



IOWA ADMINISTRATIVE BULLETIN

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Pages 881 to 1101

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PREFACE

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

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

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

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

JACK EWING, Administrative Code Editor
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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 Rulemaking 2023

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
8	Friday, September 29, 2023	October 18, 2023
9	Friday, October 13, 2023	November 1, 2023
10	Wednesday, October 25, 2023	November 15, 2023

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 10, 2023, at 10:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. For more information, contact Jack Ewing at jack.ewing@legis.iowa.gov. The following rules will be reviewed:

NOTE: See also Supplemental Agenda published in the October 4, 2023, Iowa Administrative Bulletin.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Dairy innovation program, amendments to ch 52 Notice **ARC 7069C** 9/20/23
 Weights and measures, ch 85 Notice **ARC 7072C**..... 9/20/23

ALCOHOLIC BEVERAGES DIVISION[185]

COMMERCE DEPARTMENT[181]“umbrella”
 Retail alcohol licenses, amend chs 1, 4, 5, 8, 18; rescind ch 17 Filed **ARC 7073C** 9/20/23

ECONOMIC DEVELOPMENT AUTHORITY[261]

Iowa jobs training program—definitions of “eligible business” and “employee,” 7.3 Filed **ARC 7067C** 9/6/23

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Iowa hazard mitigation plan, 9.3 Filed **ARC 7068C** 9/6/23

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”
 Licensure by verification; veterans; spouses of veterans, 9.5, 18.1, 18.3 Filed **ARC 7074C** 9/20/23

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”
 Proceedings; sports wagering; fantasy sports contests, 4.1, 4.4, 4.5, 13.2, 13.5, 13.6(3), 14.7(2), 14.8 Notice **ARC 7070C**..... 9/20/23

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Physician assistants, 24.23(6), 24.25(35), 24.26 Notice **ARC 7071C** 9/20/23

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mike Klimesh
 Vice Chair
 Senate District 32

Representative Megan Jones
 Chair
 House District 6

Senator Nate Boulton
 Senate District 20

Representative Amy Nielsen
 House District 85

Senator Mike Bousset
 Senate District 21

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 House District 39

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Representative Mike Sexton
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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Dairy innovation program,
amendments to ch 52
IAB 9/20/23 **ARC 7069C**,
Regulatory Analysis

Second Floor Conference Room
Wallace State Office Bldg.
Des Moines, Iowa

October 13, 2023
1 p.m.

Weights and measures, ch 85
IAB 9/20/23 **ARC 7072C**
Regulatory Analysis

Second Floor Conference Room
Wallace State Office Bldg.
Des Moines, Iowa

October 13, 2023
2 p.m.

COMMERCE DEPARTMENT[181]

Organization and operation, ch 1
IAB 9/20/23
Regulatory Analysis

Iowa Insurance Division
1963 Bell Ave.
Des Moines, Iowa

October 12, 2023
10 a.m.

EDUCATIONAL EXAMINERS BOARD[282]

Complaints, investigations,
contested case hearings, 11.4(9)
IAB 9/20/23
Regulatory Analysis

Board Room
701 East Court Ave., Suite A
Des Moines, Iowa

October 11, 2023
1 p.m.

Investigation of complaints or
license reports, 11.5
IAB 9/20/23
Regulatory Analysis

Board Room
701 East Court Ave., Suite A
Des Moines, Iowa

October 11, 2023
1 p.m.

Renewal or extension
fees—licenses, certificates,
statements of professional
recognition, authorizations, 12.2
IAB 9/20/23
Regulatory Analysis

Board Room
701 East Court Ave., Suite A
Des Moines, Iowa

October 11, 2023
1 p.m.

EDUCATION DEPARTMENT[181]

High school equivalency diploma,
ch 32
IAB 9/20/23
Regulatory Analysis

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

October 10, 2023
10 to 11 a.m.

Extracurricular interscholastic
competition, ch 36
IAB 9/20/23
Regulatory Analysis

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

October 10, 2023
10 to 11 a.m.

Extracurricular athletic activity
conference for member schools,
ch 37
IAB 9/20/23
Regulatory Analysis

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

October 10, 2023
10 to 11 a.m.

EDUCATION DEPARTMENT[181](cont'd)

Work-based learning; individual career and academic plan, rescind ch 48; amend ch 49 IAB 9/20/23 Regulatory Analysis	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 10, 2023 10 to 11 a.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Operation of environmental protection commission, ch 1 IAB 9/6/23 Regulatory Analysis	Wallace State Office Building Des Moines, Iowa Via video/conference call Contact Kelli Book Email: kelli.book@dnr.iowa.gov	September 26, 2023 9 to 10 a.m.
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Complaints, audits, enforcement options and administrative penalties, ch 10 IAB 9/6/23 Regulatory Analysis	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Kelli Book Email: kelli.book@dnr.iowa.gov	September 26, 2023 10 to 11 a.m.
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Tax certification of pollution control or recycling property, ch 11 IAB 9/6/23 Regulatory Analysis	Conference Room 5 West Wallace State Office Bldg. Des Moines, Iowa Google Meet: meet.google.com/gar-xeni-bpq?authuser=0&hs=122	September 26, 2023 1 p.m.
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Cross-media electronic reporting, ch 15 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Jim McGraw Email: jim.mcgraw@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
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Compliance, excess emissions, and measurement of emissions, ch 21 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
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Controlling air pollution, ch 22 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
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Air emission standards, ch 23 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
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Operating permits, ch 24 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
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Certificate of acceptance, ch 27 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Fees, ch 30 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Wendy Walker Email: wendy.walker@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Nonattainment new source review, ch 31 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Construction permit requirements for major stationary sources—PSD, ch 33 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Animal feeding operations, ch 65 IAB 9/6/23 Regulatory Analysis	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Email: AFO@dnr.iowa.gov	September 26, 2023 11 a.m. to 1 p.m.
INSURANCE DIVISION[191]		
Organization, ch 1 IAB 9/20/23 Regulatory Analysis	1963 Bell Avenue, Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.
Public records and fair information practices, 2.1 to 2.6, 2.9 to 2.12 IAB 9/20/23 Regulatory Analysis	1963 Bell Avenue, Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.
Contested cases, amendments to ch 3 IAB 9/20/23 Regulatory Analysis	1963 Bell Avenue, Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.
Waiver of rules and declaratory orders, ch 4 IAB 9/20/23 Regulatory Analysis	1963 Bell Avenue, Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.
Life insurance illustrations model regulation, 14.5, 14.7(4), 14.13 IAB 9/20/23 Regulatory Analysis	1963 Bell Avenue, Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.
Unfair trade practices, 15.2, 15.3 IAB 9/20/23 Regulatory Analysis	1963 Bell Avenue, Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.
Replacement of life insurance and annuities, 16.23 to 16.27 IAB 9/20/23 Regulatory Analysis	1963 Bell Avenue, Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.

INSURANCE DIVISION[191](cont'd)

Property and casualty insurance,
amendments to ch 20
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Regulatory Analysis

1963 Bell Avenue, Suite 100
Des Moines, Iowa

October 12, 2023
10 a.m.

Surplus lines insurance,
21.3(1), 21.5(1)
IAB 9/20/23
Regulatory Analysis

1963 Bell Avenue, Suite 100
Des Moines, Iowa

October 12, 2023
10 a.m.

Military sales practices, 25.2, 25.3
IAB 9/20/23
Regulatory Analysis

1963 Bell Avenue, Suite 100
Des Moines, Iowa

October 12, 2023
10 a.m.

Workers' compensation
insurance—rate or manual
rule filing, 60.4
IAB 9/20/23
Regulatory Analysis

1963 Bell Avenue, Suite 100
Des Moines, Iowa

October 12, 2023
10 a.m.

Financial and health information
regulation, 90.2 to 90.6
IAB 9/20/23
Regulatory Analysis

1963 Bell Avenue, Suite 100
Des Moines, Iowa

October 12, 2023
10 a.m.

LABOR SERVICES DIVISION[875]

Child labor, amendments to ch 32
IAB 8/23/23
Regulatory Analysis

Conference Room 106
150 Des Moines St.
Des Moines, Iowa

September 26, 2023
9:30 to 10:30 a.m.

MANAGEMENT DEPARTMENT[541]

Organization and operation, ch 1
IAB 9/20/23
Regulatory Analysis

State Capitol, G14
1007 East Grand Avenue
Des Moines, Iowa

October 18, 2023
9 a.m.

