



# IOWA ADMINISTRATIVE BULLETIN

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September 8, 2021

NUMBER 5  
Pages 611 to 746

## CONTENTS IN THIS ISSUE

Pages 619 to 746 include **ARC 5883C** to **ARC 5906C**

### ALL AGENCIES

Agency identification numbers . . . . .	616
Citation of administrative rules . . . . .	613
Schedule for rule making . . . . .	614

### ENVIRONMENTAL PROTECTION

#### COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Notice, Waste tire management, 116.6(1), 117.7(2) <b>ARC 5902C</b> . . . . .	619
Filed, Air quality, 20.2, 22.100, 23.1, 25.1(9) <b>ARC 5898C</b> . . . . .	668
Filed, Dams; water storage permitting, amend chs 50 to 52, 70 to 72; adopt ch 73 <b>ARC 5899C</b> . . . . .	676
Filed, Mercury-added switch recovery from end-of-life vehicles, rescind ch 215 <b>ARC 5897C</b> . . . . .	690

### ETHICS AND CAMPAIGN DISCLOSURE

#### BOARD, IOWA[351]

Notice, Sales or leases by regulatory agency officials or employees, 1.4(9), 6.11 <b>ARC 5888C</b> . . . . .	621
--	-----

### HUMAN SERVICES DEPARTMENT[441]

Notice, Provider reimbursement rates; fee schedules, 78.27(10)“f,” 78.34(9)“g,” 78.41(2)“i,” 78.43, 78.46, 79.1, 83.2(2)“b,” 83.42(2)“b,” 83.102(2)“b,” 83.122(6)“b” <b>ARC 5903C</b> . . . . .	625
Notice, Medical assistance—eligibility, payment, 75.5(3)“d,” 75.16(1), 75.25, 80.3(2)“a” <b>ARC 5904C</b> . . . . .	623

Filed, Home- and community-based services habilitation program—eligibility criteria, staff training, scope of services, 77.25, 78.27 <b>ARC 5889C</b> . . . . .	691
---	-----

Filed Emergency, Provider reimbursement rates; fee schedules, 78.27(10)“f,” 78.34(9)“g,” 78.41(2)“i,” 78.43, 78.46, 79.1, 83.2(2)“b,” 83.42(2)“b,” 83.102(2)“b,” 83.122(6)“b” <b>ARC 5896C</b> . . . . .	653
---	-----

Filed Emergency After Notice, Prescribing controlled substances, 79.17 <b>ARC 5901C</b> . . . . .	665
---	-----

Filed, Child and spousal support—obligations, terminology, 99.1, 99.2, 99.4(5), 99.69(4), 99.85(1)“d,” 99.91(1), 99.109(2) <b>ARC 5892C</b> . . .	705
--	-----

Filed, Foster home insurance fund—applicability, definitions, payment limits, claims, amendments to ch 158 <b>ARC 5890C</b> . . . . .	709
--	-----

Filed, Child care assistance provider reimbursement rates, 170.4(7)“a” <b>ARC 5891C</b> . . . . .	711
---	-----

### INSPECTIONS AND APPEALS

#### DEPARTMENT[481]

Notice, Frequency of game nights, 100.2 <b>ARC 5895C</b> . . . . .	627
---	-----

### NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Filed, State parks, recreation areas, and state forest camping, 61.2 to 61.7, 61.14, 61.23(1) <b>ARC 5900C</b> . . . . .	714
--	-----

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Filed, Psychologists—standards of practice, supervised professional experience, waivers, amend chs 240, 244; adopt ch 243 **ARC 5905C**..... 721

**PUBLIC FUNDS—AVAILABILITY**

Homeland Security and Emergency Management Department, FEMA DR-4483-IA ..... 618

**PUBLIC HEARINGS**

Summarized list ..... 615

**REVENUE DEPARTMENT[701]**

Notice, Appeals of director’s rejection of assessor appointment or reappointment, 7.37 **ARC 5885C** ..... 629

Notice, Nonresident and part-year resident income tax credit, 42.5 **ARC 5884C** .... 631

Notice, Out-of-state tax credit, 42.6, 89.8(11) **ARC 5886C**..... 636

Notice, Order of deduction of tax credits, 42.44, 52.12, 58.24 **ARC 5883C** ..... 645

Notice, Assessors and deputy assessors—assessment of own property, 71.27 **ARC 5887C** ..... 650

Filed, Marketable food products for human consumption, 230.2(1) **ARC 5906C** ..... 725

**TRANSPORTATION DEPARTMENT[761]**

Filed, Motor vehicles operated by an automated driving system, adopt ch 380; amend chs 400, 524, 540 **ARC 5893C**..... 727

**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]“umbrella”

Filed, Hazardous liquid pipelines and underground storage, amendments to ch 13 **ARC 5894C** ..... 734

## PREFACE

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

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

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

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

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

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### CITATION of Administrative Rules

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

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

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

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

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

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

## Schedule for Rule Making 2021

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
7	Friday, September 17, 2021	October 6, 2021
8	Friday, October 1, 2021	October 20, 2021
9	Friday, October 15, 2021	November 3, 2021

**PLEASE NOTE:**

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

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

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

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

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Waste tire management, 116.6(1),  
117.7(2)  
IAB 9/8/21 ARC 5902C

Via video/conference call  
Contact Mel Pins  
Email: [mel.pins@dnr.iowa.gov](mailto:mel.pins@dnr.iowa.gov)

September 28, 2021  
9 to 10 a.m.

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

Sales or leases by regulatory  
agency officials or employees,  
1.4(9), 6.11  
IAB 9/8/21 ARC 5888C

Zoom link:  
[us02web.zoom.us/j/82254559463?pwd=cmdEzU9LYlZLaFhwbFkzUkRXNGNydz09](https://us02web.zoom.us/j/82254559463?pwd=cmdEzU9LYlZLaFhwbFkzUkRXNGNydz09)  
Meeting ID: 822 5455 9463  
Passcode: 174520  
Phone: +1 312.626.6799 US (Chicago)

September 29, 2021  
2 to 2:15 p.m.  
Enter meeting ID and passcode

**INSURANCE DIVISION[191]**

Surplus lines insurers, risk  
retention groups—penalty for  
failure to timely file, 21.5, 21.6  
IAB 8/25/21 ARC 5874C

Via conference call  
Contact Tracy Swalwell  
Email: [tracy.swalwell@iid.iowa.gov](mailto:tracy.swalwell@iid.iowa.gov)

September 15, 2021  
9 a.m.

Viatical and life  
settlements—annual report,  
late fee, 48.7  
IAB 8/25/21 ARC 5875C

Via conference call  
Contact Tracy Swalwell  
Email: [tracy.swalwell@iid.iowa.gov](mailto:tracy.swalwell@iid.iowa.gov)

September 15, 2021  
10 a.m.

**LABOR SERVICES DIVISION[875]**

Federal occupational safety and  
health standards—COVID-19  
emergency temporary standard  
adopted by reference, 10.20  
IAB 8/11/21 ARC 5846C

150 Des Moines St.  
Des Moines, Iowa

September 15, 2021  
9 a.m.  
(If requested)

**REVENUE DEPARTMENT[701]**

Order of deduction of tax credits,  
42.44, 52.12, 58.24  
IAB 9/8/21 ARC 5883C

Via video/conference call  
Contact Michael Mertens  
Email: [michael.mertens@iowa.gov](mailto:michael.mertens@iowa.gov)

September 29, 2021  
10 to 11 a.m.  
(If requested)

Nonresident and part-year resident  
income tax credit, 42.5  
IAB 9/8/21 ARC 5884C

Via video/conference call  
Contact Michael Mertens  
Email: [michael.mertens@iowa.gov](mailto:michael.mertens@iowa.gov)

September 29, 2021  
9 to 10 a.m.  
(If requested)

Out-of-state tax credit, 42.6,  
89.8(11)  
IAB 9/8/21 ARC 5886C

Via video/conference call  
Contact Michael Mertens  
Email: [michael.mertens@iowa.gov](mailto:michael.mertens@iowa.gov)

September 29, 2021  
11 a.m. to 12 noon  
(If requested)

**UTILITIES DIVISION[199]**

Civil penalty for permit violation;  
tile repairs; assessment  
exemptions; definition of  
“competitive local exchange  
service provider,” 8.1(5),  
9.5(4)“d”(6), 17.2(9), 38.1(2)  
IAB 7/28/21 ARC 5813C

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

September 14, 2021  
11:30 a.m. to 1:30 p.m.

The following list will be updated as changes occur.

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

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

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
 AGING, DEPARTMENT ON[17]  
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
   Soil Conservation and Water Quality Division[27]  
 ATTORNEY GENERAL[61]  
 AUDITOR OF STATE[81]  
 BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]  
 BLIND, DEPARTMENT FOR THE[111]  
 CAPITAL INVESTMENT BOARD, IOWA[123]  
 CHIEF INFORMATION OFFICER, OFFICE OF THE[129]  
 OMBUDSMAN[141]  
 CIVIL RIGHTS COMMISSION[161]  
 COMMERCE DEPARTMENT[181]  
   Alcoholic Beverages Division[185]  
   Banking Division[187]  
   Credit Union Division[189]  
   Insurance Division[191]  
   Professional Licensing and Regulation Bureau[193]  
     Accountancy Examining Board[193A]  
     Architectural Examining Board[193B]  
     Engineering and Land Surveying Examining Board[193C]  
     Landscape Architectural Examining Board[193D]  
     Real Estate Commission[193E]  
     Real Estate Appraiser Examining Board[193F]  
     Interior Design Examining Board[193G]  
   Utilities Division[199]  
 CORRECTIONS DEPARTMENT[201]  
   Parole Board[205]  
 CULTURAL AFFAIRS DEPARTMENT[221]  
   Arts Division[222]  
   Historical Division[223]  
 EARLY CHILDHOOD IOWA STATE BOARD[249]  
 ECONOMIC DEVELOPMENT AUTHORITY[261]  
   City Development Board[263]  
 IOWA FINANCE AUTHORITY[265]  
 EDUCATION DEPARTMENT[281]  
   Educational Examiners Board[282]  
   College Student Aid Commission[283]  
   Higher Education Loan Authority[284]  
   Iowa Advance Funding Authority[285]  
   Libraries and Information Services Division[286]  
   Public Broadcasting Division[288]  
   School Budget Review Committee[289]  
 EGG COUNCIL, IOWA[301]  
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
 EXECUTIVE COUNCIL[361]  
 FAIR BOARD[371]  
 HUMAN RIGHTS DEPARTMENT[421]  
   Community Action Agencies Division[427]  
   Criminal and Juvenile Justice Planning Division[428]  
   Deaf Services Division[429]  
   Persons With Disabilities Division[431]  
   Latino Affairs Division[433]  
   Status of African-Americans, Division on the[434]  
   Status of Women Division[435]

Status of Iowans of Asian and Pacific Islander Heritage[436]  
HUMAN SERVICES DEPARTMENT[441]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Child Advocacy Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
IOWA PUBLIC INFORMATION BOARD[497]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]  
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]  
PUBLIC DEFENSE DEPARTMENT[601]  
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Professional Licensure Division[645]  
    Dental Board[650]  
    Medicine Board[653]  
    Nursing Board[655]  
    Pharmacy Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and Workforce Development Center Administration Division[877]

## FEMA DR-4483-IA

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
Iowa Homeland Security and Emergency Management Department (HSEMD)	<p><b>Hazard Mitigation Grant Program (HMGP)</b>            Authorized by §404 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"> <li>● State Agencies and Local Governments.</li> <li>● Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations.</li> <li>● 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).</li> <li>● 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.</li> <li>● All applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan.</li> </ul> <p><b>Application Process:</b>            -Potential <b>project &amp; planning</b> applicants must complete a Notice of Interest (NOI) Form located on the HSEMD website at: <a href="http://homelandsecurity.iowa.gov/grants-overview/grants/">homelandsecurity.iowa.gov/grants-overview/grants/</a>            -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> <p><b>For additional information, please contact:</b></p> <p style="text-align: center;"><b>Dusty Pogones 515-725-9384</b>  <b>Aimee Bartlett 515-725-9364</b></p> <p style="text-align: center;"><b>Iowa Homeland Security and Emergency Management Department</b>  <b>7900 Hickman Road, Suite 500</b>  <b>Windsor Heights, IA 50324</b></p>	<p><b>Eligible Project Types</b></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"> <li>● Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity</li> <li>● Construction of safe rooms (tornado and severe wind shelters)</li> <li>● 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)</li> <li>● 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</li> <li>● 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</li> <li>● Development of multi-jurisdictional hazard mitigation plans and plan updates</li> </ul> <p><b>Planning Application</b></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 5902C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

**Proposing rule making related to waste tire management  
and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 116, “Registration of Waste Tire Haulers,” and Chapter 117, “Waste Tire Management,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 455D.11(7) and 455D.11I(7).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455D.11A(5) and 455D.11I(6) and 2021 Iowa Acts, House File 560.

*Purpose and Summary*

Chapters 116 and 117 collectively establish standards for the proper management of waste tires. Specifically, the rules set forth requirements for the disposal, collection, storage, processing, and beneficial use of waste tires. They also require permits, require the registration of waste tire haulers, and dictate certain industry fees.

The purpose of this proposed rule making is to align Chapters 116 and 117 with their recently amended authorizing statutes. Iowa Code sections 455D.11A(5) and 455D.11I(6) as amended by 2021 Iowa Acts, House File 560, made several substantive changes to the waste tire program. The following amendments are proposed, consistent with the legislation:

- Remove pre-1998 financial assurance requirements;
- Increase the amount of financial assurance from \$.35 to \$2.50 for each tire stored by a waste tire collector and from \$.85 to \$2.50 for each tire held for more than three days by a waste tire processor; and
- Change the bond amount required for waste tire haulers from \$10,000 to \$150,000.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*Public Comment*

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

Mel Pins  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319  
Email: [mel.pins@dnr.iowa.gov](mailto:mel.pins@dnr.iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally will be held by conference call as follows. Persons who wish to attend the conference call should contact Mel Pins via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Mel Pins prior to the hearing to facilitate an orderly hearing.

September 28, 2021  
9 to 10 a.m.

Via video/conference call

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 116.6(1) as follows:

**116.6(1)** An application for registration or renewal shall not be approved by the department until the waste tire hauler has provided a bond in the sum of a minimum of ~~\$10,000~~ \$150,000 on a form prescribed by the commissioner of insurance.

ITEM 2. Amend subrule 117.7(2) as follows:

**117.7(2)** *Financial assurance amounts required.*

*a.* Waste tire stockpile sites shall have financial assurance coverage equal to ~~35 cents~~ \$2.50 per waste tire collected and stored ~~prior to July 1, 1998, and 85 cents per waste tire collected and stored on or after July 1, 1998.~~

*b.* ~~If the owner or operator of a waste tire stockpile does not have adequate records to determine the time frame within which waste tire inventories were initially collected, then financial assurance amounts shall be determined by allocating the number of tires stored proportionally between the time period the facility has operated before and after July 1, 1998.~~

*e. b.* Waste tire processing sites shall have financial assurance coverage equal to ~~85 cents~~ \$2.50 per waste tire stored above the permitted three-day processing capacity, in accordance with 117.6(3) "b."

**ARC 5888C**

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

**Notice of Intended Action**

**Proposing rule making related to sales or leases by regulatory agency officials or employees  
and providing an opportunity for public comment**

The Ethics and Campaign Disclosure Board hereby proposes to amend Chapter 1, “Iowa Ethics and Campaign Disclosure Board,” and Chapter 6, “Executive Branch Ethics,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 68B.32A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 68B.4 as amended by 2021 Iowa Acts, House File 491.

*Purpose and Summary*

These proposed amendments implement 2021 Iowa Acts, House File 491, prohibiting state regulatory agency officials and employees from selling or leasing real estate to persons subject to the agency’s regulatory authority unless certain conditions are met.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 351—Chapter 15.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

Michael Marshall  
Iowa Ethics and Campaign Disclosure Board  
510 East 12th Street, Suite 1A  
Des Moines, Iowa 50319  
Fax: 515.281.4073  
Email: [mike.marshall@iowa.gov](mailto:mike.marshall@iowa.gov)

*Public Hearing*

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

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

September 29, 2021  
2 to 2:15 p.m.

Zoom link:  
[us02web.zoom.us/j/82254559463?pwd=cmdEZU9LY1ZLaFhwbFkzUkRXNGNydz09](https://us02web.zoom.us/j/82254559463?pwd=cmdEZU9LY1ZLaFhwbFkzUkRXNGNydz09)  
Meeting ID: 822 5455 9463  
Passcode: 174520  
Phone: +1 312.626.6799 US (Chicago) (enter meeting ID and passcode)

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 1.4(9) as follows:

**1.4(9)** As the board is defined as a “regulatory agency” under Iowa Code section 68B.2(23), members and staff of the board shall comply with the requirements of Iowa Code section 68B.4 and rule 351—6.11(68B) prior to selling or leasing goods, real estate, or services to individuals, associations, or corporations subject to the board’s regulatory authority.

ITEM 2. Amend **351—Chapter 6**, Division III heading, as follows:

SALES OR LEASES OF GOODS, REAL ESTATE, OR SERVICES

ITEM 3. Amend rule 351—6.11(68B), introductory paragraph, as follows:

**351—6.11(68B) Sales or leases by regulatory agency officials or employees.** An official or employee of a regulatory agency shall not directly or indirectly sell or lease any goods, real estate, or services to individuals, associations, or corporations subject to the regulatory authority of the official’s or employee’s agency except as provided by Iowa Code section 68B.4 and this rule. This prohibition does not apply to sales or leases that are part of the official’s or employee’s state duties.

ITEM 4. Rescind subrule **6.11(1)**.

ITEM 5. Renumber subrules **6.11(2)** to **6.11(8)** as **6.11(1)** to **6.11(7)**.

ITEM 6. Amend renumbered subrule 6.11(2) as follows:

**6.11(2) Request for consent.** An official’s or employee’s request for an agency’s consent to the sale or lease of goods, real estate, or services shall comply with all of the following:

*a.* The request shall be in writing and shall be filed with the official’s or employee’s agency at least 20 calendar days in advance of the proposed sale or lease of any goods, real estate, or services.

*b.* The request shall include all of the following:

(1) The name of the individual, association, or corporation to which the goods, real estate, or services are to be sold or leased;

(2) The relationship of the individual, association, or corporation to the agency;

(3) A description of the goods, real estate, or services;

(4) The date or dates that the goods, real estate, or services will be delivered; and

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

(5) A statement by the official or employee explaining how the proposed sale or lease of the goods, real estate, or services will not violate the provisions of Iowa Code section 68B.4 or create a conflict of interest under Iowa Code section 68B.2A.

ITEM 7. Amend renumbered subrule 6.11(3) as follows:

**6.11(3) Agency guidelines.** Iowa Code section 68B.4 and the guidelines in this subrule shall be the sole legal authorities to be used by an agency in considering the granting of consent. In determining whether to grant consent, the agency shall take the following guidelines into consideration:

- a. No change.
- b. The duties and functions performed by the official or employee seeking consent are not related to the regulatory authority of the agency over the individual, association, or corporation to which the goods, real estate, or services will be sold or leased.
- c. The selling or leasing of the goods, real estate, or services does not affect the official's or employee's duties or functions at the agency.
- d. The selling or leasing of the goods, real estate, or services will not cause the official or employee to advocate on behalf of the individual, association, or corporation to the agency.
- e. The selling or leasing of the goods, real estate, or services does not cause the official or employee to sell or lease goods, real estate, or services to the agency on behalf of the individual, association, or corporation.
- f. The selling or leasing of the goods, real estate, or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.
- g. The request complies with the procedural requirements of subrule ~~6.11(3)~~ 6.11(2).
- h. A regulatory agency may grant blanket consent for sales or leases to classes of individuals, associations, or persons when such blanket consent is consistent with subrule ~~6.11(4)~~ 6.11(3) and the granting of single consents is impractical or impossible to determine.

These guidelines shall be publicized and made known to all personnel throughout the agency.

**ARC 5904C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Notice of Intended Action**

#### **Proposing rule making related to medical assistance eligibility and payment and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 75, "Conditions of Eligibility," and Chapter 80, "Procedure and Method of Payment," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 249A.3.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.3.

#### *Purpose and Summary*

The Department is aligning administrative rules with current policy and federal regulations in several areas. The proposed rules:

- Remove exemptions from third-party liability for prenatal services based on the federal Bipartisan Budget Act of 2018.
- Update the minimum community spouse resource allowance to allow for the federal amount and link to the federal references so the amounts do not need to be updated annually.
- Add language to better describe the income considered in determining client participation.

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

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

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **75.5(3)“d”** as follows:

*d. Method of attribution.* The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized spouse and the community spouse as of the first moment of the first day of the month of the spouse’s first entry to a medical facility. However, if one-half of the resources is less than \$24,000 the minimum set by the federal spousal impoverishment provisions, then the greater of \$24,000 or the federally established minimum shall be protected for the community spouse. Also, when one-half of the resources attributed to the community spouse exceeds the maximum amount allowed as a community spouse resource allowance ~~by Section 1924(f)(2)(A)(i) of the Social Security Act (42 U.S.C. § 1396r-5(f)(2)(A)(i))~~ under the federal spousal impoverishment provisions, the amount over the maximum shall be attributed to the institutionalized spouse. (The minimum and maximum limit is limits are indexed annually according to the consumer price index.) The federal spousal impoverishment provisions are defined at Section 1924(f)(2)(A)(i) of the Social Security Act (42 U.S.C. §1396r-5(f)(2)(A)(i)).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

If the institutionalized spouse has transferred resources to the community spouse under a court order for the support of the community spouse, the amount transferred shall be the amount attributed to the community spouse if it exceeds the specified limits above.

ITEM 2. Amend subrule 75.16(1), introductory paragraph, as follows:

**75.16(1)** *Income considered in determining client participation.* The department determines the amount of client participation based on the client's total monthly income; Income is determined pursuant to the supplemental security income program under Title XVI of the Social Security Act (42 U.S.C. §396r-5(f)(2)(A)(i)) with the following exceptions:

ITEM 3. Amend rule **441—75.25(249A)**, definition of “Pay and chase,” as follows:

“*Pay and chase*” shall mean that the state pays the total amount allowed under the agency’s payment schedule and then seeks reimbursement from the liable third party. The pay and chase provision applies to Medicaid claims for prenatal care, for preventive pediatric services, and for all services provided to a person for whom there is court-ordered medical support.

ITEM 4. Amend paragraph **80.3(2)“a”** as follows:

a. The department pays the total amount allowed under the Medicaid payment schedule and then seeks reimbursement from the liable third party. This “pay and chase” provision applies to claims for:

- (1) ~~Prenatal care,~~
- (2) (1) Preventive pediatric services, and
- (3) (2) All services provided to a person for whom there is court-ordered medical support.

**ARC 5903C**

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

#### Proposing rule making related to provider rates and fee schedules and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 249A.4 and 2021 Iowa Acts, House File 891, section 32.

#### *State or Federal Law Implemented*

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

#### *Purpose and Summary*

As part of the 2021 Legislative Session, 2021 Iowa Acts, House File 891, appropriates funds to increase specific provider reimbursement rates. The proposed amendments to Chapter 78, 79 and 83 do the following:

- Increase the reimbursement rates and upper rate limits for providers of Home- and Community-Based Service (HCBS) Waiver and HCBS Habilitation services beginning July 1, 2021, by 3.55 percent over the rates in effect on June 30, 2021.
- Increase the monthly caps on the total monthly cost of HCBS waiver services and Habilitation.
- Increase the monthly cap on HCBS Supported Employment and the annual cap on Intellectual Disability Waiver Respite services.
- Increase annual or lifetime limitations for home and vehicle modifications and specialized medical equipment.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Increase air ambulance rates to \$550 beginning July 1, 2021. In addition, the proposed amendments to Chapter 79:
  - Add the inflation factor limitation.
  - Implement the fee schedule rate in effect July 1, 2021, for air ambulance providers. 2021 Iowa Acts, House File 891, appropriates funds to increase air ambulance rates to \$550 per one-way trip.
  - Implement the home health agency low utilization payment adjustment (LUPA) rate increase. This rate is applied when there are three or fewer visits provided in a 30-day period.
  - Increase psychiatric medical institutions for children (PMIC) provider-specific fee schedule rate percentages over the rates in effect June 30, 2021. House File 891 appropriates \$3.9 million to increase non-State-owned PMIC provider rates over the rates in effect June 30, 2021.

*Fiscal Impact*

The targeted HCBS and Habilitation increases were calculated assuming both the regular federal medical assistance percentages (FMAP) and COVID-increased FMAP. The Legislature opted for the COVID-increased FMAP scenario for both sets of services. These are the only adjustments where the Legislature agreed to base the increase on the COVID-increased FMAP. All other adjustments are based on the regular FMAP. The FMAP is estimated at 65.14 percent in SFY22 and 62.01 percent in SFY23. As part of the 2021 Legislative Session, 2021 Iowa Acts, House File 891, appropriates funds to increase specific provider reimbursement rates.

*Jobs Impact*

These amendments may have a positive influence on private-sector jobs and employment opportunities in Iowa.

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

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

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or



HUMAN SERVICES DEPARTMENT[441](cont'd)

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

*Emergency Rule Making Adopted by Reference*

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 5896C**, IAB 9/8/21). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

**ARC 5895C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Notice of Intended Action**

**Proposing rule making related to frequency of game nights  
and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 100, "General Provisions for Social and Charitable Gambling," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 99B.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2021 Iowa Acts, House File 311.

*Purpose and Summary*

The proposed amendment to Chapter 100 implements 2021 Iowa Acts, House File 311. The legislation modifies the frequency of game nights conducted by licensed qualified organizations.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Sara Throener  
 Iowa Department of Inspections and Appeals  
 Lucas State Office Building  
 321 East 12th Street  
 Des Moines, Iowa 50319  
 Email: [Sara.Throener@dia.iowa.gov](mailto:Sara.Throener@dia.iowa.gov)

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend rule 481—100.2(99B) as follows:

**481—100.2(99B) Licensure.** Gambling shall only occur upon receipt of a license issued by the department. The license shall be prominently displayed at the gambling location.

**100.2(1) Types of gambling licenses—qualified organizations.** A qualified organization (QO), as defined in Iowa Code section 99B.1(26), may apply for the six following license types, each of which permits the activities listed. A QO with a two-year QO license may also apply for a seventh license type, a very large raffle license.

License type/Activity type	Two-year QO	One-year QO	180-day QO	90-day QO	14-day QO	Bingo at a fair or festival
Bingo	Three occasions per week; 15 occasions per month	No	No	No	Two occasions	One occasion per day for length of fair or festival
Games of skill and chance	Unlimited carnival-style games	No	No	No	Unlimited carnival-style games	No
Game night	One per calendar year month	One per calendar year month	One per calendar year month	One per calendar year month	One per calendar year month	No
Very small and small raffles	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	No
Large raffles	One per calendar year	Eight per license period, each conducted in a different county	One per calendar year	One per calendar year	One per calendar year	No

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

License type/Activity type	Two-year QO	One-year QO	180-day QO	90-day QO	14-day QO	Bingo at a fair or festival
Very large raffles	One per calendar year, requires additional very large raffle license	One per calendar year, requires additional very large raffle license	No	No	No	No
Electronic raffles	One small raffle per day; one large raffle per calendar year	No	No	No	No	No

100.2(2) and 100.2(3) No change.

**ARC 5885C**

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to appeals of the rejection of an assessor appointment or reappointment and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 7, “Practice and Procedure Before the Department of Revenue,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 421.14 and 441.6(3).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 441.6(3) and chapter 17A.

*Purpose and Summary*

This proposed rule making is intended to implement and clarify procedures for appeals of the Director of Revenue’s rejection of an assessor appointment or reappointment under Iowa Code section 441.6(3). This rule making alters the existing appeal procedures to clarify that the Director of Revenue is the presiding officer in contested cases under rule 701—7.37(441). Additionally, this rule making clarifies cross-references to the Department’s rule regarding contested cases before the Department.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

REVENUE DEPARTMENT[701](cont'd)

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

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

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend rule 701—7.37(441) as follows:

**701—7.37(441) Appeals of director’s ~~confirmation decision regarding conference board rejection of assessor appointment or reappointment of assessor.~~**

**7.37(1) Appeal process** *Written request for appeal.* Any assessor or conference board wishing to contest the director’s rejection of the conference board’s appointment ~~or reappointment~~ of an assessor under 701—subrule 72.15(4) or ~~reappointment of an assessor under 701—subrule 72.16(3)~~ shall file an appeal, in writing, within 30 days of the director’s notice of decision. Any person who does not seek an appeal within 30 days of the director’s notice shall be precluded from challenging the director’s decision. Appeals will be governed by the procedures set forth in this rule together with the process set forth in the following rules: rule 701—7.8(17A), excluding the first sentence of the introductory paragraph of 701—7.8(17A) and excluding subrules 7.8(1) to 7.8(7); subrules 7.8(8) and 7.8(9); subrule 7.8(10), except the clerk of the hearings section will file the protest file to the division of administrative hearings within ten days; subrules 7.9(1) and 7.9(2); rule 701—7.10(17A); paragraphs 7.11(2)“d” and “e”; subrules 7.12(2) to 7.12(4); subrules 7.12(7) and 7.12(8); rule 701—7.13(17A); rule 701—7.14(17A); rule 701—7.15(17A); rule 701—7.16(17A); subrules 7.17(1) to 7.17(7); subrule 7.17(8), except paragraph 7.17(8)“b” related to costs shall not apply; additionally, Iowa Code section 421.60(4) shall not apply; subrules 7.17(9) and 7.19(10); subrules 7.17(13) and 7.17(14); rule 701—7.18(17A); rule 701—7.19(17A); rule 701—7.20(17A); rule 701—7.21(17A); and rule 701—7.22(17A).

**7.37(2) Procedures.** Appeals will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

*a.* The introductory paragraph of rule 701—7.8(17A), excluding the first sentence of the introductory paragraph of rule 701—7.8(17A); and subrules 7.8(8) and 7.8(9);

*b.* Subrules 7.9(1) and 7.9(2);

## REVENUE DEPARTMENT[701](cont'd)

- c. Rule 701—7.10(17A);
- d. Paragraphs 7.11(2) “d” and “e”;
- e. Subrules 7.12(2) to 7.12(4);
- f. Rule 701—7.13(17A);
- g. Rule 701—7.14(17A);
- h. Rule 701—7.15(17A);
- i. Rule 701—7.16(17A);
- j. Subrule 7.17(1); subrules 7.17(3) through 7.17(7); subrule 7.17(8), except paragraph 7.17(8) “b” related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.17(9), 7.17(10), and 7.17(14);
- k. Rule 701—7.18(17A);
- l. Rule 701—7.19(17A);
- m. Rule 701—7.20(17A);
- n. Rule 701—7.21(17A); and
- o. Rule 701—7.22(17A).

7.37(3) Presiding officer. The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.37(2) 7.37(4) Contents of the appeal. The appeal shall contain the following in separate numbered paragraphs:

- a. A statement of the department action giving rise to the appeal.
- b. The date of the department action giving rise to the appeal.
- c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
- d. Reference to the particular statutes, rules, or agreement terms, if known.
- e. References to and copies of any documents or other evidence relevant to the appeal.
- f. Any other matters deemed relevant to the appeal.
- g. A statement setting forth the relief sought.
- h. The signature, mailing address, and telephone number of the person or that person’s representative.

7.37(3) 7.37(5) Burden of proof. The burden of proof is on the party challenging the director’s decision under 701—subrule 72.15(4) or 72.16(3).

This rule is intended to implement Iowa Code section 441.6(3) and chapter 17A.

**ARC 5884C**

## REVENUE DEPARTMENT[701]

### Notice of Intended Action

#### Proposing rule making related to nonresident and part-year resident credit and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 422.68.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 422.5.

REVENUE DEPARTMENT[701](cont'd)

*Purpose and Summary*

This proposed rule making relates to the Iowa individual income tax credit used to apportion a nonresident's or part-year resident's income among Iowa and other jurisdictions. The primary objective of the amendments is to modify the Iowa income percentage used to calculate the credit so that the percentage is computed to the nearest ten-thousandth of a percent (i.e., four digits to the right of the decimal point) for tax years beginning on or after January 1, 2022. Under the current rules, the Iowa income percentage is computed to the nearest tenth of a percent (i.e., one digit to the right of the decimal point). This change will result in more accurate credit calculations and will create more uniformity under the Iowa income tax because corporations and other business entities apportion their income using a business activity ratio that is calculated to the nearest ten-thousandth of a percent. The amendments also make a number of changes to improve clarity and readability of the rules and to update or remove outdated language or outdated year or form references.

*Fiscal Impact*

The change to the credit calculation is expected to result in a minimal increase or decrease to General Fund revenues. The total impact is expected to be less than \$100,000 each year.

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

Michael Mertens  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306  
Phone: 515.587.0458  
Email: [michael.mertens@iowa.gov](mailto:michael.mertens@iowa.gov)

*Public Hearing*

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

September 29, 2021  
9 to 10 a.m.

Via video/conference call

Persons who wish to participate in the video/conference call should contact Michael Mertens before 4:30 p.m. on September 28, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

## REVENUE DEPARTMENT[701](cont'd)

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend rule 701—42.5(422) as follows:

**701—42.5(422) Nonresident and part-year resident credit.** For tax years beginning on or after January 1, 1982, an An individual who is a nonresident of Iowa for the entire tax year, or an individual who is an Iowa resident for a portion of the tax year, is allowed a credit against the individual's Iowa income tax liability for the Iowa income tax on the portion of the individual's income which was earned outside Iowa while the person was a nonresident of Iowa. This credit is computed on Schedule IA 126, ~~which is included in the Iowa individual income tax booklet.~~ The following subrules clarify explain how the ~~nonresident and part-year resident~~ credit is computed for taxpayers who are nonresidents of Iowa and taxpayers who are part-year residents of Iowa ~~during the tax year.~~

**42.5(1) ~~Nonresident/part-year resident credit~~ Credit calculation for nonresidents of Iowa.**

*a.* ~~A~~ Prior to the calculation of the nonresident credit, a nonresident of Iowa shall ~~complete the Iowa individual return in the same way an Iowa resident completes the form by reporting the individual's total net income, including income earned outside Iowa, on the front of the IA 1040 return form. A nonresident individual is allowed the same deduction for federal income tax and the same itemized deductions as an Iowa resident taxpayer with identical deductions for these expenditures compute taxable income in the same manner as a full-year Iowa resident. Thus, a nonresident with a taxable income of \$40,000 would have the same initial Iowa income tax liability as a full-year Iowa resident taxpayer with a taxable income of \$40,000 with the same taxable income before the nonresident/part-year resident credit is computed.~~

*b.* ~~The nonresident/part-year resident credit is computed on Schedule IA 126. The lines referred to in this subrule are from Schedule IA 126 and Form IA 1040 for the 2008 tax year. Similar lines on the schedule and form may apply for subsequent tax years. The individual's Iowa source net income from lines 1 through 25 of the schedule is totaled on line 26 of the schedule. If the nonresident's Iowa source net income is less than \$1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa income tax return for the tax year. However, if the Iowa source net income amount is \$1,000 or more, the Iowa source net income is then divided by the person's all source net income on line 27 of Schedule IA 126 to determine the percentage of the Iowa net income to all source net income by dividing the taxpayer's Iowa source net income by the taxpayer's total net income. See 701—Chapter 40 to determine a nonresident's Iowa source net income and total net income. This Iowa income percentage, which is rounded to the nearest tenth of a percent, is inserted on line 28 of the schedule, and this (e.g., 1.2 percent) for tax years beginning before January 1, 2022, and to the nearest ten-thousandth of a percent (e.g., 1.2345 percent) for tax years beginning on or after January 1, 2022. The Iowa income percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage of the, which represents the percentage of the individual's total income which was earned outside Iowa. The nonresident/part-year resident credit percentage is entered on line 29 of Schedule IA 126. The Iowa income tax on total income from line 43 of the IA 1040 is entered on line 30 of Schedule IA 126. The total of nonrefundable credits from line 49 of the IA 1040 is then shown on line 31 of Schedule IA 126. The amount on line 31 is subtracted from the amount on line 30, which results in the Iowa total tax after nonrefundable credits, which is entered on line 32. This Iowa tax after credits amount is multiplied by the nonresident/part-year resident credit percentage from line 29 net Iowa tax to compute~~

## REVENUE DEPARTMENT[701](cont'd)

the nonresident/~~part-year resident~~ credit. ~~The amount of the credit is inserted on line 33 of Schedule IA 126 and on line 51 of the IA 1040. For purposes of this subrule, "net Iowa tax" means the Iowa regular income tax after reduction for the nonrefundable credits provided in Iowa Code section 422.12.~~

~~EXAMPLE A- 1:~~ EXAMPLE A- 1: A single resident of Nebraska had ~~Iowa source~~ Iowa source net income of \$15,000 in ~~2008~~ 2022 from wages earned from employment in Iowa. The rest of this person's income was attributable to sources outside Iowa. This nonresident of Iowa had ~~an all-source~~ a total net income of \$40,000 and a taxable income of \$30,000 due to ~~a federal tax deduction of \$7,000 and itemized deductions of \$3,000~~ allowable deductions. The Iowa income percentage is computed by dividing the Iowa source net income of \$15,000 by the taxpayer's ~~all-source~~ total net income of \$40,000, which results in a percentage of ~~37.5~~ 37.5000. This percentage is subtracted from 100 percent, which leaves a nonresident/~~part-year resident~~ credit percentage of ~~62.5~~ 62.5000.

The Iowa tax ~~from line 43 of the IA 1040~~ before reduction for the nonrefundable credits under Iowa Code section 422.12 is \$1,508. ~~The total nonrefundable credit from line 49 is~~ The individual is allowed an exemption credit under Iowa Code section 422.12 of \$40, which leaves a tax amount of \$1,468 ~~when the credit is subtracted from \$1,508 (\$1,508 - \$40)~~. When \$1,468 is multiplied by the nonresident/~~part-year resident~~ credit percentage of ~~62.5~~ 62.5000, a nonresident credit of \$918 is computed ~~which is entered on line 33 of Schedule IA 126 as well as on line 51 of the IA 1040 for 2008.~~

~~EXAMPLE B- 2:~~ EXAMPLE B- 2: A California resident, who was married, had \$20,000 of Iowa source net income in ~~2008~~ 2022 from an Iowa farm. This individual had an additional \$80,000 in net income that was attributable to sources outside Iowa, but the individual's spouse had no income. The taxpayers had ~~paid \$18,000 in federal income tax in 2008 and had itemized deductions of \$12,000 in 2008~~ a total net income of \$100,000 and a taxable income of \$70,000 due to allowable deductions.

~~The taxpayers' taxable income on their joint Iowa return was \$70,000.~~ The taxpayers had an Iowa income tax liability of \$4,583 after application of the personal exemption credits of \$80 under Iowa Code section 422.12. The taxpayers had an Iowa source net income of \$20,000 and ~~an all-source~~ a total net income of \$100,000. Therefore, the Iowa income percentage was ~~20~~ 20.0000. Subtracting the Iowa income percentage of 20 percent from 100 percent leaves a nonresident/~~part-year resident~~ credit percentage of ~~80~~ 80.0000.

When the Iowa income tax liability of \$4,583 is multiplied by 80 percent, this results in a nonresident/~~part-year resident~~ credit of \$3,666. ~~This credit amount is entered on line 33 of the Schedule IA 126 and on line 51 of Form IA 1040.~~

#### **42.5(2) Nonresident/part-year resident credit** *Credit calculation for part-year residents of Iowa.*

*a.* ~~An~~ Prior to the calculation of the part-year resident credit, an individual who is a resident of Iowa for part of the tax year shall ~~complete the front of the IA 1040 income tax return form as a resident taxpayer by showing the taxpayer's total income, including income earned outside Iowa, on the front of the IA 1040 return form.~~ A part-year resident of Iowa is allowed the same federal tax deduction and itemized deductions as a resident taxpayer who has paid the same amount of federal income tax and has paid for the same deductions that can be claimed on Schedule A in the tax year compute taxable income in the same manner as a full-year Iowa resident. Therefore, a part-year resident would have the same initial Iowa income tax liability as ~~an a full-year~~ a full-year Iowa resident with the same taxable income before computation of the nonresident/~~part-year resident~~ credit.

