of Corrections finds that notice and public participation are unnecessary because these amendments are corrective in nature. The amendments ensure the proper text appears in the Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(3), the Administrative Rules Review Committee at its July 14, 2015, meeting reviewed the Department's findings and approved the Emergency adoption.

Pursuant to Iowa Code section 17A.5(2)"b"(2) as amended by 2015 Iowa Acts, House File 536, section 27, the Department of Corrections finds that the normal effective date of these amendments should be waived and these amendments made effective on August 12, 2015, as the amendments confer a benefit to the public by ensuring the proper text appears in the Iowa Administrative Code.

After analysis and review of this rule making, there is no fiscal impact.

These rules do not provide for waivers in specified situations. An agencywide waiver provision is provided in 201—Chapter 7.

These amendments were approved during the July 23, 2015, meeting of the Iowa Prison Industry Advisory Board.

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

These amendments are intended to implement Iowa Code section 904.804.

These amendments became effective August 12, 2015, at which time the Adopted and Filed amendments of **ARC 2056C** are hereby rescinded.

The following amendments are adopted.

ITEM 1. Rescind subrule **37.2(5)**.

ITEM 2. Rescind rules 201—37.3(904) and 201—37.4(904) and adopt the following new rules in lieu thereof:

201—37.3(904) Catalogs. Catalogs are available at the following Iowa state industries locations:

1. Main office: Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319;
2. Des Moines sales/surplus: 2323 Dean Avenue, Des Moines, Iowa 50317;
3. Business office: 406 North High Street, Anamosa, Iowa 52205; and
4. Sales offices:
 - Anamosa: 406 North High Street, Anamosa, Iowa 52205; and
 - Ft. Madison: P.O. Box 316, Avenue E and First Street, Ft. Madison, Iowa 52627.

201—37.4(904) Offices. The main office for Iowa state industries is located in the Jessie Parker State Office Building, Capitol Complex, Des Moines, Iowa. The mailing address is Iowa State Industries, Jessie Parker State Office Building, 510 East 12th Street, Des Moines, Iowa 50319; telephone (515)725-5785. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

ITEM 3. Rescind rule 201—37.7(904) and adopt the following new rule in lieu thereof:

201—37.7(904) Procurement of goods and services. The provisions of 11—Chapter 105 are hereby adopted by reference with the following amendments.

1. Strike "Department of Administrative Services" and insert in lieu thereof "Iowa State Industries" in all rules except rule 11—105.10(8A), which pertains to procurement of information technology devices and services.

CORRECTIONS DEPARTMENT[201](cont'd)

2. In lieu of the definitions of “Department” and “Director,” insert the following:

“Department” means the division of Iowa state industries.

“Director” means the director of the division of Iowa state industries or the director’s designee.

3. Rules 11—105.6(8A), 11—105.13(8A), and 11—105.15(8A) are not adopted.

4. In lieu of the text of subrule 105.14(1), insert the following: “Purchase of goods. An agency may acquire goods not otherwise available through a master agreement in accordance with the procurement threshold guidelines in 11—105.3(8A)”.

5. In lieu of the text of rule 11—105.20(8A), insert the following: “Appeal process. Vendors may appeal actions by Iowa state industries under these rules as follows:

“Step 1. Appeals shall be filed in writing to the Business Manager, Iowa State Industries, 406 North High Street, Anamosa, Iowa 52205, within five working days of notification of the action being appealed.

“Step 2. If the appeal is not resolved, it may be further appealed to the Director of Iowa State Industries, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319, within ten working days of the notification of the Step 1 appeal response.

“Step 3. An unresolved appeal to the Director of Iowa State Industries shall be referred to the Director of the Department of Corrections, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319, within ten working days of the notification of the Step 2 appeal response.”

This rule is intended to implement Iowa Code section 904.813.

ITEM 4. Rescind subrule 37.8(1) and adopt the following **new** subrule in lieu thereof:

37.8(1) Rules of procedure. The seven-member prison industries advisory board is represented by five appointees of the governor, one appointee of the parole board, and one appointee of the director, department of corrections. The principal duties of the advisory board are to promulgate and adopt rules and to advise the director, Iowa state industries, regarding the management of Iowa state industries.

a. A quorum shall consist of five members.

b. When a quorum is present, a position is carried by a majority of the members of the board.

c. The board shall meet at least once per calendar quarter. The meetings will be held at the seat of government unless notification is given otherwise. Other meetings shall be held at the call of the chairperson or of any three members when necessary for the board to discharge its duties.

(1) The communications media shall be notified at least two weeks in advance of board meetings.

(2) When it is necessary to hold an emergency meeting, the communications media shall be notified as far in advance of the meeting as time allows. The nature of the emergency shall be stated in the minutes.

d. Copies of the minutes are kept on file in the office of the director, Iowa state industries. Minutes are available from the director’s office to interested persons upon request. Organizations may request to be placed on a mailing list. Copies of administrative rules and other materials considered are made a part of the minutes by reference.

e. In cases not covered by these rules, Robert’s Rules of Order shall govern.

ITEM 5. Rescind rule 201—37.9(904) and adopt the following **new** rule in lieu thereof:

201—37.9(904) Private sector employment projects.

37.9(1) Definitions.

“Advisory board” means the prison industries advisory board.

“Deputy director of prison industries” means the department of corrections deputy director responsible for the day-to-day operations of prison industries including private sector individuals.

“Director” means the chief executive officer of the department of corrections.

“Workforce development board” means the state workforce development board.

“Workforce development director” means the chief executive officer of the department of workforce development.

37.9(2) Preapplication requirement. Prior to submitting an application to the deputy director of prison industries for a private sector employment project, the employer shall place a job order with a duration of at least 30 days with the nearest workforce development center. The job order will contain

CORRECTIONS DEPARTMENT[201](cont'd)

the prevailing wage determined by workforce development. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet Web site.

37.9(3) Employer application.

a. Private sector employers requesting offender labor must submit the following to the deputy director of prison industries:

- (1) Work program, including job description;
- (2) Proposed wage rate;
- (3) Description of job site;
- (4) Duration of the work; and
- (5) A copy of the job order listing with workforce development.

b. Upon receiving a written proposal to use offenders in a private sector work program, the deputy director of prison industries shall provide a copy of the private sector work proposal including job descriptions and proposed wages to the workforce development director.

c. The deputy director of prison industries shall send a letter to the department of workforce development requesting verification of the employer's 30-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the company that will employ the offenders.

d. The deputy director of prison industries and the warden/superintendent at the proposed institution shall review the proposed projects with the board of supervisors and the sheriff in the county where the project will be located.