Petitions for rulemaking, ch 5
IAB 9/20/23
Regulatory Analysis

State Capitol, G14
1007 East Grand Avenue
Des Moines, Iowa

October 18, 2023
9 a.m.

Declaratory orders, ch 6
IAB 9/20/23
Regulatory Analysis

State Capitol, G14
1007 East Grand Avenue
Des Moines, Iowa

October 18, 2023
9 a.m.

Agency procedure for rulemaking,
ch 7
IAB 9/20/23
Regulatory Analysis

State Capitol, G14
1007 East Grand Avenue
Des Moines, Iowa

October 18, 2023
9 a.m.

Public records and fair
information practices, ch 8
IAB 9/20/23
Regulatory Analysis

State Capitol, G14
1007 East Grand Avenue
Des Moines, Iowa

October 18, 2023
9 a.m.

MANAGEMENT DEPARTMENT[541](cont'd)

Grants enterprise management system, ch 11 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Avenue Des Moines, Iowa	October 18, 2023 9 a.m.
DAS customer council, ch 12 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Avenue Des Moines, Iowa	October 18, 2023 9 a.m.
Suspension and reinstatement of state funds, ch 13 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Avenue Des Moines, Iowa	October 18, 2023 9 a.m.
Suspension and reinstatement of state funds, rescind ch 16 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Avenue Des Moines, Iowa	October 18, 2023 9 a.m.

NATURAL RESOURCE COMMISSION[571]

Operation of natural resource commission, ch 1 IAB 9/6/23 Regulatory Analysis	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Kelli Book Email: kelli.book@dnr.iowa.gov	September 26, 2023 9 to 10 a.m.
Conservation education, ch 12 IAB 9/6/23 Regulatory Analysis	Conference Room 4W Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Permits and easements for construction and other activities on public lands and waters, ch 13 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Casey Laskowski Email: casey.laskowski@dnr.iowa.gov	September 28, 2023 1 to 2 p.m.
Concessions, ch 14 IAB 9/6/23 Regulatory Analysis	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Kim Bohlen Email: kim.bohlen@dnr.iowa.gov	September 26, 2023 12 noon to 1 p.m.
General license regulations, ch 15 IAB 9/6/23 Regulatory Analysis	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Docks and other structures on public waters, ch 16 IAB 9/6/23 Regulatory Analysis	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Email: iowa.stateparks@dnr.iowa.gov	September 26, 2023 12 noon to 1 p.m.
Leases and permits, ch 17 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Nathan Schmitz Email: nathan.schmitz@dnr.iowa.gov	September 28, 2023 12 noon to 1 p.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

Manufacturer's certificate of origin, ch 20 IAB 9/6/23 Regulatory Analysis	Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Agricultural lease program, ch 21 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Nathan Schmitz Email: nathan.schmitz@dnr.iowa.gov	September 28, 2023 12 noon to 1 p.m.
Habitat and public access program, ch 22 IAB 9/6/23 Regulatory Analysis	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Wildlife habitat promotion with local entities program, ch 23 IAB 9/6/23 Regulatory Analysis	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Blufflands protection program and revolving loan fund, ch 24 IAB 9/6/23 Regulatory Analysis	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Certification of land as native prairie or wildlife habitat, ch 25 IAB 9/6/23 Regulatory Analysis	Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Lands and waters conservation fund program, ch 27 IAB 9/6/23 Regulatory Analysis	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 12 noon to 1 p.m.
All-terrain vehicle registration revenue grant program, ch 28 IAB 9/6/23 Regulatory Analysis	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 12 noon to 1 p.m.
Waters cost-share and grant programs, ch 30 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Nate Hoogeveen Email: nate.hoogeveen@dnr.iowa.gov	September 28, 2023 12 noon to 1 p.m.
Publicly owned lakes watershed program, ch 31 IAB 9/6/23 Regulatory Analysis	Via video/conference call us02web.zoom.us/j/82347854378?pwd=d3IvaGg4Ky9MUfVGeURiOW1OSFFEQT09 Meeting ID: 823 4785 4378 Passcode: t%im4H	September 28, 2023 10 a.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

Resource enhancement and protection program: county, city, private open spaces and conservation education grant programs, ch 33 IAB 9/6/23 Regulatory Analysis	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Michelle Wilson Email: michelle.wilson@dnr.iowa.gov	September 28, 2023 1 to 2 p.m.
Fish habitat promotion for county conservation boards, ch 35 IAB 9/6/23 Regulatory Analysis	Via video/conference call Contact Randy Schultz Email: randy.schultz@dnr.iowa.gov	September 28, 2023 12 noon to 1 p.m.
State parks, recreation areas, and state forest camping, ch 61 IAB 9/6/23 Regulatory Analysis	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Jessica Manken Email: jessica.manken@dnr.iowa.gov	September 26, 2023 12 noon to 1 p.m.
Waterfowl and coot hunting seasons, ch 91 IAB 9/6/23 Regulatory Analysis	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Deer hunting, ch 106 IAB 9/6/23 Regulatory Analysis	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
REVENUE DEPARTMENT[701]		
Property assessment appeal board, 115.1 to 115.11 IAB 9/20/23 Regulatory Analysis	PAAB Hearing Room 1N Hoover State Office Bldg. Des Moines, Iowa	October 12, 2023 9:30 a.m.
STATE PUBLIC DEFENDER[493]		
Claims for indigent defense services—rate of compensation, travel time, 12.4(1), 12.5(4) IAB 9/20/23 Regulatory Analysis	Fourth Floor Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 17, 2023 11 a.m.
UTILITIES DIVISION[199]		
Organization and operation, ch 1 IAB 8/23/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 26, 2023 9 a.m.
Forms, rescind ch 2 IAB 9/20/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
Rulemaking, ch 3 IAB 8/23/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 4, 2023 9 a.m.

UTILITIES DIVISION[199](cont'd)

Declaratory orders, ch 4 IAB 8/23/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 21, 2023 9 a.m.
Procedure for determining the competitiveness of a communications service or facility, rescind ch 5 IAB 8/23/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 26, 2023 2 p.m.
Practice and procedure, ch 7 IAB 8/23/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 5, 2023 1:30 p.m.
Civil penalties, rescind ch 8 IAB 8/23/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 21, 2023 2 p.m.
Interstate natural gas pipelines and underground storage, rescind ch 12 IAB 8/23/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 20, 2023 2 p.m.
Electronic filing, ch 14 IAB 9/20/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 18, 2023 2 to 4 p.m.
Regulation of electric cooperatives and municipal electric utilities under Iowa Code chapter 476, ch 27 IAB 8/23/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 25, 2023 9 a.m.
Access to affiliate records, requirements for annual filings, and asset and service transfers, ch 31 IAB 9/20/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 19, 2023 2 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]
 ECONOMIC DEVELOPMENT AUTHORITY[261]
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 IOWA FINANCE AUTHORITY[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 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]
 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]
 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]
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]
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]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 21—Chapter 52
“Dairy Innovation Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 2023 Iowa Acts, House File 700
State or federal law(s) implemented by the rulemaking: 2023 Iowa Acts, House File 700

Public Hearing

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

October 13, 2023
1 p.m.

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

Public Comment

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

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

The proposed rulemaking implements 2023 Iowa Acts, House File 700, by creating rules for the Dairy Innovation Program.

The proposed rules create definitions, provide eligibility criteria, and establish the application and review process as well as criteria to score applications. The proposed rules also establish grant agreement terms and provide explanation for how grant funds will be disbursed to awardees.

The proposed rules can be found in Notice **ARC 7069C**, IAB 9/20/23.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
No costs are applicable since this is a grant program.
 - Classes of persons that will benefit from the proposed rulemaking:
Dairy producers will benefit by receiving the grants.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There are no costs to apply for the grant program.
 - Qualitative description of impact:
Dairy producers will need to fill out an application that will take time.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no costs other than staff time to score, award, and reimburse grant applications.
 - Anticipated effect on state revenues:
There is no anticipated effect on state revenue.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Without rules, dairy producers will not be able to access grant funding.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
No other methods exist.

6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
No other methods were considered.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
No other methods were considered.

Small Business Impact

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

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

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

There will be no impact on small business.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 21—Chapter 85
“Weights and Measures”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 214.10, 214A.1A, 215.24 and 215A.3 and 2023 Iowa Acts, House File 666

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 214, 214A, 215 and 215A and 2023 Iowa Acts, House File 666

Public Hearing

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

October 13, 2023
2 p.m.