*b.* The nonresident/~~part-year resident~~ credit for a part-year resident is computed on Schedule IA 126. ~~The lines referred to in this subrule are from the IA 1040 income tax return form and the Schedule IA 126 for 2008. Similar lines may apply for tax years after 2008. The individual's Iowa source income is totaled on line 26 of Schedule IA 126 and includes by adding all the individual's net income received while the taxpayer was a resident of Iowa and all the Iowa source net income received during the period of the tax year when the individual was a resident of a state other than Iowa. Iowa source income includes, but is not limited to, wages earned in Iowa while a resident of another state as well as income from Iowa farms and other Iowa businesses that was earned during the portion of the year that the taxpayer was a nonresident of Iowa. In the case of interest from a part-year resident's account at an Iowa financial institution, only interest earned during the period of the individual's Iowa residence is Iowa source income unless the account is for an Iowa business. If the part-year resident's account at a~~



## REVENUE DEPARTMENT[701](cont'd)

financial institution is for an Iowa business, all interest earned in the year by the part-year resident from the account is taxable to Iowa.

Income earned outside Iowa by the part-year resident during the portion of the year the individual was an Iowa resident is taxable to Iowa and is part of the individual's Iowa source income. To compute the nonresident/part-year resident credit for a part-year resident, the taxpayer's Iowa source income on Schedule IA 126 is totaled. If the Iowa source income is less than \$1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa return. If the Iowa source income is \$1,000 or more, it is divided by the taxpayer's all source net income on line 27 of Schedule IA 126 nonresident of Iowa, and dividing that sum by the taxpayer's total net income. See 701—Chapter 40 to determine a part-year resident's Iowa source net income and total net income. The percentage computed by this procedure is the Iowa income percentage and is entered on line 28 of the Schedule IA 126. The This Iowa income percentage, which is rounded to the nearest tenth of a percent; (e.g., 1.2 percent) for tax years beginning before January 1, 2022, and to the nearest ten-thousandth of a percent (e.g., 1.2345 percent) for tax years beginning on or after January 1, 2022. The Iowa income percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage, which is entered on line 29 of Schedule IA 126. The Iowa tax from line 43 of the IA 1040 is then shown on line 30 of Schedule IA 126. The total of the Iowa nonrefundable credits from line 49 of the IA 1040 is entered on line 31 of Schedule IA 126 and is subtracted from the Iowa tax amount on line 30. The tax after credits amount on line 32 is next multiplied by the nonresident/part-year resident credit percentage from line 28. The amount calculated from this procedure is the nonresident/part-year resident credit, which is shown on line 33 of Schedule IA 126 and on line 51 of Form IA 1040 represents the percentage of the individual's total income which was earned outside of Iowa while a nonresident. The part-year resident credit percentage is multiplied by the net Iowa tax to compute the part-year resident credit. For purposes of this subrule, "net Iowa tax" means the Iowa regular income tax after reduction for the nonrefundable credits provided in Iowa Code section 422.12.

EXAMPLE A- 3: A single individual was a resident of Nebraska for the first half of ~~2008~~ 2022 and moved to Iowa on July 1, ~~2008~~ 2022, to accept a job in Des Moines. This individual earned \$20,000 from wages, \$200 from interest, and \$4,000 from a ranch in Nebraska from January 1, ~~2008~~ 2022, through June 30, ~~2008~~ 2022. In the last second half of ~~2008~~ 2022, this person had wages of \$30,000, interest income of \$300, and \$4,000 from the Nebraska ranch. This part-year resident had ~~federal income tax paid in 2008 of \$11,000 and had itemized deductions of \$3,000~~ \$14,000 of allowable deductions.

The part-year resident's all source total net income was \$58,500 and the Iowa source net income was \$34,300, which includes the Iowa wages, the Nebraska ranch income of \$4,000 earned during the individual's period of Iowa residence, as well as the interest income of \$300 earned during that time of the tax year. The Iowa taxable income for the part-year resident for ~~2008~~ 2022 was \$44,500, which included the federal income tax deduction of \$11,000 and itemized deductions of \$3,000 due to allowable deductions of \$14,000 (\$58,500 - \$14,000). The individual's Iowa income percentage was ~~58.6~~ 58.6325, which was determined by dividing the Iowa source income of \$34,300 by the all source total income of \$58,500. Subtracting the Iowa income percentage of ~~58.6~~ 58.6325 from 100 percent results in a nonresident/part-year resident credit percentage of 41.4 41.3675. The Iowa tax on total income was \$2,529, which was reduced to \$2,489 after subtraction of the personal exemption credit of \$40 under Iowa Code section 422.12.

When \$2,489 is multiplied by the nonresident/part-year resident percentage of 41.4 41.3675, a nonresident/part-year resident credit of \$1,030 is computed for this part-year resident.

EXAMPLE B- 4: A single individual moved from Minnesota to Iowa on July 1, ~~2008~~ 2022. This person ~~had received~~ earned \$5,000 in income from an Iowa farm in ~~March~~ the first half of the tax year and another \$10,000 from this farm in ~~September of 2008~~ the second half of the tax year. This person had \$10,000 in wages from employment in Minnesota in the first half of the year and another \$15,000 in wages from employment in Iowa in the ~~last second~~ the tax year. This person had \$2,000 in interest from a ~~Minnesota~~ bank in the first half of the year and \$2,000 in interest from ~~an Iowa~~ a bank in the ~~last six months of 2008~~ second half of the tax year. This taxpayer had \$8,000 in federal income tax

REVENUE DEPARTMENT[701](cont'd)

~~withheld from wages in 2008 and claimed the standard deduction on both the Iowa and federal income tax returns.~~

The part-year resident's ~~all source total net~~ income was \$44,000 and the Iowa source net income was \$32,000, which consisted of \$15,000 in wages, \$2,000 in interest income, and \$15,000 in income from the Iowa farm. Since the farm was in Iowa, ~~the all farm income received in the first half of 2008~~, including the income received while the individual was not a resident of Iowa, was taxable to Iowa as well as ~~the farm income received while the individual was an Iowa resident~~. The individual's Iowa taxable income was \$34,250, which was computed after subtracting ~~the federal income tax deduction of \$8,000 and a standard deduction of \$1,750~~ \$9,750 in allowable deductions (\$44,000 - \$9,750). The taxpayer's Iowa income tax liability was \$1,757 after subtraction of a personal exemption credit of \$40 under Iowa Code section 422.12.

The taxpayer's Iowa income percentage was ~~72.7~~ 72.7273, which was computed by dividing the Iowa source net income of \$32,000 by the ~~all source total net~~ income of \$44,000. The ~~nonresident/part-year resident credit percentage was 27.3~~ 27.2727, which was arrived at by subtracting the Iowa income percentage of ~~72.7~~ 72.7273 from 100 percent. The taxpayer's ~~nonresident/part-year resident credit is \$480~~ \$479. This was determined by multiplying the Iowa income tax liability after personal exemption credit amount of \$1,757 by the ~~nonresident/part-year resident percentage of 27.3~~ 27.2727.

This rule is intended to implement Iowa Code section 422.5.

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## REVENUE DEPARTMENT[701]

### Notice of Intended Action

#### Proposing rule making related to out-of-state tax credit and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 42, "Adjustments to Computed Tax and Tax Credits," and Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 422.68.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2641.

#### *Purpose and Summary*

This proposed rule making relates to the Iowa out-of-state tax credit against regular Iowa income tax for income tax paid to other jurisdictions on a resident individual's or fiduciary's income that is also taxed by Iowa.

The primary purpose of these amendments is to implement 2020 Iowa Acts, House File 2641, division XVII. That legislation modified the out-of-state tax credit to allow a resident partner, shareholder, or beneficiary to claim certain entity-level income taxes owed and paid by a partnership, S corporation, estate, or trust (i.e., a "pass-through entity") in another jurisdiction in the calculation of the resident's out-of-state tax credit. That legislation also allowed a resident shareholder of a regulated investment company (e.g., mutual fund) to claim certain entity-level foreign income taxes owed and paid by the regulated investment company in the calculation of the resident's out-of-state tax credit.

In general, the amendments provide that resident individuals and fiduciaries who are direct or indirect members of a pass-through entity may include in the calculation of the out-of-state tax credit their pro rata share of entity-level income tax owed and paid by such pass-through entity in another qualifying jurisdiction if the income tax would otherwise qualify for inclusion in the calculation of the out-of-state

## REVENUE DEPARTMENT[701](cont'd)

tax credit, had it been imposed on and paid by the resident, and if the pass-through entity provides certain statements to the resident and to other intermediate pass-through entities in the case of indirect ownership. The amendments also provide rules for regulated investment companies and their resident shareholders.

The amendments also significantly update, rewrite, or expand other parts of the out-of-state tax credit rule not directly impacted by 2020 Iowa Acts, House File 2641, in order to provide more guidance to taxpayers on the application of the credit. These amendments provide relevant definitions and describe the general application of the credit, the calculation of the credit including the maximum credit calculation, other limitations and considerations for the credit, and supporting documentation required for the taxpayer to prove eligibility for the credit and credit amount.

Finally, the amendments modify the Iowa income percentage used to calculate the maximum credit so that it is computed to the nearest ten-thousandth of a percent (i.e., four digits to the right of the decimal point) for tax years beginning on or after January 1, 2022. Under current rules, the Iowa income percentage is computed to the nearest tenth of a percent (i.e., one digit to the right of the decimal point). This change will result in more accurate credit calculations and will create more uniformity under the Iowa income tax because corporations and other business entities apportion their income using a business activity ratio that is calculated to the nearest ten-thousandth of a percent.

*Fiscal Impact*

Modifying the maximum credit calculation to compute to the nearest ten-thousandth of a percent instead of the nearest tenth of a percent is expected to result in a minimal increase or decrease to General Fund revenues. The total impact is expected to be less than \$100,000 each year. Apart from that change, this rule making has no fiscal impact to the State of Iowa beyond the legislation it is intended to implement. The final fiscal note for 2020 Iowa Acts, House File 2641, division XVII, estimated that the out-of-state tax credit changes enacted in that legislation will reduce General Fund revenues in fiscal years 2021 through 2025 by \$4.2 million, \$4.2 million, \$4.3 million, \$4.3 million, and \$4.4 million, respectively.

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

Michael Mertens  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306  
Phone: 515.587.0458  
Email: [michael.mertens@iowa.gov](mailto:michael.mertens@iowa.gov)

REVENUE DEPARTMENT[701](cont'd)

*Public Hearing*

If requested, a public hearing will be held as follows:

September 29, 2021  
11 a.m. to 12 noon

Via video/conference call

Persons who wish to participate in the video/conference call should contact Michael Mertens before 4:30 p.m. on September 28, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Rescind rule 701—42.6(422) and adopt the following new rule in lieu thereof:

**701—42.6(422) Out-of-state tax credits.**

**42.6(1) Definitions.** For purposes of this rule:

“*Foreign country*” means any country, other than the United States, and any political subdivision of that country.

“*Income tax*” means any direct tax imposed upon a taxpayer and measured by the taxpayer's income for a specified period of time. The out-of-state jurisdiction's characterization of the tax is not controlling in the department's determination of whether a tax is an income tax. Fees, penalty, and interest paid in connection with an income tax do not qualify. For purposes of this rule, the term “income tax” does not include a minimum tax imposed on preference items.

“*Pass-through entity*” means an entity taxed as a partnership for federal tax purposes, an S corporation, an estate, or a trust other than grantor trusts.

“*Regulated investment company*” means any domestic corporation that meets the requirements of Section 851 of the Internal Revenue Code and that has made a valid election under Section 853 of the Internal Revenue Code to have its shareholders' pro rata share of entity-level income tax paid by the electing corporation be deemed to have been paid by its shareholders. The term “regulated investment company” includes, but is not limited to, a mutual fund.

“*State*” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any political subdivision thereof.

“*Tiered owner*” means an owner or beneficiary of a pass-through entity that is itself a pass-through entity.

**42.6(2) General application.**

*a. Residents.* Iowa residents, including part-year residents, are allowed an out-of-state tax credit against the resident's Iowa income tax liability for income taxes owed and paid by the resident to another state or foreign country on income for which all of the following are true:

(1) The income was derived from sources within the other state or foreign country. In determining whether income is derived from sources within that other state or foreign country, Iowa statutes and rules on the sourcing of a nonresident's income shall govern.

## REVENUE DEPARTMENT[701](cont'd)

(2) The income is subject to Iowa income tax. Income tax imposed by another state or foreign country on income that is not subject to Iowa income tax does not qualify for the credit.

(3) The income was earned while the taxpayer was an Iowa resident and is included on the resident's Iowa income tax return. The credit is allowable only if the taxpayer files an Iowa income tax return as a resident or part-year resident.

*b. Nonresidents.* Nonresidents of Iowa shall not claim the out-of-state tax credit.

**42.6(3) Rule for pass-through entities.**

*a. Direct owners.*

(1) If the Iowa resident is a direct partner, shareholder, or beneficiary of a pass-through entity that owed and paid entity-level income tax, or income tax on a composite return basis, to another state or foreign country on income derived from sources in that state or foreign country, the resident is allowed to treat the resident's pro rata share of that income tax as paid by the resident for purposes of the out-of-state tax credit, provided the resident's pro rata share of that income flows through to the resident and meets the requirements of paragraph 42.6(2) "a."

(2) The entity-level income tax or composite income tax paid to the other state or foreign country is the net state or foreign income tax actually owed and paid for the tax year on income taxed by that state or foreign country, as properly computed on the pass-through entity's income tax return or composite return (not a withholding return) in the other state or foreign country after reduction for all nonrefundable credits provided to the pass-through entity. Paragraph 42.6(6) "b" provides an additional limitation if the Iowa resident receives a refundable credit in the other state or foreign country for the Iowa resident's share of the income tax owed and paid by the pass-through entity. The resident's pro rata share of entity-level income tax or composite income tax paid by the pass-through entity shall be in the same proportion as the resident's pro rata share of income derived from sources in that state or foreign country, as properly reported on the entity's return in the other state or foreign country.

(3) To qualify, the pass-through entity must provide to the resident a statement identifying the jurisdiction and the resident's pro rata share of the income, income tax liability, and income tax paid in that jurisdiction.

EXAMPLE 1: Partnership W earns \$2,000 of income in state A, which imposes an entity-level income tax directly on the partnership. Partnership W pays \$100 of income tax to state A. Partnership W is owned 50 percent by Partnership X and 50 percent by individual Y, a resident of Iowa. Individual Y receives a statement from Partnership W showing that Partnership W earned \$2,000 of income and paid \$100 of entity-level income tax to state A and that individual Y's pro rata share of that income and entity-level income tax is \$1,000 and \$50, respectively. If that \$1,000 of income from Partnership W is subject to Iowa income tax and included on individual Y's Iowa income tax return as earned while an Iowa resident, individual Y will be entitled to treat the \$50 of income tax paid by Partnership W to state A as paid by individual Y in the computation of Y's out-of-state tax credit.

*b. Indirect owners.*

(1) If the Iowa resident is an indirect partner, shareholder, or beneficiary of a pass-through entity that paid entity-level income tax, or income tax on a composite return basis, to another state or foreign country on income derived from sources in that state or foreign country, the resident is allowed to treat the resident's pro rata share of that income tax as paid by the resident for purposes of the out-of-state tax credit if both of the following requirements are satisfied:

1. The tiered owner reduces the amount of the paying pass-through entity's income tax that the tiered owner reports to its partners, shareholders, or beneficiaries by the amount of any credit available from that other state or foreign country to the tiered owner for the tax liability of the paying pass-through entity.

2. The resident's pro rata share of that income flows through one or more tiered owners to the resident and meets the requirements of paragraph 42.6(2) "a."

(2) The entity-level income tax or composite income tax paid to the other state or foreign country is the net state or foreign income tax actually owed and paid for the tax year on income taxed by that state or foreign country, as properly computed on the pass-through entity's income tax return or composite tax return (not a withholding return) in the other state or foreign country, after reduction for all nonrefundable

## REVENUE DEPARTMENT[701](cont'd)

credits provided to the pass-through entity, and after further reduction by a tiered owner for any credits provided by that other state or foreign country to the tiered owner for the tax liability of the paying pass-through entity. Paragraph 42.6(6) "b" provides an additional limitation if the Iowa resident receives a refundable credit in the other state or foreign country for the Iowa resident's share of the income tax owed and paid by a pass-through entity. The resident's pro rata share of entity-level income tax or composite income tax paid by the pass-through entity shall be in the same proportion as the resident's pro rata share of income derived from sources in that state or foreign country, as properly reported on the entity's return in the other state or foreign country, after flowing through one or more tiered pass-through entities to the resident.

(3) To qualify, the paying pass-through entity must provide to the tiered owner a statement identifying the jurisdiction and the tiered owner's pro rata share of the income, income tax liability, and income tax paid in that jurisdiction. The tiered owner, in turn, must provide the indirect partner, shareholder, or beneficiary with a statement that includes all of the following information:

1. The jurisdiction to which income tax was paid; the paying pass-through entity and any other tiered owner through which the income flowed; and the indirect partner's, shareholder's, or beneficiary's pro rata share of the paying pass-through entity's income.

2. The indirect partner's, shareholder's, or beneficiary's pro rata share of the paying pass-through entity's income tax liability and income tax paid to the other jurisdiction after reduction for any credit available to the tiered owner for the tax liability of the paying pass-through entity. If no such credit was provided to the tiered owner, the statement must include a declaration from the tiered owner to that effect.

EXAMPLE 2: Assume the same facts as Example 1. Partnership X (a tiered owner) receives a statement from Partnership W which shows that W earned \$2,000 of income in state A and paid \$100 of entity-level income tax to state A and that Partnership X's pro rata share of that income and entity-level income tax is \$1,000 and \$50, respectively. Partnership X is not eligible for a credit in state A for its share of the entity-level income tax paid by Partnership W. Partnership X is owned 50 percent by individual Z, a resident of Iowa. Individual Z then receives a statement from Partnership X indicating that Partnership X was not eligible for a credit for the tax paid by Partnership W, that Z's pro rata share of Partnership W's income taxed by state A is \$500, and that Z's pro rata share of Partnership W's income tax imposed by and paid to state A is \$25. If that \$500 of income from Partnership W flows through Partnership X to individual Z, is subject to Iowa income tax, and is included on Z's Iowa income tax return as earned while an Iowa resident, Z will be entitled to treat the \$25 of income tax paid by Partnership W to state A as paid by Z in the computation of Z's out-of-state tax credit.

EXAMPLE 3: Assume the same facts as Example 2, except that Partnership X (a tiered owner) is eligible for a \$50 credit in state A for its share of the entity-level income tax paid by Partnership W to state A. Partnership X must reduce its share of Partnership W's entity-level income tax (\$50) that it can report to its partners by the amount of the credit provided by state A for that tax (\$50). Therefore, Partnership X cannot pass Partnership W's entity-level income tax through to individual Z, and Z cannot treat a pro rata share of Partnership W's entity-level income tax as paid by Z. However, if Partnership X is itself subject to and pays an entity-level income tax in state A, it may be allowed to pass through, and individual Z may be allowed to treat as paid by Z a pro rata share of the entity-level income tax paid by Partnership X in state A in the same manner as described in paragraph 42.6(3) "a."

**42.6(4) Rule for regulated investment companies.** If the Iowa resident is a shareholder of a regulated investment company making an election under Section 853 of the Internal Revenue Code, the resident shareholder is allowed an out-of-state tax credit for the resident shareholder's pro rata share of entity-level income tax paid to a foreign country or possession of the United States by the regulated investment company and treated as paid by the resident shareholder under Section 853 of the Internal Revenue Code if the income taxed by the foreign country or possession of the United States is also subject to tax in Iowa and is included on the resident shareholder's Iowa income tax return as earned while an Iowa resident. To qualify, the regulated investment company must provide to the resident shareholder a statement identifying the jurisdiction and the resident shareholder's pro rata share of the income, income tax liability, and income tax paid in that jurisdiction.

## REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 4: Individual D is a resident of Iowa and a shareholder of a mutual fund that paid income tax to foreign jurisdictions and that made an election under Section 853 of the Internal Revenue Code. On the annual, year-end tax statement, the mutual fund reported \$2,000 of income to individual D and \$10 of foreign tax paid with respect to D's income. If that \$2,000 of income from the mutual fund is subject to Iowa income tax and included on individual D's Iowa income tax return as earned while an Iowa resident, D will be entitled to treat the \$10 of income tax paid by the mutual fund to the foreign jurisdictions as paid by D in the computation of D's out-of-state tax credit.

**42.6(5) Computing the out-of-state tax credit—preliminary calculation.**

*a. Required form.* The tax credit must be computed on the IA 130, Iowa Out-of-State Tax Credit Schedule. Married taxpayers filing separate Iowa returns, or filing separately on a combined Iowa return, must complete a separate IA 130 for each spouse.

*b. Computed separately by jurisdiction.* The tax credit must be computed separately for each out-of-state jurisdiction. A separate IA 130 is required for each out-of-state jurisdiction. However, separate computations and separate IA 130s are not required for foreign income taxes paid by a regulated investment company.

*c. Computed separately by income tax type.* The tax credit must be computed separately for regular income tax and special lump-sum distribution tax. If the taxpayer was assessed a special tax on a lump-sum distribution by another state or foreign country, compute the tax credit separately under these rules using only the lump-sum distribution and lump-sum distribution tax imposed in Iowa and imposed in the other state or foreign country. A lump-sum distribution taxed by another state or foreign country shall not be included as part of gross income. A minimum tax or income tax imposed on preference items derived from sources in another state or foreign country are not eligible for the out-of-state tax credit under this rule. For rules on the out-of-state tax credit with respect to minimum tax paid, see rule 701—42.7(422).

*d. Full-year Iowa residents.* For a taxpayer who is an Iowa resident for the entire tax year, the income tax paid to the other state or foreign country is the sum of the following amounts:

(1) Income tax treated as paid by the resident under subrules 42.6(3) and 42.6(4). The income tax shall be treated as paid by the resident for the tax year that the out-of-state pass-through income is considered taxable Iowa income to the resident.

(2) The net state or foreign income tax actually owed and paid by the resident for the tax year on income qualifying under paragraph 42.6(2) "a," as properly computed on the resident's income tax return in the other state or foreign country, less all nonrefundable credits provided to the resident, and less any refundable credits provided to the resident for entity-level income taxes or composite income taxes paid by a pass-through entity. See Example 5 below.

*e. Part-year Iowa residents.* A taxpayer who is a part-year resident of Iowa may only claim the out-of-state tax credit against the taxpayer's Iowa income tax liability for income tax paid to another state or foreign country on income qualifying under paragraph 42.6(2) "a" that is earned during the period of the tax year that the taxpayer was an Iowa resident. The income tax paid to the other state or foreign country is the sum of the following amounts:

(1) Income tax treated as paid by the resident under subrules 42.6(3) and 42.6(4) on income earned during the period of the tax year that the taxpayer was an Iowa resident. The income tax shall be treated as paid by the resident for the tax year that the out-of-state pass-through income is considered taxable Iowa income.

(2) The net state or foreign income tax actually owed and paid by the taxpayer for the tax year on income qualifying under paragraph 42.6(2) "a" that was earned during the period of the tax year that the taxpayer was an Iowa resident, as properly computed on the resident's income tax return in the other state or foreign country, less all nonrefundable credits provided to the resident, and less any refundable credits provided to the resident for entity-level income taxes or composite income taxes paid by a pass-through entity. See Example 6 below.

**42.6(6) Computing the out-of-state tax credit—additional limitations and considerations.**

*a. Maximum credit.* The out-of-state tax credit cannot exceed the amount of Iowa income tax that would have been imposed on the same income which was taxed by the other state or foreign country. The

## REVENUE DEPARTMENT[701](cont'd)

maximum out-of-state tax credit must be computed according to the formula in this paragraph. If gross income is subject to tax in a jurisdiction at more than one level (i.e., at the pass-through entity level and at the individual level), it shall only be counted once for purposes of computing the maximum credit.

(1) Full-year Iowa residents. Gross income qualifying under paragraph 42.6(2) “a” and taxed by the other state or foreign country shall be divided by the total gross income of the Iowa resident taxpayer. This quotient, multiplied by the net Iowa tax as determined on the total gross income of the taxpayer as if entirely earned in Iowa, shall be the maximum tax credit. For tax years beginning before January 1, 2022, this quotient shall be computed as a percentage rounded to the nearest tenth of a percent (e.g., 1.2 percent). For tax years beginning on or after January 1, 2022, this quotient shall be computed as a percentage rounded to the nearest ten-thousandth of a percent (e.g., 1.2345 percent). For purposes of this subparagraph, “net Iowa tax” means the Iowa regular income tax after reduction for the nonrefundable credits provided in Iowa Code section 422.12.

EXAMPLE 5: Taxpayer A was an Iowa resident for the entire tax year but commuted across the border and worked in state Z. Taxpayer A had wages of \$30,000 in state Z. Taxpayer A filed an income tax return in state Z reporting the \$30,000 of wages and had state Z income tax liability of \$500, which is A’s preliminary out-of-state credit under subrule 42.6(5). Taxpayer A also had income of \$10,000 from rental of an Iowa farm and another \$10,000 in interest income from a personal savings account. Taxpayer A’s total gross income for the tax year was \$50,000. Thus, 60 percent ( $\$30,000 \div \$50,000$ ) of Taxpayer A’s income was earned in state Z. Taxpayer A’s net Iowa tax on total gross income was \$817, which results in a maximum out-of-state credit of \$490 ( $\$817 \times .60$ ). Therefore, the out-of-state tax credit allowed is \$490, because the maximum credit of \$490 was less than the preliminary credit of \$500.

(2) Part-year Iowa residents. Gross income qualifying under paragraph 42.6(2) “a” that was earned during the period of the tax year that the taxpayer was an Iowa resident and taxed by the other state or foreign country shall be divided by the total gross income of the Iowa taxpayer earned while an Iowa resident or otherwise sourced to Iowa. This quotient, multiplied by the net Iowa tax as determined on the total gross income of the taxpayer as if entirely earned in Iowa, shall be the maximum tax credit. For tax years beginning before January 1, 2022, this quotient shall be computed as a percentage rounded to the nearest tenth of a percent (e.g., 1.2 percent). For tax years beginning on or after January 1, 2022, this quotient shall be computed as a percentage rounded to the nearest ten-thousandth of a percent (e.g., 1.2345 percent). For purposes of this subparagraph, “net Iowa tax” means the Iowa regular income tax after reduction for the nonrefundable credits provided in Iowa Code section 422.12 and after reduction for the nonresident and part-year resident credit in rule 701—42.5(422).

EXAMPLE 6: Taxpayer B was a part-year Iowa resident for the tax year. Taxpayer B resided in state Z for the first six months of the year and moved to Iowa on July 1 but continued to commute across the border and work in state Z. Taxpayer B was employed in state Z for the entire year and had wages of \$30,000 in state Z. Taxpayer B filed an income tax return in state Z reporting the \$30,000 of wages and had state Z income tax liability of \$1,000. The amount of gross income taxed by state Z while taxpayer B was an Iowa resident was \$15,000 (50 percent of the \$30,000 of state Z wages). Since 50 percent of the income earned in state Z was earned while taxpayer B was a resident of Iowa, the preliminary out-of-state credit under subrule 42.6(5) was \$500 ( $\$1,000 \times .50$ ). Taxpayer B also had \$10,000 in farm rental income from farmland located in Iowa. Taxpayer B’s gross income earned while an Iowa resident and otherwise sourced to Iowa was \$25,000 ( $\$15,000$  of wages +  $\$10,000$  farm rental income). Thus, 60 percent of the gross income was earned in state Z while an Iowa resident ( $\$15,000 \div \$25,000$ ). Taxpayer B’s net Iowa tax on total gross income was \$1,094, which results in a maximum out-of-state credit of \$656 ( $\$1,094 \times .60$ ). Therefore, the out-of-state tax credit allowed is \$500, because the preliminary credit of \$500 was less than the maximum credit of \$656.

*b. Refund attributable to credit for entity-level income tax or composite income tax paid by a pass-through entity.* If the resident claims a refundable tax credit in another state or foreign country for entity-level income tax or composite income tax paid by a pass-through entity, that refundable credit reduces the resident’s income tax liability in that state or foreign country as described in subparagraphs 42.6(5) “d”(2) and 42.6(5) “e”(2). However, any refund attributable to that refundable credit also reduces the amount of income tax treated as paid by the resident under subrules 42.6(3) and 42.6(4). In computing



## REVENUE DEPARTMENT[701](cont'd)

this credit reduction, the refundable credit for entity-level income tax or composite income tax paid by a pass-through entity shall be applied on the other state's or foreign country's income tax return after all nonrefundable credits, but before any other refundable credit. The credit reduction is required whether the resident receives the refund or applies the amount to a different tax liability or tax period.

EXAMPLE 7: Individual B, a resident of Iowa and a 50 percent owner of Partnership P doing business in state Z, receives a statement from Partnership P in accordance with subparagraph 42.6(3) "a"(3) showing that P earned income in and paid entity-level income tax to state Z and individual B's pro rata share of that income and that entity-level income tax is \$5,000 and \$250, respectively. However, individual B also receives a \$250 refundable credit from state Z for B's share of the entity-level income tax paid by Partnership P. Individual B files an individual income tax return in state Z to report B's pro rata share of income from Partnership P and calculates a tentative income tax of \$200, before application of the refundable credit. Individual B applies the refundable tax credit against that tentative income tax and calculates an income tax liability of \$0 and a refund of \$50 from state Z. Therefore, individual B must reduce the \$250 of entity-level income tax treated as paid by B under subrule 42.6(3) to \$200 (\$250 - \$50). Individual B files an Iowa income tax return which includes the \$5,000 of income from Partnership P earned in state Z and calculates a preliminary out-of-state tax credit under subrule 42.6(5) of \$200.

*c. Taxpayers claiming the S corporation apportionment tax credit.* A taxpayer who is a shareholder of an S corporation and who has income that was apportioned outside of Iowa through a claim to the S corporation apportionment tax credit is not permitted to claim the out-of-state tax credit on the same S corporation income. Income tax paid by the resident or a pass-through entity with respect to the S corporation income shall not be included in the resident's preliminary credit calculation in paragraph 42.6(5) "d" or "e." Gross income from the S corporation shall not be included in the resident's maximum credit calculation in paragraph 42.6(6) "a."

*d. Married taxpayers using a different filing status in the other state or foreign country.* If married taxpayers use a separate filing status in the other state or foreign country, but file jointly for Iowa tax purposes, the taxpayers must combine both spouses' income and income tax paid in the other state or foreign country for purposes of computing the out-of-state tax credit. If married taxpayers file jointly in the other state or foreign country, but file separate Iowa returns, or separately on a combined Iowa return, the taxpayers must prorate the income tax paid in the other state or foreign country according to each spouse's respective gross income earned in that state or foreign country.

*e. Tax on income that does not flow through to resident.* Entity-level income tax or composite income tax paid by a pass-through entity on income that does not flow through to the Iowa resident and meet the requirements of paragraph 42.6(2) "a" does not qualify for the out-of-state tax credit. For example, a LIFO recapture tax installment paid by an S corporation in another state would not qualify because that tax is measured by the income of the entity in the last tax year it was a C corporation, when such income did not flow through to the shareholders. Also, income tax paid by a trust in another state on income not distributed to the beneficiaries would not qualify because that income did not flow through to the beneficiaries. These examples are not intended to be exhaustive.

*f. Recalculating credit following adjustments in the other jurisdiction.* If the taxpayer or the taxpayer's pass-through entity amends the amount of income or income tax liability reported and paid to the other state or foreign country, either through an amended return, audit, or otherwise, the taxpayer shall file an amended Iowa return and recalculate the allowable out-of-state tax credit. Any refund must be requested by the later of three years after the due date of the return, or one year after payment of the tax, as prescribed in Iowa Code section 422.73(2) "a." Iowa law does not provide additional time to request a refund following an audit by another state or foreign country.

*g. Nonrefundable and nontransferable.* The out-of-state tax credit cannot exceed the resident's tax liability; thus, no amount is eligible to be carried forward to any future tax year. The credit may not be transferred to any other person.

**42.6(7) Claiming the out-of-state tax credit—supporting documentation.** To claim the out-of-state tax credit, the taxpayer claiming the credit must submit the following to the department with the return or upon request as indicated below:

## REVENUE DEPARTMENT[701](cont'd)

*a. Out-of-state tax return.* A copy of the income tax return filed with the other state or foreign country must be submitted. The department may further request a copy of the return which has been certified by the tax authority of that state or foreign country and showing thereon that the income tax assessed has been paid to them.

*b. Iowa income tax return.* To claim the out-of-state tax credit, a taxpayer must file an Iowa income tax return for the tax year for which the credit is claimed. A taxpayer must file an Iowa income tax return to claim the out-of-state tax credit even if the taxpayer would not otherwise have an obligation to file an Iowa income tax return for the year for which the credit is claimed.

*c. Iowa out-of-state tax credit schedule.* An IA 130, Iowa Out-of-State Tax Credit Schedule, must be submitted for the tax year for which the credit is claimed.

*d. Pass-through entity statements.* A taxpayer who is claiming an out-of-state tax credit for entity-level income tax or composite income tax paid by a pass-through entity must submit a statement from the pass-through entity that meets the requirements of subrule 42.6(3). The pass-through entity's actual income tax returns must be submitted to the department upon request. A taxpayer who is claiming an out-of-state tax credit for entity-level income tax paid by a regulated investment company must submit a statement from the regulated investment company that meets the requirements of subrule 42.6(4).

*e. Additional foreign income tax documentation.* A taxpayer who is claiming the out-of-state tax credit for income taxes paid to a foreign country must provide the department with a copy of federal Form 1116, Foreign Tax Credit, if that form was required to be submitted with the taxpayer's federal income tax return. This submission requirement does not mean that all amounts on federal Form 1116 qualify for the Iowa out-of-state tax credit. Additionally, if the income tax was paid in foreign currency, the taxpayer shall include a detailed explanation of how the taxpayer figured the conversion rate. The conversion rate is the rate of exchange in effect on the day the taxpayer paid the foreign income tax.

*f. Proof of payment.* Upon request, the taxpayer must provide the department with a photocopy, or other similar reproduction, of either:

- (1) The receipt issued by the other state or foreign country for payment of the tax, or
- (2) The canceled check (both sides) with which the tax was paid to the other state or foreign country together with a statement of the amount and kind (e.g., wage or salary income, rental income, business income) of total income on which such tax was paid.

This rule is intended to implement Iowa Code section 422.8.

ITEM 2. Amend subrule 89.8(11) as follows:

**89.8(11) Credits against the tax.**

*a.* No change.

*b. Credit for tax paid to another state or foreign country.* Iowa Code section 422.8 grants Iowa situs trusts and estates of Iowa resident decedents, which have income derived from sources in another state or foreign country, a credit against the Iowa tax for the income tax paid to the state or foreign country where the income was derived. ~~To be eligible for the credit, the income must have been includable for income tax purposes both in Iowa and the other state or foreign country. The credit allowable against the Iowa tax is limited to the lesser of: (1) the tax paid to the other state or foreign country on the income, or (2) the Iowa income tax paid on the foreign source income. The Iowa income tax paid on the foreign source income is computed by multiplying the Iowa computed tax, less the personal exemption credit, by a fraction of which the foreign source income included in the Iowa gross income is the numerator and the total Iowa gross income is the denominator. The resulting amount is the Iowa tax paid on foreign source income. Any tax paid to another state or foreign country in excess of the Iowa credit allowable is not refundable. The credit is computed in the same manner as a full-year resident under rules 701—42.6(422) and 701—42.7(422).~~ Foreign situs trusts and estates of foreign decedents are not allowed a credit against the Iowa tax for the income tax paid another state or foreign country on Iowa source income. This rule Rule 701—42.6(422) as applied to an Iowa situs trust or estate is illustrated by the following example:

## REVENUE DEPARTMENT[701](cont'd)

Decedent A died a resident of Webster City, Iowa, on February 15, 1997. Decedent A at the time of death owned income-producing property both in Iowa and the state of Missouri. For the short taxable year ending December 31, 1997, A's estate had the following income and expenses:

Interest	\$ 5,000
Dividends	7,500
Iowa farm income	20,000
Missouri farm income	10,000
Iowa gross income	\$ 42,500
Less allowable deductions	8,000
Iowa taxable income	\$ 34,500
Iowa computed tax	\$2,587.87
Less personal credit	40.00
Tax subject to credit for foreign taxes paid	\$2,547.87
<u>Tentative credit for tax paid to Missouri</u>	<u>\$ 413.00</u>
<u>Maximum credit</u>	<u>\$ 604.20</u>
<u>Less credit for tax paid Missouri</u> <u>Lesser of tentative credit or maximum credit</u>	<u>413.00</u>
Iowa tax due	\$2,134.87

A's estate paid \$413.00 income tax to the state of Missouri on the \$10,000 Missouri farm income. This is A's tentative credit.

The ~~Iowa tax~~ maximum credit on the foreign source income is \$604.20 computed as follows:

$$\frac{\text{Foreign income included in gross income } \$10,000}{\text{Total Iowa gross income } \$42,500} \times \$2,547.87^* = \$604.20$$

\*\$2,547.87 is the Iowa computed tax less the \$40.00 personal credit.

The allowable out-of-state tax credit for taxes paid the state of Missouri is \$413.00, because ~~it the~~ \$413.00 of income tax paid to Missouri (tentative credit) is less than the ~~Iowa tax paid on the Missouri income~~ maximum credit of \$604.20. If the Missouri tax paid had been greater than the ~~Iowa tax on the Missouri income~~ maximum credit, the allowable credit would have been the ~~Iowa tax on the Missouri income~~ maximum credit.

~~See 701—subrule 42.6(3) for the computation of the credit allowed Iowa resident individuals for income tax paid to another state or foreign country.~~

c. to e. No change.

**ARC 5883C**

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to deduction of credits  
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 42, "Adjustments to Computed Tax and Tax Credits," Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 422.68.

REVENUE DEPARTMENT[701](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 422.

*Purpose and Summary*

This proposed rule making updates the Department's rules that dictate the order in which Iowa income and franchise tax credits must be deducted by Iowa taxpayers. The amendments strike from the deduction list recently repealed tax credits and add newly enacted tax credits such as the Beginning Farmer Tax Credit, the Hoover Presidential Library Tax Credit, and the Renewable Chemical Production Tax Credit. Updates are also proposed to certain tax credits that have experienced a change in name, claim period, or claim procedure, or that were previously grouped together with other similar tax credits on the list.

These amendments change the order of deduction for the alternative minimum tax credit in tax year 2021 for corporations and financial institutions, and in tax year 2023 for individuals, because that is the final tax year that credit may be claimed for those tax types, so the carryforward period is reduced to zero. This change will allow the alternative minimum tax credit to be claimed in 2021 or 2023, as applicable, before other tax credits with a carryforward period.

These amendments also provide for the order in which tax credits carried forward from a previous tax year must be deducted. Finally, this rule making proposes a rule regarding order of deduction for tax credits claimed under the Iowa franchise tax.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

Michael Mertens  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306  
Phone: 515.587.0458  
Email: [michael.mertens@iowa.gov](mailto:michael.mertens@iowa.gov)

*Public Hearing*

If requested, a public hearing will be held as follows:

September 29, 2021  
10 to 11 a.m.

Via video/conference call

## REVENUE DEPARTMENT[701](cont'd)

Persons who wish to participate in the video/conference call should contact Michael Mertens before 4:30 p.m. on September 28, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 701—42.44(422) as follows:

**701—42.44(422) Deduction of credits.**

**42.44(1) Sequencing of credit deductions.** The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, 422.12N, and 422.110 shall be claimed in the following sequence:

- ~~1. a.~~ Personal exemption credit.
- ~~2. b.~~ Tuition and textbook credit.
- ~~3. c.~~ Volunteer fire fighter, volunteer emergency medical services personnel and reserve peace officer tax credit.
4. d. Nonresident and part-year resident credit.
- e. Out-of-state tax credit.
- ~~5. f.~~ Franchise tax credit.
- ~~6. g.~~ S corporation apportionment credit.
- h. Alternative minimum tax credit (for tax years beginning during 2023 only).
- i. Historic preservation tax credit (when the taxpayer has elected that the credit be nonrefundable under Iowa Code section 404A.2(4)).
- ~~7. j.~~ School tuition organization tax credit.
- ~~8. k.~~ ~~Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit).~~ Innovation fund investment tax credit.
- ~~9. l.~~ Endow Iowa tax credit.
- ~~10.~~ ~~Film qualified expenditure tax credit.~~
- ~~11.~~ ~~Film investment tax credit.~~
- ~~12.~~ m. Redevelopment tax credit.
- ~~13.~~ n. From farm to food donation tax credit.
- ~~14.~~ o. Workforce housing tax credit.
- p. Hoover presidential library tax credit.
- ~~15.~~ ~~q.~~ ~~Investment~~ Enterprise zone investment tax credit.
- r. High quality jobs investment tax credit.
- ~~16.~~ s. Wind energy production tax credit.
- ~~17.~~ t. Renewable energy tax credit.
- ~~18.~~ ~~Redeemed Iowa fund of funds tax credit.~~
- ~~19.~~ u. New jobs tax credit.
- v. Beginning farmer tax credit.
- ~~20.~~ ~~Economic development region revolving fund tax credit.~~
- ~~21.~~ w. Agricultural assets transfer tax credit.