37.9(4) Verification. The workforce development director shall verify the employment levels and prevailing wages paid for similar jobs in the area and provide to the deputy director of prison industries, in writing:

- a. Verification of the employer's 30-day job listing;
- b. The number of qualified applicant referrals and hires made as a result of the job order;
- c. The average wage rate for the proposed job(s);
- d. The wage range;
- e. The current unemployment rate for the county where the employer is located; and
- f. The current employment levels of the company that will employ the offenders based upon the most recent quarter for which data is available.

37.9(5) Prevailing wages. The deputy director of prison industries shall obtain employment levels in the locale of the proposed job(s) and the prevailing wages for the job(s) in question from the department of workforce development prior to authorizing any private sector work program. The deputy director of prison industries will consider the average wage rate and wage range from the department of workforce development for the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide. To reduce possible displacement of civilian workers, the deputy director of prison industries shall advise prospective employers and eligible offenders of the following requirements:

- a. Offenders shall not be eligible for unemployment compensation while incarcerated.
- b. Before the employer initiates work utilizing offender labor, the deputy director of prison industries shall provide the baseline number of jobs as established by the department of workforce development.

c. In January and July of each year, the deputy director of prison industries shall receive from the department of workforce development the actual number of civilian workers by employer and shall compile a side-by-side comparison for each employer. A copy of the side-by-side comparison will be provided to the advisory board and workforce development director semiannually.

37.9(6) Ineligible projects. The deputy director of prison industries shall evaluate the information from the department of workforce development to verify nondisplacement of civilian workers. Employment of offenders in private industry shall not displace employed workers, apply to skills, crafts, or trades in which there is a local surplus of labor, or impair existing contracts for employment or services.

CORRECTIONS DEPARTMENT[201](cont'd)

37.9(7) Notification and review.

a. The deputy director of prison industries shall provide a copy of the private sector work proposal and the department of workforce development review of the private sector work proposal to the following:

- (1) Governor's office;
- (2) Speaker of the house;
- (3) President of the senate;
- (4) Warden/superintendent at the proposed work site;
- (5) Local labor organization(s);
- (6) Director of workforce development; and
- (7) Department of Justice, Washington, DC.

b. Within 14 calendar days of receiving the department of workforce development review, the deputy director of prison industries will consolidate the recommendations for review and approval by the director of corrections.

37.9(8) Prison industries advisory board review.

a. Following approval by the director of corrections, the deputy director of prison industries shall forward the final proposal to the prison industries advisory board with the recommendation to approve or disapprove the work program, including all correspondence from the department of workforce development, the Department of Justice, and any local official who has offered comments.

b. The deputy director of prison industries shall provide written documentation to the prison industries advisory board confirming that the proposed work project will not displace civilian workers. If displacement occurs, the deputy director of prison industries shall advise the private employer that the employer will be given 30 days to become compliant or the department of corrections will terminate the use of offender labor.

37.9(9) Disputes.

a. Anyone who believes that the private sector work program violates this rule shall advise the department of workforce development. A written complaint may be filed in accordance with workforce development board rule 877—1.5(84A). The workforce development director shall consult with the deputy director of prison industries before the workforce development board makes a final recommendation(s) to resolve any complaint.

b. The deputy director of prison industries will assist the department of workforce development in compiling all information necessary to resolve the dispute. The workforce development board shall notify the deputy director of prison industries and interested parties in writing of the recommended action to resolve a complaint, which will be binding on all parties.

This rule is intended to implement Iowa Code section 904.809.

[Filed Emergency 7/27/15, effective 8/12/15]

[Published 8/19/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/19/15.

ARC 2099C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 15.106A, 2014 Iowa Acts, chapter 1132, section 12, and 2015 Iowa Acts, Senate File 510, division XI, the Economic Development Authority hereby amends Chapter 104, "Innovative Businesses Internship Program," and adopts new Chapter 110, "STEM Internship Program," Iowa Administrative Code.

The Legislature, in 2014 Iowa Acts, chapter 1132, directed the Authority to establish a STEM internship component as part of the previously established innovative businesses internship program. The Legislature, in 2015 Iowa Acts, Senate File 510, amended both the STEM internship component

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

and the innovative businesses component. The rules adopted under Chapter 110 establish the program to provide STEM internship assistance to Iowa employers and describe the manner in which the Authority intends to implement and administer the program. The amendments to Chapter 104 make changes to the innovative businesses internship program in conformance with the legislative amendments.

In compliance with Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to public interest because of the benefit conferred to the public by allowing students to begin participating in internships under the program immediately. In addition, 2015 Iowa Acts, Senate File 510, division XI, which was effective upon enactment and signed by the Governor on July 2, 2015, permits the Authority to adopt emergency rules for this purpose.

The Authority further finds, pursuant to Iowa Code sections 17A.5(2)“b”(1) and (2) as amended by 2015 Iowa Acts, House File 536, section 27, that the normal effective date of these amendments should be waived and the amendments should be made effective upon filing as they confer a benefit upon students participating in internship programs.

The Economic Development Authority Board adopted this rule making on July 17, 2015, at the Board’s monthly meeting.

These amendments are also published herein under Notice of Intended Action as **ARC 2098C** to allow for public comment.

After analysis and review of this rule making, no negative impact on jobs has been found, and the Authority finds that providing financial assistance for STEM internships will have a positive effect on job creation and economic growth.

These amendments are intended to implement 2014 Iowa Acts, chapter 1132, section 12, and Iowa Code section 15.411 as amended by 2015 Iowa Acts, Senate File 510, division XI.

These amendments became effective July 20, 2015.

The following amendments are adopted.

ITEM 1. Amend subrule 104.4(4) as follows:

104.4(4) A business may receive financial assistance ~~in an amount of one dollar for every two dollars paid by the business to the intern~~ on a matching basis for a portion of the wages paid to an intern. If providing financial assistance, the authority shall provide the assistance on a reimbursement basis such that for every two dollars of wages earned by the student, one dollar paid by the business is matched by one dollar for the authority.

ITEM 2. Amend subrule 104.9(2) as follows:

104.9(2) The application will be reviewed and scored by authority staff, ~~the committee and the board.~~ The committee will make a recommendation to the board regarding an application ~~director of the authority will make final funding decisions after considering the recommendations of staff.~~ The board director has final decision-making authority on requests for financial assistance for this program. The board director may approve, defer or deny an application.