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

Public Comment

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

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

This proposed rulemaking updates the State’s weights and measures rules by removing outdated or redundant provisions that are covered by statute. The rulemaking also simplifies and restructures the chapter to enhance readability for the public.

Additionally, the proposed rulemaking implements 2023 Iowa Acts, House File 666, by adopting rules related to testing the accuracy and correctness of electric vehicle charging stations to assist in the proper collection of Road Use Tax Fund moneys. The standards being utilized are included in the 2023 version of the National Institute of Standards and Technology (NIST) Handbook 44.

The proposed rules can be found in Notice **ARC 7072C**, IAB 9/20/23.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Any entity that utilizes a commercial weighing or measuring device, including but not limited to fuel stations and grocery stores, will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Consumers will benefit. These rules help ensure consumer confidence in the products and services that they purchase, including fuel or groceries.

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

- Quantitative description of impact:

No additional costs will be incurred by entities regulated under the updated rules.

- Qualitative description of impact:

There is no qualitative impact.

3. Costs to the State:

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

There are no additional costs.

- Anticipated effect on state revenues:

There is no impact on state revenue.

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

Inaccurate scales and meters cost consumers and businesses hundreds of millions of dollars each year.

Monitoring fuel quality protects consumers from getting bad fuel, which could result in costly repairs. It protects businesses from selling bad fuel when they are unaware of contamination. It also protects Iowa's biofuel production industry from getting blame for fuel quality issues.

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

Much of the rules are developed in conjunction with ASTM International and the NIST. These entities bring together private industry and regulatory officials to develop practices and standards that are applicable across state lines.

6. Alternative methods considered by the agency:

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

Much of the rules are developed in conjunction with ASTM International and the NIST. These entities bring together private industry and regulatory officials to develop practices and standards that are applicable across state lines.

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

ASTM International and the NIST are industry standards used across the country.

Small Business Impact

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

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

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

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

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

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

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

The rules have been consolidated/simplified by removing scale-specific requirements and instead relying on the two main types of scale design (scale pits or pitless scales).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 181—Chapter 1
“Organization and Operation”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 546 and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 546

Public Hearing

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

October 12, 2023
10 a.m.

Iowa Insurance Division
1963 Bell Avenue
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
1963 Bell Avenue, Suite 100
Des Moines, Iowa
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

This proposed chapter provides the organizational structure for the Department of Insurance and Financial Services (Department). The Department proposes removing duplicative language and updating the Department’s organizational structure.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowans will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowans will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.
 - Anticipated effect on state revenues:
There is no effect on state revenues.

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

The proposed rulemaking updates organizational structure and eliminates redundant and repetitive language.

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

The Department did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

Alternative methods were considered in the adoption of the uniform agency rules for petitions for rulemaking.

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

The alternative methods were included in the proposed rules.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 181—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1 ORGANIZATION AND OPERATION

181—1.1(546,17A) Purpose. This chapter describes the organization and operation of the department of insurance and financial services (department).

181—1.2(546,17A) Scope of rules. The rules for the department are promulgated under Iowa Code chapters 17A and 546 and shall apply to all matters before the department. No rule shall, in any way, relieve a person affected by or subject to these rules or any person affected by or subject to the rules promulgated by the various divisions of the department from any duty under the laws of this state.

181—1.3(546,17A) Duties of the department. The department administers and coordinates the various regulatory, service, and licensing functions of the state relating to the conducting of business or commerce in the state. The department consists of the following divisions: banking, credit union, and insurance.

1.3(1) *Banking division.* The banking division regulates and supervises state banks, regulated loan companies, industrial loan companies, mortgage bankers, mortgage brokers, real estate closing agents, debt management companies, money services companies, and delayed deposit service businesses and performs other duties assigned to it by law.

1.3(2) *Credit union division.* The credit union division regulates and supervises the operation of credit unions within the state; the credit union review board performs duties assigned to it by Iowa Code chapter 533.

1.3(3) *Insurance division.* The insurance division regulates and supervises the conduct of the business of insurance within the state and enforces the laws promulgated under Title XIII of the Iowa Code and Iowa Code chapters 502, 502A, 505, 505A through 523A, 523C, 523D, and 523I. The division performs other duties assigned to it by law.

181—1.4(546,17A) Definitions.

“Administrator” means the commissioner of insurance, the superintendent of banking, or the superintendent of credit unions.

“Commissioner of insurance” means the same as defined in Iowa Code section 505.2.

“Department” means the department of insurance and financial services.

“Person” means an individual, corporation, partnership, association, professional corporation, licensee or permittee.

“Superintendent of banking” means the same as defined in Iowa Code section 524.201.

“Superintendent of credit unions” means the same as defined in Iowa Code section 533.104.

181—1.5(546,17A) Central offices and communications. Correspondence and communications with the department shall be addressed or directed to the department’s director. The department director is the commissioner of insurance. The department’s website is iowa.gov/difs.

181—1.6(546,17A) Custodians of records, filings and requests for public information. Unless otherwise specified by the department or the rules of its various divisions, each division is the principal custodian of its own divisional orders, statements of law or policy issued by the respective divisions, legal documents and other public documents on file with the department or its respective divisions. This is true in particular for the Iowa fair information practices Act. The responsibility for complying with that Act shall be upon the individual divisions. Each division shall promulgate rules pursuant to Iowa Code chapter 17A governing the manner in which documents may be filed with the respective divisions.

181—1.7(546,17A) Division administrators’ responsibilities.

1.7(1) *Rulemaking.* Each division administrator has the authority to promulgate rules pursuant to Iowa Code chapter 17A to implement the duties of the division. Such rules are not subject to review by the department director. All applicable rules previously promulgated by the divisions shall remain in effect until amended by the divisions.

1.7(2) *Decision making.* Decisions of the division administrator with respect to duties assigned to the division under the law are final agency actions pursuant to Iowa Code chapter 17A. Decisions by either the commissions or division administrators are not subject to review by the department director.

1.7(3) *Supervision.* Each division administrator has the authority to hire, allocate, develop, and direct employees and other resources assigned to the division by law.

1.7(4) *Establish fees.* Each division administrator has the authority to establish fees assessed to the regulated industry. The fees so established are not reviewable by the department director.

1.7(5) *Expenditure authorization.* Each division administrator may authorize expenditures from accounts for that division or office within the department of commerce revolving fund established in Iowa Code section 546.12, or otherwise use funds as permitted by Iowa Code section 546.12.

181—1.8(17A) Petitions for rulemaking—uniform rules adopted. The department hereby adopts the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published on the general assembly’s website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf, as rules 181—1.9(17A) to 181—1.12(17A) below, with amendments and exceptions specified therein.

181—1.9(17A) Petition for rulemaking. Rule X.1 is adopted by reference with the following amendments: Any person or agency may file a petition for rulemaking with the respective division at the address disclosed on the department’s website. A petition is deemed filed when it is received. The respective division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the respective division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

181—1.10(17A) Briefs. Rule X.2 is adopted by reference.

181—1.11(17A) Inquiries. Rule X.3 is adopted by reference.

181—1.12(17A) Agency consideration. Rule X.4 is adopted by reference.

These rules are intended to implement Iowa Code sections 17A.3 and 546.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 282—subrule 11.4(9)
“Confidentiality”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272.2(15) as amended by 2023 Iowa Acts, House File 430

State or federal law(s) implemented by the rulemaking: Iowa Code section 272.2

Public Hearing

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

October 11, 2023
1 p.m.

Board Room
701 East Court Avenue, Suite A
Des Moines, Iowa

Public Comment

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

Beth Myers
Board of Educational Examiners
701 East Court Avenue, Suite A
Des Moines, Iowa 50309-0147
Email: beth.myers@iowa.gov

Purpose and Summary

2023 Iowa Acts, House File 430, directs the Board to adopt rules related to retention of records, public notice, and the evaluation of past complaints.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Additional costs will not be incurred as a result of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa students and the public will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact, and no anticipated costs will be incurred as a result of the proposed rulemaking.
 - Qualitative description of impact:
The health and safety of students will benefit from the proposed rulemaking.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no additional costs to the agency or any other agency.
 - Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

No incurred costs are anticipated.

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

No incurred costs are anticipated.

6. Alternative methods considered by the agency:

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

No alternative methods were considered because the agency is required by 2023 Iowa Acts, House File 430, to adopt these rules.