## REVENUE DEPARTMENT[701](cont'd)

- ~~22. x.~~ Custom farming contract tax credit.
- ~~23. y.~~ Geothermal heat pump tax credit.
- ~~24. z.~~ Solar energy system tax credit.
- ~~25. aa.~~ Charitable conservation contribution tax credit.
- ~~26. ab.~~ Alternative minimum tax credit (for tax years beginning before January 1, 2023).
- ~~27. ac.~~ Historic preservation ~~and cultural and entertainment district~~ tax credit (when the taxpayer has elected that the credit be refundable under Iowa Code section 404A.2(4)).
- ~~28. ad.~~ Ethanol promotion tax credit. High quality jobs third-party developer tax credit.
- ~~29. ae.~~ Research activities credit.
- ~~30. Out of state tax credit.~~
- ~~31. af.~~ Child and dependent care tax credit or early childhood development tax credit.
- ~~32. ag.~~ Motor fuel tax credit.
- ~~33. ah.~~ Claim of right credit (if elected in accordance with rule 701—38.18(422)).
- ~~34. Wage benefits tax credit.~~
- ai. Qualifying business investment tax credit (also known as angel investor tax credit).
- ~~35. aj.~~ Adoption tax credit.
- ~~36. ak.~~ E-85 gasoline promotion tax credit.
- ~~37. al.~~ Biodiesel blended fuel tax credit.
- ~~38. am.~~ E-15 plus gasoline promotion tax credit.
- ~~39. an.~~ Earned income tax credit.
- ~~40. ao.~~ Iowa taxpayers trust fund Renewable chemical production tax credit.
- ~~41. ap.~~ Estimated payments, payment with vouchers, and withholding tax.

**42.44(2) Order of credits carried forward from a previous tax year.** A credit carried forward from a previous tax year shall be applied against computed tax before a credit earned under the same credit program in the current tax year. However, a credit carried forward from a previous tax year cannot be applied against computed tax before a credit earned under a different credit program in a later year that appears before it in the sequence in subrule 42.44(1). For example, a school tuition organization tax credit awarded in the current tax year must be applied against computed tax before a renewable energy tax credit carried forward from a previous tax year.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11D, 422.11E, 422.11F, 422.11H, 422.11I, 422.11J, 422.11L, 422.11M, 422.11N, 422.11O, 422.11P, 422.11Q, 422.11R, 422.11S, 422.11V, 422.11W, 422.11Y, 422.11Z, 422.12, 422.12B, 422.12C and 422.110 and 2014 Iowa Acts, House Files 2448 and 2468.

ITEM 2. Amend rule 701—52.12(422) as follows:

**701—52.12(422) Deduction of credits.**

**52.12(1) Sequencing of credit deductions.** The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be claimed in the following sequence.

- ~~1. a.~~ Franchise tax credit.
- ~~b.~~ Alternative minimum tax credit (for tax years beginning during 2021 only).
- ~~c.~~ Qualifying business investment tax credit (also known as angel investor tax credit).
- ~~d.~~ Historic preservation tax credit (when the taxpayer has elected that the credit be nonrefundable under Iowa Code section 404A.2(4)).
- ~~2. e.~~ School tuition organization tax credit.
- ~~3. f.~~ ~~Venture capital tax credit (excluding redeemed Iowa fund of funds tax credit).~~ Innovation fund investment tax credit.
- ~~4. g.~~ Endow Iowa tax credit.
- ~~5. Film qualified expenditure tax credit.~~
- ~~6. Film investment tax credit.~~
- ~~7. h.~~ Redevelopment tax credit.
- ~~8. i.~~ From farm to food donation tax credit.
- ~~9. j.~~ Workforce housing tax credit.

## REVENUE DEPARTMENT[701](cont'd)

- k. Hoover presidential library tax credit.
- ~~10. l. Investment Enterprise zone tax credit.~~
- m. High quality jobs investment tax credit.
- ~~11. n. Wind energy production tax credit.~~
- ~~12. o. Renewable energy tax credit.~~
- ~~13. Redeemed Iowa fund of funds tax credit.~~
- 14. p. New jobs tax credit.
- q. Beginning farmer tax credit.
- ~~15. Economic development region revolving fund tax credit.~~
- 16. r. Agricultural assets transfer tax credit.
- 17. s. Custom farming contract tax credit.
- 18. t. Solar energy system tax credit.
- 19. u. Charitable conservation contribution tax credit.
- 20. v. Alternative minimum tax credit (for tax years beginning before January 1, 2021, only).
- 21. w. Historic preservation and cultural and entertainment district tax credit (when the taxpayer has elected that the credit be refundable under Iowa Code section 404A.2(4)).
- ~~22. Corporate tax credit for certain sales tax paid by developer.~~
- x. High quality jobs third-party developer tax credit.
- ~~23. Ethanol promotion tax credit.~~
- 24. y. Research activities credit.
- 25. z. Assistive device tax credit.
- 26. aa. Motor fuel tax credit.
- ~~27. Wage benefits tax credit.~~
- 28. ab. E-85 gasoline promotion tax credit.
- 29. ac. Biodiesel blended fuel tax credit.
- 30. ad. E-15 plus gasoline promotion tax credit.
- ae. Renewable chemical production tax credit.
- 31. af. Estimated tax and payment with vouchers.

**52.12(2) Order of credits carried forward from a previous tax year.** A credit carried forward from a previous tax year shall be applied against computed tax before a credit earned under the same credit program in the current tax year. However, a credit carried forward from a previous tax year cannot be applied against computed tax before a credit awarded under a different credit program in a later year that appears before it in the sequence in subrule 52.12(1). For example, a school tuition organization tax credit awarded in the current tax year must be applied against computed tax before a renewable energy tax credit carried forward from a previous tax year.

This rule is intended to implement Iowa Code sections 422.33, 422.91 and 422.110.

ITEM 3. Adopt the following **new** rule 701—58.24(422):

**701—58.24(422) Deduction of credits.**

**58.24(1) Sequencing of credit deductions.** The credits against computed tax set forth in Iowa Code section 422.60 shall be claimed in the following sequence.

- a. Alternative minimum tax credit (for tax years beginning during 2021 only).
- b. Qualifying business investment tax credit (also known as angel investor tax credit).
- c. Historic preservation tax credit (when the taxpayer has elected that the credit be nonrefundable under Iowa Code section 404A.2(4)).
- d. Innovation fund investment tax credit.
- e. Endow Iowa tax credit.
- f. Redevelopment tax credit.
- g. Workforce housing tax credit.
- h. Hoover presidential library tax credit.
- i. Enterprise zone tax credit.
- j. High quality jobs investment tax credit.

## REVENUE DEPARTMENT[701](cont'd)

- k. Wind energy production tax credit.
- l. Renewable energy tax credit.
- m. Solar energy system tax credit.
- n. Alternative minimum tax credit (for tax years beginning before January 1, 2021, only).
- o. Historic preservation tax credit (when the taxpayer has elected that the credit be refundable under Iowa Code section 404A.2(4)).
- p. High quality jobs third-party developer tax credit.
- q. Estimated tax and payment with vouchers.

**58.24(2) Order of credits carried forward from a previous tax year.** A credit carried forward from a previous tax year shall be applied against computed tax before a credit earned under the same credit program in the current tax year. However, a credit carried forward from a previous tax year cannot be applied against computed tax before a credit awarded under a different credit program in a later year that appears before it in the sequence in subrule 58.24(1). For example, an innovation fund investment tax credit awarded in the current tax year must be applied against computed tax before a renewable energy tax credit carried forward from a previous tax year.

This rule is intended to implement Iowa Code sections 422.60 and 422.91.

**ARC 5887C**

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to restrictions on assessors and deputy assessors assessing their own property and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 71, “Assessment Practices and Equalization,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 421.14 and 441.17(2).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 441.17(2) as amended by 2021 Iowa Acts, Senate File 366, section 76.

*Purpose and Summary*

This proposed rule making is intended to implement changes made in the 2021 Legislative Session. Specifically, 2021 Iowa Acts, Senate File 366, section 76, removes the “immediate family” component from Iowa Code section 441.17(2), which prohibits assessors and deputy assessors from assessing their own property, property the assessor or deputy assessor has a financial interest in, and property owned by an entity in which the assessor or deputy assessor has a financial interest. Additionally, this rule making removes reporting requirements and requires that assessors and deputy assessors certify annually to the Director that they have not personally assessed the above properties.

*Fiscal Impact*

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

*Jobs Impact*

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



## REVENUE DEPARTMENT[701](cont'd)

*Waivers*

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

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 28, 2021. Comments should be directed to:

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

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend rule 701—71.27(441) as follows:

**701—71.27(441) Assessor shall not assess own property.**

**71.27(1) Assessor and deputy assessor prohibited from assessing own property.** An assessor or deputy assessor shall not personally assess a property if the assessor or deputy assessor ~~or a member of the assessor’s or deputy assessor’s immediate family~~ owns the property, has a financial interest in the property, or has a financial interest in the entity that owns the property. The assessing jurisdiction shall pay all costs and expenses associated with the assessment of the above property.

**71.27(2) Report Certification to the department.**

a. Not later than January 1 of each year, assessors, ~~and in the case that an assessing jurisdiction has a deputy assessor, deputy assessors,~~ shall report certify to the director, ~~using forms and procedures prescribed by the director,~~ an inventory of all of the following real property in the assessor and deputy assessor’s assessing jurisdiction that the assessor did not personally assess the following property in the previous assessment year:

- (1) Property owned by the assessor;
- (2) Property in which the assessor has a financial interest;
- (3) Property owned by an entity in which the assessor has a financial interest.
- ~~(1) Properties owned by the assessor;~~
- ~~(2) Properties owned by a member of the assessor’s immediate family;~~

## REVENUE DEPARTMENT[701](cont'd)

~~(3) Properties in which the assessor or a member of the assessor's immediate family has a financial interest;~~

~~(4) Properties owned by an entity in which the assessor or a member of the assessor's immediate family has a financial interest;~~

~~(5) Properties owned by a deputy assessor;~~

~~(6) Properties owned by a member of the deputy assessor's immediate family;~~

~~(7) Properties in which a deputy assessor or a member of a deputy assessor's immediate family has a financial interest;~~

~~(8) Properties owned by an entity in which a deputy assessor or a member of a deputy assessor's immediate family has a financial interest.~~

~~b. Not later than March 1 of each year, assessors, and in the case that an assessing jurisdiction has a deputy assessor, deputy assessors, shall report to the director, using forms and procedures prescribed by the director, the property record card of each of the properties described in paragraph 71.27(2) "a" and additional information as required by the director. In the event a property described in paragraph 71.27(2) "a" was reported on January 1 but is no longer owned by one of the parties described in paragraph 71.27(2) "a" and none of the parties described in paragraph 71.27(2) "a" has a financial interest in the property or has a financial interest in the entity that owns the property, the assessor is not required to make the March 1 report described in this subrule for that property but shall report to the department the sale or other circumstances under which the property no longer requires reporting under this subrule.~~

~~c. In the event of an appeal to the board of review regarding the assessment of any of the properties described in paragraph 71.27(2) "a," the board of review shall report the results of the appeal to the director within 15 days following the adjournment of any regular or special session of the board of review.~~

~~b. Not later than January 1 of each year, deputy assessors shall certify to the director that the deputy assessor did not personally assess the following property in the previous assessment year:~~

~~(1) Property owned by the deputy assessor;~~

~~(2) Property in which the deputy assessor has a financial interest;~~

~~(3) Property owned by an entity in which the deputy assessor has a financial interest.~~

~~c. Assessors and deputy assessors shall use forms and procedures prescribed and provided by the director for the certifications described in paragraphs 71.27(2) "a" and "b."~~

~~71.27(3) Powers and duties of director. The director shall have and assume all of the powers and duties under Iowa Code section 421.17 in administering this rule.~~

~~71.27(4) Definitions. For purposes of this rule, the following definitions shall govern.~~

~~"Financial interest" includes but is not limited to the holding of legal title to real property or any ownership interest in an entity that holds legal title to real property. Notwithstanding the preceding sentence, ownership interest in an entity shall not be deemed a "financial interest" when a person's ownership interest equals less than 10 percent of the entity's total ownership interest.~~

~~"Immediate family" includes the spouse, children, or parents of the assessor or deputy assessor, including adoptive relationships. There is a rebuttable presumption that relatives of the assessor or deputy assessor beyond the relation of the spouse, children, or parents of the taxpayer are not within the taxpayer's immediate family.~~

~~"Personally assess" means engaging in the listing, valuation, and classification of real property.~~

~~This rule is intended to implement Iowa Code section 441.17 as amended by 2020 Iowa Acts, House File 2641.~~

ARC 5896C

**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency****Rule making related to provider rates and fee schedules**

The Human Services Department hereby amends 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.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 249A.4 and 2021 Iowa Acts, House File 891, section 32.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2021 Iowa Acts, House File 891.

*Purpose and Summary*

As part of the 2021 Legislative Session, 2021 Iowa Acts, House File 891, appropriates funds to increase specific provider reimbursement rates. The amendments to Chapters 78, 79 and 83 do the following:

- Increase the reimbursement rates and upper rate limits for providers of Home- and Community-Based Services (HCBS) Waiver and HCBS Habilitation services beginning July 1, 2021, by 3.55 percent over the rates in effect on June 30, 2021.
- Increase the monthly caps on the total monthly cost of HCBS Waiver and Habilitation services.
- Increase the monthly cap on HCBS Supported Employment and the annual cap on Intellectual Disability Waiver Respite services.
- Increase annual or lifetime limitations for home and vehicle modifications and specialized medical equipment.
- Increase air ambulance rates to \$550 beginning July 1, 2021.

In addition, the amendments to Chapter 79:

- Add the inflation factor limitation.
- Implement the fee schedule rate in effect July 1, 2021, for air ambulance providers. 2021 Iowa Acts, House File 891, appropriates funds to increase air ambulance rates to \$550 per one-way trip.
- Implement the home health agency low utilization payment adjustment (LUPA) rate increase. This rate is applied when there are three or fewer visits provided in a 30-day period.
- Increase psychiatric medical institutions for children (PMIC) provider-specific fee schedule rate percentages over the rates in effect June 30, 2021. House File 891 appropriates \$3.9 million to increase non-State-owned PMIC provider rates over the rates in effect June 30, 2021.

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

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary or impractical because statute so provides and because the emergency adoption was reviewed by the Administrative Rules Review Committee. 2021 Iowa Acts, House File 891, allows for emergency adoption due to a July 1, 2021, effective date provided in the legislation. This also provides a benefit of increased provider rates. In compliance with 2021 Iowa Acts, House File 891, section 32, the Administrative Rules Review Committee at its August 17, 2021, meeting reviewed the Department's determination and this rule filing.

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a) and (b), the Department also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on August 17, 2021, because 2021 Iowa Acts, House File 891, section 32, so provides and because increased provider rates provide a benefit.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on August 12, 2021.

*Concurrent Publication of Notice of Intended Action*

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 5903C** to allow for public comment.

*Fiscal Impact*

The targeted HCBS and Habilitation increases were calculated assuming both the regular federal medical assistance percentages (FMAP) and COVID-increased FMAP. The Legislature opted for the COVID-increased FMAP scenario for both sets of services. These are the only adjustments for which the Legislature agreed to base the increase on the COVID-increased FMAP. All other adjustments are based on the regular FMAP. The FMAP is estimated at 65.14 percent in SFY22 and 62.01 percent in SFY23. As part of the 2021 Legislative Session, 2021 Iowa Acts, House File 891, appropriates funds to increase specific provider reimbursement rates.

*Jobs Impact*

These amendments may have a positive influence on private-sector jobs and employment opportunities in Iowa.

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making became effective on August 17, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **78.27(10)“f”(2)** as follows:

(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 ~~\$3,059.29~~ \$3,167.89 per month.

ITEM 2. Amend paragraph **78.34(9)“g”** as follows:

g. Service payment shall be made to the enrolled home or vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home or vehicle

HUMAN SERVICES DEPARTMENT[441](cont'd)

modification provider following completion of the approved modifications. Payment of up to ~~\$6,366.64~~ \$6,592.66 per year may be made to certified providers upon satisfactory completion of the service.

ITEM 3. Amend paragraph **78.41(2)“i”** as follows:

i. Payment for respite services shall not exceed ~~\$7,334.62~~ \$7,595 per the member’s waiver year.

ITEM 4. Amend paragraph **78.43(5)“g”** as follows:

g. Service payment shall be made to the enrolled home or vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home or vehicle modification provider following completion of the approved modifications. Payment of up to ~~\$6,366.64~~ \$6,592.66 per year may be made to certified providers upon satisfactory completion of the service.

ITEM 5. Amend paragraph **78.43(8)“c”** as follows:

c. Payment of up to ~~\$6,366.64~~ \$6,592.66 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service. ~~Each month within the 12-month period, the service worker shall encumber an amount within the monthly dollar cap allowed for the member until the amount of the equipment cost is reached.~~

ITEM 6. Amend paragraph **78.46(2)“g”** as follows:

g. Service payment shall be made to the enrolled home or vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home or vehicle modification provider following completion of the approved modifications. Payment of up to ~~\$6,366.64~~ \$6,592.66 per year may be made to certified providers upon satisfactory completion of the service.

ITEM 7. Amend paragraph **78.46(4)“c”** as follows:

c. Payment of up to ~~\$6,366.64~~ \$6,592.66 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service.

ITEM 8. Adopt the following **new** paragraph **79.1(1)“i”**:

i. *Inflation factor:* When the department’s reimbursement methodology for any provider includes an inflation factor, this inflation factor shall not exceed the amount by which the consumer price index for all urban consumers increased during the calendar year ending December 31, 2002.

ITEM 9. Amend subrule **79.1(2)**, provider categories of “Ambulance,” “HCBS waiver service providers,” “Home- and community-based habilitation services,” “Home health agencies” and “Psychiatric medical institutions for children,” as follows:

Ambulance	Fee schedule	Ground ambulance: Fee schedule in effect 6/30/14 plus 10%. Air ambulance: Fee schedule in effect <del>6/30/14</del> plus 10% <u>7/1/21</u> .
HCBS waiver service providers, including:		Except as noted, limits apply to all waivers that cover the named provider.
1. Adult day care	For AIDS/HIV, brain injury, elderly, and health and disability waivers: Fee schedule	Effective <del>7/1/16</del> <u>7/1/21</u> , for AIDS/HIV, brain injury, elderly, and health and disability waivers: Provider’s rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% <u>3.55%</u> , converted to a 15-minute, half-day, full-day, or extended-day rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: Veterans Administration contract rate or

## HUMAN SERVICES DEPARTMENT[441](cont'd)

			<p><del>\$1.47</del> <u>\$1.52</u> per 15-minute unit,  <del>\$23.47</del> <u>\$24.30</u> per half day,  <del>\$46.72</del> <u>\$48.38</u> per full day, or  <del>\$70.06</del> <u>\$72.55</u> per extended day  if no Veterans Administration  contract.</p>
	For intellectual disability waiver: Fee schedule for the member's acuity tier, determined pursuant to 79.1(30)		<p>Effective <del>7/1/17</del> <u>7/1/21</u>, for  intellectual disability waiver:  The provider's rate in effect  <del>6/30/16</del> <u>6/30/21</u> plus <del>1%</del> <u>3.55%</u>,  converted to a 15-minute or  half-day rate. If no <del>6/30/16</del>  <del>6/30/21</del> rate, <del>\$1.96</del> <u>\$2.03</u>  per 15-minute unit or <del>\$31.27</del>  <u>\$32.38</u> per half day.</p> <p>For daily services, the fee  schedule rate published on the  department's website, pursuant  to 79.1(1)"c," for the member's  acuity tier, determined pursuant  to 79.1(30).</p>
2. Emergency response system:			
Personal response system	Fee schedule		<p>Effective <del>7/1/13</del> <u>7/1/21</u>,  provider's rate in effect <del>6/30/13</del>  <del>6/30/21</del> plus <del>3%</del> <u>3.55%</u>. If no  <del>6/30/13</del> <del>6/30/21</del> rate: Initial  one-time fee: <del>\$52.04</del> <u>\$53.89</u>.  Ongoing monthly fee: <del>\$40.47</del>  <u>\$41.91</u>.</p>
Portable locator system	Fee schedule		<p>Effective <del>7/1/13</del> <u>7/1/21</u>,  provider's rate in effect <del>6/30/13</del>  <del>6/30/21</del> plus <del>3%</del> <u>3.55%</u>. If  no <del>6/30/13</del> <del>6/30/21</del> rate: One  equipment purchase: <del>\$323.26</del>  <u>\$334.74</u>. Initial one-time  fee: <del>\$52.04</del> <u>\$53.89</u>. Ongoing  monthly fee: <del>\$40.47</del> <u>\$41.91</u>.</p>
3. Home health aides	<del>Retrospective cost-related</del> <u>Fee</u> <u>schedule</u>		<p>For AIDS/HIV, elderly, and  health and disability waivers  effective <del>7/1/16</del> <u>7/1/21</u>: Lesser  of maximum Medicare rate in  effect <del>6/30/16</del> <del>6/30/21</del> plus <del>4%</del>  <u>3.55%</u> or maximum Medicaid  rate in effect <del>6/30/16</del> <del>6/30/21</del>  plus <del>4%</del> <u>3.55%</u>.</p> <p>For intellectual disability  waiver effective <del>7/1/16</del> <u>7/1/21</u>:  Lesser of maximum Medicare  rate in effect <del>6/30/16</del> <del>6/30/21</del>  plus <del>4%</del> <u>3.55%</u> or maximum  Medicaid rate in effect <del>6/30/16</del>  <del>6/30/21</del> plus <del>4%</del> <u>3.55%</u>,  converted to an hourly rate.</p>
4. Homemakers	Fee schedule		<p>Effective <del>7/1/13</del> <u>7/1/21</u>,  provider's rate in effect <del>6/30/13</del>  <del>6/30/21</del> plus <del>3%</del> <u>3.55%</u>,  converted to a 15-minute rate.  If no <del>6/30/13</del> <del>6/30/21</del> rate:  <del>\$5.20</del> <u>\$5.38</u> per 15-minute unit.</p>

## HUMAN SERVICES DEPARTMENT[441](cont'd)

5. Nursing care	Fee schedule	For AIDS/HIV, health and disability, elderly and intellectual disability waiver effective <del>7/1/16</del> 7/1/21, provider's rate in effect 6/30/16 6/30/21 plus 4% 3.55%. If no <del>6/30/16</del> 6/30/21 rate: \$87.99 \$91.11 per visit.
6. Respite care when provided by:		
Home health agency:		
Specialized respite	<del>Cost-based rate for nursing services provided by a home health agency</del> Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect 6/30/16 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: Lesser of maximum Medicare rate in effect 6/30/16 6/30/21 plus 4% 3.55%, converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/16 6/30/21 plus 4% 3.55%, converted to a 15-minute rate, not to exceed \$315.09 \$326.28 per day.
Basic individual respite	<del>Cost-based rate for home health aide services provided by a home health agency</del> Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect 6/30/16 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: Lesser of maximum Medicare rate in effect 6/30/16 6/30/21 plus 4% 3.55%, converted to a 15-minute rate, or maximum Medicaid rate in effect 6/30/16 6/30/21 plus 4% 3.55%, converted to a 15-minute rate, not to exceed \$315.09 \$326.28 per day.
Group respite	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect 6/30/16 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: \$3.49 \$3.61 per 15-minute unit, not to exceed \$315.09 \$326.28 per day.
Home care agency:		

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Specialized respite	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$8.96</del> \$9.28 per 15-minute unit, not to exceed <del>\$315.09</del> \$326.28 per day.
Basic individual respite	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$4.78</del> \$4.95 per 15-minute unit, not to exceed <del>\$315.09</del> \$326.28 per day.
Group respite	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed <del>\$315.09</del> \$326.28 per day.
Nonfacility care:		
Specialized respite	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$8.96</del> \$9.28 per 15-minute unit, not to exceed <del>\$315.09</del> \$326.28 per day.
Basic individual respite	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$4.78</del> \$4.95 per 15-minute unit, not to exceed <del>\$315.09</del> \$326.28 per day.
Group respite	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed <del>\$315.09</del> \$326.28 per day.
Facility care:		
Hospital or nursing facility providing skilled care	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed the facility's daily Medicaid rate for skilled nursing level of care.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

Nursing facility	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed the facility's daily Medicaid rate.
Camps	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed <del>\$315.09</del> \$326.28 per day.
Adult day care	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed rate for regular adult day care services.
Intermediate care facility for persons with an intellectual disability	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed the facility's daily Medicaid rate.
Residential care facilities for persons with an intellectual disability	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed contractual daily rate.
Foster group care	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed daily rate for child welfare services.
Child care facilities	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$3.49</del> \$3.61 per 15-minute unit, not to exceed contractual daily rate.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

7. Chore service	Fee schedule	Effective <del>7/1/13</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/13</del> <u>6/30/21</u> plus <del>3%</del> <u>3.55%</u> , converted to a 15-minute rate. If no <del>6/30/13</del> <u>6/30/21</u> rate: <del>\$4.05</del> <u>\$4.19</u> per 15-minute unit.
8. Home-delivered meals	Fee schedule	Effective <del>7/1/13</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/13</del> <u>6/30/21</u> plus <del>3%</del> <u>3.55%</u> . If no <del>6/30/13</del> <u>6/30/21</u> rate: <del>\$8.10</del> <u>\$8.39</u> per meal. Maximum of 14 meals per week.
9. Home and vehicle modification	Fee schedule. See 79.1(17)	For elderly waiver effective <del>7/1/13</del> <u>7/1/21</u> : <del>\$1,061.11</del> <u>\$1,098.78</u> lifetime maximum.  For intellectual disability waiver effective <del>7/1/13</del> <u>7/1/21</u> : <del>\$5,305.53</del> <u>\$5,493.88</u> lifetime maximum.  For brain injury, health and disability, and physical disability waivers effective <del>7/1/13</del> <u>7/1/21</u> : <del>\$6,366.64</del> <u>\$6,592.66</u> per year.
10. Mental health outreach providers	Fee schedule	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus <del>4%</del> <u>3.55%</u> . If no <del>6/30/16</del> <u>6/30/21</u> rate: On-site Medicaid reimbursement rate for center or provider. Maximum of 1,440 units per year.
11. Transportation	Fee schedule	<del>Effective 10/1/13: The provider's nonemergency medical transportation contract rate or, in the absence of a nonemergency medical transportation contract rate, the median nonemergency medical transportation contract rate paid per mile or per trip within the member's DHS region. Fee schedule in effect 7/1/21.</del>
12. Nutritional counseling	Fee schedule	Effective <del>7/1/16</del> <u>7/1/21</u> for non-county contract: Provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus <del>4%</del> <u>3.55%</u> , converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$8.76</del> <u>\$9.07</u> per 15-minute unit.
13. Assistive devices	Fee schedule. See 79.1(17)	Effective <del>7/1/13</del> <u>7/1/21</u> : <del>\$115.62</del> <u>\$119.72</u> per unit.
14. Senior companion	Fee schedule	Effective <del>7/1/16</del> <u>7/1/21</u> for non-county contract: Provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus <del>4%</del> <u>3.55%</u> , converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$1.89</del> <u>\$1.96</u> per 15-minute unit.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

15. Consumer-directed attendant care provided by:	Agency (other than an elderly waiver assisted living program)	Fee agreed upon by member and provider	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% <u>3.55%</u> , converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$5.35</del> <u>\$5.54</u> per 15-minute unit, not to exceed <del>\$123.85</del> <u>\$128.25</u> per day.
	Assisted living program (for elderly waiver only)	Fee agreed upon by member and provider	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% <u>3.55%</u> , converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$5.35</del> <u>\$5.54</u> per 15-minute unit, not to exceed <del>\$123.85</del> <u>\$128.25</u> per day.
	Individual	Fee agreed upon by member and provider	Effective <del>7/1/16</del> <u>7/1/21</u> , <del>\$3.58</del> <u>\$3.71</u> per 15-minute unit, not to exceed <del>\$83.36</del> <u>\$86.32</u> per day. When an individual who serves as a member's legal representative provides services to the member as allowed by 79.9(7) "b," the payment rate must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.
16. Counseling:	Individual	Fee schedule	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% <u>3.55%</u> , converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$11.45</del> <u>\$11.86</u> per 15-minute unit.
	Group	Fee schedule	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% <u>3.55%</u> , converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$11.44</del> <u>\$11.85</u> per 15-minute unit. Rate is divided by six, or, if the number of persons who comprise the group exceeds six, the actual number of persons who comprise the group.
17. Case management		Fee schedule	For brain injury and elderly waivers: <del>Fee schedule effective 7/1/21, provider's rate in effect 7/1/18</del> <u>6/30/21</u> plus 3.55%.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

18. Supported community living	For brain injury waiver: Retrospectively limited prospective rates. See 79.1(15)	For brain injury waiver effective <del>7/1/16</del> <u>7/1/21</u> : <del>\$9.28</del> <u>\$9.61</u> per 15-minute unit, not to exceed the maximum daily ICF/ID rate per day plus <del>3.927%</del> <u>7.477%</u> .
	For intellectual disability waiver: Fee schedule for the member's acuity tier, determined pursuant to 79.1(30). Retrospectively limited prospective rate for SCL 15-minute unit. See 79.1(15)	For intellectual disability waiver effective <del>7/1/17</del> <u>7/1/21</u> : <del>\$9.28</del> <u>\$9.61</u> per 15-minute unit. For daily service, the fee schedule rate published on the department's website, pursuant to 79.1(1) "c," for the member's acuity tier, determined pursuant to 79.1(30).
19. Supported employment:		
Individual placement and support	Fee schedule	Fee schedule in effect <u>7/1/21</u> .
Individual supported employment	Fee schedule	Fee schedule in effect <del>7/1/16</del> <u>7/1/21</u> . Total monthly cost for all supported employment services not to exceed <del>\$3,059.29</del> <u>\$3,167.89</u> per month.
Long-term job coaching	Fee schedule	Fee schedule in effect <del>7/1/16</del> <u>7/1/21</u> . Total monthly cost for all supported employment services not to exceed <del>\$3,059.29</del> <u>\$3,167.89</u> per month.
Small-group supported employment (2 to 8 individuals)	Fee schedule	Fee schedule in effect <del>7/1/16</del> <u>7/1/21</u> . Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed <del>\$3,059.29</del> <u>\$3,167.89</u> per month.
20. Specialized medical equipment	Fee schedule. See 79.1(17)	Effective <del>7/1/13</del> <u>7/1/21</u> , <del>\$6,366.64</del> <u>\$6,592.66</u> per year.
21. Behavioral programming	Fee schedule	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus <del>4%</del> <u>3.55%</u> . If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$11.45</del> <u>\$11.86</u> per 15 minutes.
22. Family counseling and training	Fee schedule	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus <del>4%</del> <u>3.55%</u> , converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$11.44</del> <u>\$11.85</u> per 15-minute unit.
23. Prevocational services, including career exploration	Fee schedule	Fee schedule in effect <del>7/1/16</del> <u>7/1/21</u> .
24. Interim medical monitoring and treatment:		

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Home health agency (provided by home health aide)	<del>Cost-based rate for home health aide services provided by a home health agency</del> <u>Fee schedule</u>	Effective <del>7/1/16</del> <u>7/1/21</u> : Lesser of maximum Medicare rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% 3.55%, converted to a 15-minute rate, or maximum Medicaid rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% 3.55%, converted to a 15-minute rate.
Home health agency (provided by nurse)	<del>Cost-based rate for nursing services provided by a home health agency</del> <u>Fee schedule</u>	Effective <del>7/1/16</del> <u>7/1/21</u> : Lesser of maximum Medicare rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% 3.55%, converted to a 15-minute rate, or maximum Medicaid rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% 3.55%, converted to a 15-minute rate.
Child development home or center	Fee schedule	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$3.49</del> <u>\$3.61</u> per 15-minute unit.
Supported community living provider	Retrospectively limited prospective rate. See 79.1(15)	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$9.28</del> <u>\$9.61</u> per 15-minute unit, not to exceed the maximum ICF/ID rate per day plus <del>3.927%</del> <u>7.477%</u> .
25. Residential-based supported community living	Fee schedule for the member's acuity tier, determined pursuant to 79.1(30)	Effective <del>7/1/17</del> <u>7/1/21</u> : The fee schedule rate published on the department's website, pursuant to 79.1(1) "c," for the member's acuity tier, determined pursuant to 79.1(30).
26. Day habilitation	Fee schedule for the member's acuity tier, determined pursuant to 79.1(30)	Effective <del>7/1/17</del> <u>7/1/21</u> : Provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$3.51</del> <u>\$3.63</u> per 15-minute unit. For daily service, the fee schedule rate published on the department's website, pursuant to 79.1(1) "c," for the member's acuity tier, determined pursuant to 79.1(30).
27. Environmental modifications and adaptive devices	Fee schedule. See 79.1(17)	Effective <del>7/1/13</del> <u>7/1/21</u> , <del>\$6,366.64</del> <u>\$6,592.66</u> per year.
28. Family and community support services	Retrospectively limited prospective rates. See 79.1(15)	Effective <del>7/1/16</del> <u>7/1/21</u> , provider's rate in effect <del>6/30/16</del> <u>6/30/21</u> plus 4% 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> <u>6/30/21</u> rate: <del>\$9.28</del> <u>\$9.61</u> per 15-minute unit.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

29. In-home family therapy	Fee schedule	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus <del>4%</del> 3.55%, converted to a 15-minute rate. If no <del>6/30/16</del> 6/30/21 rate: <del>\$24.85</del> <u>\$25.73</u> per 15-minute unit.
30. Financial management services	Fee schedule	Effective <del>7/1/13</del> 7/1/21, provider's rate in effect <del>6/30/13</del> 6/30/21 plus <del>3%</del> 3.55%. If no <del>6/30/13</del> 6/30/21 rate: <del>\$68.97</del> <u>\$71.42</u> per enrolled member per month.
31. Independent support broker	Rate negotiated by member	Effective <del>7/1/16</del> 7/1/21, provider's rate in effect <del>6/30/16</del> 6/30/21 plus <del>4%</del> 3.55%. If no <del>6/30/16</del> 6/30/21 rate: <del>\$16.07</del> <u>\$16.64</u> per hour.
32. to 34. No change.		
35. Assisted living on-call service providers (elderly waiver only)	Fee agreed upon by member and provider	<del>\$26.08</del> <u>\$27.01</u> per day.
Home- and community-based habilitation services:		
1. Case management	Fee schedule. See 79.1(24) "d"	<del>Fee</del> Effective 7/1/21: Fee schedule in effect <del>7/1/18</del> 6/30/21 plus 3.55%.
2. Home-based habilitation	See 79.1(24) "d"	Effective <del>7/1/13</del> : <del>\$11.68</del> per 15-minute unit, not to exceed <del>\$6,083</del> per month, or <del>\$200</del> per day. Fee schedule in effect 7/1/21.
3. Day habilitation	See 79.1(24) "d"	Effective <del>7/1/13</del> 7/1/21: <del>\$3.30</del> <u>\$3.42</u> per 15-minute unit or <del>\$64.29</del> <u>\$66.57</u> per day.
4. Prevocational habilitation Career exploration	Fee schedule	Fee schedule in effect <del>May 4, 2016</del> 7/1/21.
5. Supported employment:		
Individual supported employment	Fee schedule	Fee schedule in effect <del>May 4, 2016</del> 7/1/21. Total monthly cost for all supported employment services not to exceed <del>\$3,029.00</del> <u>\$3,136.53</u> per month.
Long-term job coaching	Fee schedule	Fee schedule in effect <del>May 4, 2016</del> 7/1/21. Total monthly cost for all supported employment services not to exceed <del>\$3,029.00</del> <u>\$3,136.53</u> per month.
Small-group supported employment (2 to 8 individuals)	Fee schedule	Fee schedule in effect <del>May 4, 2016</del> 7/1/21. Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed <del>\$3,029.00</del> <u>\$3,136.53</u> per month.

Home health agencies

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. Skilled nursing, physical therapy, occupational therapy, speech therapy, home health aide, and medical social services; home health care for maternity patients and children	Fee schedule. See 79.1(26). For members living in a nursing facility, see 441—paragraph 81.6(11)“r.”	Effective <del>7/1/18</del> ; Medicare LUPA rates in effect on <del>6/30/18</del> plus a 3% increase. 7/1/21: <u>The Medicaid LUPA fee schedule rate published on the department’s website.</u>
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2. and 3. No change.

Psychiatric medical institutions for children:

1. Inpatient in non-state-owned facilities	Fee schedule	Effective <del>7/1/14</del> 7/1/21: non-state-owned facilities provider-specific fee schedule in effect.
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2. and 3. No change.

ITEM 10. Amend paragraph **83.2(2)“b,”** table, as follows:

Skilled level of care	Nursing level of care	ICF/ID
<del>\$2,792.65</del> <u>\$2,891.79</u>	<del>\$959.50</del> <u>\$993.56</u>	<del>\$3,742.93</del> <u>\$3,875.80</u>

ITEM 11. Amend paragraph **83.42(2)“b”** as follows:

b. The total monthly cost of the AIDS/HIV waiver services shall not exceed the established aggregate monthly cost for level of care. The monthly cost of AIDS/HIV waiver services cannot exceed the established limit of ~~\$1,876.80~~ \$1,943.43.

ITEM 12. Amend paragraph **83.102(2)“b”** as follows:

b. The total cost of physical disability waiver services, excluding the cost of home and vehicle modifications, shall not exceed ~~\$705.84~~ \$730.90 per month.

ITEM 13. Amend paragraph **83.122(6)“b”** as follows:

b. The total cost of children’s mental health waiver services needed to meet the member’s needs, excluding the cost of environmental modifications, adaptive devices and therapeutic resources, may not exceed ~~\$2,006.34~~ \$2,077.57 per month.

[Filed Emergency 8/17/21, effective 8/17/21]

[Published 9/8/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5901C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency After Notice**

**Rule making related to prescription drug monitoring**

The Human Services Department hereby amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 249A.

*State or Federal Law Implemented*

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Purpose and Summary*

Section 5042 of the SUPPORT for Patients and Communities Act, codified in 42 U.S.C. 1396w-3a, requires covered providers who are permitted to prescribe controlled substances and who participate in Medicaid to query qualified prescription drug monitoring programs (PDMPs) before prescribing controlled substances to most Medicaid beneficiaries, beginning October 1, 2021. This rule making adds requirements consistent with the federal and state requirements for Medicaid-participating providers. Iowa Medicaid providers must also comply with requirements under Iowa Code section 124.551A and their respective licensing boards in regard to utilizing the PDMP.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5708C**. The Department received comments on the proposed rule in the following areas.

**Comment 1:** One respondent commented on the ability to allow a covered provider to delegate the ability to utilize the Prescription Monitoring Program (PMP) database.

**Response 1:** The Department agrees with the comment and has revised subrule 79.17(1) to add the prescribing practitioner's designated agent.

**Comment 2:** One respondent asked to amend the rules for practitioners to exclude utilizing the PMP database for an inpatient setting.

**Response 2:** The rule allows practitioners' review of the database to be conducted in accordance with all requirements under the practitioner's specific professional licensing authority. No changes were made as a result of this comment.

**Comment 3:** Two respondents commented on the additional work required for practitioners who prescribe controlled substances for Attention Deficit Hyperactivity Disorder and epilepsy. For example: checking the PMP every month or every six months.

**Response 3:** The federal law (Section 5042 of the SUPPORT for Patients and Communities Act, codified in 42 U.S.C. 1396w-3a) requires covered providers who are permitted to prescribe controlled substances and who participate in Medicaid to query qualified PDMPs before prescribing controlled substances. Medicaid is implementing this requirement to comply with the federal requirements. No changes were made as a result of this comment.

**Comment 4:** One respondent asked if providers would be required to check the PMP for other states.

**Response 4:** The requirement is to check the Iowa PMP. The Iowa PMP allows registered users to query other states' PMPs by selecting those states at the bottom of a patient request in the section titled "PMP InterConnect Search." Additional information can be found there. Providers would also have the discretion to sign up for surrounding states' PMPs. No changes were made as a result of this comment.

**Comment 5:** Two respondents asked if the State would require software requirements and provide state assistance with cost.

**Response 5:** The PMP is not a Medicaid system; it is operated by the Iowa Board of Pharmacy under the Iowa Department of Public Health. Providers would need to check with their electronic health record provider. Additional information can be found at Integration with PMP. No changes were made as a result of this comment.

*Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 1, 2021, because the effective date of federal legislation is October 1, 2021, and because it provides a benefit to individual consumers and the general public by providing a method to monitor prescription controlled substance use to prevent drug misuse and improve patient care.