ITEM 3. Amend rule 261—104.11(15) as follows:

261—104.11(15) Selection process. Applications will be reviewed in the order received by the authority. ~~The board director may approve, defer or deny each application for financial assistance, based on the availability of funds. The authority and the committee will score applications according to the criteria specified in rule 261—104.12(15). To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.~~

ITEM 4. Adopt the following **new** 261—Chapter 110:

CHAPTER 110
STEM INTERNSHIP PROGRAM

261—110.1(15,85GA,ch1132,86GA,SF510) Authority. The authority for adopting rules establishing a STEM internship program is provided in Iowa Code section 15.411(3) as amended by 2015 Iowa Acts, Senate File 510, division XI, and in Iowa Code section 15.106A.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

261—110.2(15,85GA,ch1132,86GA,SF510) Purpose. The purpose of the STEM internship program is to assist in placing Iowa students studying in the fields of science, technology, engineering, and mathematics into internships that lead to permanent positions with Iowa employers.

261—110.3(15,85GA,ch1132,86GA,SF510) Definitions.

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

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Business*” means any enterprise located in this state which is operated for profit and under a single management.

“*Committee*” means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

“*Community college*” means a community college established under Iowa Code chapter 260C.

“*Designated internship period*” means the summer or semester internship during which a student is employed in an internship.

“*Director*” means the director of the economic development authority.

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

“*Program*” means the STEM internship program established in this chapter.

“*STEM field*” means a major course of study within the fields of science, technology, engineering, or mathematics or a related field. For purposes of this chapter, STEM field includes all majors and academic or degree programs listed on the ACT-defined STEM majors and occupations by area list. The ACT-defined STEM majors and occupations by area list may be found at <http://www.act.org>. If a student has declared a major or enrolled in an academic or degree program not listed on the ACT-defined STEM majors and occupations by area list, the student may still be found eligible for participation in the program if, in the authority’s sole discretion, the student’s major is substantially similar to a major that is listed on the ACT-defined STEM majors and occupations by area list.

“*Student*” means a student of one of the Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or a student who graduated from high school in Iowa but now attends an institution of higher learning outside the state of Iowa.

261—110.4(15,85GA,ch1132,86GA,SF510) Program funding and disbursement.

110.4(1) The maximum amount awarded to an employer for any one internship shall not exceed \$5,000. The maximum amount that may be awarded to any one employer in any one fiscal year shall not exceed \$100,000.

110.4(2) Funds shall only be used for reimbursement of wages paid during the designated internship period. An employer must pay students hired as interns an hourly wage that is at least twice the minimum wage. An employer may apply for program funding for an internship beginning prior to July 1, 2014, but the authority will only reimburse the employer for wages paid on or after July 1, 2014.

110.4(3) The authority will disburse funds to an employer only after approval of a completed application and execution of a contract between the employer and the authority. The authority shall have sole discretion in determining whether an application is fully complete.

110.4(4) An Iowa employer may qualify for financial assistance under the program on a matching basis for a portion of the wages paid to an intern during the designated internship period. If providing financial assistance, the authority shall provide the assistance on a reimbursement basis such that for every two dollars of wages earned by the student, one dollar paid by the employer is matched by one dollar from the authority. Funds will be disbursed on a reimbursement basis.

261—110.5(15,85GA,ch1132,86GA,SF510) Eligible employers. Eligible employers may apply to the authority for assistance under the program. The program is available to employers that meet all of the following criteria:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

110.5(1) The employer must be an Iowa-based business and have a significant portion of its employees located within the state of Iowa.

110.5(2) The employer must be employing students who have either declared a major in a STEM field or enrolled in a STEM-related academic or degree program at a community college. The students must be employed as interns at a location in Iowa.

110.5(3) The employer must offer the internship to students of Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or to students who graduated from high school in Iowa but attend an institution of higher learning outside the state of Iowa.

110.5(4) The employer must offer either summer or semester-based internships. The summer internships must have a minimum duration of 8 weeks (averaging no less than 30 hours per week), and the employer's semester internships must have a minimum duration of 14 weeks (averaging no less than 10 hours per week).

261—110.6(15,85GA,ch1132,86GA,SF510) Ineligible employers. The following employers are not eligible for the program:

110.6(1) An employer that is a business engaged in retail sales is ineligible.

110.6(2) An employer which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operations to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

110.6(3) An employer that has applied or will apply during the same state fiscal year to the innovative businesses internship under 261—Chapter 104 is ineligible to receive funding under the STEM internship program.

261—110.7(15,85GA,ch1132,86GA,SF510) Eligible students. To be eligible, a person shall meet the requirements of a student as defined in rule 261—110.3(15,85GA,ch1132,86GA,SF510), must be within one to two years of graduation, shall have declared a major in a STEM field or enrolled in a STEM-related academic or degree program at a community college, and shall be selected for an internship at an Iowa employer during a designated internship period.

261—110.8(15,85GA,ch1132,86GA,SF510) Ineligible students. Students who are more than two years from graduation are ineligible. Students who have not declared a major, have not declared a major in a STEM field, or are not enrolled in a STEM-related academic or degree program at a community college are ineligible. Students who are immediate family members of management employees or board members of the applicant employer are ineligible. Students who do not otherwise meet the eligibility requirements described in rule 261—110.7(15,85GA,ch1132,86GA,SF510) are ineligible.

261—110.9(15,85GA,ch1132,86GA,SF510) Application submittal and review process.

110.9(1) The authority shall develop a standardized application and make the application available to eligible employers. To apply for assistance under the program, an employer shall submit an application to the authority. Required forms and instructions are available by contacting the authority or from the authority's Internet site at www.iowaeconomicdevelopment.com.

110.9(2) Applications will be reviewed and scored by the staff of the authority. The director of the authority will make final funding decisions after considering the recommendations of staff. The director has final decision-making authority on requests for financial assistance for this program. The director may approve, defer or deny an application.

261—110.10(15,85GA,ch1132,86GA,SF510) Application content and other requirements.

110.10(1) An employer seeking assistance under the program must complete an application for internship assistance and submit it to the authority.

110.10(2) If an award is made, the employer shall secure an intern within the time period stated in the contract between the authority and the employer.

110.10(3) The application shall include, but not be limited to, all of the following:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- a. The dates and location of the internship.
- b. A statement of duties the student will be performing at the internship site. The student shall be involved in a substantive experience in an area closely related to the student's STEM field. The application shall also include information regarding the student's work space (i.e., access to telephone, computer, and other necessary items).
- c. The name of the employer's representative who will train and supervise the student.
- d. A statement of the anticipated workforce needs at the internship site. The statement shall include an explanation of the current workforce shortage and identify the student's potential for prospective employment with the employer following graduation.

110.10(4) In accepting applications from employers, the authority may require additional information reasonably related to the program.