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

The rulemaking is required.

Small Business Impact

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

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

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

The proposed rulemaking has no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 11.4(9) as follows:

11.4(9) Confidentiality. All complaint files, investigation files, other investigation reports, and other investigation information in the possession of the board or its employees or agents, which relate to licensee discipline, are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of the board or its employees or agents which is related to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authorities in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. Records related to written complaints shall be collected and retained and shall be evaluated if a similar complaint has been filed against the same licensed practitioner. A finding of probable cause, a final written decision, and a finding of fact by the board in a disciplinary proceeding is constitute a public record.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code rule 282—11.5(272)
“Investigation of Complaints or License Reports”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272.2(15) as amended by 2023 Iowa Acts, House File 430

State or federal law(s) implemented by the rulemaking: Iowa Code section 272.2

Public Hearing

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

October 11, 2023
1 p.m.

Board Room
701 East Court Avenue, Suite A
Des Moines, Iowa

Public Comment

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

Beth Myers
Board of Educational Examiners
701 East Court Avenue, Suite A
Des Moines, Iowa 50309-0147
Email: beth.myers@iowa.gov

Purpose and Summary

2023 Iowa Acts, House File 430, directs the Board to adopt rules related to investigations.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Additional costs will not be incurred as a result of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa students and the public will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact, and no anticipated costs will be incurred as a result of the proposed rulemaking.
 - Qualitative description of impact:
The health and safety of students will benefit from the proposed rulemaking.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no additional costs to the agency or any other agency.
 - Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

No incurred costs are anticipated.

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

No incurred costs are anticipated.

6. Alternative methods considered by the agency:

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

No alternative methods were considered because the agency is required by 2023 Iowa Acts, House File 430, to adopt these rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The rulemaking is required.

Small Business Impact

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

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

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

The proposed rulemaking has no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 282—11.5(272) as follows:

282—11.5(272) Investigation of complaints or license reports. The chairperson of the board or the chairperson's designee may request an investigator to investigate the complaint or report received by the board from another state, territory or other jurisdiction concerning license or certificate revocation or suspension pursuant to subrule 11.4(7); providing that the jurisdictional requirements have been met on the face of the complaint. The investigation shall be limited to the allegations contained on the face of the complaint. The investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. Upon completion of the investigation, the investigator shall prepare a report of the investigation for consideration by the board in determining whether probable cause exists. The investigation of the complaint shall be finalized even if the licensed practitioner resigns or surrenders the practitioner's license, certificate, authorization, or statement of recognition during the investigation. The board shall investigate whether or not an administrator who is employed by the school that employs a licensed practitioner who is the subject of an investigation initiated under Iowa Code section 272.15(1) "a" as amended by 2023 Iowa Acts, House File 430, filed a written complaint and

whether or not the administrator was required to report to the board pursuant to Iowa Code section 272.15 as amended by 2023 Iowa Acts, House File 430.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code rule 282—12.2(272)
 “Fees for the Renewal or Extension of Licenses, Certificates,
 Statements of Professional Recognition, and Authorizations”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.6C as enacted by 2023 Iowa Acts,
 House File 688; 272.2; and 272.10

State or federal law(s) implemented by the rulemaking: Iowa Code section 272.10

Public Hearing

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

October 11, 2023
 1 p.m.

Board Room
 701 East Court Avenue, Suite A
 Des Moines, Iowa

Public Comment

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

Beth Myers
 Board of Educational Examiners
 701 East Court Avenue, Suite A
 Des Moines, Iowa 50309-0147
 Email: beth.myers@iowa.gov

Purpose and Summary

2023 Iowa Acts, House File 672, creates a new renewal option with a reduced fee. 2023 Iowa Acts, House File 688, directs all agencies to adopt rules related to fees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
 Additional costs will not be incurred as a result of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
 Iowa educators will benefit from a reduced licensure renewal fee.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
 For qualifying applicants, renewal fees for the educator are reduced from \$85 to \$50.
 - Qualitative description of impact:
 The reduced rate is an incentive for educators to maintain a valid license and remain active as an educator.

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

No new costs are anticipated; however, agency revenues will be reduced by an estimated \$116,000 per year.

- Anticipated effect on state revenues:

Twenty-five percent of fees collected annually by the Educational Examiners Board are credited to the General Fund, and the reduction in fees will result in a decrease of approximately \$37,000 to the General Fund annually.

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

The rulemaking is required and will help with recruitment and retention for educators.

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

The rulemaking is required. Iowa Code section 272.10 requires the Board to finance all activities through fees. 2023 Iowa Acts, House File 672, creates a new renewal option with a reduced fee. 2023 Iowa Acts, House File 688, directs all agencies to adopt rules related to fees.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
No alternative methods were considered because the rulemaking is required.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
No alternative methods were considered.

Small Business Impact

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

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

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

The proposed rulemaking has no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 282—12.2(272) as follows:

282—12.2(272) Fees for the renewal or extension of licenses, certificates, statements of professional recognition, and authorizations. The fee for the renewal or extension of a license, certificate, statement of professional recognition, or authorization shall be \$85 unless otherwise specified below:

1. The renewal of the paraeducator certificate shall be \$40.
2. The renewal of the behind-the-wheel authorization shall be \$40.
3. A one-year extension for renewal of a coaching authorization shall be \$40.

4. A one-year extension of the initial license shall be \$25. This extension may be issued if the applicant needs one additional year to meet the experience requirement for the standard license, but has met Iowa teaching standards, pursuant to rule 282—20.4(272).

5. A \$25 fee for an extension of the initial administrator license, which may be issued instead of renewing the initial administrator license if the applicant verifies one of the criteria listed in 282—subrule 20.8(2).

6. The fee for the renewal of a license, certificate, statement of professional recognition, or authorization for practitioners with a master's degree or higher who have ten or more years of experience in education shall be \$50.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 32
“High School Equivalency Diploma”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 259A.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 259A

Public Hearing

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

October 10, 2023
10 to 11 a.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

This proposed rulemaking rescinds and replaces Chapter 32 related to high school equivalency diplomas. The Department is removing unduly restrictive rule language. The Department is also removing an age restriction for High School Equivalency Test (HiSET) takers who are in the juvenile justice system (proposed subrule 32.2(3)). That age restriction was contrary to the underlying statute.

In reviewing this chapter, the Department consulted with colleagues at Iowa Workforce Development.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The Department bears the cost of compliance, and individuals who seek a HiSET credential are required to pay a fee.
 - Classes of persons that will benefit from the proposed rulemaking:
This chapter is intended to benefit Iowans who have not been able to graduate from high school by traditional means but demonstrate the competencies for the award of a high school diploma.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no discernable quantitative impact of these proposed changes.
 - Qualitative description of impact:
There is no discernable qualitative impact of these proposed changes.

3. Costs to the State:

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

Costs associated with compliance include providing instruction and evaluating progress. Costs to participants include fees as specified in the proposed rules.

- Anticipated effect on state revenues:

There is no discernable impact on state revenues.

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

Inaction is not an option because of the large amount of obsolete matter in the current chapter, as well as a rule that is out of alignment with the underlying statute.

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

There is not a less costly method. The statute requires rules, and the Department seeks to make these rules as user-friendly as possible within statutory constraints.

6. Alternative methods considered by the agency:

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

No alternative methods were considered because the statute requires rules.

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

No alternative methods were considered because the statute requires rules.

Small Business Impact

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

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

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

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

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

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

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

There is no discernable effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 32 and adopt the following **new** chapter in lieu thereof:

CHAPTER 32
HIGH SCHOOL EQUIVALENCY DIPLOMA

281—32.1(259A) Definitions. As used in this chapter:

“*Adult education and literacy program*” means the same as defined in 877—Chapter 32.

“*Approved program*” means any defined option established under this chapter for the completion of a high school equivalency diploma that has been approved by the department.

“*Approved test*” means the entire battery of subtests given under a high school equivalency test adopted by the department and administered at department-approved testing sites.

“*Contact hour*” means the same as described in 281—Chapter 21.

“*Continuous enrollment*” means a participant has not exited from the approved program as defined in the federal Workforce Innovation and Opportunity Act (34 CFR §361.150(c)), as effective on [the publication date of Notice of Intended Action].