HUMAN SERVICES DEPARTMENT[441](cont'd)

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on August 12, 2021.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

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

The following rule-making action is adopted:

Adopt the following **new** rule 441—79.17(249A):

**441—79.17(249A) Requirements for prescribing controlled substances.**

**79.17(1) Review of Iowa prescription monitoring program database.** A prescribing practitioner, as defined in Iowa Code section 124.550, or the prescribing practitioner's designated agent, shall review patient information in the Iowa prescription monitoring program (PMP) database prior to issuing a prescription for a controlled substance as defined in 42 U.S.C. 1396w-3a, inclusive of Schedules II, III and IV, unless the patient is receiving inpatient hospice care or long-term residential facility care. Review shall be conducted in accordance with all requirements under the prescribing practitioner's specific professional licensing authority.

**79.17(2) Documentation.** The prescribing practitioner shall include documentation in the patient file to demonstrate compliance with subrule 79.17(1). Subject to the requirements under Iowa Code chapter 124, subchapter VI, if the prescribing practitioner is not able to conduct a review of the PMP database despite a good-faith effort, the prescribing practitioner must document in the patient file such good-faith effort, including the reasons why the prescribing practitioner was not able to conduct the review. The prescribing practitioner shall submit such documentation to the Iowa Medicaid program upon request.

This rule is intended to implement Iowa Code chapters 124 and 249A.

[Filed Emergency After Notice 8/17/21, effective 10/1/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5898C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

**Rule making related to air quality**

The Environmental Protection Commission (Commission) hereby amends Chapter 20, “Scope of Title—Definitions,” Chapter 22, “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” and Chapter 25, “Measurement of Emissions,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 455B.133.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455B.133 and 455B.134.

*Purpose and Summary*

This rule making adopts several new mandatory federal air quality standards. These amendments are identical to the federal regulations, and the amendments do not impose any regulations on Iowa businesses not already required by federal law. Additionally, the adoption of these amendments will ensure that Iowa’s administrative rules are consistent with federal regulations and not any more stringent.

More specifically, the amendments adopt updated federal new source performance standards (NSPS) and air toxics standards, also known as National Emissions Standards for Hazardous Air Pollutants (NESHAP). These standards apply whether they are adopted into state regulation or not; however, by incorporating these terms into the State’s rules, the Department of Natural Resources (Department) can continue to be a delegated authority under the Clean Air Act (CAA). This allows the Department, rather than the U.S. Environmental Protection Agency (EPA), to be the primary compliance and implementation agency in Iowa.

In more detail, this rule making adopts the following six amendments:

**Item 1** amends rule 567—20.2(455B), definition of “EPA reference method,” to adopt the most current EPA methods for measuring air pollutant emissions, performance testing (sometimes called “stack testing”), and continuous monitoring. EPA’s revisions to 40 Code of Federal Regulations (CFR) Parts 51, 60, 61, and 63 to correct and update regulations for source testing of emissions were published in the Federal Register on October 7, 2020. See 85 Fed. Reg. 63394–63422 (Oct. 7, 2020) (a correction to Part 63 was subsequently published in 85 Fed. Reg. 77384 (Dec. 2, 2020)). EPA states in the final regulations that these revisions include corrections to inaccurate testing provisions, updates to outdated procedures, and approved alternative procedures that will provide flexibility to testers. EPA also states that the updates will improve the quality of data and will not impose any new substantive requirements on source owners or operators. Adopting EPA’s updates ensures that state reference testing methods match current federal reference methods and are no more stringent than the federal methods.

The amendment in **Item 2** is adopted concurrently with the amendment in Item 1. It revises the definition of “EPA reference method” in rule 567—22.100(455B) to similarly reflect updates to EPA testing and monitoring methods, which are the methods that apply to the Title V Operating Permit rules in Chapter 22.

The amendments in **Items 3, 4, and 5** adopt changes to the federal NSPS and NESHAP. The CAA obligates EPA to issue standards to control air pollution. The NSPS and NESHAP set federal standards and deadlines for industrial, commercial or institutional facilities to meet uniform standards for equipment operation and air pollutant emissions.

Because the NSPS and NESHAP adopted by reference are federal regulations, affected sources are subject to the federal requirements regardless of whether the Commission adopts the standards into the State’s rules. However, the CAA allows a state or local agency to implement NSPS and NESHAP as

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

a delegated authority. Upon state adoption of the standards, the Department becomes the delegated authority for the specific NSPS or NESHAP and is the primary implementation agency in Iowa. Two local agencies, those in Polk County and Linn County, implement these standards within their counties.

The Commission's rules, including all compliance deadlines, are identical to the federal NSPS and NESHAP as of a specific federal publication date. With delegation authority and adoption of the federal standards into the State's rules and the rules of Polk County and Linn County, the State and local agencies have the ability to make applicability determinations for facilities, rather than referring these decisions to EPA.

Stakeholders affected by NSPS and NESHAP typically prefer for the Department, rather than EPA, to be the primary implementation agency in Iowa. Upon adoption of the new and amended standards, the Department will work with affected facilities to provide any needed compliance assistance. Additionally, affected area sources that are small businesses are eligible for free assistance from the small business technical assistance program.

Notably, the Commission is excluding from adoption the recent changes that EPA made to the NSPS for Kraft Pulp Mills (40 CFR 60, Subpart BB) due to active litigation of the federal regulation. This is described in more specificity below. An additional amendment to subrule 23.1(2) indicates the previous date for which Subpart BB was adopted by reference, which will exclude the recent federal amendments from being adopted.

Finally, **Item 6** amends subrule 25.1(9) to adopt the changes EPA made to the federal test methods for measuring emissions, as explained above for Item 1.

#### **Risk and technology review**

Most of EPA's amendments adopted in subrule 23.1(4) address the risk and technology reviews required under the CAA. The CAA requires EPA to address air toxics emissions from large industrial facilities (major sources) in two phases.

The first phase is "technology-based," where EPA develops standards for controlling the emissions of air toxics from sources in an industry group or "source category" (for example, industrial boilers). These maximum achievable control technology (MACT) standards are based on emissions levels that controlled and low-emitting sources in an industry are already achieving. Typically, MACT affects only a "major source" of air toxics (a source with a potential to emit at least 10 tons per year of any one hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPs).

The second phase is a "risk-based" approach called residual risk. In this step, EPA must determine whether more health-protective standards are necessary. Within eight years of setting the MACT standards, the CAA requires EPA to assess the remaining health risks from each source category to determine whether the MACT standards protect public health with an ample margin of safety and protect against adverse environmental effects. On this same schedule, the CAA also requires EPA to review the standards and, if necessary, revise them to account for improvements in air pollution controls or prevention. The combined review of public health risk and air pollution control is called the "risk and technology review" (RTR).

#### **Impact of the NESHAP amendments**

For most of the recent NESHAP RTR updates, EPA has determined that the risks from emissions from affected source categories are acceptable and that there are no new cost-effective controls available. However, the updates do include revisions to the requirements for periods of startup, shutdown, and malfunction (SSM) and require electronic reporting of performance test results and compliance reports.

In some cases, EPA made minor amendments to correct errors, clarify requirements, and provide technical amendments. EPA also provided additional flexibilities in several of the final NESHAP RTRs, such as alternative testing methods or reduced monitoring. A few of the recent and upcoming NESHAP RTRs do include more substantive requirements for pollution control and monitoring.

Table 1 below identifies the amendments to the NESHAP source categories adopted by reference. The standards are identified by source category and are listed in order of publication date in the Federal Register. The table also indicates the subpart in 40 CFR Part 63, as well as the associated paragraph in subrule 23.1(4). Additionally, the table indicates the number of facilities that the Department estimates

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

are currently affected by the specific standard. The Commission is adopting standards that currently do not affect any Iowa sources in case a new facility of that type is constructed in the future.

**Table 1**  
**Adopted NESHAP Amendments**

<b>NESHAP: Affected Source Category</b> (Note: "Mfg" is the abbreviation for "manufacturing")	<b>Date Published in Federal Register</b>	<b>40 CFR 63 Subpart/Subrule 23.1(4) Paragraph</b>	<b>Estimated Iowa Facilities Affected</b>
Surface Coating of Metal Cans	2/25/2020	KKKK/"ck"	0
Surface Coating of Metal Coil	2/25/2020	SSSS/"cs"	0
Asphalt Processing	3/12/2020	LLLLL/"dl"	0
Vegetable Oil Production	3/18/2020	GGGG/"cg"	17
Boat Mfg	3/20/2020	VVVV/"cv"	0
Reinforced Plastics	3/20/2020	WWWW/"cw"	15
HCl Acid Production	4/15/2020	NNNNN/"dn"	0
Engine Test Cells	6/3/2020	PPPPP/"dp"	1
Cellulose Products	7/2/2020	UUUU/"cu"	0
Automobiles and Light Duty Trucks	7/8/2020	IIII/"ci"	0
Miscellaneous Metal Parts	7/8/2020	MMMM/"cm"	31
Plastic Parts	7/8/2020	PPPP/"cp"	12
Paper and Other Web Coatings	7/9/2020	JJJJ/"cj"	2
Rubber Tire Mfg	7/24/2020	XXXX/"cx"	1
Miscellaneous Coating Mfg	8/14/2020	HHHHH/"dh"	1
Iron and Steel Foundries	9/10/2020	EEEEEE/"de"	4
Phosphoric Acid Mfg	11/3/2020	AA/"aa"	0

There are several recent NESHAP amendments that the Commission excluded from adoption at this time due to active legal challenges of the federal regulations. Additional amendments to subrule 23.1(4) indicate the previous dates for which the specific NESHAP were adopted by reference, which excludes the recent federal amendments from being adopted. Table 2 below indicates the NESHAP amendments being excluded from adoption. Affected sources remain subject to these federal requirements regardless of whether the Commission adopts the standards into the State's rules.

**Table 2**  
**NESHAP Amendments Excluded from Adoption Due to Legal Challenges**

<b>NESHAP: Affected Source Category</b> (Note: "Mfg" is the abbreviation for "manufacturing")	<b>Date Published in Federal Register</b>	<b>40 CFR 63 Subpart/Subrule 23.1(4) paragraph and the previous adoption date</b>	<b>Estimated Iowa Facilities Affected by the NESHAP</b>
Combustion Turbines	3/9/2020	YYYY/"cy" 4/20/2006	2
Municipal Solid Waste Landfills	3/26/2020	AAAA/"ca" 4/20/2006	5
Ethylene Production	7/6/2020	YY/"ay" 10/8/2014	1
Organic Liquids (Non-Gasoline) Distribution	7/7/2020	EEEE/"ce" 7/17/2008	3
Site Remediation	7/10/2020	GGGG/"dg" 11/29/2006	0
Integrated Steel Mfg	7/13/2020	FFFF/"df" 7/13/2006	0
Lime Mfg	7/24/2020	AAAAA/"da" 4/20/2006	0
Miscellaneous Organic Chemical Mfg (MON)	8/12/2020	FFFF/"cf" 7/14/2006	19
Plywood & Composites Mfg	8/13/2020	DDDD/"cd" 10/29/2007	2
Pulp Mills	11/5/2020	MM/"am" 10/11/2017	0

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5678C**. A public hearing was held on July 19, 2021, at 1 p.m. via video/conference call. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on August 17, 2021.

*Fiscal Impact*

After analysis and review of this rule making, these amendments will have no fiscal impact to either the State of Iowa or to regulated facilities, the general public, or county or local governments. Some of the amendments may benefit the private sector because they streamline current air quality programs. Affected businesses and the public benefit from up-to-date air quality requirements and increased effectiveness. A copy of the fiscal impact statement is available from the Department upon request.

*Jobs Impact*

After analysis and review of this rule making, these amendments will have an overall neutral impact on private-sector jobs. Some of these amendments may benefit the private sector because they streamline

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

current air quality programs. For the amendments specified in Items 3, 4, and 5, the Commission has determined that there may be job impacts to Iowa businesses. However, the amendments are only implementing federally mandated regulations, thus any resulting impact originates at the federal level. These amendments are identical to the federal regulations and will not impose any regulations on Iowa businesses not already required by federal law. In some cases, the revised federal standards being adopted provide more flexibility and potential cost savings for affected businesses, offering a positive impact on private-sector jobs. A copy of the jobs impact statement is available from the Department upon request.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on October 13, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **567—20.2(455B)**, definition of “EPA reference method,” as follows:

“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 61, Appendix B (as amended or corrected through ~~August 30, 2016~~ October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through ~~November 14, 2018~~ December 2, 2020).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

ITEM 2. Amend rule **567—22.100(455B)**, definition of “EPA reference method,” as follows:

“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 61, Appendix B (as amended or corrected through ~~August 30, 2016~~ October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through ~~November 14, 2018~~ December 2, 2020).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 75,

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

ITEM 3. Amend subrule 23.1(2) as follows:

**23.1(2) *New source performance standards.*** The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~November 14, 2018~~ October 7, 2020, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. ~~An earlier A different~~ A different date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. to w. No change.

x. *Kraft pulp mills.* Any of the following in a kraft pulp mill: digester system; brown stock washer system; multiple effect evaporator system; black liquor oxidation system; recovery furnace; smelt dissolving tank; lime kiln; and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of the standard of performance are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. (Subpart BB as amended or corrected through February 27, 2014)

y. to cccc. No change.

ITEM 4. Amend subrule 23.1(3), introductory paragraph, as follows:

**23.1(3) *Emission standards for hazardous air pollutants.*** The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through ~~August 30, 2016~~ October 7, 2020, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is in parentheses. A different date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

ITEM 5. Amend subrule 23.1(4) as follows:

**23.1(4) *Emission standards for hazardous air pollutants for source categories.*** The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~March 15, 2019~~ November 3, 2020, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. ~~An earlier A different~~ A different date for adoption by reference may be included with the subpart designation in parentheses or as indicated in this introductory paragraph. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A as amended or corrected through December 2, 2020), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded ( $F_{bio}$ ) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in rule 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

23.1(4) "a," general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

*a. to al.* No change.

*am. Emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.* (Part 63, Subpart MM as amended or corrected through October 11, 2017)

*an. to ax.* No change.

*ay. Emission standards for hazardous air pollutants: generic maximum achievable control technology (Generic MACT).* These standards apply to new and existing major sources of acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, polycarbonate (PC) production, carbon black production, cyanide chemicals manufacturing, ethylene production, and Spandex production. Affected processes include, but are not limited to, producers of homopolymers and copolymers of alternating oxymethylene units, acrylic fiber, modacrylic fiber synthetics composed of acrylonitrile (AN) units, hydrogen fluoride and polycarbonate. (Subpart YY as amended or corrected through October 8, 2014)

*az. to bz.* No change.

*ca. Emission standards for hazardous air pollutants: municipal solid waste landfills.* This standard applies to existing and new municipal solid waste (MSW) landfills. (Part 63, Subpart AAAA as amended or corrected through April 20, 2006)

*cb.* Reserved.

*cc. Emission standards for hazardous air pollutants for the manufacturing of nutritional yeast.* (Part 63, Subpart CCCC)

*cd. Emission standards for hazardous air pollutants for plywood and composite wood products (formerly plywood and particle board manufacturing).* These standards apply to new and existing major sources with equipment used to manufacture plywood and composite wood products. This equipment includes dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing process. This also includes coating operations, on-site storage and wastewater treatment. However, only certain process units (defined in the federal rule) are subject to control or work practice requirements. (Part 63, Subpart DDDD as amended or corrected through October 29, 2007)

*ce. Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline).* These standards apply to new and existing major source organic liquids distribution (non-gasoline) operations, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. (Part 63, Subpart EEEE, as amended or corrected through July 17, 2008)

*cf. Emission standards for hazardous air pollutants for miscellaneous organic chemical manufacturing (MON).* These standards establish emission limits and work practice standards for new and existing major sources with miscellaneous organic chemical manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment. (Part 63, Subpart FFFF, as amended or corrected through July 14, 2006)

*cg. to cx.* No change.

*cy. Emission standards for hazardous air pollutants for stationary combustion turbines.* These standards apply to stationary combustion turbines which are located at a major source of hazardous air pollutant emissions. Several subcategories have been defined within the stationary combustion turbine source category. Each subcategory has distinct requirements as specified in the standards. These standards do not apply to stationary combustion turbines located at an area source of hazardous air pollutant emissions. (Part 63, Subpart YYYY, as amended or corrected through April 20, 2006)

*cz.* No change.

*da. Emission standards for hazardous air pollutants for lime manufacturing plants.* These standards regulate hazardous air pollutant emissions from new and existing lime manufacturing plants that are major sources, are collocated with major sources, or are part of major sources. Additional



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

applicability criteria and exemptions from these standards may apply. (Part 63, Subpart AAAAA, as amended or corrected through April 20, 2006)

*db.* to *de.* No change.

*df. Emission standards for hazardous air pollutants for integrated iron and steel manufacturing.* These standards apply to affected sources at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. (Part 63, Subpart FFFFF, as amended or corrected through July 13, 2006)

*dg. Emission standards for hazardous air pollutants: site remediation.* These standards apply to new and existing major sources with certain types of site remediation activity on the source's property or on a contiguous property. These standards control hazardous air pollutant (HAP) emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (e.g., soil, groundwater, or surface water) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media.

Some site remediations already regulated by rules established under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) are not subject to these standards, as specified in Subpart GGGGG. There are also exemptions for short-term remediation and for certain leaking underground storage tanks, as specified in Subpart GGGGG. (Part 63, Subpart GGGGG, as amended or corrected through November 29, 2006)

*dh.* to *fd.* No change.

ITEM 6. Amend subrule 25.1(9) as follows:

**25.1(9) Methods and procedures.** Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

*a. Performance test (stack test).* A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended or corrected through November 14, 2018 October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through November 14, 2018 October 7, 2020); 40 CFR 61, Appendix B (as amended or corrected through August 30, 2016 October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through November 14, 2018 December 2, 2020). The owner of the equipment or the owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

*b. Continuous monitoring systems.* Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through November 14, 2018 October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through November 14, 2018 October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specifications and quality assurance procedures are conducted.

*c.* No change.

[Filed 8/17/21, effective 10/13/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5899C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

**Rule making related to dams and water storage permitting**

The Environmental Protection Commission (Commission) hereby amends Chapter 50, “Scope of Division—Definitions—Forms—Rules Of Practice,” Chapter 51, “Water Permit or Registration—When Required,” Chapter 52, “Criteria and Conditions for Authorizing Withdrawal, Diversion and Storage of Water,” Chapter 70, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 71, “Flood Plain or Floodway Development—When Approval is Required,” and Chapter 72, “Criteria for Approval”; rescinds Chapter 73, “Use, Maintenance, Removal, Inspections, and Safety of Dams”; and adopts a new Chapter 73, “Approval, Construction, Use, Maintenance, Removal, Inspections, and Safety of Dams,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 455B.275(9), 455B.276(1) and 455B.278.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455B.262, 455B.264, 455B.265, 455B.267, 455B.268, 455B.270, 455B.271, 455B.275 and 455B.278.

*Purpose and Summary*

Until adoption of these amendments, the regulation of dams was located in seven different Iowa Administrative Code chapters. This rule making reduces and consolidates these administrative rules to ease administrative and regulatory burdens on dam owners and consultants. Simultaneously, this rule making updates the rules to make them consistent with national standards and best management practices.

More specifically, this rule making consolidates rules governing dam approval, construction, maintenance, and inspections. Formerly, these rules were scattered across four Iowa Administrative Code chapters (Chapters 70, 71, 72, and 73), as well as included in one rule-referenced technical bulletin. The rules are now located in large part in new Chapter 73, and almost all rules regarding dam safety from the previous seven Iowa Administrative Code chapters are now in new Chapter 73.

This rule making also streamlines water storage permits involving the use of a dam (i.e., to establish a new pond or lake). Previously, this process required two separate permit applications to two different programs (water supply and floodplains) and touched on four different Iowa Administrative Code chapters (Chapters 50, 51, 52, and 73). The rule making consolidates this process into one chapter (new Chapter 73) and requires only one application and one approval process to obtain both permits.

Strategic rule rescissions and amendments are included in this consolidation effort. For example, dam size thresholds subject to the Department of Natural Resources’ (Department’s) oversight are being simplified to make it easier to know when permits are required. Prescriptive design standards have been relaxed. Dams designated as “high hazard,” which are those likely to cause loss of life in the event of a failure, will now be required to have an emergency action plan to mitigate risk. Finally, certain updates to the inflow design storm requirements have been made. These two changes in particular bring Iowa’s administrative rules on dams up to national standards and reflect best management practices.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5677C**. A public hearing was held on July 12, 2021, at 2 p.m. via

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

video/conference call. A representative of the Iowa Farm Bureau Federation (IFBF) attended but did not provide oral comments.

Written comments were received from the IFBF. Two revisions to the rules were requested, both of which have been addressed as explained below.

First, IFBF stated that proposed paragraph 73.10(8)“i” “requires the department to include a permit condition which gives the department access to the dam site for inspections. The rule does not set any limitations on government access to private property.” The commenter requested that reasonable limitations be placed on dam site access.

Second, IFBF stated that “subrule 73.10(2) requires the preliminary application packet to be prepared by or under the supervision of an Iowa licensed profession engineer. Subrule 73.10(4) requires the final submittal of engineering plans to be certified by a professional engineer licensed in the state of Iowa. Many conservation structures, such as channel stabilization, constructed wetlands, sediment control basins and farm ponds, are designed by the Natural Resources Conservation Service (NRCS) each year. The NRCS employees assisting with the design and permit application may or may not be professional engineers licensed in the state of Iowa, but these federal employees are working from NRCS design standards. We recommend that the rules allow for the preliminary and final submission to be prepared by an NRCS qualified staff person or an Iowa licensed professional engineer.”

The Commission has revised subrule 73.10(2), the introductory paragraph of subrule 73.10(4) and paragraph 73.10(8)“i” to read as follows:

**“73.10(2) Preliminary application packet.** The preliminary application packet includes the joint application form and requires submittal of preliminary design data prepared by or under supervision of a professional engineer licensed in the state of Iowa or by an engineer working for the United States government. The preliminary design data packet shall contain a report summarizing the preliminary design, hydrologic data and reservoir routing, a hazard potential analysis, preliminary design drawings, the soils and geotechnical engineering analysis, and a list of the engineering references used as the basis for design and construction.”

**“73.10(4) Final submittal.** After the department’s review of and concurrence with the preliminary submittal, the engineering plans and other engineering information shall be certified by a professional engineer licensed in the state of Iowa, unless prepared by an engineer working for the United States government, and submitted with the following information:”

*“i. Postconstruction department inspections.* A department approval which authorizes construction or modification, operation, and maintenance of a dam for which ongoing inspections are required by these rules shall include a condition stating that the department shall have access to the dam site for such inspections at a reasonable time after notification of the dam owner.”

#### *Adoption of Rule Making*

This rule making was adopted by the Commission on August 17, 2021.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

#### *Jobs Impact*

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

#### *Waivers*

This rule is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on October 13, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **50.4(1)“a”** as follows:

*a.* ~~Application for approval of a new withdrawal, or diversion or storage of water unrelated to the use of an agricultural drainage well.~~ For withdrawals, or diversions, or storage of water unrelated to the use of an agricultural drainage well, a request for a new permit as distinguished from modification or renewal of an existing permit shall be made on Form ~~16 (542-3106)~~ 542-3106. An application form must be submitted by or on behalf of the owner, lessee, easement holder or option holder of the area where the water is to be withdrawn, diverted or stored, and used. An application must be accompanied by a map portraying the points of withdrawal or diversion ~~and storage~~, and the land on which water is to be used oriented as to section, township, and range. One application normally will be adequate for all uses on contiguous tracts of land. Tracts of land involved in the same operation separated only by roads or railroads will be deemed contiguous tracts. For water storage permits, applications will be made in conjunction with dam construction permits as required in rule 567—73.10(455B).

ITEM 2. Rescind and reserve rule **567—51.2(455B)**.

ITEM 3. Rescind and reserve rule **567—52.20(455B)**.

ITEM 4. Amend rule **567—70.2(455B,481A)**, definition of “Dam,” as follows:

“Dam” means ~~a barrier which impounds or stores water~~ the same as defined in rule 567—73.2(455B).

ITEM 5. Rescind the definitions of “Height of dam,” “Low head dam” and “Major dam structure” in rule **567—70.2(455B,481A)**.

ITEM 6. Amend rule 567—71.3(455B) as follows:

**567—71.3(455B) Dams.** Approval by the department for construction, operation, or maintenance of a dam in the floodway or flood plain of any water source shall be required when the dimensions and effects of such dam exceed the thresholds established by this rule repair, or modification of any dam shall be required when the dam exceeds the thresholds under rule 567—73.3(455B). Other structures across a stream may require approval under rule 567—71.12(455B). ~~EXCEPTION: Public road embankments with culverts which impound water only in temporary storage are exempt from the requirements of this rule and shall be reviewed under rules 567—71.1(455B) and 567—72.1(455B).~~ Approval required by this rule shall be coordinated with approval for storage of water required by 567—Chapter 51. Approval by the department shall be required in the following instances:

**71.3(1) Rural areas.** In rural areas:

*a.* Any dam designed to provide a sum of permanent and temporary storage exceeding 50 acre-feet at the top of dam elevation, or 25 acre-feet if the dam does not have an emergency spillway, and which has a height of 5 feet or more.

*b.* Any dam designed to provide permanent storage in excess of 18 acre-feet and which has a height of 5 feet or more.

*c.* Any dam across a stream draining more than 10 square miles.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~d. Any dam located within 1 mile of an incorporated municipality, if the dam has a height of 10 feet or more, stores 10 acre-feet or more at the top of dam elevation, and is situated such that the discharge from the dam will flow through the incorporated area.~~

~~71.3(2) Urban areas. Any dam which exceeds the thresholds in 71.3(1) "a," "b" or "d."~~

~~71.3(3) Low head dams. Any low head dam on a stream draining 2 or more square miles in an urban area, or 10 or more square miles in a rural area.~~

~~71.3(4) Modifications to existing dams. Modification or alteration of any dam or appurtenant structure beyond the scope of ordinary maintenance or repair, or any change in operating procedures, if the dimensions or effects of the dam exceed the applicable thresholds in this rule. Changes in the spillway height or dimensions of the dam or spillway are examples of modifications for which approval is required.~~

~~71.3(5) Mill dams. Rescinded IAB 2/20/91, effective 3/27/91.~~

~~71.3(6) Maintenance of preexisting dams. Approval shall be required to maintain a preexisting dam as described in 567—Chapter 73 only if the department determines that the dam poses a significant threat to the well-being of the public or environment and should therefore be removed or repaired and safely maintained. Preexisting dams are subject to the water, air and waste management dam safety inspection program as set forth in 567—Chapter 73.~~

This rule is intended to implement Iowa Code sections 455B.262, 455B.264, 455B.267, 455B.275 and 455B.277.

ITEM 7. Rescind and reserve rule **567—72.3(455B)**.

ITEM 8. Adopt the following **new** subrule 72.11(3):

**72.11(3) Structures or materials across a channel.** The following criteria shall apply to structures or materials such as riprap that span the channel of a stream or river and do not meet the thresholds of rule 567—73.3(455B):

a. The location and design of the structure shall not adversely affect the fisheries or recreational use of the stream.

b. The pool created by the structure shall not adversely affect drainage on lands not owned or under easements by the applicant.

c. The structure shall be hydraulically designed to submerge before bankfull stage is reached in the stream channel in order that increased or premature overbank flooding does not occur. Where this cannot be reasonably accomplished in order for the structure to fulfill its intended purpose, the applicant shall demonstrate that any increased flooding will affect only lands owned or controlled by the applicant.

d. For projects that include significant appurtenant structures or works outside the stream channel, the combined effect of the total project shall not create more than one foot of backwater during floods which exceed the flow capacity of the channel, unless the proper lands, easements, or rights-of-way are obtained.

e. The structure shall be capable of withstanding the effects of normal and flood flows across its crest and against the abutments with erosion protection added as required to prevent failure of the structure during flood events.

ITEM 9. Rescind 567—Chapter 73 and adopt the following **new** chapter in lieu thereof:

### CHAPTER 73

#### APPROVAL, CONSTRUCTION, USE, MAINTENANCE, REMOVAL, INSPECTIONS, AND SAFETY OF DAMS

##### DIVISION I SCOPE AND DEFINITIONS

**567—73.1(455B) Scope and applicability.** The department regulates the storage of water and the construction and maintenance of dams. Any person who desires to construct, repair, modify, abandon,

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

or remove a dam has a responsibility to determine whether approval is required from the department prior to undertaking any such work.

**567—73.2(455B) Definitions.**

*“Abandonment”* means to render a dam nonimpounding by dewatering and filling the reservoir created by that dam with solid materials and by diverting the natural drainage around the site.

*“Acre-foot”* means a volume of water that would cover one acre of land one foot deep, equal to 43,560 cubic feet of water.

*“Adverse consequences”* means negative impacts that may occur upstream, downstream, or at locations remote from the dam. The primary concerns are loss of human life, economic loss including but not limited to property damage, public damages, disruption of public utilities, and environmental impact.

*“Appurtenant structures”* means structures such as spillways, either in the dam or separate therefrom; the reservoir and its rim; low-level outlet works; and water conduits such as tunnels, pipelines, or penstocks, occurring through either the dam or its abutments.

*“Auxiliary spillway”* means any secondary spillway that is designed to be operated infrequently.

*“Confinement feeding operation”* means the same as defined in rule 567—65.1(459,459B).

*“Dam”* means a barrier that impounds or stores water.

*“Dam owner”* means any person who owns, controls, operates, maintains, or manages a dam.

*“Hazard potential”* means a classification based on the possible incremental adverse consequences that result from the release of water or stored contents due to a failure or misoperation of the dam or appurtenances. The hazard potential classification of a dam does not reflect in any way on the current condition of the dam and its appurtenant structures (e.g., safety, structural integrity, or flood routing capacity).

*“Height of dam”* means the vertical distance from the top of the dam to the natural bed of the stream or water source measured at the downstream toe of the dam or to the lowest elevation of the outside limit of the dam if it is not across a water source.

*“Incremental consequence”* means the difference, under the same conditions (e.g., flood, earthquake, or other event), between the consequences that are likely to occur from the failure or misoperation of the dam and appurtenances as compared to the consequences that are likely to occur without such failure or misoperation.

*“Probable”* means more likely than not to occur; reasonably expected; realistic.

*“Probable maximum flood”* means the same as defined in rule 567—70.2(455B,481A).

*“Public damages”* means as defined in rule 567—70.2(455B,481A).

*“Q100,” “Q50,” “Q25,” “Q15,” “Q10,”* et cetera, means the same as defined in rule 567—70.2(455B,481A).

**567—73.3(455B) Regulated dams.**

**73.3(1) Thresholds.** Dams meeting any of the following thresholds shall be regulated by the department:

a. A dam with a height of at least 25 feet and a storage of 15 acre-feet or more at the top of the dam elevation; or

b. A dam with a storage of 50 acre-feet or more at the top of the dam elevation and a height of at least 6 feet; or

c. A dam that is assigned a hazard potential of high hazard.

**73.3(2) Exceptions.** Road embankments or driveways with culverts are exempt unless such structure serves, either primarily or secondarily, a purpose commonly associated with dams, such as the temporary storage of water for flood control.

**73.3(3) New construction.** Before construction begins, approval is required for construction of any dam meeting the thresholds of a regulated dam. The proposed dam must meet the criteria outlined in this chapter.

**73.3(4) Existing dams.**

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*a.* Approval is required for:

(1) Modification, repair, alteration, breach, abandonment, or removal of any existing dam or appurtenant structure beyond the scope of ordinary maintenance if the height of the dam or storage of the dam exceeds the applicable thresholds in this rule.

(2) Any change in operating procedures if the height of the dam or storage of the dam exceeds the applicable thresholds in this rule.

*b.* Spillway reconstruction, changes in normal water level, and modification of the dam embankment or spillway are examples of modifications that require approval. The dam must meet the criteria outlined in this chapter. Dams found to be unsafe according to rule 567—73.33(455B) shall be repaired or removed.

**73.3(5) *Required upgrades.*** Improvements may be required for existing dams in order to reduce the risk of a dam failure.

*a.* Existing dams assigned a high hazard potential or significant hazard potential that have been inspected or analyzed and found not to meet the criteria in this chapter will be required to meet the requirements outlined in this chapter for the appropriate hazard potential.

*b.* Existing dams assigned a low hazard potential that have been inspected or analyzed and found to have a significant hazard potential or high hazard potential shall be required to be upgraded to meet the requirements outlined in this chapter for the appropriate hazard potential.

**567—73.4(455B) Assignment of hazard potential.** All existing and proposed dams reviewed by the department shall be assigned a hazard potential. Anticipated future land and impoundment use shall be considered in the determination of hazard potential. The hazard potential shall be determined using the following criteria:

**73.4(1) *Low hazard.*** A dam shall be classified as “low hazard” if failure of the dam would result in no probable loss of human life, low economic losses, and low public damages.

**73.4(2) *Significant hazard.*** A dam shall be classified as “significant hazard” if failure of the dam would result in no probable loss of human life but may damage residential structures or industrial, commercial, or public buildings; may negatively impact important public utilities or moderately traveled roads or railroads; or may result in significant economic losses or significant public damages.

**73.4(3) *High hazard.*** A dam shall be classified as “high hazard” if located in an area where failure would result in probable loss of human life.

**73.4(4) *Consideration of changes affecting hazard potential.*** In locating the site of a dam and in obtaining easements and rights-of-way, the applicant shall consider the impacts to the hazard potential of a dam from anticipated changes in land use downstream or adjacent to the impoundment, the operation of the dam, and the potential liability of the dam owner.

**73.4(5) *Changes in hazard potential.*** Any future changes in downstream land use, development, impoundment use, or critical hydraulic structures shall require a reevaluation of the hazard potential of the dam. If the hazard potential of the dam changes, the dam shall be required to meet all applicable criteria for that hazard potential. This may require additional increases in spillway capacity for the dam. The owner and any other persons responsible for the construction and operation of the dam shall assume all risks for future costs to upgrade a dam in the event there is a change in hazard potential.

**567—73.5 to 73.9** Reserved.

DIVISION II  
APPROVAL PROCESS

**567—73.10(455B) Review and approval process for dam construction, modification, abandonment, or removal.**

**73.10(1) *Application process.*** Application materials are provided by the department. The application shall be submitted by or on behalf of the person or persons who will be the future dam owner or owners. The application shall be signed by the applicant or a duly authorized agent. Completed applications along with supporting information shall be submitted to the department through an online

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

application system or mailed to Iowa Department of Natural Resources, Attn: Joint Application, 502 East 9th Street, Des Moines, Iowa 50319. For dam repairs, abandonment, or removal, the department may waive the requirements of the application process outlined in this rule if the requirements are unnecessary for the application approval or if the dam has been designated as unsafe and immediate temporary emergency stabilization repairs are required to prevent failure of the dam. Permanent repairs or modifications will require review and approval.

**73.10(2) Preliminary application packet.** The preliminary application packet includes the joint application form and requires submittal of preliminary design data prepared by or under supervision of a professional engineer licensed in the state of Iowa or by an engineer working for the United States government. The preliminary design data packet shall contain a report summarizing the preliminary design, hydrologic data and reservoir routing, a hazard potential analysis, preliminary design drawings, the soils and geotechnical engineering analysis, and a list of the engineering references used as the basis for design and construction.

**73.10(3) Project review.** The department shall review a preliminary application packet and provide feedback or concurrence on the initial design and assumptions. After concurrence with the preliminary application packet and upon reception of the final submittal as required by subrule 73.10(4), the department will review the final submittal and issue a decision based on whether the project meets criteria for approval outlined in this chapter.

**73.10(4) Final submittal.** After the department's review of and concurrence with the preliminary submittal, the engineering plans and other engineering information shall be certified by a professional engineer licensed in the state of Iowa, unless prepared by an engineer working for the United States government, and submitted with the following information:

- a. One complete set of certified construction plans;
- b. One complete set of construction specifications;
- c. An operating plan, if required;
- d. Easements, if required;
- e. For high hazard dams, an emergency action plan; and
- f. An engineering design report documenting all aspects of the design of the dam and how the design of the dam meets the criteria outlined in this chapter. The engineering design report shall include the following: hazard potential analysis; hydrology and hydraulic calculations; embankment design and foundation analysis; and structural calculations, where applicable.

**73.10(5) Public notice.** Public notice shall be issued by the department to inform persons who may experience adverse consequences by the permitted project. Adverse consequences may occur through maintenance of the dam and appurtenant structures, spillway discharges, temporary ponding of floodwater behind the dam, or failure of the dam. It is the applicant's responsibility to submit sufficient information with the preliminary application packet and on request to enable the department to accurately identify the owners, occupants, and addresses of affected lands.

**73.10(6) Project approval or disapproval.**

a. *Approval.* Issuance of a dam construction permit shall constitute approval of a project. The permit may include one or more special conditions when reasonably necessary to implement relevant criteria.

b. *Disapproval.* A letter to the applicant denying the application shall constitute disapproval of a project.

c. *Notice of decision.* Copies of the decision shall be mailed or electronically transmitted to the applicant and any person who commented.

**73.10(7) Appeal of decision.** Any person aggrieved by a decision issued under these rules may file a notice of appeal as governed by 567—Chapter 7.

**73.10(8) General conditions.** Department approvals of a project shall be subject to the following conditions:

a. *Change in ownership.* The dam owner and any successor in interest to the real estate on which the project or activity is located shall be responsible for notifying the department of change in ownership.



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*b. Maintenance.* The dam owner has a responsibility to maintain the dam and appurtenant structures in a safe condition. Maintenance shall include keeping earthen portions of the dam well vegetated, keeping trees and brush off the dam, preventing and repairing erosion, keeping the spillway free of obstructions, repairing deteriorated structural elements, and performing required maintenance on mechanical appurtenances such as gates.

*c. Responsibility.* No legal or financial responsibility arising from the construction or maintenance of the approved works shall attach to the state of Iowa or the department due to the issuance of an approval or administrative waiver.

*d. Lands.* The applicant shall be responsible for obtaining such government licenses, permits, and approvals, and lands, easements, and rights-of-way which are required for the construction, operation, and maintenance of the authorized work.

*e. Change in plans.* No material change from the plans and specifications approved by the department shall be made unless authorized in writing by the department.

*f. Revocation of permit.* A department permit may be revoked if construction is not completed within the period of time specified in the department permit.

*g. Performance bond.* A performance bond may be required when necessary to secure the construction, operation, and maintenance of approved projects and activities in a manner that does not create a hazard to the public's health, welfare, and safety. The amount and conditions of the bond shall be specified as special conditions in the department permit.

*h. Construction inspection.* For high hazard and significant hazard dams, construction shall be inspected by or under the supervision of a professional licensed engineer in the state of Iowa. The engineer shall prepare and certify as-built plans after completion and a report documenting that the dam was constructed in general conformance with the approved plans (or approved changes) and outlining unusual circumstances encountered during construction. The water storage permit shall not be issued until the department accepts the as-built plans and report.

*i. Postconstruction department inspections.* A department approval which authorizes construction or modification, operation, and maintenance of a dam for which ongoing inspections are required by these rules shall include a condition stating that the department shall have access to the dam site for such inspections at a reasonable time after notification of the dam owner.

*j. Owner inspections.* For high hazard and significant hazard dams, the owner is responsible for annual inspections and submission of written inspection reports to the department as required in subrule 73.30(4).

**567—73.11(455B) Water storage permits.**

**73.11(1)** A water storage permit shall be required for all regulated dams in order to legally impound water. No water shall be impounded by a dam or reservoir prior to issuance of a water storage permit.

**73.11(2)** Application for a dam construction permit shall constitute application for a water storage permit if the appropriate fee (as stated in 567—subrule 50.4(2)) is received with the application.

**73.11(3)** A water storage permit shall be issued upon a finding by the department that the dam and reservoir are safe to impound water within the conditions prescribed in the dam construction permit and the project meets the following conditions:

*a.* The proposed storage is for a specified beneficial use such as human or livestock water supply, flood control, water quality, recreation, aesthetic value, erosion control, or low-flow augmentation.

*b.* The impounding structure can be operated in a manner which will not adversely affect any applicable protected flow in the impounded stream. Protected flows are listed in 567—Chapter 52.

*c.* For high hazard and significant hazard dams, the water storage permit will not be issued until as-built plans and a construction report have been submitted documenting that the dam has been constructed in general conformance with the approved plans and conditions of the dam construction permit and until the department has conducted an inspection of the dam.

**73.11(4)** A water storage permit may be modified, canceled, or suspended pursuant to Iowa Code section 455B.271. Conditions of cancellation or suspension of water storage permits shall include

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

draining the lake with any available low-level drain and may include dewatering with other methods or breaching of the dam.