261—110.11(15,85GA,ch1132,86GA,SF510) Award process. Applications will be reviewed in the order received by the authority. The authority will attempt to award as many eligible internships as funding allows. However, the authority may deny applications for incompleteness or because of insufficient funds. The authority will score applications according to the criteria specified in rule 261—110.12(15,85GA,ch1132,86GA,SF510). To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

261—110.12(15,85GA,ch1132,86GA,SF510) Application scoring criteria. When applications for financial assistance under the program are reviewed, the following criteria will be considered and scored as described below:

110.12(1) The extent to which the student is involved in a substantive experience closely related to the student's STEM field of study. 30 points.

110.12(2) The quality and sufficiency of the explanation of the employer's anticipated workforce needs and of the student's potential for prospective employment with the employer or another Iowa employer following graduation. 30 points.

110.12(3) The extent to which the internship duties require independent judgment, creativity, and intelligence to complete and contribute to the employer's goals or processes. 10 points.

110.12(4) The extent to which the internship will have a positive impact on the student's skills, knowledge and abilities. 10 points.

110.12(5) The extent to which the internship pays more than twice the minimum wage. 10 points.

110.12(6) Whether applications will be accepted by the employer from more than one private college, university or community college. 5 points.

110.12(7) Whether the application establishes that all relevant internship considerations, including necessary funding, have been addressed by the employer in advance. 5 points.

261—110.13(15,85GA,ch1132,86GA,SF510) Contract and reporting.

110.13(1) Notice of award. Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

110.13(2) Contract required. An employer receiving an award under the program shall execute a standard contract prepared by the authority. The contract may include, but is not limited to, a description of the internship to be completed, the conditions for disbursement, any required reports, the applicable events of default, the repayment requirements imposed in the event of default, and any other specific provisions that may be established from time to time on a case-by-case basis.

110.13(3) Reporting. An employer receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

110.13(4) *Contract amendments and terminations.* Contract amendments or termination may be approved by the director without board approval.

These rules are intended to implement 2014 Iowa Acts, chapter 1132, section 12, and Iowa Code section 15.411(3) as amended by 2015 Iowa Acts, Senate File 510, division XI.

[Filed Emergency 7/20/15, effective 7/20/15]

[Published 8/19/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/19/15.

ARC 2104C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.22(5), 190.2, 192.102 and 192.112, the Department of Agriculture and Land Stewardship hereby amends Chapter 62, "Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs," and Chapter 68, "Dairy," Iowa Administrative Code.

The amendments conform the rules to recent legislation by eliminating a 1985 date used to qualify horses and dogs for the "Iowa bred" program. The amendments also adopt by reference the most recent dairy inspection manuals.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2034C** on June 10, 2015. No comments were received from the public. The adopted amendments are identical to the noticed amendments.

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

These amendments are intended to implement 2015 Iowa Acts, House File 634.

These amendments will become effective September 23, 2015.

The following amendments are adopted.

ITEM 1. Amend subrules 62.15(1) and 62.15(2) as follows:

62.15(1) All thoroughbred horses foaled in Iowa ~~prior to January 1, 1985~~, which are registered by the Jockey Club as Iowa foaled, shall be considered to be Iowa foaled.

62.15(2) ~~After January 1, 1985, eligibility~~ Eligibility for brood mare residence shall be achieved by meeting at least one of the following ~~rules~~:

a. Thirty days' residency until the foal is inspected by a department inspector, if in foal to a registered Iowa stallion.

b. Thirty days' residency until the foal is inspected by a department inspector for brood mares which are bred back to registered Iowa stallions.

c. Continuous residency from December 31 until the foal is inspected by a department inspector if the mare was bred by other than an Iowa registered stallion and ~~which~~ is not bred back to an Iowa registered stallion.

~~*d.* Rescinded IAB 8/31/94, effective 10/5/94.~~

ITEM 2. Amend rule 21—62.16(99D), introductory paragraphs, as follows:

21—62.16(99D) Iowa-foaled horse status. Iowa-foaled horse status can be achieved the following two ways:

1. All thoroughbred horses foaled in Iowa ~~prior to January 1, 1985~~, which are registered by the Jockey Club as Iowa foaled shall be considered to be Iowa foaled.

2. ~~After January 1, 1985, a~~ A foal from a mare meeting the eligibility requirements will be eligible to become an Iowa-foaled horse.

ITEM 3. Amend subrules 62.25(1) and 62.25(2) as follows:

62.25(1) All standardbred horses foaled in Iowa ~~prior to January 1, 1985~~, which are registered by the U.S. Trotting Association as Iowa foaled, shall be considered to be Iowa foaled.

62.25(2) ~~After January 1, 1985, eligibility~~ Eligibility for brood mare residence shall be achieved by meeting at least one of the following ~~rules~~:

a. Thirty days' residency until the foal is inspected by a department inspector, if in foal to a registered Iowa stallion.

b. Thirty days' residency until the foal is inspected by a department inspector for brood mares which are bred back to registered Iowa stallions.

c. Continuous residency from December 31 until the foal is inspected by a department inspector if the mare was bred by other than an Iowa registered stallion and ~~which~~ is not bred back to an Iowa registered stallion.

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

~~d. Rescinded IAB 8/31/94, effective 10/5/94.~~

ITEM 4. Amend rule 21—62.26(99D), introductory paragraphs, as follows:

21—62.26(99D) Iowa-foaled horse status. Iowa-foaled horse status can be achieved the following two ways:

1. All standardbred horses foaled in Iowa ~~prior to January 1, 1985~~, which are registered by the U.S. Trotting Association as Iowa foaled; shall be considered to be Iowa foaled.

2. ~~After January 1, 1985, a~~ A foal from a mare meeting the eligibility requirements will be eligible to become an Iowa-foaled horse.

ITEM 5. Amend subrules 62.35(1) and 62.35(2) as follows:

62.35(1) All quarter horses foaled in Iowa ~~prior to January 1, 1985~~, which are registered by the American Quarter Horse Association as Iowa foaled; shall be considered to be Iowa foaled.

62.35(2) ~~After January 1, 1985, eligibility~~ Eligibility for brood mare residence shall be achieved by meeting at least one of the following rules:

a. Thirty days' residency until the foal is inspected by a department inspector, if in foal to a registered Iowa stallion.

b. Thirty days' residency until the foal is inspected by a department inspector for brood mares which are bred back to registered Iowa stallions.

c. Continuous residency from December 31 until the foal is inspected by a department inspector if the mare was bred by other than an Iowa registered stallion and ~~which~~ is not bred back to an Iowa registered stallion.

~~d. Rescinded IAB 8/31/94, effective 10/5/94.~~

ITEM 6. Amend rule 21—62.36(99D), introductory paragraphs, as follows:

21—62.36(99D) Iowa-foaled horse status. Iowa-foaled horse status can be achieved the following two ways:

1. All quarter horses foaled in Iowa ~~prior to January 1, 1985~~, which are registered by the American Quarter Horse Association as Iowa foaled; shall be considered to be Iowa foaled.