“*Demonstrated competence*” means the ability to apply the knowledge and skills required to perform critical functions specific to a program of study. Competencies that measure the attainment of the knowledge, skills, and abilities equivalent to a high school program of study are to be aligned with content standards for adult education as referenced in 877—Chapter 32 and twenty-first century learning skills.

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

“*Eligible institution*” means an entity as described in 877—Chapter 32.

“*High school credit*” means credit awarded for the successful completion of a secondary course or demonstrated competence equivalent to one-half unit as defined in 281—Chapter 12.

“*High school equivalency diploma*” means the credential granted by the department to adults who did not graduate from high school and are unable to receive a high school diploma through traditional means but who are able to demonstrate attainment of the knowledge, skills, and abilities that are equivalent to those that would be attained in a high school program of study.

“*Resident*” means an individual who satisfies the provisions of 281—subrule 21.2(11).

“*Twenty-first century learning skills*” means the same as defined in 281—Chapter 12.

“*Work-site learning*” means a planned and supervised work experience, equivalent to the training services defined in the federal Workforce Innovation and Opportunity Act, 29 U.S.C. §3174(c)(3)(D), that follows workplace laws and regulations, including the minimum wage prescribed by Iowa law or the federal Fair Labor Standards Act, if applicable.

281—32.2(259A) Eligibility to participate.

32.2(1) No one under 16 years and 9 months of age is allowed to participate in an approved program, with the exception of a person who is at least 16 years of age and satisfies one or more of the following conditions:

- a. Is a resident of an Iowa juvenile institution;
- b. Is an active participant in Job Corps; or
- c. Is under the supervision of a probation office.

32.2(2) Anyone 16 years and 9 months of age or older who is not enrolled in a secondary school nor is a high school graduate is permitted to apply for enrollment in an approved program. The requirements for admission into an approved program are:

- a. Proof of age and, for an applicant under 18 years of age, consent of the applicant’s parent or guardian.
- b. For an applicant under 19 years of age, verification of nonenrolled status from the last high school attended.
- c. Completion of a comprehensive intake by an eligible institution. For purposes of this chapter, the intake includes all of the following:

- (1) Assessment of the applicant’s reading level and career interests and aptitudes.
- (2) Discussion of program options available to the applicant regarding completion of a high school equivalency diploma, to include the requirements, expectations, benefits, and limitations of each option.
- (3) Development of a plan for the completion of one of the options discussed and subsequent activities necessary to work toward an identified goal, career pathway, occupation, or further education.

32.2(3) An eligible participant who successfully completes an approved program will not be awarded a high school equivalency diploma until the participant reaches 18 years of age and the participant’s ninth

grade class has graduated from high school. This subrule does not apply to eligible participants described in paragraphs 32.2(1) “a” through “c,” who may receive their diploma at any time after completion.

281—32.3(259A) By whom administered. An approved program is to be administered by an eligible institution, which may provide one or more approved programs. The department will maintain a process by which an eligible institution may apply to offer an approved program.

281—32.4(259A) Diploma, transcript, verification fees. Upon payment to the department or its designee of a fee for the actual cost of production and distribution of a high school equivalency diploma, transcript, or verification letter not to exceed \$20 per document, the department will issue a high school equivalency diploma, transcript, or verification letter to an applicant who has achieved the minimum standards established in this chapter. Upon payment to the department or its designee of a fee for the actual cost of verification and issuance of a duplicate diploma, transcript, and verification letter not to exceed \$20, the department or its designee will issue a duplicate diploma, transcript, or provide verification to the applicant or person authorized by the applicant to request these documents. Approved providers must track and submit to the department evidence of the applicant’s completion of the program requirements for the issuance of a high school equivalency diploma.

281—32.5(259A) Application, course, and testing fees. The applicant or the applicant’s supporting agency is to pay an application, course, or testing fee to cover only necessary and reasonable testing or program costs. Fees paid directly to an approved program are considered program income and are to adhere to the federal Office for Management and Budget Uniform Guidance cost principles, as codified in 2 CFR §200.80, effective as of [the publication date of Notice of Intended Action].

281—32.6(259A) High school equivalency diploma program based on a department-approved test. The department will award a high school equivalency diploma to an applicant who achieves the appropriate minimum standard scores on an approved test.

32.6(1) Validity of test scores. Scores on an approved test remain valid for a period of five years from the date of the first subtest taken. If an applicant has not earned a high school equivalency diploma within this five-year period, the applicant must retake any expired subtest. The only exception is for test series that expire prior to the five-year period, in which case all previously taken subtests are void.

32.6(2) Retest. Any applicant not achieving the minimum standard test score on any subtest in effect at the time of testing is permitted to apply for retest. Applicants may retest twice per calendar year, provided one of the following conditions is met:

- a. A period of three months from the date of initial testing has elapsed; or
- b. The applicant completes instruction in an adult education and literacy program in each subject area to be retested. This instruction is to be certified by an official of the adult education and literacy program provider to the test administrator authorized to release the retest.

281—32.7(259A) High school equivalency diploma program based on attainment of high school credits. The department will award a high school equivalency diploma to an applicant who demonstrates completion of an approved program consisting of at least 36 high school credits. The approved program will be inclusive of the graduation requirements established under 281—Chapter 12 and consist of at least eight high school credits in English or communications; six credits in mathematics; six credits in science; six credits in social studies, including government; and ten elective credits that meet the requirements of subrule 32.7(4).

32.7(1) Award of prior credit. The applicant is to provide certified, translated transcripts from any Iowa school district, accredited public or nonpublic high school, or regionally accredited college or university to document completion of credits earned that are equivalent to those required in an approved program established under this rule. Additional documentation may be requested to validate credits earned.

32.7(2) Minimum participation requirement. An eligible applicant is to demonstrate competence through continuous enrollment in an approved program for a minimum of two high school credits.

32.7(3) Minimum graduation requirements. If the applicant is not continuously enrolled in an approved program, the applicant becomes subject to the minimum graduation requirements applicable to the date of reenrollment.

32.7(4) Electives.

a. Coursework for electives will align with twenty-first century learning skills and be classified in one of the following five areas:

- (1) Civic literacy;
- (2) Health literacy;
- (3) Technology literacy;
- (4) Financial literacy;
- (5) Employability skills.

b. Work-site learning may be counted toward an elective, under the following conditions:

(1) Evidence of prior work-site learning will be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for prior work-site learning will not be counted toward the minimum participation requirement, as described in subrule 32.7(2).

(2) Current work-site learning will be evaluated using a state-developed assessment tool and may be awarded a maximum of two high school credits. Credit earned for current work-site learning may be counted toward the minimum participation requirement, as described in subrule 32.7(2).

32.7(5) Postsecondary credit. Credit awarded by a regionally accredited postsecondary institution for the successful completion of a course that applies toward the requirements of a postsecondary credential, including a certificate, diploma, or associate, bachelor, or graduate-level degree program, will be accepted to fulfill the requirements for the satisfactory completion of a program as follows:

a. One postsecondary semester credit or its equivalent is equal to one-third high school credit. The resulting high school credit may be used to satisfy either a core or elective credit requirement of an approved program.

b. Twenty contact hours of noncredit postsecondary coursework is equal to one-third high school credit provided the coursework is aligned to regional career pathways and occupational needs. This credit can be used to satisfy an elective credit requirement of an approved program.

281—32.8(259A) High school equivalency diploma program based on postsecondary degree.

32.8(1) Postsecondary degree from a United States postsecondary institution. The department will award a high school equivalency diploma to a resident applicant who presents an associate degree or higher that includes general education coursework and is awarded by a regionally accredited postsecondary institution. The applicant is to provide official transcripts to an adult education and literacy program to document completion of program requirements.

32.8(2) Postsecondary degree from a foreign postsecondary institution. The department will award a high school equivalency diploma to a resident applicant who presents a postsecondary degree equivalent to an associate degree or higher, provided that the following conditions are met:

a. The applicant presents to an adult education and literacy program an official transcript from an institution of higher education attesting to the completion of the program of study for the postsecondary degree. If the transcript is not in English, the applicant will also provide a certified translation.

b. The applicant is a United States citizen or meets both of the following conditions:

(1) Demonstrates proficiency in speaking, listening, reading, and writing as defined by the department's approved English language proficiency standards; and

(2) Has successfully completed a course in government or civics education as a component of an approved program.