**567—73.12 to 73.14** Reserved.

DIVISION III  
CRITERIA FOR APPROVAL

**567—73.15(455B) General criteria.**

**73.15(1) Required findings.** The department shall approve the construction, repair, modification, abandonment, or removal of a dam only after finding that the project is designed in accordance with accepted engineering practice and methods, and in a manner consistent with the applicable department criteria in this rule.

**73.15(2) Waiver.** A request for a waiver to this chapter shall be submitted in writing pursuant to 561—Chapter 10. The contents of a petition for waiver shall include information pursuant to rule 561—10.9(17A,455A).

**567—73.16(455B) Lands, easements, and rights-of-way.** An application for approval of a dam project shall include information showing the nature and extent of lands, easements, and rights-of-way that the applicant has acquired or proposes to acquire to satisfy the following criteria:

**73.16(1)** Ownership or perpetual easements shall be obtained for the area to be occupied by the dam embankment, spillways, and appurtenant structures, and the permanent or maximum normal pool.

**73.16(2)** Ownership or easements shall be obtained for temporary flooding of areas that would be inundated by the flood pool up to the top of dam elevation and for spillway discharge areas.

**73.16(3)** Easements covering areas affected by temporary flooding or spillway discharges shall include provisions prohibiting the erection and usage of structures for human habitation or commercial purposes without prior approval by the department.

**73.16(4)** As a condition of granting approval of a dam rated less than high hazard, the applicant may be required to acquire control over lands downstream from the dam as necessary to prevent downstream development which would affect the hazard classification of the dam.

**567—73.17(455B) Emergency action plans for high hazard dams.**

**73.17(1) Emergency action plan required.** All high hazard dams shall be required to have an approved emergency action plan on file with the department. The plan shall include the following:

- a. A statement of purpose;
- b. A project description;
- c. An emergency response process;
- d. An emergency notification plan with flowchart;
- e. Responsibilities of all parties;
- f. A list of emergency preparedness and plan maintenance activities; and
- g. Inundation maps or another acceptable description of the inundated area.

**73.17(2) Emergency action plan maintenance.** The owner of the dam shall keep the emergency action plan up to date. Contact information shall be verified in the plan at least once a year, and an exercise shall be performed at least every five years. The owner of the dam shall keep an up-to-date copy of the emergency action plan on file with the department and with the local county emergency manager.

**567—73.18(455B) Encroachment on a confinement feeding operation structure.** A dam shall not be constructed or modified so that the ordinary high water of the lake, pond, or reservoir created by the dam is closer than the following distances from a confinement feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place. Measurement shall be from the closest point of the confinement feeding operation structure to the water edge of the lake, pond,

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

or reservoir for a pool level at the elevation of the crest of the auxiliary spillway or at the top of dam elevation if the dam does not have an auxiliary spillway.

**73.18(1)** The minimum separation between a water source other than a major water source and a confinement feeding operation structure is 500 feet.

**73.18(2)** The minimum separation between a major water source and a confinement feeding operation structure is 1,000 feet or such distance that the structure is not located on land that would be inundated by Q100, whichever is greater.

**567—73.19(455B) Hydrologic and hydraulic criteria.**

**73.19(1) Hydrology and hydraulic calculations.** Hydrology and hydraulic calculations shall be submitted in the design report documenting the methods and analysis followed in modeling software selection, inflow design hydrograph determination, and reservoir routing. The hydrology and hydraulics section of the design report shall include design references, inflow hydrograph, reservoir stage storage, and stage discharge curves and clearly identify peak inflows, peak discharges, and reservoir elevations for the design floods.

**73.19(2) Design floods.** The specified freeboard design floods in the table below shall be passed without overtopping of the dam or the dam shall be designed to withstand such overflow. The specified spillway design flood in the table below shall be passed by the principal spillway without need for operation of an auxiliary spillway unless the auxiliary spillway is designed such that erosion is not expected during operation.

Hazard Potential	Freeboard Design Flood	Spillway Design Flood
Low Hazard	Q100	Q10
Significant Hazard	Q1000	Q50
High Hazard	Probable Maximum Flood	Q100

**73.19(3) Precipitation amounts.** The National Oceanic and Atmospheric Administration's NOAA Atlas 14, Precipitation-Frequency Atlas of the United States, Volume 8, Version 2.0, dated 2013, shall be used for the Q10–Q1000 frequency storm events. NOAA Hydrometeorological Report No. 51, Probable Maximum Precipitation Estimates, United States, East of the 105th Meridian, dated 1978, shall be used for the probable maximum precipitation.

**73.19(4) Spatial and temporal rainfall distributions and storm durations.** The design report shall document the sources and methodologies for inflow hydrograph development. Distributions and durations that produce the highest impoundment water level shall be used for design.

**73.19(5) Spillway discharge capacity.** The spillway discharge capacity shall be sufficient to evacuate at least 80 percent of the volume of water temporarily stored during the principal spillway design flood within ten days. If this cannot be accomplished, the auxiliary spillway and freeboard design flood routings shall be made beginning with the impoundment level at the ten-day drawdown elevation.

**73.19(6) Incremental consequence analysis.** An inflow design flood based on an incremental consequence analysis may be developed and submitted to the department for review as an alternative to the design floods stated in subrule 73.19(2). The design flood selected using incremental consequence analysis is the flood above which there is a negligible increase in downstream water surface elevation, velocity, and consequences due to failure of the dam when compared to the same flood without failure. If the department concurs with the analysis, the freeboard design storm may be reduced. The minimum design flood for a high hazard dam shall be Q500. The minimum design flood for low hazard and significant hazard dams shall be Q100.

**567—73.20(455B) Spillway design requirements.**

**73.20(1)** Spillways shall be designed to operate safely for the life of the structure and at the discharges and pressures that would be experienced under all flow conditions, including the freeboard design flood.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**73.20(2)** Spillways shall be provided with a means of piping and seepage control (e.g., drainage diaphragms), antivortex devices, trash racks, or other inlet debris control measures, and stable outlets capable of handling design exit flow velocities.

**73.20(3)** When a conduit is proposed to be used in a high hazard or significant hazard dam, detailed hydraulic, hydrologic, and structural computations supporting selection of the size and type of pipe to be used shall be provided by the applicant.

**73.20(4)** Detailed drawings and specifications relating to the installation of the pipe shall include, but not be limited to, construction measures that adequately address critical load bedding, backfill, compaction, joints, and seepage precautions related to installation of the pipe.

**73.20(5)** Structural computations and drawings shall be submitted for all proposed concrete structures. Drawing details, as necessary, shall be provided showing reinforcement, cutoffs, underdrains/filters, waterstops, construction joints, control joints, and any other details necessary to construct.

**73.20(6)** If an auxiliary spillway is proposed, it shall be analyzed, designed, and constructed adequately to establish and maintain stability during the passage of design flows without blockage or breaching. Open-channel auxiliary spillways shall have a minimum depth of 2 feet and minimum width of 10 feet and be designed with appropriate curvature and slopes to prevent excessive erosion.

**73.20(7)** A gated low-level outlet shall be provided for high hazard and significant hazard dams. The gated low-level outlet shall be capable of draining at least 50 percent of the permanent storage behind the dam within ten days. The pipe conduit shall be designed so that negative pressures will not occur at any point.

**567—73.21(455B) Embankment design requirements.**

**73.21(1)** The applicant shall document the engineering standards and design references used for dam embankment design. Drawing details, as necessary, shall be provided showing embankment slopes, required additional fill for anticipated settlement, top width, foundation preparation, core trench or cutoff wall, fill materials and methodology, internal seepage controls, and embankment erosion protection.

**73.21(2)** A geotechnical report shall be submitted for high hazard and significant hazard dams documenting the evaluation of slope stability requirements, anticipated vertical settlement and horizontal elongation, seepage and underseepage potential, whether cathodic protection is needed for metal pipes, and proper construction practices for the soil types and conditions encountered. A stability evaluation shall include end-of-construction, steady-state seepage and sudden-drawdown conditions.

**567—73.22(455B) Operating plan.** A written operating plan shall be prepared for any dam with gates or other movable structures that must operate or be operated during times of flood or to provide a minimum downstream release rate. Development of the operating plan is considered part of the design process. An operating plan shall include, at a minimum, the following items:

**73.22(1) Responsibility.** The operating plan shall outline and identify the necessary personnel who will be present to operate the equipment or, in the case of automatic equipment, to monitor it and ensure it is functioning properly.

**73.22(2) Operating circumstances.** The circumstances under which operation must occur shall be clearly defined, and a means shall be provided to ensure that operating personnel are present when necessary.

**73.22(3) Method of operation.** The means and methods by which operation is to be conducted shall be clearly defined and shall include, at a minimum, the following items: rates and sequences for opening or closure of gates, target water levels, and target flow rates.

**73.22(4) Flood capacity.** The operating plan shall allow for safe passage of all floods up to and including the freeboard design flood. Flood discharges through the dam greater than the design peak flood inflows into the impoundment shall not be permitted.

**73.22(5) Low flow.** The operating plan shall address low flow situations and shall specify a minimum release rate if required by the department and how the minimum release will be provided and maintained.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**73.22(6) Equipment.** Consideration shall be given to and allowance made for the possible failure of or malfunctioning of the equipment.

**73.22(7) Discharge measurement.** A means shall be provided to determine the discharge through the control structures, especially where operation is to maintain a minimum downstream flow. Stage discharge tables, streamflow gages or other means of obtaining discharge readings shall be provided. The settings of control structures shall be easily read.

**567—73.23(455B) Removal and abandonment of dams.** Removal is the draining of the impoundment and removal of all or a significant portion of the embankment. A dam may be abandoned by rendering a dam nonimpounding by dewatering and filling the reservoir with solid materials and by diverting the natural drainage around the site.

**73.23(1) Removal requirements.** A dam removal project shall meet all of the following requirements:

- a. The dam removal plan shall clearly show removal limits and will demonstrate how the proposed construction will render the dam height and storage below thresholds in rule 567—73.3(455B);
- b. An impoundment dewatering plan shall be submitted that documents how the water will be released in a controlled manner and not cause upstream erosion or pose a flooding risk downstream;
- c. A dam breach plan shall be submitted that demonstrates how the breach process will not pose an increased risk compared to the existing structure; and
- d. A sediment disposition plan shall be submitted that provides for stabilization, release, or removal of stored sediment and shall demonstrate no significant adverse consequences on fish and wildlife habitat downstream from the proposed construction.

**73.23(2) Abandonment requirements.** An abandonment plan shall be submitted documenting the final site stabilization, evidence that the structure will no longer impound water or waterborne materials that would be released in the event of a dam failure, and evidence that the structure will not store water above the thresholds outlined in this chapter.

**567—73.24 to 73.29** Reserved.

DIVISION IV  
DAM OWNERSHIP, INSPECTIONS, AND ENFORCEMENT

**567—73.30(455B) Dam owner responsibilities.**

**73.30(1) Operation and maintenance required.** The intent to permanently cease or cause to cease all acts of construction, operation, and maintenance of a dam is prohibited. If any person wishes to be relieved of the responsibilities inherent in the ownership or control of a dam structure, those responsibilities shall be undertaken by another person through sale, transfer, or other means or the dam shall be removed.

**73.30(2) Dam maintenance.** The dam owner shall be required to maintain the dam and appurtenant structures in a safe condition. Maintenance shall include, but not be limited to, keeping earthen portions of the dam well vegetated, keeping trees and brush off the dam, preventing and repairing erosion, keeping spillways and drains free of obstructions, repairing structural deterioration, and performing required maintenance on mechanical appurtenances such as gates. The dam owner shall perform regular inspections to identify potential maintenance problems.

**73.30(3) Dam repairs.** The dam owner shall arrange for performance of engineering investigations when needed to evaluate potential safety problems. The dam owner shall perform any required repairs. When the department determines the need for follow-up inspections, the dam owner may be required to have a qualified person make inspections and prepare written inspection reports at specified intervals.

**73.30(4) Maintenance inspections by dam owner.** The dam owner of a high hazard or significant hazard structure shall be responsible for annual inspections and submission of written inspection reports. Annual inspection reports are due to the department on or before December 1. Inspection reports shall include:

- a. Maintenance work done since the previous annual report;
- b. Observed deficiencies on the dam or appurtenant structures;

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- c. Remedial measures necessary and the method and schedule the dam owner proposes to correct the deficiencies found; and
- d. Changes in land use downstream of the dam.

**567—73.31(455B) Dam safety inspection program.**

**73.31(1) Scope of dam safety inspection program.** Dams subject to inspection under these rules are regulated dams as defined in this chapter. The scope of department staff field inspections normally is limited to visually observable features of dams and their appurtenant structures.

**73.31(2) Purpose of dam safety inspection program.** The general purposes of inspections are as follows: to evaluate the construction, operation, and maintenance of dams; to identify observable deficiencies in dams or appurtenant structures; and to identify other floodplain structures or uses which may affect the hazard potential of a dam or use of an associated impoundment. Inspection reports shall be used by the department in determining whether a proposed dam project complies with applicable criteria and to determine whether any of the following conditions exist:

- a. A permit violation;
- b. A violation of law which requires that a permit be obtained; or
- c. A condition which constitutes a public nuisance by causing unacceptable risk of injury to the public health, safety or welfare.

**73.31(3) Inspections of significant hazard and high hazard dam structures.**

a. *Inspection prior to construction.* A field inspection may be made by the department to determine the hazard potential of the dam and verify the location and plan information upon receipt of an application for approval of construction or modification of a dam.

b. *Inspection during construction.* Construction or modification of a dam structure shall be inspected by an engineer licensed in the state of Iowa or by a trained inspector under the supervision of the engineer. After completion of construction or modification of a dam structure, the engineer shall prepare and submit a construction report, as-built plans, and a statement that in the engineer's professional opinion the work was conducted in general conformance with the approved plans and specifications.

c. *Acceptance inspections.* When construction of a dam or modifications thereto is completed, and as-built plans and a construction report have been submitted, the department shall make a field inspection to determine whether visually observable features of the dam and appurtenant structures are consistent with the approved plans and the conditions of the dam construction permit. The department shall thereafter issue the water storage permit or a letter stating that additional work is required for acceptance of construction. Closure of the low-level outlet gate shall not begin until the department has issued the water storage permit.

d. *Periodic inspections after acceptance.* High hazard structures shall be inspected at least once every two years by the department. Significant hazard structures shall be inspected at least once every five years by the department. Structures poorly maintained or those that require repairs identified by the department shall be inspected more frequently until required maintenance and repairs are completed. The department shall notify the dam owner or agent before each inspection. Each inspection shall assess the condition of the dam and appurtenant structures and the adequacy of operation and maintenance practices. The inspection may include reevaluation of the ability of the dam and appurtenant structures to adequately withstand the hydraulic loadings and pass the appropriate design floods.

**73.31(4) Inspections of low hazard dams.**

a. *Preliminary site evaluation.* The department may evaluate the site of a proposed dam from maps and aerial photographs in lieu of a field inspection.

b. *Inspection during construction.* The applicant shall be responsible for providing supervision of construction by a person experienced in the type of construction involved.

c. *Inspection of dams with operating plans.* Low hazard dams with operating plans shall be inspected by the department at least once every five years. Any problems noted shall be reported to the dam owner in writing.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*d. General inspections of low hazard dams.* Low hazard dams may be periodically inspected by the department to determine their condition. Any serious problems noted shall be reported to the dam owner in writing.

**73.31(5) *Special inspections and investigations.*** Special inspections and investigations shall be made by department personnel in the following instances:

- a.* Upon notice or evidence of unauthorized construction;
- b.* Upon notice or evidence that a dam has failed or is in a condition where failure appears likely, and public damages would result from such failure; or
- c.* Upon notice or evidence that the hazard classification of a dam may no longer be valid due to changes in downstream conditions.

**73.31(6) *Inspections by others.*** At the discretion of the department, an inspection report submitted by a qualified individual may be accepted in lieu of an inspection and report by the department.

**73.31(7) *Inspection reports.*** The department shall prepare a report of each inspection and provide a copy to the dam owner. The report shall state the deficiencies observed during the inspection. If appropriate, the report shall detail the actions required to address the noted deficiencies.

**567—73.32(455B) Raising or lowering of impoundment levels.**

**73.32(1) *When approval is required.*** A separate approval is required to temporarily or permanently raise or lower the normal level of water impounded by a regulated dam unless the raising and lowering has been authorized as part of an approved operating plan. Such approval shall be in the form of a letter authorizing the lowering or raising and may be conditioned upon various requirements.

**73.32(2) *Information required for approval.*** The applicant shall submit the following information:

- a.* The date when the raising or lowering will be initiated, the level to which the impoundment will be raised or lowered and, if the raising or lowering is temporary, the anticipated date when the normal water level will be restored; and
- b.* Evidence that the discharge rate during lowering will not exceed the capacity of the stream channel below the dam.

**73.32(3) *Criteria for approval.*** The department's review of the raising or lowering of the impoundment includes determining the effects on flooding or flood control for any proposed works and adjacent lands and property; on the wise use and protection of water resources; on the quality of water; on fish, wildlife, and recreational facilities or uses; and on all other public rights and requirements.

**73.32(4) *Conditions.*** Conditions of approving the temporary or permanent raising or lowering of water levels may include:

- a.* Giving prior notice to the director of the local county conservation board or local enforcement officer for the department;
- b.* Publicizing the lowering locally in order to notify downstream users, persons who have boats or docks on the impoundment and other persons whose use of the impoundment might be affected; and
- c.* Maintaining a minimum release rate as determined by the department during refilling.

**567—73.33(455B) Unsafe dams.**

**73.33(1) *Procedures for designation of a dam as unsafe.***

*a. Department report.* If after inspection or other investigation the department determines that a dam is unsafe, a report shall be prepared. Copies of the report shall be provided to the dam owner and any other person whom the report identifies as responsible for the unsafe condition of the dam. The report shall identify the problems which cause the dam to be unsafe and recommend action to remedy the unsafe condition.

*b. Opportunity for comment.* The department shall provide the dam owner or other responsible person with a reasonable opportunity to comment on the department report considering the degree and imminence of hazard identified in the department report.

**73.33(2) *Criteria for designating a dam as unsafe.*** Designation of a dam as unsafe shall be based on one or more of the following findings:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*a.* The dam has serious deficiencies in its design, construction, use, maintenance, or physical condition which would contribute to failure or otherwise increase flood damages;

*b.* A high hazard or significant hazard dam has inadequate spillway capacity for the size and hazard potential of the dam.

**73.33(3) Department action concerning an unsafe dam.** After completion of the procedures for designating an unsafe dam, the department shall issue an initial decision which may order remedial work depending on the degree and imminence of hazard caused by the unsafe condition. Remedial work may include draining of the impoundment or removal of any structure determined to constitute a public nuisance. Procedures for appealing an initial decision are the procedures in 567—Chapter 7. If the initial decision requires emergency remedial work to abate an imminent danger of failure which would cause significant public damages, the director of the department may request the assistance of the attorney general to seek an appropriate judicial order compelling performance of emergency remedial work.

These rules are intended to implement Iowa Code chapter 455B, division III, part 4.

[Filed 8/17/21, effective 10/13/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5897C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

**Rule making related to mercury-added switch recovery from end-of-life vehicles**

The Environmental Protection Commission (Commission) hereby rescinds Chapter 215, “Mercury-Added Switch Recovery from End-of-Life Vehicles,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 455B.806.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455B.801 to 455B.809.

*Purpose and Summary*

This rule making rescinds and reserves Chapter 215. The Mercury-Free Recycling Act, passed in 2006, required auto manufacturers to implement and fund a system to recover mercury switches from scrap vehicles before they were crushed or shredded for recycling. Mercury switches were used in convenience lighting (hood and trunk lights) in vehicles as recently as 2002. The Mercury-Free Recycling Act included a sunset date of July 1, 2020, based on the expectation that the vast majority of vehicles containing the switches would be scrapped by then. The sunset deadline was not extended by the Legislature. As such, the Commission no longer has the authority to enforce this program. Accordingly, the rules must be rescinded.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5676C**. No public comments were received. No changes from the Notice have been made.



ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*Adoption of Rule Making*

This rule making was adopted by the Commission on August 17, 2021.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on October 13, 2021.

The following rule-making action is adopted:

Rescind and reserve **567—Chapter 215**.

[Filed 8/17/21, effective 10/13/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5889C**

**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to home- and community-based services eligibility**

The Human Services Department hereby amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," and Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 249A.

*State or Federal Law Implemented*

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Purpose and Summary*

The purpose of these amendments to the Home- and Community-Based Services (HCBS) Habilitation program is to adopt the Level of Care Utilization System (LOCUS) for adults ages 19 and older and Child and Adolescent Level of Care Utilization System (CALOCUS) for youth ages 16 to 18 for the purposes of the needs-based eligibility determination, person-centered service planning, and HCBS tier authorization.

These amendments also add provisions related to intensive residential habilitation services as defined in rule 441—25.1(331), adopt training criteria for direct service staff providing HCBS services, and clarify the scope of services included in Home-Based Habilitation (HBH).

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5706C**.

The Department received 26 comments and questions from five respondents on the proposed amendments. The comments and questions and the corresponding responses from the Department are divided into three topic areas: (1) provider standards, (2) needs-based eligibility and LOCUS/CALOCUS implementation, and (3) general comments.

**HCBS habilitation and HBH provider standards**

**Comment 1:** Does the training proposed in the rule packet need to be competency-based?

**Response 1:** The training required in paragraph 77.25(8)“b” does not have to be competency-based; however, that is best practice.

**Comment 2:** What is the proposed effective date for the rule changes?

**Response 2:** The effective date of these adopted amendments is November 1, 2021.

**Comment 3:** How do we approach staff training if a person served moves from a “home-based habilitation” service to an “intensive residential habilitation” service? Do the staff need an additional 48 hours of training? Twenty-four hours of training since they already had their initial 24 hours, or just an additional 12 hours of training on top of the 12 hours they need to have annually?

**Response 3:** Staff training is not affected if a member moves from HBH services to intensive residential habilitation services. Staff that will be delivering intensive residential habilitation services must meet the criteria of subparagraph 77.25(8)“b”(3), which states that a person providing direct support to members receiving intensive residential habilitation services shall complete 48 hours of training within the first year of employment in mental health and multi-occurring conditions pursuant to subrule 25.6(8).

**Comment 4:** How will these training rules apply to existing staff? Will the staff be grandfathered in, or will they need to take 24 or 48 hours of training within a year of implementation of the rule? How do the new training expectations impact current staff? Will they need the initial 24 or 48 hours of training in the first year following rule implementation or default to the 12-hour annual training immediately?

**Response 4:** Existing staff will be expected to have completed the initial 24 or 48 hours of training, as applicable, within 12 months of November 1, 2021. When completing the 2022 HCBS provider self-assessment, the provider will attest to compliance with the HBH training requirements and the intensive residential habilitation training requirements, if applicable. In addition, during future HCBS quality oversight desk reviews and targeted reviews, HBH providers will be expected to show evidence of completion of the required training based on the services being delivered by the employee as documented in each employee’s training file.

**Comment 5:** Do training expectations apply solely to the HBH tier services, or will they additionally apply to staff in employment and day habilitation services as well?

**Response 5:** The training requirements in paragraph 77.25(8)“b” are applicable to HBH services only. Day habilitation service provider training requirements are included in paragraph 77.25(7)“b,” and the supported employment service provider training requirements are listed in paragraph 77.25(10)“c.”

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**Comment 6:** Will training types including webinars, seminars and video tutorials that apply to the approved topics be an appropriate training method for staff, or is the expectation that trainings be such that staff must show competency for the topic?

**Response 6:** Providers may choose from a wide variety of training modalities to deliver the required training.

**Comment 7:** Do staff providing services to persons served who are receiving services in Intensive I, II, III, and IV need to have 48 hours of training within the first year of employment? Or is this just needed for staff working with persons served who are approved for the new level of service Intensive IV?

**Response 7:** When a staff person is delivering HBH services, that employee must be provided training in accordance with subparagraphs 77.25(8)“b”(4) and 77.25(8)“b”(5). When a direct support professional is providing intensive residential habilitation – Intensive IV services, that employee must be provided training in accordance with subparagraph 77.25(8)“b”(3).

Since publication of the Notice of Intended Action, the Department has revised subparagraph 77.25(8)“b”(3) in Item 2 by adding a requirement that 24 hours of training be completed each year after the employee’s first year of employment.

**Comment 8:** Paragraphs 77.25(8)“c” and “d.” Do these line items pertain to only the “intensive residential service homes” as being “designed to serve up to four persons,” or do these pertain to any home providing HBH services?

**Response 8:** Paragraphs 77.25(8)“c” and “d” apply to any home where HCBS habilitation or HCBS waiver services are provided. These paragraphs implement Iowa Code section 135C.6.

**Comment 9:** Subparagraph 77.25(8)“b”(1) states that a person providing direct support shall be at least 18 years old and have a high school diploma or its equivalent. This field is drastically short staffed, and this rule may continue to prohibit a provider’s ability to hire staff. Is it necessary to have a high school diploma or its equivalent? What exactly does “its equivalent” mean? With the increase in training hours to provide HBH, it appears that providers will be able to train on the skills that are necessary to provide these services regardless if a person has a high school diploma or its equivalent.

**Response 9:** The age and education requirements for a direct support professional that will be delivering the HBH services set the minimum expectation for the staff. A “high school diploma or equivalent” means having either a high school diploma or a GED certificate. Due to the level of maturity needed to support adults with functional limitations as a result of a diagnosis of serious mental illness, it was determined that the services should be delivered by an adult. If a provider wishes to employ someone who does not meet the minimum requirements under subparagraph 77.25(8)“b”(1), the provider may seek an exception to policy to employ the person in the delivery of HBH services.

**Comment 10:** Numbered paragraph 78.27(7)“c”(1)“1.” What exactly does “medically managed residential services” mean?

**Response 10:** Once generated, the LOCUS score is used to recommend a person for a level of care. There are seven different levels of care described in the LOCUS that differ according to:

- The types of services and supports available.
- The type and amount of staff support available.
- How often treatment or services are provided.
- The setting in which the treatment or services are provided.
- The ability of the treatment or service setting to manage the safety of people who are at risk of harming themselves or others.

Medically managed residential services is a level of care generally used for those experiencing the greatest severity of behavioral health condition(s), whether acutely or (for a small subset of individuals) for a longer period. This level of care is provided in an environment that allows persons who are at high risk of harm or with severe dysfunction and lack of engagement to be managed safely until their condition improves. The clinical attention and level of intervention provided are generally intense.

**Comment 11:** Subparagraph 78.27(7)“c”(2). What exactly does “medically monitored residential services” mean?

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**Response 11:** This level of care is for those with higher levels of risk, more difficulties with daily functioning, and less access to or ability to use supports in the home. It commonly involves residential-based services, though it may also be provided through intensive in-home support. There is a great deal of structure and intervention provided under this level of care, with intensive monitoring and some level of 24-hour access to nursing and medical monitoring.

**Comment 12:** Subparagraph 78.27(7)“c”(7). For High Recovery, it states that the person must have a LOCUS score of level zero. We are concerned with this as our clients all have serious and persistent mental illness and will never have scores of zero on the LOCUS, as they have to meet all of the eligibility criteria which will indicate trouble in areas of functioning to receive habilitation services.

**Response 12:** The Department recognizes that actual disposition of level one recovery maintenance and health management is the lowest disposition score obtainable through the LOCUS/CALOCUS assessment, and as such, the Department has revised subparagraph 78.27(7)“c”(7) by changing the eligible LOCUS score from level zero to level one.

**Comment 13:** Subparagraph 78.27(7)“c”(3). What exactly does “medically monitored non-residential services” mean? There should be clarification within the rule as to what this means.

**Response 13:** This level of care is for those who need a great deal of structure, support and monitoring in order to live safely and successfully in the community. With appropriately matched supports and services, individuals at this level of care do not require an on-site living situation for their treatment. The Department recognizes that members receiving this level of HBH services may be residing in residential settings with daily staffing support.

**Comment 14:** Paragraphs 78.27(7)“d” and “e.” With the additional requirements for support and safety in service provision for serving youth, ensuring children ages 16 to 18 or those living in a 24-hour home for children up to the age of 21 are provided 24-hour supervision, they should get the highest level tier if residing in an agency-operated home. Recently our organization had this situation and did not get the highest level tier of Intensive III. Also, not sure how the LOCUS for children scores are calculated, but they would almost always need that higher tier because of their age. It does state in the rules that children ages 17.5 to 18 shall receive 24-hour supervision and support, but what about the 16 year olds and 17 year olds? We understand that if services are provided in their parental/guardian home, then we wouldn't need that high level tier, but this should be clarified better.

**Response 14:** In accordance with Department policy regarding serving minors in residential settings outside the family home, minors 16 to 17 years old are to be served in a setting licensed by the Department of Inspections and Appeals. Minors receiving services outside the family home are to receive 24-hour supervision from the service provider. The Department has revised paragraph 78.27(7)“d” by adding new subparagraph 78.27(7)“d”(4) as follows:

“(4) Individuals 16 to 18 years of age shall receive 24-hour site supervision and support.”

**Needs-based eligibility and LOCUS/CALOCUS implementation**

**Comment 1:** Subparagraphs 78.27(2)“f”(1) and (2). Needs Assessment Habilitation Services are utilized to serve Medicaid members who have experienced psychiatric treatment and have a history of severe and persistent mental illness. Our agency strongly recommends that assessments not be completed based solely on a review of records, but that language be included in this section requiring a face-to-face assessment completed by the designated case manager and the interdisciplinary team (including member and guardian). This is consistent with current Iowa Administrative Code rule 441—90.4(249A) guidelines and will ensure the LOCUS score is a true representation of each member's assessed needs.

**Response 1:** The Department agrees that the comprehensive assessment and social history completed by the integrated health home (IHH) or the community-based case manager (CBCM) must be completed based on a face-to-face interview with the member and the member's representatives as applicable. Consequently, the Department has revised the first sentence of paragraph 78.27(2)“f” so that it now reads as follows:

“The LOCUS or CALOCUS tool has been completed in the LOCUS online system and using the algorithm developed by Deerfield Solutions to derive the actual disposition score based on the comprehensive assessment and social history (CASH) completed by the integrated health home (IHH)

## HUMAN SERVICES DEPARTMENT[441](cont'd)

or community-based case manager (CBCM) during a face-to-face interview with the member and the member's representative as applicable, and based on information submitted on the information submission tool and other supporting documentation as relevant, the IME medical services unit has determined that the member is in need of home- and community-based services."

**Comment 2:** The assessor should be identified prior to the implementation of these rules (CBCM, IHH or other?). Add into rule the requirement for assessor to have completed LOCUS/CALOCUS training by Deerfield Solutions' authorized training program or certification prior to implementation.

**Response 2:** The operationalization of the LOCUS/CALOCUS is within the purview of the managed care organizations (MCOs). The MCOs are expected to have trained assessors who meet the criteria in the 1915(i) state plan amendment (SPA) and the managed care contracts. The scoring of the LOCUS/CALOCUS will be operationalized through the contractual obligations of the MCOs.

**Comment 3:** Add language requiring that any scoring of the LOCUS/CALOCUS use the algorithm developed by Deerfield Solutions.

**Response 3:** Paragraph 78.27(2)"f" has been revised as noted in Response 1 of this section.

**Comment 4:** Regarding completion of a member's initial assessment within 7 days of referral for habilitation services, an annual LOCUS/CALOCUS assessment should be completed 30 days prior to the implementation of the new individual service plan.

**Response 4:** The timelines for completion of the initial assessment and annual reassessment will be completed within the timelines agreed upon in the core standardized assessment (CSA) vendor contract and the managed care contracts. The contractual obligations of the MCOs and CSA vendors will not be placed in administrative rule.

**Comment 5:** Our agency recommends that a process for appeal of the assessment be developed and clearly outlined, utilizing the Supports Intensity Scale (SIS) assessment process for appeal.

**Response 5:** Habilitation member appeal rights are included in paragraph 78.27(11)"d." The Department has amended paragraph 78.27(11)"d" in new Item 6 to add the words "or of the LOCUS/CALOCUS actual disposition score" to the paragraph's second sentence so that it now reads as follows:

"The member is entitled to have a review of the determination of needs-based eligibility or of the LOCUS/CALOCUS actual disposition score by the Iowa Medicaid enterprise medical services unit by sending a letter requesting a review to the medical services unit."

**Comment 6:** Development of evaluation process to ensure interrater reliability of assessment should be included in rules.

**Response 6:** The oversight of the MCO assessment processes will be included in the scope of work of the MCO oversight vendor contract. Similar processes that are in place today to ensure interrater reliability for the interRAI and SIS assessment tools will be utilized for the scoring of the LOCUS/CALOCUS tool.

**Comment 7:** The process for reassessment should include a seven-day time frame for completion of LOCUS/CALOCUS in the event of a significant observable change in the member's situation, condition, or circumstances. Include language directing that a copy of the LOCUS/CALOCUS full assessment and scores derived from the assessment be shared with all members of the interdisciplinary team at the conclusion of the assessment with a written report distributed within seven days.

**Response 7:** The MCO and medical services vendors are contractually obligated to observe the timelines contained in their respective contracts regarding completion of initial and annual assessments. No changes are being made to the rules at this time in response to the comment.

**Comment 8:** Subparagraphs 78.27(7)"c"(3) and (4). Currently Intensive I and Intensive II tiers (UD and U8) are residential-based services, but they are indicated on here to be "non-residential services" in the proposed rule. The only indicated residential service in the proposed tiers is for Intensive III and IV. This would be a change from the current tier system. This is a concern to us, as we feel they should remain residential services.

**Response 8:** The definitions related to the LOCUS/CALOCUS actual disposition scores are the definitions for the level of care identified by the LOCUS/CALOCUS online system. For the purposes

## HUMAN SERVICES DEPARTMENT[441](cont'd)

of the HCBS habilitation program, the Department recognizes that both Intensive I and Intensive II are provided in residential and community-based settings.

The Department has revised subparagraphs 78.27(7)“c”(2) to (7) to remove references to the level of care identified by the LOCUS/CALOCUS online system. The subparagraphs now read as follows:

“(1) Intensive IV residential habilitation services. Intensive IV services are provided 24 hours per day. To be eligible for intensive IV services, a member must meet the following criteria:

“1. The member has a LOCUS/CALOCUS actual disposition of level six medically managed residential services, and

“2. The member meets the criteria in 441—subparagraph 25.6(8)“c”(3).

“(2) Intensive III services are provided 17 to 24 hours per day. To be eligible for intensive III services, the member must have a LOCUS/CALOCUS actual disposition of level five.

“(3) Intensive II services are provided 13 to 16.75 hours per day. To be eligible for intensive II services, the member must have a LOCUS/CALOCUS actual disposition of level four.

“(4) Intensive I services are provided 9 to 12.75 hours per day. To be eligible for intensive I services, the member must have a LOCUS/CALOCUS actual disposition of level three.

“(5) Medium need services are provided 4.25 to 8.75 hours per day as needed. To be eligible for medium need services, the member must have a LOCUS/CALOCUS actual disposition of level two.

“(6) Recovery transitional services are provided 2.25 to 4 hours per day as needed. To be eligible for recovery transitional services, the member must have a LOCUS/CALOCUS actual disposition of level one.

“(7) High recovery services are provided 0.25 to 2 hours per day as needed. To be eligible for high recovery services, the member must have a LOCUS/CALOCUS actual disposition of level one.”

**Comment 9:** We have heard that the LOCUS tool would be completed by the MCO as a desk review and not as an interactive assessment completed with the individuals receiving service. We are concerned about individuals not receiving appropriate scoring by only utilizing this method. We strongly encourage that the rules be amended to indicate that the LOCUS would include an interview with the individual requesting services, as that is also indicated in the LOCUS training manual to be done.

**Response 9:** The member will participate in a face-to-face comprehensive assessment and social history (CASH) to be completed by the IHH or by the CBCM at the time the member is enrolled in habilitation. The CASH will be used to complete the LOCUS/CALOCUS in the LOCUS online system by assessors trained by Deerfield Solutions, the LOCUS/CALOCUS vendor. The Department requested clarification from Deerfield Solutions and the American Association for Community Psychiatry (AAP) regarding the validity of the LOCUS and CALOCUS when completed as a desk review. According to Deerfield Solutions and AAP, it is appropriate to complete the LOCUS/CALOCUS as a desk review as long as the supporting information reflects the member’s current status.

**Comment 10:** The current process allows for a client to change tiers by just having a comprehensive team meeting, but it appears that a new LOCUS would have to be completed by the MCO to get this done. How timely can this get completed utilizing this proposed process, as often situations can change very rapidly and need a change in tier with very quick turnover?

**Response 10:** The operationalization of the LOCUS/CALOCUS including timelines for completion and distribution back to the member and the member’s IHH or CBCM will be consistent with the terms of the managed care contracts.

**Comment 11:** There are concerns also about the MCO payer completing the LOCUS and deciding the level of care for a client, overall, as it is a possible conflict of interest. We feel it should be completed by IHH Care Coordinators (IHHCC), as the interRAI is now, as they have the relationship with the client and thus, better understand the needs of the clients.

**Response 11:** The payer is not determining the service; it is the decision support tool, the LOCUS/CALOCUS, in addition to other supporting documentation that will determine the member’s eligibility for habilitation and the LOCUS/CALOCUS tool that will determine the member’s level of service for HBH. A dedicated team of trained LOCUS/CALOCUS assessors will enhance the interrater reliability. LOCUS/CALOCUS will be incorporated to the core standardized assessment oversight process that is completed today by Telligen. This process will be similar to the process that is used

## HUMAN SERVICES DEPARTMENT[441](cont'd)

today to score the SIS assessment used for level of care and service authorization for the intellectual disability waiver.

**Comment 12:** For HBH services, if someone needs or wants less hours than what they are tested at, do staff have to be provided at that amount?

**Response 12:** The member and the member's interdisciplinary team will review the LOCUS/CALOCUS Domain scores and Actual Disposition Score to determine if the member's needs can be safely met at a lower tier than that recommended by the LOCUS online tool. If the member can be safely served at a lower level of care, the IHHCC or CBCM will document the discussion and determination made by the team in the member's comprehensive person-centered service plan. That information will be communicated to the MCO or through IoWANS when seeking service authorization.

**Comment 13:** How will they ensure comp assessments are done thoroughly?

**Response 13:** The IHHs and CBCMs will be provided training on the interaction between the CASH and the LOCUS/CALOCUS. The IHHs and CBCMs will use the CASH/LOCUS crosswalk tool developed to ensure that the CASH is capturing the member's information and condition accurately and thoroughly to enable accurate scoring of the LOCUS/CALOCUS in the LOCUS online system.

**Comment 14:** Would providers still do tier reviews with the MCO/IHH?

**Response 14:** The process for reviewing a member's service authorization will be modified to include updates to the CASH, which would then be submitted to the MCO to complete a new LOCUS/CALOCUS when a change in the member's needs indicates that a change in service level is necessary.

**Comment 15:** Paragraph 78.27(2)“g,” plan for service, states “Home- and community-based habilitation services provided before approval of a member's eligibility for the program cannot be reimbursed.” IACP requests the plan for service be developed within 7 days of the initial assessment completion and 30 days prior to the annual Individual Service Plan implementation date. This request is due to the nature of the supports and services offered through the Habilitation Program. Without a completed service plan, providers cannot provide necessary supports and services to individuals, which puts the member at risk.

**Response 15:** The timelines for completion of the service plan are detailed in subparagraph 78.27(4)“a”(9). In addition, the MCO and medical services vendors are contractually obligated to observe the timelines contained in their respective contracts. No changes are being made to the rules at this time based on this comment.

**Comment 16:** At the June 1, 2021, workgroup meeting, it was announced that the LOCUS/CALOCUS tool that is to replace the interRAI would no longer be completed by the IHH during a meeting with the client (aka member), but instead the MCOs would complete the tool by doing a desk review of the 30+ page CASH document compiled by the IHH via meetings with the client. It was suggested by the MCOs that maybe the IHHs could highlight areas of the CASH when changes were made and add more in-depth verbiage throughout the CASH so that it would be easier for the MCO to more readily recognize these areas when completing the LOCUS/CALOCUS as a desk review. We are opposed to the change in how the LOCUS tool would be utilized.

1. The LOCUS is designed for interaction with a client to understand their needs, not as a desk review tool of other documents. The LOCUS Training Manual clearly states that “Although the instrument does supply some guidelines, you will be required to make a determination based upon the interview with the client and your intuition about where the most appropriate assignment or rating level falls within a dimension.” The LOCUS has a guided interview to gather the information with the client. There is also a need to understand the client, to know the client, and to be able to determine how the client's ability to engage may affect his or her capacity for making changes that will enhance well-being.

2. A crosswalk between the CASH and the LOCUS/CALOCUS tool needs to be completed with provider input and advanced training provided. The CASH takes over an hour with the client just to read the questions on the 30+ pages; it is more focused on the history and strengths of how a client is doing, whereas the LOCUS is a tool to determine the resource intensity needs of the client via a disposition score.