2. ~~After January 1, 1985, a~~ A foal from a mare meeting the eligibility requirements will be eligible to become an Iowa-foaled horse.

ITEM 7. Amend subrule 62.41(2) as follows:

62.41(2) All greyhound litters meeting the qualifications to be Iowa-whelped, ~~which were whelped in a qualified kennel prior to January 1, 1985~~, are eligible to be registered, and a pup of such litter is eligible to race as an Iowa-whelped dog. If it is determined that the breeder's kennel is not qualified, the litter will not be registered and approved until the kennel has complied with animal welfare laws and regulations. The "Certified Iowa-whelped" designation will begin on the date of approval and shall not be retroactive.

~~Individual dogs whelped prior to January 1, 1985, if sold to an owner currently in compliance with animal welfare laws and regulations, may receive the "Certified Iowa-whelped" designation for owner supplements only.~~

ITEM 8. Amend rule 21—**68.1(192,194)**, definition of "P.M.O.," as follows:

"P.M.O." means the Grade A Pasteurized Milk Ordinance, ~~2009~~ 2015 Revisions, from the United States Public Health Service/Food and Drug Administration, a copy of which is on file with the department and is incorporated into this chapter by reference and made a part of this chapter.

ITEM 9. Amend rule 21—68.5(190,192,194), introductory paragraph, as follows:

21—68.5(190,192,194) Milk tests. The department recognizes approved methods of testing milk or cream for milk fat and other dairy products as specified in Standard Methods for the Examination of Dairy Products (~~16th~~ 17th Edition). That publication is hereby incorporated into this rule by this reference and made part thereof insofar as applicable, and a copy ~~of which~~ is on file with the department.

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

ITEM 10. Amend rule 21—68.6(190,192,194) as follows:

21—68.6(190,192,194) Test bottles. Test bottles and pipettes as approved by the Standard Methods for the Examination of Dairy Products, ~~16th~~ 17th Edition, are approved for universal use in Iowa. All test bottles should be graduated to the half point.

This rule is intended to implement Iowa Code chapters 192 and 194.

ITEM 11. Amend subrule 68.11(1) as follows:

68.11(1) Grade A and Grade B farm permit suspension and revocation. The department may temporarily suspend a Grade A or Grade B farm permit if the dairy farm fails to meet all the requirements as set forth in the P.M.O. or the Grade B United States Department of Agriculture document titled, “Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements,” effective ~~September 1, 2005~~ July 21, 2011. A Grade A farm under temporary suspension of the Grade A permit may sell the milk as “milk for manufacturing purposes” until reinstated as a Grade A farm if the former Grade A farm meets the requirements necessary to sell Grade B milk. A Grade B farm under temporary suspension of the Grade B permit may sell milk as “Undergrade Class 3” until reinstated as a Grade B farm if the former Grade B farm meets the requirements of Undergrade Class 3. If an inspection reveals a violation which, in the opinion of the inspector, is an imminent hazard to the public health, the inspector shall take immediate action to prevent any milk believed to have been exposed to the hazard from entering commerce. In addition, the inspector shall immediately notify the department that such action has been taken. In other cases, if there is a repeat violation of a dairy standard as determined by two consecutive routine inspections of a dairy farm, the inspector shall immediately refer the violation to the department for action. The department may revoke the dairy permit of a person that the department determines is a habitual violator as defined in rule 21—68.1(192,194).

ITEM 12. Amend rule 21—68.13(192,194) as follows:

21—68.13(192,194) Public health service requirements.

68.13(1) Certification. A rating of 90 percent or more calculated according to the rating system as contained in Public Health Service “Methods of Making Sanitation Ratings of Milk Shippers,” ~~2009~~ 2013 Revision, shall be necessary to receive or retain a Grade A certification under Iowa Code chapter 192. That publication is hereby incorporated into this rule by this reference and made a part thereof insofar as applicable, ~~and a copy of which is on file with the department.~~

68.13(2) Documents. The following publications of the Public Health Service of the Food and Drug Administration are hereby adopted. A copy of each is on file with the department:

1. “Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments,” ~~2009~~ 2013 Revision.

2. “Standards for the Fabrication of Single Service Containers and Closures for Milk and Milk Products,” as incorporated in the P.M.O., Appendix J.

~~3. “Grade A Condensed and Dry Milk Products and Condensed and Dry Whey,” Supplement I to the Grade A Pasteurized Milk Ordinance, 2009 Recommendations.~~

~~4. 3. “Evaluation of Milk Laboratories,” 2009 2011 Revision.~~

This rule is intended to implement Iowa Code chapter 192.

ITEM 13. Amend rule 21—68.14(190,192,194,195) as follows:

21—68.14(190,192,194,195) Laboratories. Evaluation of methods and reporting of results for approval of a laboratory shall be based on procedures and tests contained in “Standard Methods for the Examination of Dairy Products, ~~16th~~ 17th Edition, ~~1992~~ 2004,” and “Methods of Analysis of the Association of Official Analytical Chemists, ~~15th~~ 18th Edition, ~~1990~~ 2005.” These publications are hereby incorporated into this rule by this reference and made a part thereof insofar as applicable; a copy of each ~~being~~ is on file with the department. The health authority shall accept, without the imposition of a fee for testing or inspection, supplies of milk and milk products from an area or an individual

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

shipper not under routine inspection provided they are delivered in closed and date-coded containers; provided further that if the code date has expired, reasonable inspection testing fees may be assessed the processor or establishment having care, custody and control of the milk and milk products.

This rule is intended to implement Iowa Code chapter 192.

ITEM 14. Amend rule 21—68.15(192,194) as follows:

21—68.15(192,194) Milk standards. Standards for the production and processing of milk for manufacturing purposes shall conform to standards contained in the USDA document entitled “Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements,” dated ~~September 1, 2005~~ July 21, 2011, which is hereby incorporated into this rule by reference and made a part thereof insofar as applicable, and a copy of which ~~is~~ is on file with the department.