These rules are intended to implement Iowa Code chapter 259A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 36
“Extracurricular Interscholastic Competition”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.46 and 280.13
State or federal law(s) implemented by the rulemaking: Iowa Code section 256.46

Public Hearing

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

October 10, 2023
10 to 11 a.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

This proposed rulemaking rescinds and replaces Chapter 36 on interscholastic athletic eligibility. The Department proposes removing numerous unnecessarily restrictive terms, obsolete language on all-star contests, an unnecessary requirement that the organizations file documents with the Department (as opposed to keeping them for the Department’s inspection), and unnecessary language that merely restates statutory text.

Additionally, the Department proposes clarifying that the burden of proving eligibility in disputes lies with the athlete. The Department also proposes reducing the penalty for a failing grade from 30 days to 20 days, to be equitable between sports seasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Schools that sponsor interscholastic athletics will bear the cost of compliance, including verification of student-athlete eligibility.
 - Classes of persons that will benefit from the proposed rulemaking:
This proposed chapter is intended to benefit Iowans who compete in interscholastic athletics (131,057 in the most recent reporting year) to ensure those activities are safe and equitable.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

There is no discernible quantitative impact of these proposed revisions, aside from athletes returning sooner from a period of ineligibility under the scholarship rule.

- Qualitative description of impact:

There is no discernible qualitative impact of these proposed revisions.

3. Costs to the State:

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

Costs associated with compliance include verifying student athlete eligibility. Costs to membership organizations are defrayed by membership dues.

- Anticipated effect on state revenues:

There is no discernible impact on state revenues.

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

Inaction is not an option because the proposed chapter provides needed clarity on the appeal process and additional flexibility and grace for student athletes who are returning from a period of ineligibility under the scholarship rule.

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

There is not a less costly method. The statute requires rules, and the Department seeks to make these rules as user-friendly as possible within statutory constraints.

6. Alternative methods considered by the agency:

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

No alternative methods were considered because the statute requires rules.

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

No alternative methods were considered because the statute requires rules.

Small Business Impact

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

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

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

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

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

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

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

There is no discernible effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 36 and adopt the following new chapter in lieu thereof:

TITLE VI
INTERSCHOLASTIC COMPETITION

CHAPTER 36
EXTRACURRICULAR INTERSCHOLASTIC COMPETITION

281—36.1(280) Definitions.

“*Associate member school*” means a nonaccredited nonpublic school that has been granted associate member status by any corporation, association, or organization registered with the department pursuant to Iowa Code section 280.13, upon approval by the department based upon proof of compliance with:

1. Iowa Code section 279.19B, and rules adopted by the department related to the qualifications of the affected teaching staff, and
2. The student eligibility rules of this chapter.

Associate membership is subject to the requirements, dues, or other obligations established by the organization for which associate membership is sought.

“*Coach*” means an individual, with coaching endorsement or authorization as required by Iowa law, employed by a school district under the provisions of an extracurricular athletic contract or employed by a nonpublic school in a position responsible for an extracurricular athletic activity. “Coach” also includes an individual who instructs, diagnoses, prescribes, evaluates, assists, or directs student learning of an interscholastic athletic endeavor on a voluntary basis on behalf of a school or school district.

“*Compete*” means participating in an interscholastic contest or competition and includes dressing in full team uniform for the interscholastic contest or competition as well as participating in pregame warm-up exercises with team members. “Compete” does not include any managerial, recordkeeping, or other noncompetitor functions performed by a student on behalf of a member or associate member school.

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

“*Dropout*” means a student who quit school because of extenuating circumstances over which the student had no control or who voluntarily withdrew from school. This does not include a student who has been expelled or one who was doing failing work when the student voluntarily dropped from school.

“*Executive board*” means the governing body authorized under a constitution or bylaws to establish policy for an organization registered under this chapter.

“*Executive officer*” means the executive director or secretary of each governing organization.

“*Member school*,” for purposes of this chapter, means a public school or accredited nonpublic school that has been granted such status by any corporation, association, or organization registered with the department pursuant to Iowa Code section 280.13.

“*Parent*” means the natural or adoptive parent having actual bona fide custody of a student.

“*Student*” means a person under 20 years of age enrolled in grades 9 through 12. For purposes of these rules, ninth grade begins with the summer immediately following eighth grade. The rules contained herein apply uniformly to all students.

“*Superintendent*” means a superintendent of a local school or a duly authorized representative.

“*Varsity*” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.

281—36.2(280) Registered organizations. Organizations registered with the department include the following:

- 36.2(1)** Iowa High School Athletic Association (hereinafter association).
- 36.2(2)** Iowa Girls’ High School Athletic Union (hereinafter union).
- 36.2(3)** Iowa High School Music Association (hereinafter music association).
- 36.2(4)** Iowa High School Speech Association (hereinafter speech association).
- 36.2(5)** Unified Iowa High School Activities Federation (hereinafter federation).

281—36.3(280) Filings by organizations. Each organization will maintain a current file of the following items, available for inspection by the department:

- 36.3(1)** Constitution and bylaws, approved by the state board of education.
- 36.3(2)** Current membership and associate membership lists.
- 36.3(3)** Organization policies.
- 36.3(4)** Minutes of all meetings of organization boards.
- 36.3(5)** Proposed constitution and bylaw amendments or revisions.
- 36.3(6)** Audit reports.
- 36.3(7)** General bulletins.
- 36.3(8)** Other information pertinent to clarifying organization administration.

281—36.4(280) Executive board.

36.4(1) *Membership.* Each organization will have an executive board, containing some representation from school administrators, teachers, and elective school officers; provided, however, that the membership will include the following:

a. One member who is a member of a school board in Iowa, appointed by the Iowa association of school boards to represent the lay public.

b. One member, who is either a coach, sponsor or director of an activity sponsored by the organization to which the member is elected and who works directly with the students or the program. This member is to be elected by ballot of the member schools, the vote to be cast by the school's designated representative of the organization involved.

36.4(2) *Organization elections.* The election procedure for each organization is to be conducted as provided by the organization's constitution, which is to set criteria for protecting the voter's anonymity and ensuring adequate notice of elections. In addition, one representative designated by the department director will be present at the counting of all ballots and will validate election results.

36.4(3) *Federation membership.* The federation, in addition to conforming to other requirements in this rule, will have in its membership the executive board of the association, union, music association, speech association, and school administrators of Iowa.

281—36.5(280) Fiscal provisions.

36.5(1) *Salary.* No remuneration, salary, or remittance may be made to any member of an executive board, representative council or advisory committee of an organization for the member's service.

36.5(2) *Expenses.* Travel and actual expenses of executive board members, representative council members, advisory committee members, and officers may be paid from organizational funds only when on official business for the organization. Actual expenses are to be paid for travel for transportation outside the state, along with necessary and reasonable expenses that are to be itemized. Itemized accounting of the travel and business expenses of employees are to be furnished to the department in an annual report on a form prescribed by the department.

36.5(3) *Financial report.* Full and detailed reports of all receipts and expenditures are to be filed annually with the department.

36.5(4) *Bond.* The executive board of each activity organization will purchase a blanket fidelity bond from a corporate surety approved by the executive board, conditioned upon the faithful performance of the duties of the executive officer, the members of the executive board, and all other employees of the activity organization. Such blanket bond is to be in a penal amount set by the executive board and is to be the sum of 50 percent of the largest amount of moneys on hand in any 30-day period during the preceding fiscal year, and 20 percent of the net valuation of all assets of the activity organization as of the close of the last fiscal year, but such bond will in no case be in an amount less than \$10,000.

36.5(5) *Audit.*

a. General. The financial condition and transaction of all organizations will be examined once each year, or more often if directed by the director of education, by either a certified public accountant chosen by the organization or by a committee chosen by the organization and approved by the director of education.

b. Examinations by auditors. Auditors have the right while making the examination to examine all organization papers, books, records, tickets, and documents of any of the officers and employees of the organizations, and have the right in the presence of the custodian or deputy to have access to the cash drawers and cash in the official custody of the officer and to the records of any depository that has funds of the organization in its custody.

c. Access to records. Upon request, organizations will make available to the department or its delegated representative all records, data, written policies, books, accounts, and other materials relating to any or all aspects of their operations.

281—36.6(280) Appearance before state board. At the request of the state board of education or its executive officer, members of the governing boards and employees of the organizations will appear before and give a full accounting and details on the aforesaid matters to the state board of education.

281—36.7(280) Interscholastic athletics. In addition to the requirements of rule 281—36.8(280), organizations will implement the provisions described below for participants in interscholastic athletic competition.