3. There are again concerns with interrater reliability as the MCO payer also becomes the decider of the level of care for a client without even meeting with that client. Past experience shows that MCO

## HUMAN SERVICES DEPARTMENT[441](cont'd)

staff are not consistent in the review of client files and charts even when all are reporting on the same documents.

**Response 16:** The CASH is a person-centered tool and identifies the member's needs. If all necessary information is present, a desktop review is acceptable to complete the LOCUS/CALOCUS. According to Deerfield and AACP, it is appropriate to complete the LOCUS/CALOCUS as a desk review as long as the supporting information reflects the member's current status. The LOCUS/CALOCUS will be completed by a trained assessor using the information submitted by the IHH or CBCM on the CASH. The assessment functions within the MCO are separate from utilization management functions, which ensures an appropriate firewall in the administration of the assessment.

A crosswalk between the CASH and LOCUS is in process at this time. IHHs will receive comprehensive training on the completion of the CASH and interaction between the CASH and the LOCUS tools in advance of implementation.

The payer is not determining the level of care or the service; the LOCUS/CALOCUS is a decision support tool. All needs-based eligibility determinations are made by the IME. A dedicated team of trained LOCUS/CALOCUS assessors will enhance the interrater reliability. LOCUS/CALOCUS interrater reliability processes will be incorporated to the core standardized assessment oversight process that is completed today by Telligen.

**Comment 17:** If the MCOs are to complete the LOCUS/CALOCUS, then they should also be actively involved in completing the CASH so that they will have direct contact with the client to best understand the overall needs of each respective client. Additionally, a process and timeline for completion of the tool scoring as well as the appeal process needs to be developed to ensure there is not a gap in services or provider payments due to the changes proposed by these rules.

**Response 17:** In accordance with rule 441—90.4(249A), the IHHs and CBCMs are responsible to complete the CASH for the members that they are assigned. Habilitation member appeal rights are included in paragraph 78.27(11)“d.” The Department has amended paragraph 78.27(11)“d” as described in Response 5 of this section.

The timelines for completion of the initial assessment and annual reassessment will be completed within the timelines agreed upon in the Core Standardized Assessment vendor contract and the managed care contracts. The contractual obligations for the MCOs and CSA vendors will not be placed in administrative rule.

**Comment 18:** We strongly encourage you to amend the rules to state the LOCUS/CALOCUS tool cannot be utilized as a desk review and must be completed as designed as an interactive interview with the client by care coordinators and staff who already have a relationship and understanding of the needs of the client and focused on the client's overall well-being.

**Response 18:** The CASH will be used to complete the LOCUS/CALOCUS in the LOCUS online system by assessors trained by Deerfield Solutions, the LOCUS/CALOCUS vendor. The Department requested clarification from Deerfield Solutions and AACP regarding the validity of the LOCUS and CALOCUS when completed as a desk review. According to Deerfield and AACP, it is appropriate to complete the LOCUS/CALOCUS as a desk review as long as the supporting information reflects the member's current status.

**Comment 19:** Considering the time commitment necessary for assessments for other HCBS Waivers (ID Waiver and the SIS), what is the expectation for provider staff involvement in the LOCUS or CALOCUS assessment process? Will providers need to plan for additional staff time to be involved in these assessments?

**Response 19:** Providers are expected to participate as necessary in the development of the CASH completed by the member's IHHCC or the CBCM of the member's MCO. The MCOs will be completing the LOCUS/CALOCUS in the LOCUS online system as a desk review based on submission of the CASH by the IHHCC or CBCM.

**Comment 20:** What is the process for requesting a need for service plan change related to member situation, condition or circumstance?

**Response 20:** The processes to request a service plan change remains unchanged. Members and their service providers are to work through the IHHCC or MCO's CBCM to request service plan changes.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

**Comment 21:** Does the requirement for the service plan to include LOCUS/CALOCUS disposition, composite score and domain scores apply to the service provider plan in addition to the authorizing plan?

**Response 21:** The requirement for the service plan to include LOCUS/CALOCUS disposition, composite score and domain scores applies to the comprehensive person-centered service plan developed by the IHH or CBCM in coordination with the member's interdisciplinary team. The provider delivering HBH services will indicate in the provider-specific service plan the member's LOCUS/CALOCUS actual disposition score and the HBH tier that the provider is authorized to deliver.

**General Comments**

The Department received a number of positive comments in support of the proposed rule making. The Department thanks the agencies that participated in the Habilitation workgroup and those who are supportive of the changes to the Habilitation program.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on August 12, 2021.

*Fiscal Impact*

Assumptions are based on the change in the HBH service eligibility criteria of individuals accessing services under each of the tiers for HBH. The SFY22 State share estimate assumes the COVID-19-related increase in the Federal Medical Assistance Percentage (FMAP) will remain in effect through December 2021. The estimate does not include the potential 10 percent FMAP increase for HCBS waiver services authorized through the American Rescue Plan Act since decisions on this FMAP increase are still pending. This rule making will change the assessment tool for this population from the current interRAI to the LOCUS/CALOCUS assessment tool. The contractor costs associated with completing the assessments are comparable between these tools, so no additional administrative impact is anticipated. Use of the new assessment tool is expected to shift utilization across the HBH reimbursement tiers. Estimates were derived from Optumas using historical data from Iowa Total Care and Amerigroup on utilization and costs for different tiers of service. Funding will need to come from the existing Medical Assistance appropriation. Providers will likely see increased Medicaid payments due to the redistribution of members by reimbursement tier.

*Jobs Impact*

The impact on jobs is unknown at this time but is anticipated to be minimal.

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

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

The following rule-making actions are adopted:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Adopt the following **new** definition of “Intensive residential service homes” in subrule **77.25(1)**:

“*Intensive residential service homes*” or “*intensive residential services*” means intensive, community-based services provided 24 hours per day, 7 days per week, 365 days per year to individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions. Providers of intensive residential service homes are enrolled with Medicaid as providers of HCBS habilitation or HCBS intellectual disability waiver supported community living and meet additional criteria specified in 441—subrule 25.6(8).

ITEM 2. Amend subrule 77.25(8) as follows:

**77.25(8) Home-based habilitation.**

*a.* The following agencies may provide home-based habilitation services:

~~*a.*~~ (1) An agency that is certified by the department to provide supported community living services under:

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

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

~~*b.*~~ (2) An agency that is accredited under 441—Chapter 24 to provide supported community living services.

~~*e.*~~ (3) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as a community housing or supported living service provider.

~~*d.*~~ (4) An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

~~*e.*~~ (5) An agency that is accredited by the Council on Accreditation of Services for Families and Children.

~~*f.*~~ (6) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

*b.* Direct support staff providing home-based habilitation services shall meet the following minimum qualifications in addition to the other requirements outlined in this rule:

(1) A person providing direct support shall be at least 18 years old and have a high school diploma or its equivalent.

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

(3) A person providing direct support to members receiving intensive residential habilitation services shall complete 48 hours of training within the first year of employment and 24 hours of training each year thereafter in mental health and multi-occurring conditions pursuant to 441—subrule 25.6(8).

(4) A person providing direct support to members receiving home-based habilitation services shall complete a minimum of 24 hours of training within the first year of employment in mental health and multi-occurring conditions, including but not limited to the following topics:

1. Mental health diagnoses, symptomology, and treatment;

2. Intervention strategies that may include applied behavioral analysis, motivational interviewing, or other evidence-based practices;

3. Crisis management, intervention, and de-escalation;

4. Psychiatric medications, common medications, and potential side effects;

5. Member-specific medication protocols, supervision of self-administration of medication, and documentation;

6. Substance use disorders and treatment;

7. Other diagnoses or conditions present in the population served; and

8. Individual-person-centered service plan, crisis plan, and behavioral support plan implementation.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(5) A person providing direct support to members receiving home-based habilitation services shall complete a minimum of 12 hours of training annually on the topics listed in subparagraph 77.25(8) "b"(4) or other topics related to serving individuals with severe and persistent mental illness.

c. The department shall approve living units designed to serve up to four persons except as necessary to prevent an overconcentration of supported community living units in a geographic area.

d. The department shall approve a living unit designed to serve five persons if both of the following conditions are met:

(1) Approval will not result in an overconcentration of supported community living units in a geographic area; and

(2) The county in which the living unit is located provides to the bureau of long-term care verification in writing that the approval is needed to address one or more of the following issues:

1. The quantity of services currently available in the county is insufficient to meet the need; or

2. The quantity of affordable rental housing in the county is insufficient to meet the need; or

3. Approval will result in a reduction in the size or quantity of larger congregate settings.

ITEM 3. Adopt the following **new** definitions of "Child and Adolescent Level of Care Utilization System," "Intensive residential service homes," "Level of Care Utilization System" and "Severe and persistent mental illness" in subrule **78.27(1)**:

"*Child and Adolescent Level of Care Utilization System*" or "*CALOCUS*" means the comprehensive functional assessment tool utilized to determine eligibility for the habilitation program and service authorization for the home-based habilitation service for individuals aged 16 to 18.

"*Intensive residential service homes*" or "*intensive residential services*" means intensive, community-based services provided 24 hours per day, 7 days per week, 365 days per year to individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions. Providers of intensive residential service homes are enrolled with Medicaid as providers of HCBS habilitation or HCBS intellectual disability waiver supported community living and meet additional criteria specified in 441—subrule 25.6(8).

"*Level of Care Utilization System*" or "*LOCUS*" means the comprehensive functional assessment tool utilized to determine eligibility for the habilitation program and service authorization for the home-based habilitation service for individuals aged 19 and older.

"*Severe and persistent mental illness*" means the same as defined in rule 441—25.1(331).

ITEM 4. Amend subrule 78.27(2) as follows:

**78.27(2) Member eligibility.** To be eligible to receive home- and community-based habilitation services, a member shall meet the following criteria:

a. Age. The member is at least 16 years of age or older.

b. LOCUS/CALOCUS actual disposition. The member has a LOCUS/CALOCUS actual disposition of level one recovery maintenance and health management or higher on the most current LOCUS/CALOCUS assessment completed within the past 30 days.

~~c.~~ Risk factors. The member has at least one of the following risk factors:

(1) The member has undergone or is currently undergoing psychiatric treatment more intensive than outpatient care (e.g., crisis response services, subacute mental health services, emergency services, alternative home care, partial hospitalization, or inpatient hospitalization) more than once in the member's life; or

(2) The member is currently receiving habilitation or integrated health home services; or

(2) (3) The member has a history of ~~psychiatric illness~~ severe and persistent mental illness resulting in at least one episode of continuous, professional supportive care other than hospitalization- (e.g., counseling, therapy, assertive community treatment, or medication management); or

(4) The member has a history of severe and persistent mental illness resulting in involvement in the criminal justice system (e.g., prior incarceration, parole, probation, criminal charges, jail diversion program or mental health court); or

(5) Traditional mental health services available in the member's community have not been able to meet the member's needs.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*b. d. Need for assistance.* The member has a need for assistance or is likely to need assistance related to functional impairment arising out of a mental health diagnosis typically demonstrated by meeting at least two of the following criteria on a continuing or intermittent basis for at least ~~two years~~ 12 months:

(1) The member is unemployed, is employed in a sheltered setting, or has markedly limited skills and a poor work history, and the member is currently receiving employment services or the member has a need for employment services to obtain or maintain employment.

(2) The member requires financial assistance ~~for out-of-hospital maintenance and is to reside independently in the community or may be homeless or at risk of homelessness~~ if unable to procure this assistance without help.

(3) The member shows ~~severe~~ significant inability to establish or maintain a personal social support system.

(4) The member requires help in basic living skills such as self-care, money management, housekeeping, cooking, and medication management.

(5) The member exhibits ~~inappropriate~~ social behavior that ~~results in a demand for intervention~~ puts the member's safety or others' safety at risk, which results in the need for service intervention which may include crisis management or protective oversight.

*e. e. Income.* The countable income used in determining the member's Medicaid eligibility does not exceed 150 percent of the federal poverty level.

*d. f. Needs assessment.* The ~~interRAI—Child and Youth Mental Health (ChYMH) for youth aged 16 to 18 or the interRAI—Community Mental Health (CMH) for those aged 19 and older~~ LOCUS or CALOCUS tool has been completed in the LOCUS online system, and using the algorithm developed by Deerfield Solutions to derive the actual disposition score based on the comprehensive assessment and social history (CASH) completed by the integrated health home (IHH) or community-based case manager (CBCM) during a face-to-face interview with the member and the member's representative as applicable, and based on information submitted on the information submission tool and other supporting documentation as relevant, the IME medical services unit has determined that the member is in need of home- and community-based habilitation services. The ~~interRAI—Child and Youth Mental Health (ChYMH) and the interRAI—Community Mental Health (CMH)~~ LOCUS/CALOCUS information submission tools are available on request from the IME medical services unit. Copies of the information submission tool for an individual are available to that individual from the individual's case manager, integrated health home care coordinator, or managed care organization. The designated case manager or integrated health home care coordinator shall:

(1) Arrange for the completion of the ~~interRAI~~ LOCUS or CALOCUS, before services begin and annually thereafter, and more frequently if significant observable changes occur in the member's situation, condition or circumstances.

(2) Use the information submission tool and other supporting documentation as relevant to develop a comprehensive service plan as specified in subrule 78.27(4); and 441—paragraph 90.4(1) "b" before services begin and annually thereafter, and when there is a significant observable change in the member's situation, condition, or circumstances.

*e. g. Plan for service.* The department or the member's managed care organization has approved the member's comprehensive service plan for home- and community-based habilitation services. Home- and community-based habilitation services included in a comprehensive service plan or treatment plan that has been validated ~~through ISIS~~ by the IME or the member's managed care organization shall be considered approved by the department. Home- and community-based habilitation services provided before approval of a member's eligibility for the program cannot be reimbursed.

(1) The member's comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4); and 441—paragraph 90.4(1) "b." A service plan may change ~~at any time due to a significant change in the member's needs~~ when requested by the member or the member's interdisciplinary team when there is a significant observable change in the member's situation, condition, or circumstances.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) For members receiving home-based habilitation, the service plan shall include the member's LOCUS/CALOCUS actual disposition, the LOCUS/CALOCUS composite score, and each individual domain score for each of the six LOCUS/CALOCUS domains.

~~(2)~~ (3) The member's habilitation services shall not exceed the maximum number of units established for each service in 441—subrule 79.1(2).

~~(3)~~ (4) The cost of the habilitation services shall not exceed unit expense maximums established in 441—subrule 79.1(2).

ITEM 5. Amend subrule 78.27(7) as follows:

**78.27(7) Home-based habilitation.** “Home-based habilitation” means individually tailored supports that assist with the acquisition, retention, or improvement of skills related to living, working, and recreating in the community.

*a. Scope.* Home-based habilitation services are individualized supportive services provided in the member's home and community that assist the member to reside in the most integrated setting appropriate to the member's needs. Services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. The specific support needs for each member shall be determined necessary by the interdisciplinary team and shall be identified in the member's comprehensive service plan. Covered supports include:

(1) Adaptive skill development;  
 (2) Assistance with activities of daily living to address daily living needs;  
 (3) Assistance with symptom management and participation in mental health treatment;  
 (4) Assistance with accessing physical and mental health care treatment, communication, and implementation of health care recommendations and treatment;

(5) Assistance with accessing and participating in substance use disorder treatment and services;

(6) Assistance with medication administration and medication management;

(7) Assistance with understanding communication whether verbal or written;

~~(3)~~ (8) Community inclusion and active participation in the community;

~~(4)~~ (9) Transportation;

~~(5)~~ (10) Adult educational supports, which may include assistance and support with enrolling in educational opportunities and participation in education and training;

~~(6)~~ (11) Social and leisure skill development;

~~(7)~~ (12) Personal care; and

~~(8)~~ (13) Protective oversight and supervision.

*b. Setting requirements.* Home-based habilitation services shall occur in the member's home and community.

(1) A member may live in the member's own home, within the home of the member's family or legal representative, or in another community living arrangement that meets the criteria in 441—subrule 77.25(5).

(2) A member living with the member's family or legal representative is not subject to the criteria in 441—paragraphs 77.25(8) “c” and “d.”

(3) A member may not reside in a licensed medical or health care facility or in a setting that is required to be licensed as a medical or health care facility.

*c. Home-based habilitation level of service criteria.* Home-based habilitation services shall be available to members based on the member's most current LOCUS/CALOCUS actual disposition score, according to the following criteria:

(1) Intensive IV residential habilitation services. Intensive IV services are provided 24 hours per day. To be eligible for intensive IV services, a member must meet the following criteria:

1. The member has a LOCUS/CALOCUS actual disposition of level six medically managed residential services, and

2. The member meets the criteria in 441—subparagraph 25.6(8) “c”(3).

(2) Intensive III services are provided 17 to 24 hours per day. To be eligible for intensive III services, the member must have a LOCUS/CALOCUS actual disposition of level five.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) Intensive II services are provided 13 to 16.75 hours per day. To be eligible for intensive II services, the member must have a LOCUS/CALOCUS actual disposition of level four.

(4) Intensive I services are provided 9 to 12.75 hours per day. To be eligible for intensive I services, the member must have a LOCUS/CALOCUS actual disposition of level three.

(5) Medium need services are provided 4.25 to 8.75 hours per day as needed. To be eligible for medium need services, the member must have a LOCUS/CALOCUS actual disposition of level two.

(6) Recovery transitional services are provided 2.25 to 4 hours per day as needed. To be eligible for recovery transitional services, the member must have a LOCUS/CALOCUS actual disposition of level one.

(7) High recovery services are provided 0.25 to 2 hours per day as needed. To be eligible for high recovery services, the member must have a LOCUS/CALOCUS actual disposition of level one.

d. Additional criteria for receiving home-based habilitation services for transition-age youth 16 to 17.5 years of age.

(1) Members residing in the family home may receive home-based habilitation services as needed, subject to the criteria set forth in this rule.

(2) Members residing outside the family home may only receive home-based habilitation services in residential settings with 16 or fewer beds licensed by the department of inspections and appeals.

(3) The proposed living environment must meet HCBS setting requirements in accordance with 441—subrule 77.25(5).

(4) Individuals 16 to 18 years of age shall receive 24-hour site supervision and support.

e. Additional criteria for receiving home-based habilitation services for transition-age youth 17.5 to 18 years of age.

(1) Members residing in the family home may receive home-based habilitation services as needed, subject to the criteria set forth in this rule.

(2) Members residing outside of the family home may receive daily home-based habilitation in a provider-owned or controlled setting when the following criteria are met:

1. The proposed living environment must meet HCBS setting requirements in accordance with 441—subrule 77.25(5).

2. All providers of the service setting being requested must meet the following additional safety and service requirements for serving youth under the age of 18:

• Individuals 17.5 to 18 years of age shall receive 24-hour site supervision and support.

• Individuals under the age of 18 may not reside in settings with individuals over the age of 21.

• The comprehensive service plan shall specifically identify educational services and supports for individuals who have not obtained a high school diploma or equivalent.

• For individuals who have obtained a high school diploma or equivalent, the comprehensive service plan shall include supported employment, additional training, or educational supports.

3. The member's parent or guardian has consented to home-based habilitation services.

4. The member is able to pay room and board costs (funding sources may include, but are not limited to, supplemental security income, child support, adoptions subsidy, or private funds).

5. A licensed setting, such as those approved to provide residential-based supported community living, is not available.

b.f. Exclusions. Home-based habilitation payment shall not be made for the following:

(1) to (6) No change.

ITEM 6. Amend paragraph **78.27(11)“d”** as follows:

d. Appeal rights. The department shall give notice of any adverse action and the right to appeal in accordance with 441—Chapter 7. The member is entitled to have a review of the determination of needs-based eligibility or of the LOCUS/CALOCUS actual disposition score by the Iowa Medicaid

HUMAN SERVICES DEPARTMENT[441](cont'd)

enterprise medical services unit by sending a letter requesting a review to the medical services unit. If dissatisfied with that decision, the member may file an appeal with the department.

[Filed 8/13/21, effective 11/1/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5892C**

## **HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

### **Rule making related to child and spousal support and parenting time**

The Human Services Department hereby amends Chapter 99, "Support Establishment and Adjustment Services," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 252B.7A.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 252B.7A.

#### *Purpose and Summary*

This rule making is necessitated by recent changes to 45 CFR Section 302.56 for guidelines for setting child support awards and to 45 CFR Section 303.4 for establishment of support obligations. To conform to these federal regulations, this rule making updates the Child Support Recovery Unit's current rules for determining income to consider a parent's specific circumstances when evidence of income is limited. The federal Family Support Act of 1988 required each state to maintain uniform child support guidelines and criteria and to review the guidelines and criteria at least once every four years. The Iowa General Assembly entrusted the Iowa Supreme Court with this responsibility in Iowa Code section 598.21B. These amendments update Chapter 99 to conform to upcoming changes to the Iowa Supreme Court guidelines. This rule making adds the term "parenting time" in reference to the rights awarded a parent to time with the parent's child. The term "parenting time" is becoming the more preferred terminology, as compared to the term "visitation," and there has been recent proposed legislation to replace the term throughout the Iowa Code.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5709C**. No public comments were received; however, the Department has made some minor corrections since publication of the Notice to ensure the rules adopted are consistent throughout the chapter. To ensure conformity, changes were made in the introductory paragraph of subrule 99.1(4) in Item 1 and subrule 99.109(2) in Item 7, and they now read as follows:

**"99.1(4) Use of occupational wage rate information or median income for parents on the CSRU caseload.** CSRU shall use occupational wage rate information or median income for parents on the CSRU caseload to determine a parent's income when the parent has failed to return a completed financial statement when requested, and when complete and accurate income information from other readily available sources cannot be secured. If a parent's most recent residential address is in Iowa, CSRU shall use Iowa workforce development regional data to determine income. If a parent's most recent residential address is in another state, the District of Columbia, or Puerto Rico, CSRU shall use wage data from the place of the parent's most recent residence to determine income. For all other cases, CSRU

## HUMAN SERVICES DEPARTMENT[441](cont'd)

shall use Iowa statewide occupational wage rate or median income for parents on the CSRU caseload to determine income.”

**“99.109(2) Orders eligible for suspension.**

“a. The unit shall assist an obligor in suspending support for a child under this part only when there is no order in effect regarding legal custody, physical care, visitation, or parenting time for the child.

“b. If an order exists that contains language regarding legal custody, physical care, visitation, or parenting time for the child, the unit shall deny the suspension request.”

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on August 12, 2021.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on January 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule 441—99.1(234,252B,252H) as follows:

**441—99.1(234,252B,252H) Income considered.** The child support recovery unit shall consider all regularly recurring income of both legal parents to determine the amount of the support award in accordance with the child support guidelines prescribed by the Iowa Supreme Court. Spousal support shall be considered as specified in the Iowa Supreme Court guidelines, and prior obligation spousal support actually paid or received shall be calculated in the same manner as the deductions for support in subrule 99.2(4). These rules on child support guidelines shall not apply if the child support recovery unit is determining the support amount by a cost-of-living alteration as provided in Iowa Code chapter 252H, subchapter IV.

**99.1(1) to 99.1(3)** No change.

**99.1(4)** *Use of occupational wage rate information or median income for parents on the CSRU caseload.* ~~Occupational CSRU shall use occupational wage rate information or median income for parents on the CSRU caseload shall be used to determine a parent’s income when the parent has failed to return a completed financial statement when requested, and when complete and accurate income information from other readily available sources cannot be secured. If a parent’s most recent residential address is in Iowa, CSRU shall use Iowa workforce development regional data to determine income. If~~



## HUMAN SERVICES DEPARTMENT[441](cont'd)

a parent's most recent residential address is in another state, the District of Columbia, or Puerto Rico, CSRU shall use wage data from the place of the parent's most recent residence to determine income. For all other cases, CSRU shall use Iowa statewide occupational wage rate or median income for parents on the CSRU caseload to determine income.

*a. Occupation known.* ~~When CSRU can reasonably ascertain the current or last-known occupation of a parent can be determined through a documented source including, but not limited to, Iowa workforce development or the National Directory of New Hires, CSRU shall use occupational wage rate information shall be used to determine income. When the last-known occupation of a parent cannot be determined through a documented source, information may be gathered from the other parent and occupational wage rate information applied. Wage rate information shall be converted to a monthly amount in accordance with subrule 99.3(1).~~

*b. Occupation unknown.* ~~When CSRU cannot reasonably ascertain the current or last-known occupation of a parent is unknown, CSRU shall estimate determine the income of a parent using the median income amount for parents on the CSRU caseload, based upon the parent's most recent residential address.~~

**99.1(5) and 99.1(6)** No change.

ITEM 2. Amend rule 441—99.2(234,252B) as follows:

**441—99.2(234,252B) Allowable deductions.** ~~The deductions specified in the supreme court Iowa Supreme Court child support guidelines shall be allowed when determining the amount of income subject to application of the guidelines. The parent claiming the deduction shall provide the documentation necessary for computing allowable deductions. Allowable deductions are:~~

**99.2(1) to 99.2(3)** No change.

**99.2(4)** Actual payments of child ~~and spousal~~ support pursuant to a prior court or administrative order. The date of the original court or administrative order, rather than the date of any modifications, shall establish a prior order under this subrule. Support paid under an order established subsequent to the order being modified shall not be deducted. All support payments shall be verified before being allowed as a deduction. The child support recovery unit shall calculate deductions for support as follows:

*a. to d.* No change.

**99.2(5)** ~~Actual medical support paid pursuant to a court order or administrative order in another order~~ Health insurance premium costs for other children, not in the pending matter, as specified in the Iowa Supreme Court guidelines. ~~All medical support payments~~ Health insurance premium costs shall be verified before being allowed as a deduction and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).

**99.2(6)** ~~Actual child care expenses during the custodial parent's employment, less the applicable federal income tax credit as specified in the Iowa Supreme Court guidelines.~~ The child support recovery unit shall determine the amount of the child care deduction as follows:

*a.* ~~Actual child care expenses related to the custodial parent's employment~~ shall be verified by a copy of the custodial parent's federal or state income tax return or by a signed statement from the person or agency providing the child care.

*b.* No change.

*c.* In determining the deduction allowed to the custodial parent for child care expenses ~~due to employment~~, the following procedures shall be used:

(1) and (2) No change.

*d.* No change.

**99.2(7)** Qualified additional dependent deduction (QADD). The qualified additional dependent deduction is the amount specified in the ~~supreme court~~ Iowa Supreme Court guidelines as a deduction for any child for whom parental responsibility has been legally established as defined by the child support guidelines. However, this deduction may not be used for a child for whom the parent may be eligible to take a deduction under subrule 99.2(4).

*a. and b.* No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

**99.2(8)** Cash medical support, either ordered in the pending matter or for other children, not in the pending matter, as specified in the Iowa Supreme Court guidelines. All cash medical support payments for other children, not in the pending matter, shall be verified before being allowed as a deduction and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).

ITEM 3. Amend subrule 99.4(5) as follows:

**99.4(5)** ~~Extraordinary visitation adjustment~~ Adjustment for extraordinary visitation or parenting time. The CSRU shall calculate an extraordinary visitation ~~adjustment~~ or parenting time credit as specified in the ~~supreme court~~ Iowa Supreme Court guidelines. The credit shall not reduce the child support below the amount required by the ~~supreme court~~ Iowa Supreme Court guidelines.

The extraordinary visitation adjustment or parenting time credit shall be given if all of the following apply:

a. There is an existing order for the noncustodial parent that meets the criteria for extraordinary visitation or parenting time in excess of 127 overnights per year on an annual basis for the child for whom support is sought. The order granting visitation or parenting time can be a different order than the child support order. If a controlling order is determined pursuant to Iowa Code chapter 252K and that controlling support order does not meet the criteria for extraordinary visitation or parenting time, there is another order that meets the criteria.

b. The noncustodial parent has provided CSRU with a file-stamped or certified copy of the order.

c. The court has not ordered equally shared physical care.

ITEM 4. Amend subrule 99.69(4) as follows:

**99.69(4)** The request is based entirely on issues such as custody, ~~or~~ visitation, or parenting time rights, which are not directly related to child support.

ITEM 5. Amend paragraph **99.85(1)“d”** as follows:

d. The unit may also use ~~the most recent~~ occupational wage rate information ~~published by the department of workforce development~~ or the median income for parents on the unit caseload to ~~estimate~~ determine the net earned gross income of a parent when a parent has failed to return a completed financial statement when requested and complete and accurate information is not readily available from other sources.

ITEM 6. Amend subrule 99.91(1) as follows:

**99.91(1)** *Nonsupport issues.* The request is based entirely on issues such as custody, ~~or~~ visitation, or parenting time rights.

ITEM 7. Amend subrule 99.109(2) as follows:

**99.109(2)** *Orders eligible for suspension.*

a. The unit shall assist an obligor in suspending support for a child under this part only when there is no order in effect regarding legal custody, physical care, visitation, ~~or other~~ parenting time for the child.

b. If an order exists that contains language regarding legal custody, physical care, visitation, ~~or other~~ parenting time for the child, the unit shall deny the suspension request.

[Filed 8/13/21, effective 1/1/22]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5890C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to foster home insurance fund**

The Human Services Department hereby amends Chapter 158, "Foster Home Insurance Fund," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 237.13.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237.13 as amended by 2021 Iowa Acts, House File 891, section 54.

*Purpose and Summary*

The Foster Home Insurance Fund (Fund) was established to provide liability coverage to licensed foster parents who have a child placed in their home. Pursuant to Iowa Code section 237.13, the Fund is created within the Office of the Treasurer of State to be administered by the Department of Human Services. The Fund consists of all moneys appropriated by the General Assembly for deposit into the Fund. Iowa Code section 237.13 was updated in the 2020 Legislative Session to state that the Department shall use moneys in the Fund to reimburse foster parents for the cost of purchasing foster care liability insurance and to perform the administrative functions necessary to carry out the Iowa Code section.

The initial plan was for the Department to offer financial assistance for licensed foster parents to purchase or offset liability insurance. Following extensive research, it was determined that this was not an existing coverage offered by insurance companies. Therefore, the Department worked with the Legislature to update Iowa Code section 237.13 during the 2021 Legislative Session to add language to the Iowa Code to reflect that moneys in the Fund shall be used to provide home and property coverage for foster parents to cover damages resulting from the actions of a child residing in a foster home. In addition, language was added to the Iowa Code to allow the Department to establish limitations of liability for individual claims as deemed reasonable by the Department.

The Department has contracted with a private organization to perform the administrative functions required of the Fund and sign up all licensed foster parents to ensure that there is coverage in the event foster parents need to submit a claim.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5707C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on August 12, 2021.

*Fiscal Impact*

The annual amount budgeted for the Foster Home Insurance Fund is \$675,000. Changes to the annual limit and an increased deductible could reduce costs, so it is possible the full amount will not be utilized.

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

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

The following rule-making actions are adopted:

ITEM 1. Renumber rules **441—158.1(237)** to **441—158.5(237)** as **441—158.3(237)** to **441—158.7(237)**.

ITEM 2. Adopt the following **new** rule 441—158.1(237):

**441—158.1(237) Applicability.** This chapter specifically relates to the foster home insurance fund established by Iowa Code section 237.13. A foster home insurance fund shall be developed by the department. The fund shall provide reimbursement for any property damages caused by the acts of a foster child residing in a foster home. The department may contract with another state agency or private organization to perform the administrative functions necessary to carry out this rule.

ITEM 3. Adopt the following **new** rule 441—158.2(237):

**441—158.2(237) Definitions.**

“*Department*” means the Iowa department of human services.

“*Foster family home*” or “*licensed foster home*” means an individual, as defined in Iowa Code section 237.1(7), who is licensed to provide child foster care.

“*Personal property*” means any movable thing of value which is owned, rented, or leased by a person and not recognized as real property.

“*Real property*” means anything owned, leased, or rented which is permanently affixed to, or built upon, a piece of land. Real property is best characterized as property that does not move or that is attached to the land.

“*Third-party property*” means property belonging to any person or entity other than the foster family or foster child.

ITEM 4. Amend renumbered subrule 158.3(1) as follows:

**158.3(1) Eligible foster family claims.** The foster home insurance fund shall pay the following within the limits defined in Iowa Code section 237.13, ~~subsections 3 and 4~~ 237.13(2):

a. Valid and approved claims of ~~family foster care children, their parents, guardians or guardians ad litem~~ a licensed foster family home.

b. Compensation to licensed foster families for personal or real property damage, at replacement cost, or for bodily injury, as a result of the activities of the family foster care child. Coverage also extends to third-party property damages caused by actions of the foster child.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~c. Reasonable and necessary legal fees incurred by licensed foster families in defense of civil claims filed pursuant to Iowa Code section 237.13, subsection 7, paragraph "d," and any judgments awarded as a result of these claims. The reasonableness and necessity of legal fees shall be determined by the department or its contract agent. Non-property-based liability, bodily injury, sexual abuse or molestation, auto liability, and professional liability are not covered.~~

ITEM 5. Amend renumbered rule 441—158.4(237) as follows:

~~441—158.4(237) Payment limits.~~ The fund is not liable for the first \$100 for all claims arising out of one or more occurrences during a fiscal year related to a single foster home \$150 per claim deductible per family. Each claim shall be limited to one incident/occurrence. The fund is not liable for damages in excess of ~~\$300,000~~ \$5,000 for all claims arising out of one or more occurrences during a fiscal year related to a single home. Claims for losses related to bedbugs or other insect infestations will have an annual sublimit set by the department.

ITEM 6. Amend renumbered rule 441—158.5(237) as follows:

~~441—158.5(237) Claim procedures.~~ Claims against the fund shall be filed with the department's contractor. ~~If the department does not have a contractor, claims shall be filed on Form 470-2470, Foster Home Insurance Fund Claim.~~ Claims shall be filed on Form 470-5659, Foster Home Property Fund Notice of Loss Form. The decision to approve or deny the claim shall be made ~~by the department or its contractor~~ and the notice mailed or given to the claimant within 180 days of the date the claim is received.

ITEM 7. Amend renumbered rule 441—158.6(237) as follows:

**441—158.6(237) Time frames for filing claims.**

~~158.6(1) Claims by children who were under the age of 18 at the time of the occurrence shall be submitted within two years six months of the date of the occurrence or after the child's eighteenth birthday, but before the child's nineteenth birthday.~~

~~158.6(2) Claims by persons who were aged 18 or older at the time of the occurrence shall be submitted within two years of the occurrence.~~

~~158.6(3) Claims by foster parents pursuant to paragraph 158.1(1)"c" for legal fees or court-ordered judgments shall be submitted within two years of the date of the judgment.~~

ITEM 8. Amend ~~441—Chapter 158~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 237.13 as amended by ~~2011 Iowa Acts, Senate File 482, division II~~ 2021 Iowa Acts, House File 891.

[Filed 8/12/21, effective 11/1/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5891C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

**Rule making related to child care assistance provider reimbursement rates**

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

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

*Purpose and Summary*

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

Reimbursement rates for providers of child care assistance are increased to at least the 50th percentile of the 2020 market rate for child care providers.

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

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 30, 2021, as **ARC 5732C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on August 12, 2021.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*Effective Date*

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

The following rule-making action is adopted:

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

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

<b>Table 1</b>								
<b>Half-Day Rate Ceilings for (Licensed Center)</b>								
	No QRS		QRS 1 or 2		QRS 3 or 4		QRS 5	
Age Group	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	<del>\$17.00</del> <u>\$19.30</u>	\$51.94	<del>\$19.75</del> <u>\$20.50</u>	\$51.94	<del>\$20.50</del> <u>\$21.50</u>	\$51.94	<del>\$21.90</del> <u>\$23.21</u>	\$51.94
Preschool	<del>\$14.75</del> <u>\$17.00</u>	\$30.43	<del>\$15.50</del> <u>\$18.00</u>	\$30.43	<del>\$16.40</del> <u>\$18.98</u>	\$30.43	<del>\$18.69</del> <u>\$20.00</u>	\$30.43
School Age	<del>\$12.18</del> <u>\$13.50</u>	\$30.34	<del>\$12.50</del> <u>\$14.75</u>	\$30.34	<del>\$13.50</del> <u>\$15.00</u>	\$30.34	<del>\$15.00</del> <u>\$16.00</u>	\$30.34

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

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

The following definitions apply in the use of the rate tables:

(1) to (9) No change.

[Filed 8/12/21, effective 11/1/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5900C**

## **NATURAL RESOURCE COMMISSION[571]**

**Adopted and Filed**

### **Rule making related to state parks, recreation areas, and state forest camping**

The Natural Resource Commission (Commission) hereby amends Chapter 61, "State Parks, Recreation Areas, and State Forest Camping," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 455A.5(6).

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 461A.3 and 461A.48.

#### *Purpose and Summary*

These amendments address different aspects of the operations of the Department of Natural Resources (Department) by clarifying existing rules, rescinding outdated rules, modernizing Department systems, and streamlining camping procedures. More specifically, this rule making:

- Amends the following definitions: "cabin" to better reflect the different sizes of cabins that are available; "camping" to include hammocks; "recreation area" to correct a misspelling and cross-reference to a chapter; and "state park" to include Honey Creek Resort State Park.
- Rescinds the following definitions that are no longer used in the chapter: "call center," "persons with disabilities parking permit," "reservation window," and "state park managed by a management company."
- Rescinds the centralized reservation rule and adopts a new rule establishing that the Department operates a centralized reservation system for camping, rental facilities, and other special privileges in state parks, recreation areas, and state forests. Policies and procedures for the reservation system are available to the public upon request.
- Rescinds the paragraph regarding camping coupons because camping coupons have been discontinued.
- Amends the paragraph regarding camping units on campsites to include a hammock as a second small unit allowed on the site in addition to the basic unit.



## NATURAL RESOURCE COMMISSION[571](cont'd)

- Amends the checkout time for campsites to be 3 p.m. for both reservable and nonreservable campsites.
- Amends a rule by extending the Friday and Saturday night stay requirement for camping through October 31, and amends the Fourth of July holiday three-night minimum stay requirement for campsites to only apply when the Fourth of July occurs on a Monday.
- Rescinds the requirement that campsites marked with the international symbol of accessibility be used only by vehicles displaying a persons with disabilities parking permit in order to allow the Department to make accessibility information available through the campsite reservation system, which is consistent with federal accessibility guidance.
- Adopts a new paragraph that requires campers to use straps that are at least one inch wide to secure hammocks to trees in a campground and prohibits the use of bolts, nails, spikes, and other fastening attachments that can damage trees.
- Adopts a new paragraph that allows the Department Director or Director's designee to permit camping in areas outside designated campgrounds for certain special events.
- Rescinds the existing minimum stay requirements for cabins and yurts for organizational purposes and adopts new minimum stay requirements including:
  - A minimum three-night stay is required for the national Memorial Day holiday weekend, the national Fourth of July holiday weekend when the Fourth of July is on a Monday, and the national Labor Day holiday weekend.
  - The Department may require a minimum one-week stay for cabins with bathroom and kitchen facilities during the time period beginning with the Friday of the national Memorial Day holiday weekend and ending with the Thursday after the national Labor Day holiday.
- Rescinds and reserves the paragraph regarding occupancy numbers for cabins because the numbers are determined on a case-by-case basis following building and fire codes. Occupancy numbers are posted on the Department and centralized reservation system websites.
- Amends the damage deposit rule to require payment based on the identified deadline, which is found on the centralized reservation system website.
- Amends the procedures and policies for wet and dry vessel storage rental assignment and use.
- Amends the motorized vehicle restrictions with updated procedures for persons with a physical disability or mobility impairment to acquire a permit to use a motorized vehicle in certain areas in state parks, recreation areas, and preserves.
- Rescinds the subrule on restrictions on picnic sites to allow the Department to make accessibility information available through other mechanisms consistent with federal accessibility guidance, including availability online.
- Rescinds the rule for the Restore the Outdoors Program because the program no longer exists.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5690C**. A public hearing was held on July 6, 2021, at 10 a.m. via video/conference call. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on August 12, 2021.

*Fiscal Impact*

This rule making has no fiscal impact to the state of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

## NATURAL RESOURCE COMMISSION[571](cont'd)

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on October 13, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **571—61.2(461A)**, definitions of “Cabin,” “Camping,” “Recreation areas” and “State park,” as follows:

“*Cabin*” means a ~~small, one-story dwelling of simple construction which is available for rental on a daily or weekly basis.~~ Cabins may or may not contain restroom and kitchen facilities.