ITEM 15. Amend rule 21—68.27(192,194) as follows:

21—68.27(192,194) Standards for performing farm inspections. The ~~August 1, 1976~~ October 1, 2009, manual prepared by USDA/AMS, Dairy Division, titled “General Instructions for Performing Farm Inspections According to USDA Recommended Requirements for Manufacturing Purposes and Its Production and Processing for Adoption by State Regulatory Agencies,” is adopted in its entirety; and shall constitute the official standards for farms producing milk for manufacturing, with the following exception:

Strike from Rule 1c, Brucellosis Test, the words “Uniform Methods and Rules” for establishing and maintaining Certified Brucellosis Free Herds of Cattle, Modified Certified Brucellosis Area and Certified Brucellosis Free Areas which are approved by Animal Disease Eradication Division, Agricultural Research Service...”, and insert in lieu thereof, “Brucellosis Eradication, Uniform Methods and Rules, effective February 1, 1998”. The bacteriological standards for private water supplies used by dairy farms consist of an MPN (Most Probable Number of Coliform Organisms) of less than 2.2/100 ml by the multiple tube fermentation technique, or less than 1/100 ml by the membrane filter technique, or the results of any water test approved by the United States Food and Drug Administration or Environmental Protection Agency of less than 1/100 ml.

ITEM 16. Amend rule 21—68.42(192) as follows:

21—68.42(192) Bulk milk tanker construction. A bulk milk tanker, including equipment and accessories, shall be of a sanitary design and construction and shall comply with “3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Products Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service,” Number 05-14 B-05-15-A (~~November 1, 1989~~ April 14, 2015), published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc. and the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services.

ITEM 17. Rescind and reserve subrule **68.70(1)**.

[Filed 7/28/15, effective 9/23/15]

[Published 8/19/15]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/19/15.

ARC 2105C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 203.2 and 203D.4(4), the Department of Agriculture and Land Stewardship hereby amends Chapter 92, “Participation in Grain Indemnity Fund,” Iowa Administrative Code.

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

The amendments change the definition of purchased grain used for the assessment of fees paid into the Iowa grain depositors and sellers indemnity fund. Two new exemptions are added to clarify that the cancellation of collateral warehouse receipts and intracompany location transfers are not counted as purchases. Also, all exemptions to purchased grain will be applied uniformly to both the participation fees paid by grain dealers and the per-bushel fees paid by grain sellers.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2042C** on June 24, 2015. No comments were received from the public. The adopted amendments are identical to those published under Notice.

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

These amendments are intended to implement 2015 Iowa Acts, House File 634, sections 12 to 15.

These amendments will become effective September 23, 2015.

The following amendments are adopted.

ITEM 1. Adopt the following **new** paragraphs **92.2(1)“d”** and **“e”**:

d. Grain entered in the company-owned paid position as a cancellation of a collateral warehouse receipt.

e. Grain entered in the company-owned paid position as an intracompany location transfer.

ITEM 2. Amend paragraph **92.2(2)“a”** as follows:

a. For grain dealers, a participation fee of fourteen thousandths of a cent per bushel on all purchased grain entered into the company-owned paid position during the grain dealer's last fiscal year. However, a grain dealer shall pay a minimum participation fee of \$50. ~~Redemptions of collateral warehouse receipts entered into the company-owned paid position shall not be considered as a purchase.~~ If the grain dealer provides documentation satisfactory to the department, the following transactions shall be excluded from the participation fee:

- (1) Grain purchased from the United States government or any of its subdivisions or agencies.
- (2) Grain purchased from a person licensed as a grain dealer in any jurisdiction.
- (3) Grain purchased under a credit-sale contract.
- (4) Grain entered in the company-owned paid position as a cancellation of a collateral warehouse receipt.
- (5) Grain entered in the company-owned paid position as an intracompany location transfer.

[Filed 7/30/15, effective 9/23/15]

[Published 8/19/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/19/15.

ARC 2108C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4 and 421.1A(4)“e,” the Property Assessment Appeal Board hereby amends Chapter 71, “Assessment Practices and Equalization,” and adopts new Chapter 126, “Property Assessment Appeal Board,” Iowa Administrative Code.

The amendment in Item 1 revises the Property Assessment Appeal Board's rule 701—71.21(421,17A) to indicate that the rule is applicable to appeals filed with the Board prior to January 1, 2015, and that new Chapter 126 applies to appeals filed with the Board on or after January 1, 2015.

The amendment in Item 2 adopts new Chapter 126, which applies to all appeals filed with the Board on or after January 1, 2015. The content of new Chapter 126 is the same as that in existing rule 701—71.21(421,17A), except that the provisions included in rule 701—71.21(421,17A) that otherwise appear in Iowa Code section 421.1A have been omitted. In addition, the substantive provisions in Chapter 126, though the same as those in rule 701—71.21(421,17A), are restructured in the new chapter.

REVENUE DEPARTMENT[701](cont'd)

Existing rule 701—71.21(421,17A) will remain in effect and applicable to appeals filed prior to January 1, 2015, and the Property Assessment Appeal Board will rescind rule 701—71.21(421,17A) when it is no longer necessary.

The content of existing rule 701—71.21(421,17A) has been reordered in Chapter 126 as follows:

New Rule	Rule Catchwords	Current Subrule(s)
126.1	Applicability and definitions	71.21(5), 71.21(36), 71.21(39), 71.21(40)
126.2	Appeal and certification	71.21(6) to 71.21(12), 71.21(23)
126.3	Service on parties and filing with the board	71.21(13)
126.4	Reserved	
126.5	Motions and settlements	71.21(14), 71.21(15), 71.21(24), 71.21(31)
126.6	Hearing scheduling and discovery plan	71.21(26)
126.7	Discovery and evidence	71.21(28), 71.21(29), 71.21(30)
126.8	Hearings before the board	71.21(16) to 71.21(22), 71.21(25), 71.21(27), 71.21(35)
126.9	Posthearing motions	71.21(33), 71.21(34)
126.10	Judicial review	71.21(37), 71.21(38)
126.11	Records access	71.21(32)

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 24, 2015, as **ARC 2047C**. The Property Assessment Appeal Board received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 421.1A and 441.37A.

These amendments will become effective September 23, 2015.

The following amendments are adopted.

ITEM 1. Amend rule 701—71.21(421,17A) as follows:

701—71.21(421,17A) Property assessment appeal board. This rule applies to appeals filed before January 1, 2015, in which the property assessment appeal board has jurisdiction to hear appeals from the action of a local board of review. Appeals filed on or after January 1, 2015, are governed by 701—Chapter 126.

71.21(1) to 71.21(40) No change.

This rule is intended to implement Iowa Code sections 421.1, 421.1A as amended by 2013 Iowa Acts, Senate File 295, division VI, 421.2, 441.37A as amended by 2013 Iowa Acts, Senate File 295, division VI, 441.38 and 441.49 and chapter 17A.

ITEM 2. Adopt the following **new** 701—Chapter 126:

CHAPTER 126
PROPERTY ASSESSMENT APPEAL BOARD

701—126.1(421,441) Applicability and definitions.

126.1(1) Applicability and scope. The rules set forth in this chapter govern the proceedings for all cases filed on or after January 1, 2015, in which the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review.