36.7(1) Physical examination. Every year each student will present to the student's superintendent a certificate signed by a licensed physician and surgeon, osteopathic physician and surgeon, osteopath, qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, to the effect that the student has been examined and may safely engage in athletic competition.

Each doctor of chiropractic licensed as of July 1, 1974, is to affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic.

The certificate of physical examination is valid for the purpose of this rule for one calendar year. A grace period not to exceed 30 calendar days is allowed for expired physical certifications.

36.7(2) Sportsmanship. It is the clear obligation of member and associate member schools to ensure that their contestants, coaches, and spectators in all interscholastic competitions practice the highest principles of sportsmanship, conduct, and ethics of competition. The governing organization has the authority to penalize any member school, associate member school, contestant, or coach in violation of this obligation.

36.7(3) Awards. At no time may any student accept an award of cash.

36.7(4) Interstate competition. Every student participating in interstate athletic competition on behalf of the student's school must meet the eligibility rules.

36.7(5) Competition seasons. The length of training periods and competition seasons is determined solely by the governing organization.

36.7(6) Tournaments. The number and type of state tournaments for the various sports is solely determined by the organization. In scheduling and conducting these tournaments, the organization has the final authority for determining the tournament eligibility of all participants. Organization bylaws are to provide for a timely method of seeking an internal review of initial decisions regarding tournament eligibility.

36.7(7) Ineligible player competition. Member or associate member schools that permit or allow a student to compete in an interscholastic competition in violation of the eligibility rules or that permit or allow a student who has been suspended to so compete are subject to penalties imposed by the executive board. The penalties may include forfeiture of contests or events or both, involving any ineligible student(s); adjustment or relinquishment of conference/district/tournament standings; and return of team awards or individual awards or both.

If a student who has been declared ineligible or who has been suspended is permitted to compete in an interscholastic competition because of a current restraining order or injunction against the school, registered organization, or department, and if such restraining order or injunction subsequently is voluntarily vacated, stayed, reversed, or finally determined by the courts not to justify injunctive relief, the penalties listed above may be imposed.

This rule is intended to implement Iowa Code section 280.13.

281—36.8(280) Eligibility requirements.

36.8(1) Local eligibility and student conduct rules. Local boards of education may impose additional eligibility requirements not in conflict with these rules. Nothing herein is to be construed to prevent a local school board from declaring a student ineligible to participate in interscholastic competition by reason of the student's violation of rules adopted by the school pursuant to Iowa Code sections 279.8 and 279.9. A member or associate member school shall not allow any student, including any transfer student, to compete until such time as the school has reasonably reliable proof that the student is eligible to compete for the member or associate member school under these rules.

36.8(2) Scholarship rules.

a. All contestants are to be enrolled and in good standing in a school that is a member or associate member in good standing of the organization sponsoring the event.

b. All contestants who have attained the age of 20 years old are not eligible.

c. All contestants will receive credit in at least four subjects, each of one period or "hour" or the equivalent thereof, at all times. To qualify under this rule, a "subject" will meet the requirements of 281—Chapter 12. Coursework taken from a postsecondary institution and for which a school district or accredited nonpublic school grants academic credit toward high school graduation is used in determining eligibility. No student is to be denied eligibility if the student's school program deviates from the traditional two-semester school year.

(1) Each contestant shall be passing all coursework for which credit is given and making adequate progress toward graduation requirements at the end of each grading period. Grading period, graduation requirements, and any interim periods of ineligibility are determined by local policy. For purposes of this subrule, "grading period" means the period of time at the end of which a student in grades 9 through 12 receives a final grade and course credit is awarded for passing grades.

(2) If at the end of any grading period a contestant is given a failing grade in any course for which credit is awarded, the contestant is ineligible to dress for and compete in the next occurring interscholastic athletic contests and competitions in which the contestant is a contestant for 20 consecutive calendar days unless the student has already served a period of ineligibility for 20 consecutive calendar days in another school-sponsored activity. A student will not serve multiple periods of ineligibility because of a failing grade.

d. A student with a disability who has an individualized education program will not be denied eligibility on the basis of scholarship if the student is making adequate progress, as determined by school officials, towards the goals on the student's individualized education program, unless the course in which the student receives a failing grade has no relationship to those goals.

e. A student who meets all other qualifications may be eligible to participate in interscholastic athletics for a maximum of eight consecutive semesters upon entering the ninth grade for the first time. However, a student who engages in athletics during the summer following eighth grade is also eligible to compete during the summer following twelfth grade. Extenuating circumstances, such as health, may be the basis for an appeal to the executive board that may extend the eligibility of a student when the executive board finds that the interests of the student and interscholastic athletics will be benefited.

f. All member schools will provide appropriate interventions and necessary academic supports for students who fail or who are at risk to fail.

g. A student is academically eligible upon entering the ninth grade.

h. A student is not eligible to participate in an interscholastic sport if the student has, in that same sport, participated in a contest with or against, or trained with, a National Collegiate Athletic Association (NCAA), National Junior College Athletic Association (NJCAA), National Association of Intercollegiate Athletics (NAIA), or other collegiate governing organization's sanctioned team. A student may not participate with or against high school graduates if the graduates represent a collegiate institution or if the event is sanctioned or sponsored by a collegiate institution. Nothing in this subrule precludes a student from participating in a one-time tryout with or against members of a college team with permission from the member school's administration and the respective collegiate institution's athletic administration.

i. No student is eligible to participate in any given interscholastic sport if the student has engaged in that sport professionally.

j. The local superintendent of schools, with the approval of the local board of education, may give permission to a dropout student to participate in athletics upon return to school if the student is otherwise eligible under these rules.

k. Remediation of a failing grade by way of summer school or other means does not affect the student's ineligibility. All failing grades will be reported to any school to which the student transfers.

36.8(3) General transfer rule. A student who transfers from a school in another state or country or from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days, as defined in 281—Chapter 12, exclusive of summer enrollment, unless one of the exceptions listed in paragraph 36.8(3) “*a*” applies. The period of ineligibility applies only to varsity level contests and competitions. In ruling upon the eligibility of transfer students, the executive board will consider the factors motivating student changes in residency, which it may consider from both direct and circumstantial evidence. Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.

a. Exceptions. The executive officer or executive board will consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten school days:

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

(2) If the student is attending in a school district as a result of a whole-grade sharing agreement between the student's resident district and the new school district of attendance, the student is immediately eligible.

(3) A student who has attended high school in a district other than where the student's parent(s) resides, and who subsequently returns to live with the student's parent(s), becomes immediately eligible in the parent's resident district.

(4) A student whose residence changes due to any of the following circumstances set forth in Iowa Code section 256.46 is immediately eligible provided the student meets all other eligibility requirements in these rules and those set by the school of attendance. For purposes of Iowa Code section 256.46(1) “*d*,” participation in a foreign exchange program is based on a J-1 visa issued by the United States government, unless the student attends the school primarily for athletic purposes.

(5) A transfer student who attends in a member or associate member school that is a party to a cooperative student participation agreement, as defined in rule 281—36.13(280), with the member or associate member school the student previously attended is immediately eligible in the new district to compete in those interscholastic athletic activities covered by the cooperative agreement.

(6) Any student whose parents change district of residence but who remains in the original district without interruption in attendance continues to be eligible in the member or associate member school of attendance.

(7) A special education student whose attendance center changes due to a change in placement agreed to by the district of residence is eligible in either the resident district or the district of attendance, but not both.

(8) A student who is found by the attending district to be a homeless child or youth as defined in rule 281—33.2(256).

(9) In any transfer situation not provided for elsewhere in this chapter, the executive board will exercise its administrative authority to make any eligibility ruling that it deems to be fair and reasonable. The executive board will consider the motivating factors for the student transfer, which it may consider from both direct and circumstantial evidence. The determination will be made in writing with the reasons for the determination clearly delineated. The burden of proving entitlement to administrative discretion under this provision lies with the party seeking it.

b. In ruling upon the transfer of students who have been emancipated by marriage or have reached the age of majority, the executive board will consider all circumstances with regard to the transfer to determine if it is principally for school or athletic purposes, in which case participation will not be approved.

c. A student who participates in the name of a member or associate member school during the summer following eighth grade is ineligible to participate in the name of another member or associate member school in the first 90 consecutive school days of ninth grade unless a change of residence has occurred after the student began participating in the summer.

d. A school district that has more than one high school in its district will set its own eligibility policies regarding intradistrict transfers, subject to Iowa Code section 279.82(6) as enacted by 2023 Iowa Acts, Senate File 496.