“*Camping*” means ~~the erecting of a tent, hammock, or shelter of natural or synthetic material; or placing a sleeping bag or other bedding material on the ground; or parking a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.~~

“*Recreation areas*” means the following areas that have been designated by action of the commission:

Area	County
Badger Creek Recreation Area	Madison
Brushy Creek Recreation Area	Webster
Claire Clair Wilson Park	Dickinson
Emerson Bay and Lighthouse	Dickinson
Fairport Recreation Area	Muscatine
Lower Gar Access	Dickinson
Marble Beach	Dickinson
Mines of Spain Recreation Area	Dubuque
Pleasant Creek Recreation Area	Linn
Templar Park	Dickinson
Volga River Recreation Area	Fayette
Wilson Island Recreation Area	Pottawattamie

These areas are managed for multiple uses, including public hunting, and are governed by rules established in this chapter as well as in 571—Chapters ~~52~~ 51 and 105.

“*State park*” means the following areas managed by the state and designated by action of the commission:

## NATURAL RESOURCE COMMISSION[571](cont'd)

Area	County
A. A. Call	Kossuth
Backbone	Delaware
Banner Lakes at Summerset	Warren
Beed's Lake	Franklin
Bellevue	Jackson
Big Creek	Polk
Black Hawk	Sac
Cedar Rock	Buchanan
Clear Lake	Cerro Gordo
Dolliver Memorial	Webster
Elinor Bedell	Dickinson
Elk Rock	Marion
Fort Atkinson	Winneshiek
Fort Defiance	Emmet
Geode	Henry and Des Moines
George Wyth	Black Hawk
Green Valley	Union
Gull Point	Dickinson
Honey Creek	Appanoose
<u>Honey Creek Resort</u>	<u>Appanoose</u>
Lacey-Keosauqua	Van Buren
Lake Ahquabi	Warren
Lake Anita	Cass
Lake Darling	Washington
Lake Keomah	Mahaska
Lake Macbride	Johnson
Lake Manawa	Pottawattamie
Lake of Three Fires	Taylor
Lake Wapello	Davis
Ledges	Boone
Lewis and Clark	Monona
Maquoketa Caves	Jackson
McIntosh Woods	Cerro Gordo
Mini-Wakan	Dickinson
Nine Eagles	Decatur
Okamanpedan	Emmet
Palisades-Kepler	Linn
Pikes Peak	Clayton
Pikes Point	Dickinson
Pilot Knob	Winnebago
Pine Lake	Hardin
Prairie Rose	Shelby
Preparation Canyon	Monona
Red Haw	Lucas

## NATURAL RESOURCE COMMISSION[571](cont'd)

Area	County
Rice Lake	Winnebago
Rock Creek	Jasper
Shimek Forest Campground	Lee
Springbrook	Guthrie
Stephens Forest Campground	Lucas
Stone	Plymouth and Woodbury
Trapper's Bay	Dickinson
Twin Lakes	Calhoun
Union Grove	Tama
Viking Lake	Montgomery
Walnut Woods	Polk
Wapsipinicon	Jones
Waubonsie	Fremont
Wildcat Den	Muscatine
Yellow River Forest Campground	Allamakee

Use and management of these areas are governed by Iowa Code chapter 461A and by other restrictions prescribed on area signs pursuant to Iowa Code section 461A.44.

ITEM 2. Rescind the definitions of “Call center,” “Persons with disabilities parking permit” and “State park managed by a management company” in rule **571—61.2(461A)**.

ITEM 3. Rescind rule 571—61.3(461A) and adopt the following new rule in lieu thereof:

**571—61.3(461A) Centralized reservation system.** The centralized reservation system of the department accepts and processes reservations for camping, rental facilities, and other special privileges in state parks, recreation areas, and state forests. The system is accessible through the department’s website. The operating policies and procedures for the centralized reservation system are available upon request.

This rule is intended to implement Iowa Code section 461A.3.

ITEM 4. Rescind paragraph **61.4(3)“d.”**

ITEM 5. Amend paragraphs **61.4(5)“c,” “h”** and **“k”** as follows:

*c.* Camping is restricted to one basic unit per site except that a small tent or hammock may be placed on a site with the basic unit. The area occupied by the small tent shall be no more than 8 eight feet by ~~40~~ ten feet, and the tent shall hold no more than four people.

*h.* Campers occupying nonreservable campsites shall vacate the campground or register for the night prior to 4 3 p.m. daily. Registration can be for more than 1 night at a time but not for more than 14 consecutive nights for nonreservable campsites. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

*k.* Minimum stay requirements for camping reservations. From May 1 to ~~September 30~~ October 31, a two-night minimum stay is required for weekends. The two nights shall be designated as Friday and Saturday nights. However, if ~~September 30~~ October 31 is a Friday, the Friday and Saturday night stay shall not apply. If ~~September 30~~ October 31 is a Saturday, the Friday and Saturday night stay shall apply. The following additional exceptions apply:

(1) A Friday, Saturday, and Sunday night stay is required for the national Memorial Day holiday and national Labor Day holiday weekends.

## NATURAL RESOURCE COMMISSION[571](cont'd)

~~(2) A Thursday, Friday, and Saturday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Thursday, Friday or Saturday.~~

~~(3)~~ (2) A Friday, Saturday, and Sunday night stay is required for the Fourth of July holiday if when the Fourth of July occurs on a Monday.

ITEM 6. Rescind and reserve paragraph **61.4(5)“m.”**

ITEM 7. Adopt the following **new** paragraphs **61.4(5)“o”** and **“p”**:

*o.* Campers shall use only straps to secure hammocks to trees in campsites. Straps must be a minimum of one inch wide. The use of bolts, nails, spikes, or any other fastening attachment to a tree is prohibited.

*p.* Special events. The department director or director’s authorized representative may authorize camping in areas outside designated campgrounds for certain special events as defined in rule 571—44.2(321G,321I,461A,462A,481A). Requests shall be reviewed on a case-by-case basis and permitted under the provisions of 571—Chapter 44.

ITEM 8. Rescind paragraph **61.5(3)“b”** and adopt the following **new** paragraph in lieu thereof:

*b.* Rental stay requirements for cabins and yurts.

(1) Except as provided in subparagraphs 61.5(3)“b”(2) and 61.5(3)“b”(3), cabins and yurts may be reserved for a minimum of two nights throughout the entire season.

(2) Cabins and yurts must be reserved for a minimum of three nights (Friday, Saturday, and Sunday nights) for the national Memorial Day holiday weekend, the Fourth of July holiday weekend when the Fourth of July occurs on a Monday, and the national Labor Day holiday weekend.

(3) The department may require cabins with restroom and kitchen facilities to be reserved for a minimum stay of one week (Friday p.m. to Friday a.m.) during the time period beginning with the Friday of the national Memorial Day holiday weekend and ending with the Thursday after the national Labor Day holiday.

(4) All unreserved cabins, yurts and group camps may be rented for a minimum of two nights on a walk-in first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m.

(5) Reservations or walk-in rentals for more than a two-week stay will not be accepted for any facility.

ITEM 9. Amend paragraph **61.5(3)“c”** as follows:

*c.* Persons renting cabins, yurts or group camp facilities must check in at or after 4 p.m. on Saturday the first day of the rental period. Check-out time is 11 a.m. or earlier on Saturday the last day of the rental period.

ITEM 10. Rescind and reserve paragraphs **61.5(3)“d”** and **“f.”**

ITEM 11. Amend paragraph **61.5(4)“a”** as follows:

*a.* ~~Upon arrival for the rental facility period, renters~~ Renters shall pay in full a damage deposit in an amount equal to the weekend daily rental fee for the facility or \$50, whichever is greater, by the established deadline for the facility. If a gathering with keg beer takes place in a lodge or open shelter with kitchenette, the damage deposit shall be waived in lieu of a keg damage deposit as specified in 571—subrule 63.5(3) if the keg damage deposit is greater than the lodge or open shelter with kitchenette damage deposit.

ITEM 12. Rescind rule 571—61.6(461A) and adopt the following **new** rule in lieu thereof:

**571—61.6(461A) Wet and dry storage for vessels.** The department may provide limited temporary vessel storage for individuals who own vessels that are actively used on waters in state parks and recreation areas.

**61.6(1) Vessel storage fees.**

*a.* Vessel storage rental fees shall be set by the department pursuant to 561—Chapter 16.

*b.* A person who fails to pay a vessel storage fee by the established payment due date shall forfeit the slip assignment.

**61.6(2) Storage slip assignment.**

## NATURAL RESOURCE COMMISSION[571](cont'd)

a. Slip assignments shall be made on a first-come, first-served basis. Park staff may establish a waiting list upon receiving more requests for storage slips than the number of slips available. The waiting list shall be maintained in chronological order of the requests received.

b. Slip assignments shall be valid for one year with the option to renew annually.

c. In the event a person on a waiting list refuses a specific slip assignment, the person's name will be removed from the waiting list.

**61.6(3) Storage slip requirements and conditions.**

a. Each storage slip is limited to no more than one vessel at any given time.

b. All vessels in a storage slip must have a current boat registration.

c. Slip assignments must be in the same name of the person to whom the vessel that will occupy the slip is registered.

d. Dry storage slips shall be maintained in a clean and orderly manner. Failure to maintain the slip in a satisfactory condition will result in forfeiture of the slip assignment and any storage fees paid.

e. Slip assignments are not transferrable.

This rule is intended to implement Iowa Code section 461A.3.

ITEM 13. Amend subparagraphs **61.7(8)“b”(1), (2) and (4)** as follows:

(1) Permits.

~~1.~~ Each person with a physical disability or mobility impairment must have a permit issued by ~~the director~~ park or recreation area staff in order to use a motorized vehicle in specific areas within state parks, recreation areas, and preserves. Such permits will be issued without charge and shall be valid for two years from the date of issuance. One ~~nonhandicapped~~ companion may accompany the permit holder on the same vehicle if that vehicle is designed for more than one rider; otherwise the companion must walk.

~~2.~~ Existing permits. Those persons possessing a valid permit for use of a motorized vehicle on game management areas as provided in 571—51.7(461A) may use a motorized vehicle to gain access to specific areas for recreational opportunities and facilities within state parks, recreation areas and preserves.

(2) Approved areas. ~~On each visit, the permit holder must contact the park staff in charge of the specific area in which the permit holder wishes to use a motorized vehicle.~~ The park or recreation area staff ~~must~~ shall designate on a park or recreation area map the area(s) where the permit holder will be allowed to use a motorized vehicle. This restriction is intended to protect the permit holder from hazards ~~or~~ and to protect other users or certain natural resources consistent with relevant state and federal law. ~~The map is to be signed and dated on each visit by the park staff in charge of the area.~~ Approval for use of a motorized vehicle on state preserves also requires consultation with a member of the preserves staff in Des Moines.

(4) Prohibited acts and restrictions.

1. No change.

2. The speed limit for an approved ~~motor~~ motorized vehicle off-road will be no more than ~~5 mph~~ 3 miles per hour. The permit of a person who is found exceeding the speed limit will be revoked.

3. The permit of any person who is found causing damage to cultural and natural features or abusing the privilege of riding off-road within the park will be revoked, and restitution for damages or other remedies available under the law may be sought.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 14. Rescind and reserve subrule **61.7(12)**.

ITEM 15. Rescind and reserve rule **571—61.14(461A)**.

ITEM 16. Amend subrule 61.23(1) as follows:

**61.23(1)** Restrictions of campsite or campground use in established state forest campgrounds shall be the same as those cited in paragraphs 61.4(5) “a” through “c,” “e” through “k,” “m,” and “n.” “n” through “p.”

[Filed 8/17/21, effective 10/13/21]

[Published 9/8/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5905C**

## **PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

### **Rule making related to standards of practice and telepsychology**

The Board of Psychology hereby amends Chapter 240, “Licensure of Psychologists”; adopts new Chapter 243, “Practice of Psychology”; and amends Chapter 244, “Prescribing Psychologists,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 272C.4.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 154B and sections 147.9, 147.55, 272C.4, 272C.9 and 272C.10 and 2020 Iowa Acts, House File 2389.

#### *Purpose and Summary*

This rule making establishes standards of practice for psychologists who provide patient care through telepsychology, requires Health Insurance Portability and Accountability Act (HIPAA)-compliant technology, and imposes other requirements to ensure the patient’s confidential health information is secure. These rules align with the Board of Medicine’s rules governing telemedicine, which will ensure that psychologists operate under uniform standards when coordinating remote care. The new chapter also establishes the minimum standards of practice for licensed psychologists, provides definitions of practice terminology, and specifies the requirements for patient records management, psychological testing, participation in judicial proceedings and reporting to the Board.

In addition, there are two amendments that pertain to technical corrections. The first amendment pertains to Chapter 240 and ensures uniformity with the chapter by removing the requirement that supervised professional experience by a postdoctoral supervisee take place in the same physical setting as the supervisor. The second amendment pertains to 2020 Iowa Acts, House File 2389, which amended Iowa Code chapter 17A to remove the term “variance” and required that agencies’ rules about waiver procedures refer only to waivers. The word “variance” is therefore removed from Chapter 244.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5617C**. A virtual public hearing was held on May 25, 2021, at 10 a.m. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*Adoption of Rule Making*

This rule making was adopted by the Board on August 6, 2021.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on October 13, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **240.6(2)“a”(3)** as follows:

(3) Work in the same physical setting as the supervisor unless ~~a completed off-site supervision form is submitted to and approved by the board~~ the requirements stated in subparagraph 240.6(2)“b”(11) are met;

ITEM 2. Adopt the following **new** 645—Chapter 243:

CHAPTER 243  
PRACTICE OF PSYCHOLOGY

**645—243.1(154B) Definitions.**

“*APA*” means the American Psychological Association.

“*Clinical records*” means records created by a licensee regarding the observation and treatment of patients, such as progress notes, but does not include psychotherapy notes.

“*Examinee*” means a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney about the psychological functioning of that examinee.

“*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder.

“*Licensee*” or “*licensed*” means an individual with an active license to practice psychology, including a provisional license, or a certificate of exemption issued by the board.

“*Patient*” means an individual under the care of a licensee in a clinical role and is synonymous with the term client.

“*Personal representative*” means a person authorized to act on behalf of the patient in making health care-related decisions. A personal representative may include a parent or legal guardian, an individual



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

with a health care power of attorney, an individual with a general power of attorney or durable power of attorney that includes the power to make health care decisions, or a court-appointed legal guardian.

“*Psychotherapy notes*” means notes recorded by a licensee documenting or analyzing the contents of a conversation during a private therapy session with a patient, or a group, joint, or family therapy session, that are maintained separately from the patient’s clinical records. Psychotherapy notes excludes medication prescription monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of any clinical tests, and any summary of the following items: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

“*Telepsychology*” means the provision of psychological services using telecommunication technologies.

“*Test data*” means raw and scaled scores, patient responses to test questions or stimuli, and notes and recordings concerning patient statements and behavior during an examination.

**645—243.2(147,154B,272C) Purpose and scope.** The purpose of this chapter is to set the minimum standards of practice for licensees practicing in Iowa. The practice of psychology is occurring in Iowa if the patient or examinee is located in Iowa. Licensees shall ensure any interns or residents under supervision adhere to the minimum standards of practice and must comply with the requirements set forth in rule 645—240.9(154B). The APA Code of Ethics is applicable and enforceable to the extent it does not conflict with any standards of practice set forth in this chapter. A licensee may be disciplined for any violation of this chapter or the APA Code of Ethics.

**645—243.3(154B) Access to records.**

**243.3(1) Clinical records generally.** Upon a signed release from the patient or the patient’s personal representative, a licensee shall provide clinical records in accordance with the release unless there is a ground for denial under HIPAA.

**243.3(2) Psychotherapy notes.** A licensee is not required to release psychotherapy notes in response to a signed release, but a licensee who chooses to release psychotherapy notes may only provide psychotherapy notes if the signed release specifically authorizes the release of psychotherapy notes.

**243.3(3) Substance use disorder treatment programs.** Licensees who practice in a federally assisted substance use disorder treatment program, also known as a part 2 program, are prohibited from disclosing any information that would identify a patient as having a substance use disorder unless the patient provides written consent in compliance with part 2 requirements.

**243.3(4) Clinical records of minor patients.** A minor patient is a patient who is under the age of 18 and is not emancipated. A licensee is not required to release the clinical records of a minor patient to the minor’s personal representative if releasing such records is not in the minor’s best interest. When a minor patient reaches the age of 18, the clinical records belong to the patient.

**243.3(5) Clinical records of deceased patients.** A licensee shall provide the clinical records of a deceased patient to the deceased patient’s executor upon a written request accompanied by a copy of the patient’s death certificate and a copy of the legal document identifying the requestor as the patient’s executor.

**243.3(6) Forensic records.** A licensee shall provide forensic records consistent with the APA Specialty Guidelines for Forensic Psychology.

**243.3(7) Board.** A licensee shall provide clinical records, test data, or forensic records to the board as requested during the investigation of a complaint. A licensee is not required to obtain a patient release to send such information to the board because the board is a health oversight agency.

**243.3(8) Exceptions.** Nothing herein shall be construed as requiring a licensee to disclose information when there is a legal basis for not disclosing the information.

**645—243.4(154B) Psychological testing.** A licensee may administer psychological tests and assessments to a patient or examinee provided the licensee has appropriate training for any psychological test or assessment utilized and the test or assessment is scientifically founded.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**243.4(1) Use of proctors.** A licensee may delegate the administration of a standardized test, intelligence test, or objective personality assessment to an appropriately trained individual. The licensee is responsible for supervising any proctors.

**243.4(2) Release of test data.** A licensee shall not provide test data to any person, except that upon a written request of a patient or examinee who is the subject of a test, the test data shall be disclosed to a licensed psychologist designated by the patient or examinee. A psychologist who receives test data in this manner may not further disseminate the test data.

**645—243.5(154B) Judicial proceedings.** Prior to participating in a judicial proceeding, a licensee shall become familiar with the rules governing the proceeding. A licensee shall understand and clearly identify the licensee's role in the proceeding.

**243.5(1) Licensure.** A license to practice psychology in Iowa or an exemption from licensure is not required solely to testify as an expert witness in court, provided the psychologist did not personally examine the examinee. A psychologist who personally examines an examinee located in Iowa for the purpose of providing an expert opinion is required to be licensed or exempt from licensure at the time of the evaluation.

**243.5(2) Custody evaluations.** A licensee who performs a child custody evaluation shall comply with the APA Guidelines for Child Custody Evaluations in Family Law Proceedings.

**645—243.6(147,154B,272C) Reports required.** Within 30 days, a licensee shall report to the board the following:

**243.6(1)** A change of name or address. Name and address changes may be reported at [www.idph.iowa.gov/Licensure](http://www.idph.iowa.gov/Licensure).

**243.6(2)** A criminal conviction, even if the adjudication of guilt is deferred, withheld, or not entered. A conviction includes Alford pleas and pleas of nolo contendere.

**243.6(3)** Any disciplinary action taken by another licensing authority in this state, another state, territory, or country.

**243.6(4)** Any occurrence of any judgment or settlement of a malpractice claim or action.

**243.6(5)** Acts or omissions of the board's statute or administrative rules committed by another person licensed to practice by the board when a licensee has first-hand knowledge of such acts or omissions. This duty to report does not apply when a licensee has knowledge as a result of the other licensee being a patient.

**645—243.7(154B) Telepsychology.** A psychologist may practice telepsychology provided the following are met:

**243.7(1)** The psychologist must be licensed or be exempt from licensure in the jurisdiction where the patient or examinee is located.

**243.7(2)** Prior to initiating telepsychology with a new patient or examinee, a licensee shall take reasonable steps to verify the identity and location of the patient or examinee.

**243.7(3)** A licensee shall ensure informed consent for telepsychology includes a description of any limitations of services as a result of the technology utilized.

**243.7(4)** A licensee shall gain competency in the use of a particular technology prior to utilizing it in practice. A licensee shall only use technologies that are secure and functioning properly.

**243.7(5)** A licensee shall apply the same ethical and professional standards of care and professional practice that are required when providing in-person psychological services. If the same standard of care cannot be met with telepsychology, a licensee shall not utilize telepsychology.

**645—243.8(154B) Records.** A licensee shall complete clinical records as soon as practicable to ensure continuity of services. All clinical records shall be completed within 30 days after the service or evaluation is complete in the absence of significant extenuating circumstances. Clinical records and psychotherapy notes shall be retained for at least seven years after the last date of service, or until

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

at least three years after a minor reaches the age of 18, whichever is later. Forensic records shall be completed and retained consistent with the APA Specialty Guidelines for Forensic Psychology.

These rules are intended to implement Iowa Code chapters 147, 154B, and 272C.

ITEM 3. Amend rule 645—244.12(148,154B) as follows:

**645—244.12(148,154B) Joint waiver ~~or variance~~—joint rule.** Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

[Filed 8/18/21, effective 10/13/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5906C**

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

**Rule making related to marketable food products for human consumption**

The Revenue Department hereby amends Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 421.17.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 423.3.

*Purpose and Summary*

Iowa Code section 423.3(49) provides a limited exemption for manufacturers producing "marketable food products for human consumption." Specifically, the Iowa Code section exempts from sales tax:

"The sales price from the sale of carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services and the lease or rental of tangible personal property when used by a manufacturer of food products to produce *marketable food products for human consumption*, including but not limited to treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture." [Emphasis added.]

This exemption was first codified in 1985 and has only been amended once, in 2005, to add leases or rentals of otherwise-qualifying tangible personal property to the exemption. The phrase "marketable food products for human consumption" has never been defined in the Iowa Code or the Department's administrative rules. The Department's long-standing interpretation of the term, articulated through audits and protests, has been that only final food products, not food ingredients, are "marketable food products for human consumption." This interpretation is consistent with the statutory construction principle that exemption provisions be narrowly construed.

To provide clarity to taxpayers seeking to claim this exemption as manufacturers of marketable food products for human consumption, the Department is adopting this definition of the term. The

REVENUE DEPARTMENT[701](cont'd)

Department notes that if a taxpayer does not produce marketable food products for human consumption, the taxpayer may still be eligible for other processing-related exemptions, such as those in Iowa Code section 423.3(47).

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5614C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5720C**. A virtual public hearing was held on July 8, 2021, at 1:30 p.m.

The Department received public comments from the Iowa Taxpayers Association (ITA) and the Iowa Association of Business and Industry (ABI) at each stage of the process: two public hearings and both Administrative Rules Review Committee (ARRC) meetings, at which the Notice and the Amended Notice were reviewed. The Department also received written comments from ITA and ABI, as well as other interested tax professionals, in the initial public comment period. All comments received opposed the rule as proposed, rooted in a disagreement with the Department's interpretation. The Department did not amend the rule from its proposed form prior to adoption. The Department understands impacted stakeholders continue to disagree with the Department's interpretation of this exemption and is willing and interested in working with these stakeholders to bring this issue to a resolution.

No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on August 18, 2021.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on October 13, 2021.

The following rule-making action is adopted:

Adopt the following **new** subrule 230.2(1):

**230.2(1)** "Marketable food products for human consumption" means products intended to be sold ultimately at retail as items which furnish energy, sustain growth, support vital processes in the human body, and are final products ready for and capable of consumption without the need for further processing after being sold to the purchaser. "Marketable food products for human consumption" includes food

## REVENUE DEPARTMENT[701](cont'd)

products traditionally accepted and sold as food products and products that have been enhanced or compounded with nutritional elements. “Marketable food products for human consumption” does not include medicines or dietary or food supplements. A product that may be consumed by a human but is sold for other purposes is not a marketable food product for human consumption.

*a. Certain entities eligible.* An entity that processes a product owned by another entity is eligible for this exemption, subject to satisfying the other requirements to properly claim the exemption.

EXAMPLE: Company A owns and operates a processing facility. Company B owns corn and contracts with Company A to process the corn. Company B maintains ownership of the corn the entire time it is processed and in possession of Company A. Company B sells the processed corn to Company C, who will make retail sales of the processed corn. Company A is eligible to claim this exemption for any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to process the corn.

*b. Determination.* The burden is on the taxpayer seeking to claim this exemption to establish a product is a marketable food product for human consumption. The department’s determination shall be a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE: A manufacturer produces products, such as glucosamine, that are used as ingredients in orange juice, which is produced by a different entity. The glucosamine is not a marketable food product for human consumption. The orange juice is a marketable food product for human consumption.

[Filed 8/18/21, effective 10/13/21]

[Published 9/8/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5893C**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

**Rule making related to motor vehicles operated by an automated driving system**

The Transportation Department hereby adopts new Chapter 380, “Motor Vehicles Operated by an Automated Driving System,” and amends Chapter 400, “Vehicle Registration and Certificate of Title,” Chapter 524, “For-Hire Intrastate Motor Carrier Authority,” and Chapter 540, “Transportation Network Companies,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321.519.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 321.514 through 321.519.

*Purpose and Summary*

This rule making establishes Chapter 380 and makes conforming changes to existing Chapters 400, 524 and 540. 2019 Iowa Acts, Senate File 302, enacted Iowa Code sections 321.514 through 321.519, which authorize operation of autonomous (driverless-capable) vehicles on Iowa roadways and provide the Department with rule-making authority to regulate such vehicles.

New Chapter 380 applies to the regulation of driverless-capable vehicles in Iowa. A driverless-capable vehicle means a vehicle that is capable of performing the entire driving task within the automated driving system’s operational design domain without intervention of a conventional human driver. The following paragraphs further explain the amendments:

## TRANSPORTATION DEPARTMENT[761](cont'd)

**Definitions.** While many of the definitions applicable to driverless-capable vehicles can be found in Iowa Code section 321.514, a few definitions require further clarification in the rules. For example, the term “driverless-capable vehicle” is further defined to mean a vehicle meeting the definition of a Level 3, 4 or 5 classification, which are classifications of higher-level automated vehicles widely recognized within the autonomous vehicle community. Chapter 380 also defines “operational design domain” as that document established by the vehicle manufacturer that is very important in assessing the capabilities and intended uses of a driverless-capable vehicle.

**Identification and operational restrictions.** The rules incorporate a fundamental requirement in regulating driverless-capable vehicles in Iowa, namely, the requirement to identify the vehicle as driverless-capable in the Department’s vehicle registration system. The rules also address operational restrictions for driverless-capable vehicles. The Department already has the authority to place operational restrictions on a vehicle registered in Iowa, for example, if the vehicle is unable to meet certain equipment standards. The new chapter and amendments extend this authority to driverless-capable vehicles, especially for when the Department begins to see fully autonomous vehicles with no human driver required to be present in the vehicle. There may be operational restrictions needed for a vehicle due to the intended design of the vehicle. Two examples of potential operational restrictions would be to limit the vehicle to being operated only during daylight hours or to being operated only on roadways with a certain classification, such as a highway or a city street. Part of establishing any operational restrictions will include a review of the vehicle’s operational design domain or other necessary documentation to assess the vehicle’s operational capabilities. If the Department does issue a restricted registration, the Department will issue a certificate of restriction to be provided to the vehicle owner, which shall be carried in the vehicle and available for inspection by law enforcement upon request. These amendments also provide that if an applicant receives a software update or otherwise modifies the vehicle to make it driverless-capable after registration, the applicant is required to notify the Department within 30 days.

**Driverless-capable vehicle networks.** These amendments address driverless-capable vehicle networks that may be operated by transportation network companies (e.g., Uber or Lyft) or other commercial carriers. These networks and carriers are already required to apply to the Department for operating authority, and the rules now require a network or carrier intending to operate driverless-capable vehicles in Iowa to notify the Department. The Department may also require additional documentation as part of the application process.

**Vehicle registration and titling.** This rule making amends the existing chapter governing vehicle registration and titling to address that the applicant must indicate whether the vehicle the applicant is seeking to register is driverless-capable. In addition to requiring this information on the vehicle registration application, the Department will also have the internal ability to capture this information from the Department’s vehicle identification system. Supporting documentation requirements for a vehicle registration application are also being changed to include the authority to require the operational design domain for the driverless-capable vehicle or any other documentation necessary to assess the driverless-capable vehicle’s operational capabilities. Finally, these amendments allow a driverless-capable vehicle indicator to be placed on the vehicle title or registration, which may also include whether any operational restrictions exist. This indicator may only appear in the electronic vehicle records system.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 19, 2021, as **ARC 5621C**. A public hearing was held on June 11, 2021.

The Department received oral and written comments from the Alliance for Automotive Innovation (AFAI) regarding rules 761—380.1(321) through 761—380.7(17A,321) and subrules 400.4(10) and 400.21(6). AFAI shared concerns about the Department’s proposed rules and amendments, in particular as related to the Department’s proposal to establish a driverless-capable vehicle testing permit in rule 761—380.7(17A,321). AFAI expressed that the Iowa Code already provides a comprehensive

## TRANSPORTATION DEPARTMENT[761](cont'd)

framework for driverless-capable vehicles to operate safely and that creation of an additional testing permit process was unnecessary and would potentially discourage driverless-capable vehicle companies from bringing business to Iowa. AFAI also submitted several suggestions to further align the Department's rules with the Iowa Code and industry experience, including deleting terminology that is not used in the rule chapter, making definitions and references consistent with existing technology, and removing requirements to submit extra documentation to the Department other than the operational design domain of the vehicle.

The Department received written comments from the National Association of Mutual Insurance Companies (NAMIC) suggesting that subrule 380.7(2) be revised to add that a manufacturer or entity applying for a testing permit submit evidence of the vehicle's driving operations in order to conform to Iowa state traffic laws and regulations. The Department has not adopted the testing permit provision that was proposed in rule 761—380.7(17A,321); therefore, the suggested change is no longer applicable.

A description of the changes made by the Department in response to AFAI's comments on each of these rules and subrules is as follows:

**Rule 761—380.1(321)** establishes the applicability of Chapter 380. The Department has removed the proposed language regarding system-equipped driverless-capable vehicles since this term is not used in this chapter.

**Rule 761—380.2(321)** adopts new definitions for Chapter 380. The Department has removed the proposed definition of "ADS-equipped vehicle" because that term is not used in this chapter. The Department has revised the definition of a Level 3 driverless-capable vehicle to conform with existing technology, which provides that a Level 3 vehicle requires a human operator to respond to a request to intervene issued by the vehicle's automated driving system, although the human operator need not be present in the vehicle. The definition of "operational design domain" has also been revised to align with the definition in the Iowa Code.

**Rule 761—380.3(17A)** provides contact information for the Department. This rule has been revised to remove a proposed reference to driverless-capable vehicle testing permits, which has been replaced with a reference to driverless-capable vehicle exemptions. Driverless-capable vehicle exemptions are discussed in further detail in the paragraph explaining the changes to rule 761—380.7(17A,321) below.

**Rule 761—380.4(321)** addresses identification of driverless-capable vehicles at the time of registration. The Department has added terminology describing the vehicle classification level that is commonly used, as well as language to acknowledge changes in a vehicle's recorded SAE level of automation if the automated driving system is subsequently upgraded.

**Rule 761—380.5(321)** authorizes the Department to impose operational restrictions on a driverless-capable vehicle as a condition of registration pursuant to rule 761—400.21(321). The Department has added language requiring a driverless-capable vehicle manufacturer to provide information to the Department regarding the vehicle's operational design domain and associated operational restrictions. This revision also allows the manufacturer to provide subsequent information to the Department about automated driving system design upgrades to the vehicle so that the Department may update its records.

**Rule 761—380.6(321)** addresses documentation submission requirements for a person seeking to operate a for-hire driverless-capable vehicle network in Iowa. The Department has not adopted the proposed application requirement for the submission of additional documentation regarding features other than the vehicle's operational design domain.

**Rule 761—380.7(17A,321)** creates a driverless-capable vehicle testing process in Iowa. However, upon further review of the Iowa Code, which already provides a framework for a driverless-capable vehicle to operate in Iowa, the Department has not adopted the proposed testing permit provision because the Department agrees that the driverless-capable vehicle exemption pursuant to Iowa Code section 321.515(1)"b" is sufficient to address any circumstance in which a driverless-capable vehicle is unable to meet all of the traffic and motor vehicle safety laws and regulations in Iowa. This new rule establishes an application, review, and issuance process for the exemption as well as a suspension and hearing process.

**Subrule 400.4(10)** addresses supporting documentation as part of an application for vehicle registration and title. The Department has removed the proposed application requirement for the

## TRANSPORTATION DEPARTMENT[761](cont'd)

submission of additional documentation other than the vehicle's operational design domain. The Department has also removed a cross-reference to a proposed subrule concerning the testing permit process that was not adopted.

**Subrule 400.21(6)** authorizes operational restrictions. The Department has revised this subrule to clarify that the Department will use the operational design domain to evaluate a driverless-capable vehicle's intended operational design.

Nonsubstantive grammar and punctuation changes have also been made from the Notice.

*Adoption of Rule Making*

This rule making was adopted by the Department on August 12, 2021.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on October 13, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** 761—Chapter 380:

CHAPTER 380  
MOTOR VEHICLES OPERATED BY AN AUTOMATED DRIVING SYSTEM

**761—380.1(321) Applicability.** This chapter applies to driverless-capable motor vehicles operated by an automated driving system, which shall be regulated exclusively by the department under Iowa Code section 321.519.

This rule is intended to implement Iowa Code sections 321.514 through 321.519.

**761—380.2(321) Definitions.** The definitions in Iowa Code section 321.514 are adopted and incorporated herein. In addition:

“*Conventional human driver*” means the same as defined in Iowa Code section 321.514 but does not include a driverless-capable vehicle user.

“*Driverless-capable vehicle*” as defined in Iowa Code section 321.514 means the vehicle meets one of the following classifications:



## TRANSPORTATION DEPARTMENT[761](cont'd)

1. Level 3—conditional driving automation. The vehicle is capable of achieving the sustained and specific performance of the entire dynamic driving task as provided in the operational design domain. An SAE Level 3 vehicle requires a human operator to respond to a request to intervene issued by the automated driving system, as well as to dynamic driving task performance-relevant system failures in other vehicle systems. However, a driverless-capable Level 3 vehicle can be remotely operated without a human operator present in the vehicle.

2. Level 4—high driving automation. The vehicle is capable of achieving the sustained and specific performance of the entire dynamic driving task as provided in the operational design domain. An SAE Level 4 vehicle does not require a conventional human driver and does not require a driverless-capable vehicle user to be present in the vehicle or to perform remote operation to respond to a request to intervene issued by the automated driving system. A Level 4 vehicle is capable of fallback to a minimal risk condition without human intervention.

3. Level 5—full driving automation. The vehicle is capable of achieving the sustained and unconditional performance of the entire dynamic driving task. An SAE Level 5 vehicle is capable of performing all driving functions under all conditions. A Level 5 vehicle does not require a conventional human driver and does not require a driverless-capable vehicle user to be present in the vehicle or to perform remote operation to respond to a request to intervene issued by the automated driving system. A Level 5 vehicle is capable of fallback to a minimal risk condition without human intervention.

*“Driverless-capable vehicle user”* means a person who does not control the in-vehicle accelerating, braking, steering, and transmission gear selection input devices in order to operate a motor vehicle and who is not otherwise expected to respond to a request to intervene issued by the automated driving system of a driverless-capable vehicle.

*“Functional highway classifications”* means the process by which streets and highways are grouped into classes, or systems, according to the character of service the street or highway is intended to provide, and may include but not be limited to a functional highway classification established under 23 CFR Section 470.105.

*“Operational design domain”* means the same as defined in Iowa Code section 321.514.

*“Public highways”* means the same as “street” or “highway” as defined in Iowa Code section 321.1.

*“SAE”* means the Society of Automotive Engineers, which is an international association reputed for its standards development efforts, including its efforts to standardize definitions of driving automation systems.

This rule is intended to implement Iowa Code sections 321.1 and 321.514 and 23 CFR Section 470.105.

**761—380.3(17A) Information and addresses.** Information and forms pertaining to driverless-capable vehicle exemptions and vehicle registration and operational restrictions issued by the department or a county treasurer for a driverless-capable vehicle may be obtained in the form and manner prescribed by the department by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3264; by email at [vscusto@iowadot.us](mailto:vscusto@iowadot.us); or on the department’s website at [www.iowadot.gov](http://www.iowadot.gov).

This rule is intended to implement Iowa Code section 17A.3.

**761—380.4(321) Identification of driverless-capable vehicles in registration.** The SAE level of automation of a driverless-capable vehicle subject to registration under 761—Chapter 400 shall be listed in the department’s records system established under Iowa Code section 321.31 subject to possible changes to the SAE level of automation if the vehicle’s automated driving system is subsequently upgraded.

This rule is intended to implement Iowa Code sections 321.20, 321.31, 321.515 and 321.519.

**761—380.5(321) Operational restrictions.** The department may impose operational restrictions on a driverless-capable vehicle as provided in rule 761—400.21(321) as a condition of registration of

## TRANSPORTATION DEPARTMENT[761](cont'd)

the vehicle. The manufacturer shall provide information to the department regarding the vehicle's operational design domain and associated operational restrictions. The manufacturer may subsequently provide information showing changes to the vehicle's operational design domain and associated operational restrictions if there are subsequent automated driving system design upgrades, and the department shall update its records accordingly.

This rule is intended to implement Iowa Code sections 321.515 and 321.519.

**761—380.6(321) Identification of driverless-capable vehicle networks.** A person seeking to operate a for-hire driverless-capable vehicle network in Iowa, including an on-demand driverless-capable vehicle network, may be required to submit to the department the operational design domain as part of the application for the applicable permit under rule 761—524.3(325A) or 761—540.4(321N).

This rule is intended to implement Iowa Code sections 321.518 and 321.519.

**761—380.7(17A,321) Driverless-capable vehicle exemption.**

**380.7(1) Application.** If a driverless-capable vehicle does not meet the standards set forth in Iowa Code section 321.515(1) "b," a driverless-capable vehicle manufacturer or entity may apply in the form and manner prescribed by the department for an exemption to allow driverless operation of the vehicle. A manufacturer or entity seeking an exemption under this rule shall do all of the following:

*a.* Disclose in the application which traffic or motor vehicle safety law the driverless-capable vehicle is seeking an exemption from under Iowa Code section 321.515(1) "b."

*b.* Submit information describing how the manufacturer or entity intends to operate under the exemption without posing a safety risk to the public.

**380.7(2) Issuance and display of exemption.** If all requirements of subrule 380.7(1) are met, and the department has sufficient information to determine a public safety risk does not exist, the department may issue the driverless-capable vehicle exemption. The exemption may include operational restrictions as provided under rule 761—400.21(321). The manufacturer or entity shall maintain a physical or electronic copy of the exemption and make it available for display at all times in the driverless-capable motor vehicle that is subject to the exemption. The copy may be in either a physical or an electronic format as prescribed by the department. The exemption shall be available for display or accessible to any peace officer upon request.

**380.7(3) Suspension or revocation and reinstatement.** The department may suspend or revoke a driverless-capable vehicle exemption if the exemption has been issued in conflict with the statutes or rules governing the exemption's issuance; if the exemption was issued based on false information; if there was a violation of Iowa Code sections 321.514 through 321.519, 761—Chapter 400 or this chapter; if the vehicle operating under the exemption is involved in a contributive motor vehicle accident attributable to the automated driving system performance in this or any other state and that accident results in death or serious injury; or if the vehicle is operated in violation of any of the motor vehicle laws of this or any other state that results in death or serious injury. For incidents occurring outside the state of Iowa, revocation may only occur once the investigation of the incident is completed and the vehicle's automated driving system performance was found to be involved in or contributive to a motor vehicle accident that resulted in a death or serious injury. The effective date of the suspension or revocation shall be 20 days after the department has mailed notice of the revocation to the manufacturer or entity by first class.

**380.7(4) Hearings.** A manufacturer or entity whose driverless-capable vehicle exemption has been suspended or revoked may contest the suspension or revocation in accordance with Iowa Code chapter 17A and 761—Chapter 13. The request for a hearing shall be submitted in writing to the director of the motor vehicle division. The request shall include, as applicable, the manufacturer's or entity's name, exemption number, complete address and telephone number. The request must be submitted within 20 days after the date of the notice of the suspension or revocation. The department shall stay the suspension or revocation of an exemption for the period that the manufacturer or entity is contesting the suspension or revocation under this rule.

This rule is intended to implement Iowa Code sections 321.381, 321.482, 321.515 and 321.519.

## TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 2. Adopt the following **new** definition of “Driverless-capable vehicle” in rule **761—400.1(321)**:

“*Driverless-capable vehicle*” means the same as defined in rule 761—380.2(321).

ITEM 3. Amend rule **761—400.1(321)**, definition of “ERT service provider,” as follows:

“*ERT service provider*” means a person or entity authorized by the department under subrule ~~400.3(16)~~ 400.3(17) to submit electronic applications for certificate of title or registration of a vehicle on behalf of an end user to a county treasurer.

ITEM 4. Renumber subrule **400.3(16)** as **400.3(17)**.

ITEM 5. Adopt the following **new** subrule 400.3(16):

**400.3(16) *Driverless-capable vehicle***. As provided in Iowa Code sections 321.20 and 321.515 and rule 761—400.21(321), the applicant shall indicate on the application whether the vehicle is a driverless-capable vehicle as defined in rule 761—380.2(321).