126.1(2) Definitions. For the purpose of these rules, the following definitions shall apply:

REVENUE DEPARTMENT[701](cont'd)

“*Appellant*” means the party filing the notice of appeal with the secretary of the property assessment appeal board.

“*Board*” means the property assessment appeal board as created by Iowa Code section 421.1A and governed by Iowa Code chapter 17A and section 441.37A.

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

“*Local board of review*” means the board of review as defined by Iowa Code section 441.31.

“*Party*” means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the property assessment appeal board.

“*Secretary*” means the secretary for the property assessment appeal board.

126.1(3) Waivers.

a. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested;

(2) The waiver would not prejudice the substantial rights of any person;

(3) The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and

(4) Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.

b. Persons requesting a waiver may submit their request in writing. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if the reasons have not already been provided to the board in another pleading.

c. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

126.1(4) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34).

126.1(5) Judgment of the board. Nothing in this chapter should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

701—126.2(421,441) Appeal and certification.

126.2(1) Appeal and jurisdiction. The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by written notice of appeal given to the secretary. The written notice of appeal shall include a petition setting forth the basis of the appeal and the relief sought. The written notice of appeal shall be filed with the secretary within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed.

b. Notice of appeal may be delivered in person, mailed by first-class mail, delivered to an established courier service for immediate delivery, or e-mailed to the board at paab@iowa.gov.

c. For an appeal filed by e-mail to be timely, it must be received by the board by 11:59 p.m. on the last day for filing as established within the time period set forth in paragraph 126.2(1) “*a.*”

126.2(2) Form of appeal. The notice of appeal shall include:

a. The appellant’s name, mailing address, e-mail address, and telephone number;

b. The address of the property being appealed and its parcel number;

c. A copy of the letter of disposition by the local board of review;

d. A short and plain statement of the claim showing that the appellant is entitled to relief;

e. The relief sought; and

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f. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, e-mail address, and telephone number.

126.2(3) Scope of review.

a. Grounds for appeal. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. No new grounds in addition to those set out in the protest to the local board of review can be pleaded, but additional evidence to sustain those grounds may be introduced. The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof.

b. Burden of proof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. The burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.

c. The appeal is a contested case.

126.2(4) Notice to local board of review. The secretary shall mail a copy of the appellant's written notice of appeal and petition to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is provided to the local board of review.

126.2(5) Certification by local board of review.*a. Initial certification.*

(1) Within 21 days after notice of appeal is given, the local board of review shall certify to the board the original notice of assessment if any, the petition to the board of review, and a copy of the board of review's letter of disposition.

(2) The local board of review shall also submit to the board in writing the name, address, telephone number, and e-mail address of the attorney representing the local board of review before the board. The local board of review may request additional time to certify a copy of its record to the board by submitting a request in writing or by e-mail to the board at paab@iowa.gov.

b. Full record certification prior to hearing.

(1) At least 21 calendar days prior to the contested case hearing, the local board of review shall certify to the board the complete property record card for the subject property, the protest hearing minutes of the local board of review kept pursuant to Iowa Code chapter 21, and any information provided to or considered by the local board of review as part of the protest.

(2) The local board of review shall also send a copy of the full record to the opposing party.

126.2(6) Docketing. Appeals shall be assigned consecutive docket numbers. Records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the secretary. The records of each case shall also include each action and each act done, with the proper dates, as follows:

a. The title of the appeal including jurisdiction and parcel identification number;

b. Brief statement of the grounds for the appeal and the relief sought;

c. Postmarked date of the local board of review's letter of disposition;

d. The manner and date/time of service of notice of appeal;

e. Date of notice of hearing;

f. Date of hearing; and

g. The decision by the board, or other disposition of the case, and date thereof.

126.2(7) Consolidation and severance. The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

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b. Severance. The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

126.2(8) Appearances. Any party may appear and be heard on its own behalf, or by its designated representative. A designated representative shall file a notice of appearance with the board for each case in which the representative appears for a party. Filing a motion or pleadings on behalf of a party shall be equivalent to filing a notice of appearance. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

701—126.3(421,441) Service on parties and filing with the board.

126.3(1) Service and filing of papers. After the notice of appeal and petition have been filed, all motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. Service on a party—how and when made. The parties may agree to exchange the certified record, motions, pleadings, briefs, exhibits, and any other papers with each other electronically or via any other means. All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or sent electronically if the parties have agreed to service by such means.

b. Filing with the board—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or sent by e-mail as permitted by this chapter.

(1) For most filings in a docket made with the board, only an original is required.

(2) For exhibits and other documents to be introduced at hearing, three copies are required. For a nonoral submission, only one copy is required.

(3) The board or presiding officer may request additional copies.

c. Proof of mailing. Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).

(Date) (Signature)

126.3(2) Reserved.

701—126.4 Reserved.

701—126.5(421,441) Motions and settlements.

126.5(1) Authority of board to issue procedural orders. The board may issue preliminary orders regarding procedural matters. The secretary shall mail copies of all procedural orders to the parties.

126.5(2) Motions. No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the secretary and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. Filing of motions. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least 10 days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board or presiding officer.

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b. Motions for summary judgment.

(1) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this chapter or any other provision of law governing the procedure in contested cases.

(2) Motions for summary judgment must be filed and served no later than 90 days after service of the notice of appeal, unless good cause is shown for a later filing. Good cause may include, but is not limited to, information the moving party obtains through discovery. Any party resisting the motion shall file and serve a resistance within 20 days, unless otherwise ordered by the board or presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 30 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to subrule 126.9(2).

c. Motions to withdraw. An appellant may withdraw the appeal prior to the hearing. Such a withdrawal of an appeal must be in writing or by e-mail to paab@iowa.gov and signed by the appellant or the appellant's designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board's granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

126.5(3) Settlements. Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed in writing or by an electronic copy e-mailed to paab@iowa.gov. The board will not approve settlements unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

701—126.6(421,441) Hearing scheduling and discovery plan.

126.6(1) When required. For appeals involving properties classified commercial or industrial and assessed at \$2 million or more, a scheduling order shall be sent to the parties to set dates for discovery, designation of witnesses, filing of motions, exchange of evidence, and a contested case hearing. In any other appeal, the parties may jointly enter a scheduling order or the board may, on its own motion, issue a scheduling order. The dates established in a scheduling order under this rule shall supersede any dates set forth in any other rule in this chapter.

126.6(2) Prehearing conference. A party may request a prehearing conference to resolve scheduling issues.

126.6(3) Modification. The parties may jointly agree to modify a scheduling order. If one party seeks to modify a scheduling order, the party must show good cause for the modification.

126.6(4) Failure to comply. A party that fails to comply with a scheduling order shall be required to show good cause for failing to comply with the order and that the other party is not substantially prejudiced. Failing to comply with a scheduling order may result in sanctions including, but not limited to, the exclusion of evidence or dismissal of the appeal.

701—126.7(421,441) Discovery and evidence.

126.7(1) Discovery procedure. Discovery procedures applicable in civil actions under the Iowa Rules of Civil Procedure are available to parties in cases before the board. Unless lengthened or shortened by these rules, the board or presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

126.7(2) Discovery motions. Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer. Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within 10 days of the filing of the motion unless the time is shortened by order of

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the board or presiding officer. The board or presiding officer may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

126.7(3) Evidence.

a. Admissibility. The presiding officer shall rule on admissibility of evidence and may take official notice of facts in accordance with all applicable requirements of law. Evidence obtained in discovery may be used in the case proceeding if that evidence would otherwise be admissible in that proceeding.

b. Stipulations. Stipulation of facts by the parties is encouraged. The presiding officer may make a decision based on stipulated facts.

c. Scope of admissible evidence. Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision. Irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have entered a scheduling order under rule 701—126.6(421,441). All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark exhibits with consecutive numbers. The appellee shall mark exhibits with consecutive letters.

e. Objections. Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

126.7(4) Subpoenas.*a. Issuance of subpoena for witness.*

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 10 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

b. Issuance of subpoena for production of documents.

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 20 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.

c. Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure.

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701—126.8(421,441) Hearings before the board.

126.8(1) *Prehearing conference.* An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

126.8(2) *Notice of hearing.* Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. If a hearing is requested, the secretary shall mail a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 126.8(3). The notice of hearing shall contain the following information:

- a. A statement of the date, time, and place of the hearing;
- b. A statement of legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. That the parties may appear and present oral arguments;
- e. That the parties may submit evidence and briefs;
- f. That the hearing will be electronically recorded by the board;
- g. That a party may obtain a certified court reporter for the hearing at the party's own expense;
- h. That audiovisual aids and equipment are to be provided by the party intending to use them;
- i. A statement that, upon submission of the appeal, the board will take the matter under advisement. A letter of disposition will be mailed to the parties; and
- j. A compliance notice required by the Americans with Disabilities Act (ADA).

126.8(3) *Waiver of 30-day notice.* The parties to the appeal may jointly waive the 30-day written notice requirement for a hearing. The waiver must be in writing or by e-mail to paab@iowa.gov and signed by the parties or their designated representatives. By waiving notice, the parties acknowledge they are ready to proceed with the hearing. The parties will be contacted when a hearing date is available but notice for said date may be less than 30 days. The parties will have the right to accept or reject the hearing date.

126.8(4) *Continuance.* Any hearing may be continued for "good cause." Requests for continuance prior to the hearing shall be in writing or by e-mail to paab@iowa.gov and promptly filed with the secretary of the board immediately upon "the cause" becoming known. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors, including the existence of a scheduling order.

126.8(5) *Telephone proceedings.* The board or presiding officer may conduct a telephone conference in which all parties have an opportunity to participate to resolve preliminary procedural motions. Other proceedings, including contested case hearings, may be held by telephone. The board will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

126.8(6) *Hearing procedures.* A party to the appeal may request a hearing, or the appeal may proceed without a hearing. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members.

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a. Authority of presiding officer. The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

b. Representation. Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative.

c. Participation in hearing. The parties to the appeal have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

d. Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

e. Conduct of the hearing. The presiding officer shall conduct the hearing in the following manner:

(1) The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

(2) The parties shall be given an opportunity to present opening statements;

(3) The parties shall present their cases in the sequence determined by the presiding officer;

(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

126.8(7) Dismissal. If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

126.8(8) Transcript of hearing. All hearings shall be electronically recorded. Any party may provide a certified court reporter at the party's own expense. Any party may request a transcription of the hearing. The board reserves the right to impose a charge for copies and transcripts.

126.8(9) Members participating. Each appeal may be considered by one or more members of the board, and the chairperson of the board may assign members to consider appeals. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.

126.8(10) Disqualification of board member. A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification.

a. A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;

(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;

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- (6) Has a spouse or relative within the third degree of relationship who:
1. Is a party to the appeal, or an officer, director or trustee of a party;
 2. Is a lawyer in the appeal;
 3. Is known to have an interest that could be substantially affected by the outcome of the appeal;
- or
4. Is likely to be a material witness in the appeal; or
- (7) Has any other legally sufficient cause to withdraw from participation in the decision making in that appeal.

b. Motion for disqualification.

(1) If a party asserts disqualification on any appropriate ground, including those listed in paragraph 126.8(10)“a,” the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

(2) If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and a stay as provided under 701—Chapter 7.

c. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.

d. Withdrawal. In a situation where a presiding officer or any other board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

701—126.9(421,441) Posthearing motions.

126.9(1) *Motion to reopen records.* The board or presiding officer, on the board’s or presiding officer’s own motion or on the motion of a party, may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to the issuance of a final decision.

126.9(2) *Rehearing and reconsideration.*

a. Application for rehearing or reconsideration. Any party to a case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the case is issued.

b. Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included.

c. Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

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d. Requirements for objections to applications for rehearing or reconsideration. An answer or objection to an application for rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board.

e. Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

701—126.10(17A,441) Judicial review.

126.10(1) Appeals of board decisions. A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the letter of disposition of the appeal by the board is mailed to the appellant. Iowa Code chapter 17A applies to judicial review of the board's final decision. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

126.10(2) Stays of agency actions. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. In determining whether to grant a stay, the board or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) "c." A stay may be vacated by the board upon application of any other party.

701—126.11(22,421) Records access.

126.11(1) Location of record. A request for access to a record should be directed to the custodian.

126.11(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

126.11(3) Request for access. Requests for access to open records may be made in writing, in person, by e-mail, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, e-mail, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

126.11(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court or board order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the applicable provisions of law.

126.11(5) Security of record. No person may, without permission from the secretary, search or remove any record from board files. Examination and copying of board records shall be supervised by the secretary. Records shall be protected from damage and disorganization.

126.11(6) Copying. A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

126.11(7) Fees.

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or

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for members of the public on board photocopy machines or from electronic storage systems at cost as determined and made available by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

These rules are intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapters 17A and 22.

[Filed 7/30/15, effective 9/23/15]

[Published 8/19/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/19/15.

AGENCY	RULE	DELAY
Agriculture and Land Stewardship Department[21]	43.6 [IAB 7/22/15, ARC 2059C]	Effective date of January 1, 2016, delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at its meeting held August 11, 2015. [Pursuant to §17A.8(9)]