ITEM 6. Amend rule **761—400.3(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23 to 321.26, 321.31, 321.34, 321.46, 321.105A, 321.109, 321.122, 321.515, 321.519, 322.19A and 423.26.

ITEM 7. Renumber subrule **400.4(10)** as **400.4(11)**.

ITEM 8. Adopt the following **new** subrule 400.4(10):

**400.4(10) *Driverless-capable vehicles***. If an application is made for a driverless-capable vehicle, the department may require the application to be accompanied by the operational design domain.

ITEM 9. Amend renumbered subrule 400.4(11) as follows:

**400.4(11) *Supporting document retained by county treasurer***. All supporting documents, except those submitted pursuant to subrule ~~400.3(16)~~ 400.3(17), shall be retained by the county treasurer.

ITEM 10. Amend rule **761—400.4(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.30, 321.31, 321.45 to 321.50, 321.67, 321.515, 321.519 and 322.3.

ITEM 11. Adopt the following **new** subrule 400.7(12):

**400.7(12) *Driverless-capable vehicle indicator***, which may also indicate whether operational restrictions exist.

ITEM 12. Amend rule **761—400.7(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.24, 321.31, 321.40, 321.45, 321.52, 321.69, 321.71, 321.124, 321.515, 321.519 and 322G.12.

ITEM 13. Amend rule 761—400.21(321) as follows:

**761—400.21(321) *Registration of vehicles on a restricted basis***. The department may register a vehicle which does not meet the equipment requirements of Iowa Code chapter 321, due to the particular use for which it is designed or intended, or which is a driverless-capable vehicle as defined in rule 761—380.2(321). Registration may be accomplished upon payment of the appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition.

**400.21(1) to 400.21(4)** No change.

**400.21(5)** When a vehicle registered in this state is modified to make it a driverless-capable vehicle as defined in rule 761—380.2(321), the person in whose name the vehicle is registered shall within 30 days notify the department upon a form prescribed by the department.

**400.21(6)** As provided in Iowa Code sections 321.515 and 321.519, the department may restrict the operations of a driverless-capable vehicle registered in this state or another state but which operates in this state. The restrictions may include but are not limited to the restrictions provided in subrules 400.21(1) and 400.21(2) and any operational restrictions based on a specific functional highway classification, weather conditions, days of the week, times of day, and other elements of operational design while the automated driving system is engaged. The department may require the vehicle owner to submit

TRANSPORTATION DEPARTMENT[761](cont'd)

to the department the automated driving system's intended operational design domain for the vehicle on a form prescribed by the department. The department may evaluate the automated driving system's intended operational design domain for the vehicle. The department may establish additional operational restrictions to ensure safe operation of the vehicle. The department shall issue a certificate of restriction as provided in subrule 400.21(3) for any restriction established under this subrule, and the certificate shall be carried in the vehicle and made available for inspection by any peace officer upon request.

This rule is intended to implement Iowa Code sections 321.1, 321.23(4), 321.30(2), 321.101(1), and 321.234A and subsections 321.23(4), 321.30(2), and 321.101(1), 321.515 and 321.519.

ITEM 14. Adopt the following **new** paragraph **524.3(3)“f”**:

*f.* All applicable documents identified in 761—subrule 380.7(2) and any other documentation, if required by the department, necessary to assess the operational capabilities of any driverless-capable vehicles the motor carrier intends to operate, including for the purpose of determining whether to impose operational restrictions as authorized under rule 761—400.21(321).

ITEM 15. Amend **761—Chapter 524**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 321.515 and 321.519 and chapter 325A.

ITEM 16. Reletter paragraph **540.4(3)“j”** as **540.4(3)“k.”**

ITEM 17. Adopt the following **new** paragraph **540.4(3)“j”**:

*j.* All applicable documents identified in 761—subrule 380.7(2) and any other documentation, if required by the department, necessary to assess the operational capabilities of any driverless-capable vehicles the transportation network company intends to operate, including for the purpose of determining whether to impose operational restrictions as authorized under rule 761—400.21(321).

ITEM 18. Amend **761—Chapter 540**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 321.515 and 321.519 and chapter 321N.

[Filed 8/13/21, effective 10/13/21]

[Published 9/8/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/8/21.

**ARC 5894C**

## **UTILITIES DIVISION[199]**

**Adopted and Filed**

### **Rule making related to hazardous liquid pipelines and underground storage**

The Utilities Board hereby amends Chapter 13, “Hazardous Liquid Pipelines and Underground Storage,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 479B.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 479B.

#### *Purpose and Summary*

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of the comprehensive review is to identify and update or eliminate rules that are outdated, redundant, or inconsistent with statutes and other administrative rules. This rule making reorganizes the chapter, retains necessary provisions, introduces new provisions to address issues that have arisen in various dockets, and aligns the chapter with other chapters of the Board's rules.

## UTILITIES DIVISION[199](cont'd)

On August 12, 2021, the Board issued an order adopting new rules. The order is available on the Board's electronic filing system, [efs.iowa.gov](https://efs.iowa.gov), under Docket No. RMU-2020-0013.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 27, 2021, as **ARC 5403C**.

An oral presentation was held April 15, 2021, at 1:30 p.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

The Board received comments at the oral presentation from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; the Iowa Farm Bureau Federation (Farm Bureau); the American Petroleum Institute and Association of Oil Pipelines (Associations); and the Sierra Club Iowa Chapter (Sierra Club) relating to the scope of the rules as well as other technical changes throughout the rules.

On February 16, 2021, OCA, Farm Bureau, and Associations filed their initial comments on the Notice. On February 17, 2021, Sierra Club filed its initial comments on the Notice. On May 26, 2021, the Board issued an order requesting stakeholder comments on a draft Adopted and Filed rule making. OCA, Farm Bureau, and Sierra Club filed comments based on the Board's order requesting stakeholder comments on its proposed draft Adopted and Filed rule making, which addressed the last remaining issues stakeholders had regarding the rule.

The changes to the chapter are based upon comments made at the oral presentation, as well as the written comments submitted by interested parties.

*Adoption of Rule Making*

This rule making was adopted by the Board on August 12, 2021.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

No waiver provision is included in this amendment because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on October 13, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 13.1(1) as follows:

**13.1(1)** ~~Authority~~ *Purpose and authority.* The purpose of this chapter is to implement the requirements of Iowa Code chapter 479B to establish procedures and filing requirements for a permit

## UTILITIES DIVISION[199](cont'd)

to construct, maintain, and operate an interstate hazardous liquid pipeline, for an amendment to an existing permit, and for renewal of an existing permit. This chapter also implements the requirements of Iowa Code chapter 479B for permits for underground storage of hazardous liquids. The ~~standards~~ rules in this chapter relating to hazardous liquid pipelines and underground storage of hazardous liquids are ~~prescribed~~ adopted by the Iowa utilities board pursuant to Iowa Code ~~section 479B.4~~ chapter 479B.

ITEM 2. Rescind subrule 13.1(2) and adopt the following new subrule in lieu thereof:

**13.1(2)** *When a permit is required.* A hazardous liquid pipeline permit shall be required for any hazardous liquid pipeline to be constructed in Iowa, regardless of length or operating pressure of the pipeline.

ITEM 3. Amend subrule 13.1(3) as follows:

**13.1(3)** *Definitions.* Words and terms not otherwise defined in this chapter shall be understood to have their usual meaning. For the administration and interpretation of this chapter, the following words and terms, ~~when used in these rules,~~ shall have the following meanings indicated below:

“Affected person” means any person with a legal right or interest in the property, including but not limited to a landowner, a contract purchaser of record, a person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

“Amendment of permit” means changes to the pipeline permit or pipeline that require the filing of a petition to amend an existing pipeline permit as described in rule 199—13.9(479B).

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

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

“CFR” means the Code of Federal Regulations, which contains the general administrative rules adopted by federal departments and agencies, in effect as of October 13, 2021, unless a separate effective date is identified in a specific rule.

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

“Hazardous liquid” means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

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

“Negotiating” means contact between a pipeline company and a person with authority to negotiate an easement or other interest in land that involves the location, damages, compensation, or other matter that is restricted by Iowa Code section 479B.4(6). Contact for purposes of obtaining addresses and other contact information from a landowner or tenant is not considered negotiation.

“Permit” means a new, amended, or ~~extended~~ renewal permit issued ~~after appropriate application to and determination~~ by the board.

“Person” means an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“Pipeline” means any pipe or pipeline and necessary appurtenances used for the transportation or transmission of any hazardous liquid.

“Pipeline company” means any person, ~~firm, copartnership, association, corporation, or syndicate~~ engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any hazardous liquid or underground storage facilities for the underground storage of any hazardous liquid.

“Renewal permit” means the ~~extension and reissuance of a permit after appropriate application to and determination by the board.~~

“Underground storage” means storage of hazardous liquid in a subsurface stratum or formation of the earth.

## UTILITIES DIVISION[199](cont'd)

ITEM 4. Rescind subrule **13.1(4)**.

ITEM 5. Rescind rule 199—13.2(479B) and adopt the following **new** rule in lieu thereof:

**199—13.2(479B) Informational meetings.** Informational meetings shall be held for any proposed pipeline project five miles or more in length, including both the current project and future anticipated extensions, and which is to be operated at a pressure in excess of 150 pounds per square inch. A separate informational meeting shall be held in each county in which real property or property rights would be affected.

**13.2(1) Time frame for holding meeting.** Informational meetings shall be held not less than 30 days nor more than two years prior to the filing of the petition for pipeline permit.

**13.2(2) Facilities.** A pipeline company shall be responsible for all negotiations and compensation for a suitable facility to be used for each informational meeting, including but not limited to a building or facility which is in substantial compliance with any applicable requirements of the Americans with Disabilities Act Standards for Accessible Design, including both Title II regulations at 28 CFR part 36, subpart D, and the 2004 Americans with Disabilities Act Accessibility Guidelines at 36 CFR part 1191, appendices B and D (as amended through October 13, 2021), where such a building or facility is reasonably available.

**13.2(3) Location.** The informational meeting location shall be reasonably accessible to all persons who may be affected by the granting of a permit or who have an interest in the proposed pipeline.

**13.2(4) Board approval.** A pipeline company proposing to schedule an informational meeting shall file a request to schedule the informational meeting and shall include a proposed date and time for the informational meeting, an alternate time and date, and a description of the proposed project and map of the route. The pipeline company shall be notified within ten days of the filing of the request whether the request is approved or alternate times and dates are required. Once a date and time for the informational meeting have been approved, the pipeline company shall file the location of the informational meeting and a copy of the pipeline company's presentation with the board. The pipeline company shall file a copy of its presentation with the board 14 days prior to the date the informational meeting is to be held.

**13.2(5) Notices.** Announcement by mailed and published notice of each informational meeting shall be given to persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and those persons in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements.

*a.* The notice shall include the following:

- (1) The name of the pipeline company;
- (2) The pipeline company's principal place of business;
- (3) The general description and purpose of the proposed project;
- (4) The general nature of the right-of-way desired;
- (5) The possibility that the right-of-way may be acquired by condemnation if approved by the board;
- (6) A map showing the route of the proposed project;
- (7) A description of the process used by the board in making a decision on whether to approve a permit, including the right to take property by eminent domain;
- (8) A statement that an affected landowner and any other affected person with a legal interest in the property, or residing on the property, has the right to be present at the informational meeting and to file objections with the board;
- (9) The following statement: "Persons with disabilities requiring assistive services or devices to observe or participate should contact the board at (515) 725-7300 in advance of the scheduled date to request accommodations";
- (10) Designation of the date, time, and place of the meeting; and
- (11) A copy of the statement of damage claims as required by paragraph 13.3(3) "b."

*b.* The pipeline company shall cause a written copy of the meeting notice to be served, by certified United States mail with return receipt requested, on all persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and persons in possession of or

## UTILITIES DIVISION[199](cont'd)

residing on the property, whose addresses are known. The certified meeting notice shall be deposited in the United States mail not less than 30 days prior to the date of the meeting.

*c.* The pipeline company shall cause the meeting notice, including the map, to be published once in a newspaper of general circulation in each county where the pipeline is proposed to be located at least one week and not more than three weeks prior to the date of the meeting. Publication shall be considered as notice to affected persons listed on the tax assessment rolls as responsible for paying the real estate taxes imposed on the property and persons in possession of or residing on the property whose addresses are not known, provided a good faith effort to obtain the address can be demonstrated by the pipeline company. The map used in the published notice shall clearly delineate the pipeline route.

*d.* The pipeline company shall file prior to the informational meeting an affidavit that describes the good faith effort the pipeline company undertook to locate the addresses of all affected persons. The affidavit shall be signed by a corporate officer or an attorney representing the pipeline company.

**13.2(6) *Personnel.*** The pipeline company shall provide qualified personnel to present the following information at the informational meeting:

- a.* Service requirements and planning which have resulted in the proposed project.
- b.* When the pipeline will be constructed.
- c.* In general terms, the elements involved in pipeline construction.
- d.* In general terms, the rights which the pipeline company will seek to acquire through easements.
- e.* Procedures to be followed in contacting the affected persons for specific negotiations in acquiring voluntary easements.
- f.* Methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount for each component.
- g.* Manner in which voluntary easement payments are made, including discussion of conditional easements, signing fees, and time of payment.
- h.* Other factors or damages not included in the easement for which compensation is made, including features of interest to affected persons but not limited to computation of amounts and manner of payment.

**13.2(7) *Notice to county board of supervisors.*** The pipeline company shall send notice of the request for an informational meeting to the county board of supervisors in each county where the proposed pipeline is to be located. The pipeline company shall request from the board of supervisors the name of the county inspector, a professional engineer who shall conduct the on-site inspection required by Iowa Code section 479B.20(2). The pipeline company shall provide the name and contact information of the county inspector to the board, landowners, and other affected persons at the meeting, if known.

ITEM 6. Rescind rule 199—13.3(479B) and adopt the following new rule in lieu thereof:

**199—13.3(479B) Petition for permit.**

**13.3(1)** A petition for a permit shall be filed with the board upon the form prescribed and shall include all required exhibits. The petition shall be considered filed with the board on the date accepted by the board's electronic filing system as provided for in 199—Chapter 14. The petition shall be attested to by an officer, official, or attorney with authority to represent the pipeline company. Required exhibits shall be in the following form:

- a. Exhibit A.* A legal description showing, at minimum:
  - (1) The beginning and ending points of the proposed pipeline.
  - (2) The general direction of the proposed route through each quarter section of land to be crossed, including township and range.
  - (3) Whether the proposed pipeline will be located on private or public property, public highway, or railroad right-of-way.
  - (4) Other pertinent information.
  - (5) When the route is in or adjacent to the right-of-way of a named road or a railroad, the exhibit shall specifically identify the road or railroad by name.
- b. Exhibit B.* Maps showing the proposed routing of the pipeline. The maps may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile, and shall be



## UTILITIES DIVISION[199](cont'd)

legible when printed on paper no larger than 11 by 17 inches. Maps based on satellite imagery are preferred. An additional map of the entire route, if the route is located in more than one county or there is more than one map for a county, shall be filed in this exhibit on paper no larger than 11 by 17 inches without regard to scale. The pipeline company shall also provide the board with a KMZ file showing the proposed route of the pipeline. Data files necessary to provide mapping of the route through the use of a geographic information system application shall be provided upon the request of the board. The following minimum information shall be provided on the maps:

(1) The route of the pipeline which is the subject of the petition, including the starting and ending points, and when paralleling a road or railroad, which side the pipeline is on. Multiple pipelines on the same right-of-way shall be indicated, and the distance between paralleling pipelines shall be shown.

(2) The name of the county, county lines, section lines, section numbers, township numbers, and range numbers.

(3) The location and identity of adjacent or crossed public roads, railroads, named streams or bodies of water, and other pertinent natural or man-made features influencing the route.

(4) The name and corporate limits of cities and the name and boundaries of any public lands or parks.

(5) Other pipelines and the identity of the owner.

(6) Any buildings or places of public assembly within six tenths of a mile of the pipeline.

*c. Exhibit C.* A showing of engineering specifications covering the engineering features, materials and manner of construction of the proposed pipeline; its approximate length, diameter and the name and location of each railroad and primary highway and the number of secondary highways to be crossed, if any; and such other information as may be deemed pertinent on forms prescribed by the board, which are located on the board's website. In addition, the maximum and normal operating pressure and maximum capacity of the proposed pipeline shall be provided.

*d. Exhibit D.* Satisfactory proof of solvency and financial ability to pay damages in the sum of \$250,000 or more; or surety bond satisfactory to the board in the penal sum of \$250,000 with surety approved by the board, conditioned that the pipeline company will pay any and all damages legally recovered against the pipeline company growing out of the construction and operation of its pipeline or hazardous liquid storage facilities in the state of Iowa; security satisfactory to the board as a guarantee for the payment of damages in the sum of \$250,000; or satisfactory proofs that the company has property subject to execution within this state, other than pipelines, of a value in excess of \$250,000. The board may require additional surety or insurance policies to ensure the payment of damages resulting from the construction and operation of a hazardous liquid pipeline in a county.

*e. Exhibit E.*

(1) Consent or documentation of appropriate public highway authorities, or railroad companies, where the pipeline will be placed longitudinally on, over or under, or at other than an approximate right angle to railroad tracks or highway, when consent is obtained prior to filing of the petition, shall be filed with the petition.

(2) If any consent is not obtained at the time the petition is filed, the pipeline company shall file a statement that it will obtain all necessary consents or file other documentation of the right to commence construction prior to commencement of construction of the pipeline. A pipeline company may request board approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline.

(3) Whether there are permits that will be required from other state agencies for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained shall be included.

(4) Whether there are permits from federal agencies that will be required for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained shall be included.

*f. Exhibit F.* This exhibit shall contain the following information:

(1) A statement of the purpose of the project and a description of how the services rendered by the pipeline will promote the public convenience and necessity.

## UTILITIES DIVISION[199](cont'd)

- (2) A general statement covering each of the following topics:
  1. The nature of the lands, waters, and public or private facilities to be crossed;
  2. The possible use of alternative routes;
  3. The relationship of the proposed pipeline to present and future land use and zoning ordinances;and
  4. The inconvenience or undue injury which may result to property owners as a result of the proposed project.
- (3) For an existing pipeline, the year of original construction and a description of any amendments or reportable changes since the permit or latest renewal permit was issued.
  - g. Exhibit G.* If informational meetings were required, an affidavit that the meetings were held in each county affected by the proposed project and the time and place of each meeting. Copies of the mailed notice letter, the corridor map, and the published notice(s) of the informational meeting shall be attached to the affidavit.
  - h. Exhibit H.* This exhibit is required only if the petition requests the right of eminent domain. The extent of the eminent domain request may be uncertain at the time the petition is filed. However, the exhibit must be in final form before a hearing is scheduled. The exhibit shall consist of a map of the route showing the location of each property for which the right of eminent domain is sought and the following information for each property:
    - (1) The legal description of the property.
    - (2) The legal description of the desired easement.
    - (3) A specific description of the easement rights being sought.
    - (4) The names and addresses of all affected persons for the property over which eminent domain is requested based upon a good faith effort to identify all affected persons.
    - (5) A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of pipelines or pipeline facilities within the proposed easement, the location of and distance to any building within 300 feet of the proposed pipeline, and any other features pertinent to the location of the pipeline to the rights being sought.
    - (6) An overview map showing the location of the property over which eminent domain is requested, with the property identified as required by 199—Chapter 9.
    - (7) An updated KMZ file required by paragraph 13.3(1) “b” to show the locations of the property over which the pipeline company is seeking eminent domain.
  - i. Exhibit I.* If pipeline construction on agricultural land as defined in 199—subrule 9.1(3) is proposed, a land restoration plan shall be prepared and filed as provided for in rule 199—9.2(479,479B). The name and contact information of each county inspector designated by county boards of supervisors pursuant to Iowa Code section 479B.20(2) shall be included in the land restoration plan, when known.
  - j. Underground storage.* If permission is sought to construct, maintain, and operate facilities for underground storage of hazardous liquid, the petition shall include the following information, in addition to that stated above:
    - (1) A description of the public or private highways, grounds and waters, streams, and private lands of any kind under which the storage is proposed, together with a map.
    - (2) Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the facilities.
  - k. Exhibit K.* The pipeline company shall file additional information as follows:
    - (1) An affidavit describing the good faith effort the company has undertaken to identify all affected persons in the property for all parcels over which the pipeline is proposed to be located before easements were signed or eminent domain requested. The affidavit shall be signed by an attorney representing the pipeline company.
    - (2) Whether any private easements will be required for the proposed pipeline and, if a private easement will be required, when the easement negotiations will be completed and whether all affected persons associated with the property have been notified.
    - (3) Whether there are permits that will be required from other state agencies for the construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained.

## UTILITIES DIVISION[199](cont'd)

(4) Whether there are permits from federal agencies that will be required for construction of the pipeline and, if so, a description of the permit required and whether the permit has been obtained.

(5) Whether there are any agreements or additional facilities that need to be constructed to transport or receive hazardous liquids.

(6) Projected date when construction of the pipeline will begin.

*l. Exhibit L.* Other exhibits. The board may require filing of additional exhibits if further information on a particular project is deemed necessary.

**13.3(2) Construction on an existing easement.**

*a.* Petitions proposing new pipeline construction on an existing easement where the pipeline company has previously constructed a pipeline shall include a statement indicating whether any unresolved damage claims remain from the previous pipeline construction and, if so, shall include the name of each landowner or tenant, a legal description of the property involved, and the status of proceedings to settle the claim.

*b.* A petition for permit proposing a new pipeline construction on an existing easement where the pipeline company has previously constructed a pipeline shall not be acted upon by the board if a damage claim from the installation of the previous pipeline has not been resolved by negotiation, arbitration, or court action. The board may take action on the petition if the damage claim is under litigation or arbitration.

**13.3(3) Statement of damage claims.**

*a.* A petition for permit proposing new pipeline construction shall not be acted upon by the board if the pipeline company does not file with the board a written statement in compliance with Iowa Code chapter 479B as to how damages resulting from the construction of the pipeline shall be determined and paid.

*b.* The statement shall contain the following information: the type of damages which will be compensated, how the amount of damages will be determined, the procedures by which disputes may be resolved, the manner of payment, and the procedures that the affected person is required to follow to obtain a determination of damages by a county compensation commission.

*c.* The statement shall be amended as necessary to reflect changes in the law, company policy, or the needs of a specific project.

*d.* A copy of this statement shall be mailed with the notice of informational meeting as provided for in Iowa Code section 479B.4. If no informational meeting is required, a copy shall be provided to each affected person prior to entering into negotiations for payment of damages.

*e.* Nothing in this rule shall prevent a person from negotiating with the pipeline company for terms which are different, more specific, or in addition to the statement filed with the board.

**13.3(4) Negotiation of easements.** The pipeline company is not prohibited from responding to inquiries concerning existing easements or from requesting and collecting tenant and affected person information, provided that the pipeline company is not “negotiating” as defined at subrule 13.1(3).

ITEM 7. Amend rule 199—13.4(479B) as follows:

**199—13.4(479B) Notice of hearing.**

**13.4(1)** When a proper petition for permit is received by filed with the board, it shall be docketed for hearing and the petitioner shall be advised of the time and place of hearing, except as provided for in rule 13.8(479B). Petitioner shall also be furnished copies of the official notice of hearing which petitioner shall cause to be published once each week for two consecutive weeks in a newspaper of general circulation in each county in or through which construction is proposed. The second publication shall be not less than 10 nor more than 30 days prior to the date of the hearing. Proof of publication shall be filed prior to or at the hearing the petition shall be reviewed by board staff for compliance with applicable laws. Once board staff has completed the review and filed a report regarding the proposed pipeline and petition, the petition shall be set for hearing. This subrule does not apply to renewal petitions filed pursuant to rule 199—13.8(479B) which do not require a hearing.

**13.4(2)** The pipeline company shall be furnished copies of the official notice of hearing, which the pipeline company shall cause to be published once each week for two consecutive weeks in a

UTILITIES DIVISION[199](cont'd)

newspaper of general circulation in each county in or through which construction is proposed. The second publication shall be not less than 10 and no more than 30 days prior to the date of the hearing. Proof of publication shall be filed prior to the hearing.

13.4(3) The published notice shall include a map showing either the pipeline route or the area affected by underground ~~gas~~ hazardous liquid storage, or a telephone number and an address through which interested persons ~~can~~ may obtain a copy of a map from ~~petitioner~~ the pipeline company at no charge. If a map other than that filed as Exhibit B will be published or provided, a copy shall be filed with the petition.

~~13.4(2)~~ 13.4(4) If a petition for permit seeks the right of eminent domain, ~~petitioner~~ the pipeline company shall, in addition to the published notice of hearing, serve a copy of the notice of hearing ~~to~~ on the owners and parties in possession of lands landowners and any affected person with an interest in the property over which eminent domain is sought. A copy of the Exhibit H filed with the board for the affected property shall accompany the notice. Service shall be by certified United States mail, return receipt requested, addressed to ~~their~~ the person's last-known address, and this notice shall be mailed ~~not~~ no later than the first day of publication of the official notice of hearing on the petition. Not less than five days prior to the date of the hearing, the ~~petitioner~~ pipeline company shall file with the board a certificate of service showing all persons and addresses to which notice was sent by certified mail, and the date of the mailing, and an affidavit that all affected persons were served.

~~13.4(3)~~ 13.4(5) If a petition does not seek the right of eminent domain, but all required interests in private property have not yet been obtained at the time the petition is filed, a copy of the notice of hearing shall be served upon ~~the owners and parties in possession of those lands~~ any affected person with interests in the property. Service shall be by ordinary mail, addressed to the last-known address, and mailed ~~not~~ no later than the first day of publication of the official notice. A copy of each letter of notification, or one copy of the letter accompanied by a written statement listing all ~~parties~~ persons to which it whom the notice was mailed, and the date of mailing, and an affidavit that all affected persons were served, shall be filed with the board not less than five days prior to the hearing.

ITEM 8. Amend rule 199—13.5(479B) as follows:

**199—13.5(479B) Objections.** ~~A Any person, including a governmental entity, whose rights or interests may be affected by the object of a petition a proposed pipeline or underground storage facility may file a written objection with the board. The written objection~~ Written objections shall be filed with the ~~secretary of the~~ board not less than five days prior to date of hearing. The board may, for good cause shown, permit filing of objections less than five days prior to hearing, but in such event ~~petitioner~~ the pipeline company shall be granted a reasonable time to ~~meet objections~~ respond to a late-filed objection.

ITEM 9. Amend rule 199—13.6(479B) as follows:

**199—13.6(479B) Hearing.** ~~Hearing shall be~~ A petition for a pipeline permit, or amendment to a pipeline permit, shall be scheduled for hearing not less than 10 or nor more than 30 days from the date of last publication of the notice of hearing.

~~Petitioner shall be represented by one or more duly authorized representatives or counsel or both. The board may examine the proposed route of the pipeline or location of the underground storage facilities which are the object of the petition or may cause examination to be made on its behalf by an engineer of its selection. One or more members of the board or a duly appointed administrative law judge shall consider the petition and any objections filed thereto and may hear testimony deemed appropriate. One or more petitions may be considered at the same hearing. Petitions may be consolidated. Hearing shall be held in the office of the board or at any other place within the state of Iowa as the board may designate. Any hearing permitted by these rules in which there are no objections, interventions or material issues in dispute may be conducted by telephonic means. Notice of the telephonic hearings shall be given to parties within a reasonable time prior to the date of hearing.~~

13.6(1) Representation of a pipeline company at a pipeline permit hearing shall comply with the requirements of 199—subrule 7.4(8).

## UTILITIES DIVISION[199](cont'd)

13.6(2) The board or presiding officer may schedule a prehearing conference to consider a procedural schedule for the petition and a hearing date.

13.6(3) One or more petitions may be consolidated for hearing.

13.6(4) Hearings shall be scheduled and held in the office of the board or at any other place within the state of Iowa as the board may designate pursuant to Iowa Code section 479B.6. Requests for conducting a hearing or taking testimony by telephone or electronic means may be approved by the board or presiding officer.

13.6(5) The hearing requirements in this rule also apply to petitions for hazardous liquid underground storage permits and amendments to hazardous liquid underground storage permits.

ITEM 10. Amend rule 199—13.7(479B) as follows:

~~199—13.7(479B) Pipeline permit. If after hearing and appropriate findings of fact it is determined a permit should be granted, a permit shall be issued. Otherwise, the petition shall be dismissed with or without prejudice. Where proposed construction has not been established definitely, the permit will be issued on the route or location as set forth in the petition, subject to deviation of up to 660 feet (one-eighth mile) on either side of the proposed route. If the proposed construction is not completed within two years from the date of issue, subject to extension at the discretion of the board, the permit shall be void and of no further force or effect. Upon completion of the proposed construction, maps accurately showing the final routing of the pipeline shall be filed with the board.~~

~~A permit shall normally expire 25 years from date of issue. No permit shall be granted for a period longer than 25 years.~~

13.7(1) A pipeline permit shall be issued once an order granting the permit is final and the compliance requirements have been met. A pipeline company may request board approval to delay obtaining consent to cross railroad right-of-way until after the pipeline permit is issued.

13.7(2) The issuance of the permit authorizes construction on the route or location as approved by the board, subject to deviation within the permanent route easement right-of-way. If a deviation outside the permanent route easement right-of-way becomes necessary, construction of the line in that location shall be suspended and the pipeline company shall follow the procedures for filing a petition for amendment of a permit, except that the pipeline company need only file Exhibits A, B, E and F, reflecting the proposed deviation. In case of any deviation from the approved permanent route easement, the pipeline company shall secure the necessary easements before construction may commence on the altered route. The right of eminent domain shall not be used to acquire any such easement except as specifically approved by the board, and a hearing will not be required unless the board determines a hearing is necessary to complete a review of the petition for amendment.

13.7(3) If the construction of facilities authorized by a permit is not commenced within two years of the date the permit is granted, or within two years after final disposition of judicial review of a permit or of condemnation proceedings, the permit shall be forfeited, unless the board grants an extension of the permit filed prior to the expiration of the two-year period.

13.7(4) Upon completion of the proposed construction, maps accurately showing the final routing of the pipeline, in compliance with 199—Chapter 9 and revised Exhibits A, B, and C, shall be filed with the board.

13.7(5) The board shall set the term of the permit. The term of the permit may be less than, but shall not exceed, 25 years from the date of issuance.

ITEM 11. Amend rule 199—13.8(479B) as follows:

~~199—13.8(479B) Renewal permits. A petition for renewal of permit may be filed at any time subsequent to issuance of a permit and prior to expiration. The petition shall be made on the form prescribed by the board. Instructions for the petition are included as a part of the form. The procedure for petition for permit shall be followed with respect to publication of notice, objections, and assessment of costs. If review of the petition finds unresolved issues of fact or law, or if an objection is filed within 20 days of the second publication of the published notice, the matter will be set for hearing. If a hearing~~

## UTILITIES DIVISION[199](cont'd)

~~is not required, a renewal permit will be issued upon the filing of the proof of publication required by subrule 13.4(1). Renewal permits shall normally expire 25 years from date of issue. No permit shall be granted for a period longer than 25 years. The same procedure shall be followed for subsequent renewals.~~

13.8(1) A petition for renewal of an original or previously renewed pipeline permit may be filed at any time subsequent to issuance of the permit and shall be filed at least one year prior to expiration of the permit. This requirement is not applicable to renewal of permits that expire within one year of October 13, 2021. The petition shall be made on the form prescribed by the board. Instructions for the petition are included as part of the form, and the form is available on the board's website. The petition shall include the name of the pipeline company requesting renewal of the permit, the pipeline company's principal office and place of business, a description of any amendment or reportable change since the permit or previous renewal permit was issued, and the same exhibits as required for a new permit. The petition shall be considered filed with the board on the date accepted into the board's electronic filing system as provided for in 199—Chapter 14. The petition shall be attested to by an officer, official, or attorney with authority to represent the pipeline company.

13.8(2) The procedure for a petition for permit shall be followed with respect to publication of notice, objections, and assessment of costs.

13.8(3) If there are unresolved issues of fact or law, or if an objection is filed within 20 days of the second publication of the published notice, the board shall set the matter for hearing. If a hearing is not required, and the petition satisfies the requirements of this rule, a renewal permit will be issued upon the filing of the proof of publication as required by rule 199—13.4(479B).

13.8(4) The board shall set the term of a renewal permit. The term may be less than, but shall not exceed, 25 years from the date of issuance. The same procedure shall be followed in subsequent renewals.

~~This rule is intended to implement Iowa Code sections 476.2 and 479B.14.~~

ITEM 12. Amend rule 199—13.9(479B) as follows:

**199—13.9(479B) Amendment of permits.**

**13.9(1)** An amendment of a pipeline permit by the board is required in any of the following circumstances:

*a.* Construction of a an additional pipeline paralleling all or part of an existing line pipeline of ~~petitioner; the pipeline company.~~

*b.* Extension of an existing pipeline of ~~petitioner by more than 660 feet (one-eighth mile); the pipeline company~~ outside of the permitted permanent route easement.

*c.* Relocation or replacement of an existing pipeline of ~~petitioner the pipeline company~~ which:  
 (1) Relocates the pipeline ~~more than 660 feet (one-eighth mile) from the route~~ outside of the permitted permanent route easement approved by the board; or

(2) Involves relocation or replacement requiring new or additional interests in property ~~for five miles or more of pipe to be operated at over 150 psig. Informational meetings as provided for by rule 199—13.3(479B) shall be held for these relocations.~~ If the relocation or replacement is for five miles or more of pipe to be operated in excess of 150 pounds per square inch gauge, an informational meeting, as provided in rule 199—13.2(479B), shall be held.

*d.* Contiguous extension of an underground storage area of ~~petitioner; or the pipeline company.~~

*e.* Modification of any condition or limitation placed on the construction or operation of the pipeline in the final order granting the pipeline permit or previous renewal of the permit.

**13.9(2) Petition for amendment.**

*a.* The petition for amendment shall include the docket number and issue date of the permit for which amendment is sought and shall clearly state the purpose of the petition. If the petition is for construction of additional pipeline facilities, or expansion of an underground storage area, the same exhibits as required for a petition for permit shall be attached.

*b.* The applicable procedures for petition for permit, including hearing, shall be followed. Upon appropriate determination by the board, an amendment to a permit ~~will~~ shall be issued. The amendment

## UTILITIES DIVISION[199](cont'd)

shall be subject to the same conditions with respect to ~~completion~~ commencement of construction within two years and the filing of final routing maps as ~~attached to a permit~~ required for pipeline permits.

ITEM 13. Amend rule 199—13.10(479B) as follows:

**199—13.10(479B) Fees and expenses.** The ~~petitioner~~ pipeline company shall pay the actual unrecovered cost incurred by the board attributable to the informational meeting, processing, investigation, and hearing, inspection related to a petition requesting a pipeline permit ~~action, and any other activity of the board related to a pipeline permit, pursuant to 199—Chapter 17.~~

~~Any moneys collected by the board from other sources for chargeable activities will be deducted from billings for actual expenses submitted to the petitioner.~~

ITEM 14. Renumber rule **199—13.12(479B)** as **199—13.11(479B)**.

ITEM 15. Amend renumbered rule 199—13.11(479B) as follows:

**199—13.11(479B) Land restoration.** Pipelines shall be constructed in compliance with ~~199 IAC~~ 199—Chapter 9, “Restoration of Agricultural Lands During and After Pipeline Construction.”

ITEM 16. Renumber rule **199—13.14(479B)** as **199—13.12(479B)**.

ITEM 17. Amend renumbered rule 199—13.12(479B) as follows:

**199—13.12(479B) Crossings of highways, railroads, and rivers.**

**13.12(1)** Iowa Code chapter 479B gives the ~~Iowa utilities~~ board primary authority over the routing of pipelines. However, highway and railroad authorities and environmental agencies may have a jurisdictional interest in the routing of the pipeline, including requirements that permits or other authorizations be obtained prior to construction for crossings of highway or railroad right-of-way, or rivers or other bodies of water.

~~13.12(2) Except for other than approximate right angle crossings of highway or railroad right-of-way, the approval~~ Approval of other authorities need not be obtained prior to petitioning the board for a pipeline permit. ~~It is recommended the appropriate~~ The pipeline company shall file with the petition information that shows the pipeline company contacted the other necessary authorities ~~be contacted well in advance of construction filing the petition to determine what restrictions or conditions may be placed on the crossing, by those authorities and to obtain information on any proposed reconstruction or relocation of existing facilities which may impact the routing of the pipeline. Approvals and any restrictions, conditions, or relocations of existing facilities are required to be filed with the board prior to the grant of the permit. A pipeline company may request board approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline.~~

~~13.12(2) 13.12(3)~~ Pipeline routes which include crossings of highway or railroad right-of-way at other than an approximate right angle, or longitudinally on the right-of-way, shall not be constructed unless a showing of consent by the appropriate authority has been provided by the ~~petitioner~~ pipeline company as required in paragraph ~~13.2(1)“e.”~~ 13.3(1)“e.”

ITEM 18. Renumber rules **199—13.18(479B)** and **199—13.19(479B)** as **199—13.13(479B)** and **199—13.14(479B)**.

ITEM 19. Amend renumbered rule 199—13.13(479B) as follows:

**199—13.13(479B) Reportable changes to pipelines under permit.**

**13.13(1)** ~~The board~~ A pipeline company shall receive file prior notice with the board of any of the following actions affecting a pipeline under permit:

a. Abandonment or removal from service. The pipeline company shall also notify the landowners of the abandonment or removal of the pipeline from service.

b. ~~Relocation of more than 300 feet from the original alignment, or any relocation that would bring the pipeline to within 300 feet of an occupied residence. Relocations of 660 feet (one-eighth mile)~~

UTILITIES DIVISION[199](cont'd)

~~or more shall require the filing of a petition for amendment of a permit. Pressure test or increase in maximum allowable operating pressure.~~

~~e. Change in product being transported.~~

~~d. c. Replacement of a pipeline or significant portion thereof, not including short repair sections of pipe at least as strong as the original pipe.~~

~~e. Extensions of existing pipelines by 660 feet (one eighth mile) or less.~~

**13.13(2)** The notice shall include the docket and permit numbers of the pipeline, the location involved, a description of the proposed activity, anticipated dates of commencement and completion, revised maps and facility descriptions, where appropriate, and the name and telephone number of a person to contact for additional information.

ITEM 20. Amend renumbered rule 199—13.14(479B) as follows:

**199—13.14(479B) Sale or transfer of permit.**

**13.14(1)** No permit shall be sold or transferred without ~~prior~~ written approval of the board. A petition for approval of the sale or transfer shall be jointly filed by the buyer, or transferee, and the seller, or transferor, and shall include assurances that the buyer, or transferee, is authorized to transact business in the state of Iowa; ~~that the buyer and~~ is willing and able to construct, operate, and maintain the pipeline in accordance with these rules; ~~and, if. If the sale, or transfer, is prior to completion of construction of the pipeline, that the buyer, or transferee, shall demonstrate it has the financial ability to pay, up to \$250,000 in~~ for damages associated with construction or operation of the pipeline, up to \$250,000 or any other amount the board determined necessary when granting the permit.

~~**13.14(2)** No transfer of pipeline permit prior to completion of pipeline construction shall be effective until the person to whom the permit was issued files notice with the board of the transfer. The notice shall include the date of the transfer and the name and address of the transferee.~~

~~**13.14(3)** The board shall receive notice from the transferor of any other transfer of a pipeline permit after completion of construction.~~

**13.14(2)** For the purposes of this rule, reassignment of a pipeline permit as part of a name change or a corporate restructuring, with no change in pipeline operating personnel or procedures, is considered a transfer and requires prior board approval.

ITEM 21. Adopt the following new rule 199—13.15(479B):

**199—13.15(479B) Reports to federal agencies.**

**13.15(1)** Upon submission of any incident, annual, or other report to the U.S. Department of Transportation pursuant to 49 CFR Part 195, a pipeline company shall file a copy of the report with the board. The board shall also be advised of any telephonic incident report made by the pipeline company. The pipeline company shall notify the board, as soon as possible, of any incident by emailing the duty officer at [dutyofficer@iub.iowa.gov](mailto:dutyofficer@iub.iowa.gov) or, if email is not available, by calling the board duty officer at (515)745-2332.

**13.15(2)** Pipeline companies operating in other states shall provide to the board data for Iowa only.

ITEM 22. Adopt the following new rule 199—13.16(479B):

**199—13.16(479B) Termination of petition for pipeline permit proceedings.** If a pipeline company fails to correct an identified deficiency within six months after written notification by the board, or after such shorter period as the board may specify in the written notification, to cure an incomplete or deficient permit petition, or a pipeline company fails to publish the official notice within 90 days after the official notice is provided by the board, the board may dismiss the petition.

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