36.8(4) *Open enrollment transfer.* The transfer of a student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment is governed by Iowa Code section 282.18(9).

36.8(5) *Eligibility for other enrollment options.*

a. Shared-time students. A nonpublic school student who is enrolled only part-time in the public school district of the student's residence under a "shared-time" provision or for driver education is not eligible to compete in interscholastic athletics in the public school district.

b. Dual enrollment. A student who receives competent private instruction, not in an accredited nonpublic or public school, may seek dual enrollment in the public school of the student's resident district and is eligible to compete in interscholastic athletic competition in the resident school district provided the student meets the eligibility requirements of these rules and those set by the public school of attendance.

If a student seeking such dual enrollment is enrolled in an associate member school of the union or association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by rule 281—36.1(280).)

Any ineligibility imposed under this chapter begins with the first day of participation under dual enrollment. Any period of ineligibility applies only to varsity level contests and competitions.

c. Competent private instruction. A student who receives competent private instruction, and is not dual-enrolled in a public school, may participate in and be eligible for interscholastic athletics at an accredited nonpublic school if the student is accepted by that school and the student meets the eligibility requirements of this chapter and those set by the accredited nonpublic school where the student participates. Application will be made to the accredited nonpublic school on a form provided by the department.

If a student seeking such participation is enrolled in an associate member school of the union or association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by rule 281—36.1(280).)

Any ineligibility imposed under this chapter begins with the first day of participation with the accredited nonpublic school. Any period of ineligibility applies only to varsity level contests and competitions.

36.8(6) *Summer camps and clinics and coaching contacts out of season.*

a. School personnel, whether employed or volunteers, of a member or associate member school shall not coach that school's student athletes during the school year in a sport for which the school

personnel are currently under contract or are volunteers, outside the period from the official first day of practice through the finals of tournament play. However, school personnel may coach a senior student from the coach's school in an all-star contest once the senior student's interscholastic athletic season for that sport has concluded. In addition, volunteer or compensated coaching personnel shall not require students to participate in any activities outside the season of that coach's sport as a condition of participation in the coach's sport during its season.

b. A summer team or individual camp or clinic held at a member or associate member school facility shall not conflict with sports in season. Coaching activities between June 1 and the first day of fall sports practices will not conflict with sports in season. The associations in their discretion may establish a dead period up to 14 calendar days in length. During a dead period, coaches will not be allowed to have contact with students.

c. Penalty. A school whose volunteer or compensated coaching personnel violate this rule is ineligible to participate in a governing organization-sponsored event in that sport for one year with the violator(s) coaching.

36.8(7) Nonschool team participation. The local school board will, by policy, determine whether or not participation in nonschool athletic events during the same season is permitted and provide penalties for students who may be in violation of the board's policy.

This rule is intended to implement Iowa Code sections 256.46, 280.13 and 282.18.

281—36.9(280) Executive board review. A student, parent of a minor student, or school contesting the ruling of a student's eligibility based on these rules, other than subrule 36.8(1) or paragraph 36.8(2) "b," "c," "d," "f," or "k" or based on a challenge to a local district finding that a student was not subject to a founded incident of harassment or bullying, or a school contesting a penalty imposed under paragraph 36.8(6) "b," will state the basis of the objections in writing, addressed to the executive officer of the board of the governing organization. Upon request of a student, parent of a minor student, or a school, the executive officer will schedule a hearing before the executive board on or before the next regularly scheduled meeting of the executive board but not later than 20 calendar days following the receipt of the objections unless a later time is mutually agreeable. The executive board will give at least five business days' written notice of the hearing. The executive board will consider the evidence presented and issue findings and conclusions in a written decision within five business days of the hearing and will mail a copy to the appellant. The burden of proving entitlement to relief under this rule lies with the party seeking it.

281—36.10(280) Appeals to director. If the claimant is still dissatisfied, an appeal may be made in writing to the director of education by giving written notice of the appeal to the state director of education with a copy by registered mail to the executive officer of the governing organization. An appeal is to be in the form of an affidavit and be filed within ten business days after the date of mailing of the decision of the governing organization. The director of education will establish a date for hearing within 20 calendar days of receipt of written notice of appeal by giving at least 5 business days' written notice of hearing to the appellant unless another time is mutually agreeable. The procedures for hearing adopted by the state board of education and found at 281—Chapter 6 are applicable, except that the decision of the director is final. Appeals to the executive board and the state director are not contested cases under Iowa Code section 17A.2(5). The burden of proving entitlement to relief under this rule lies with the party seeking it.

281—36.11(280) Organization policies. The constitution or bylaws of organizations sponsoring contests for participation by member schools will reflect the following policies:

36.11(1) Expenditure policy. It is the expenditure policy of each organization, after payment of costs incurred in rules 281—36.6(280) through 281—36.9(280) and legitimate expenses for housing, equipment and supplies including by agreement with other organizations having a mutual interest in interscholastic activities, to use all receipts to promote and fiscally sponsor those extracurricular interscholastic contests and competitions deemed by the organization to be most beneficial to all eligible

students enrolled in member schools. Organizations with large revenues may provide assistance in staff, space, equipment and the transfer of funds to other organizations whose contests or competitions do not generate sufficient moneys to carry out an adequate program in their areas of service. Each organization will make an annual payment to the federation to cover the necessary expenditures of the federation. The amount of this payment will be determined by the federation.

36.11(2) *Calendar of events.* The federation will establish yearly in advance a calendar of events for the interscholastic contests and competitions sponsored by the organizations.

36.11(3) *Information to local member schools.* The federation will distribute to member schools the yearly calendar of events and other information believed by officers of the federation to be helpful to local school officials in providing a comprehensive program of extracurricular interscholastic contests or competitions.

36.11(4) *Participation.* Participation in interscholastic contests or competitions will be by school teams only and not selected individuals, with the exception of individual sports events such as wrestling, track, cross country, golf, tennis, and music and speech activities.

36.11(5) *Contests outside Iowa.* Out-of-state contest participation by a member school is limited to regularly scheduled interscholastic activities.

36.11(6) *Promoting interstate contests.* No activity organization is to sponsor interstate contests or competition between individuals, teams or groups.

36.11(7) *Chaperones.* It is the responsibility of all school districts to see that all teams or contestants are properly chaperoned when engaged in interscholastic activities.

36.11(8) *Membership.* Membership in an organization is limited to schools accredited by the department or approved by the department solely for purposes of associate membership in a registered organization.

281—36.12(280) Eligibility in situations of district organization change. Notwithstanding any other provision of this chapter, in the event eligibility of one or more students is jeopardized or in question as a result of actions beyond their control due to pending reorganization of school districts approved by the voters under Iowa Code chapter 275; action of the district boards of directors under Iowa Code section 274.37; or the joint employment of personnel and sharing of facilities under Iowa Code section 280.15 and the result is a complete discontinuance of the high school grades, or discontinuance of the high school grades pursuant to Iowa Code section 282.7(1), the boards of directors of the school districts involved may, by written agreement, determine the eligibility of students for the time the district of residence does not provide an activity program governed by this chapter. When the respective boards have not provided by written agreement for the eligibility of students whose eligibility is jeopardized or questioned four weeks prior to the normal established time for beginning the activity, students or parents of students involved may request a determination of eligibility from the governing body of the organization involved. All parties directly interested will be given an opportunity to present their views to the governing board.

A determination of eligibility by the governing board will be based upon fairness and the best interests of the students.

In the event that one or more parties involved in the request for determination before the governing board are dissatisfied with the decision of the governing board, an appeal may be made by the dissatisfied party to the director of the department under the provisions of rule 281—36.10(280). A decision of the director in the matter is final.

The above provisions apply insofar as applicable to changes of organization entered into between two or more nonpublic schools.

This rule is intended to implement Iowa Code section 280.13.

281—36.13(280) Cooperative student participation. Notwithstanding any other provision of this chapter, in the event a member or associate member school does not directly make participation in an interscholastic activity available to its students, the governing board of the member or associate member school may, by formally adopted policy if among its own attendance centers, or by written agreement

with the governing board of another member or associate member school, provide for the eligibility of its students in interscholastic activities provided by another member or associate member school. The eligibility of students under a policy, insofar as applicable, or a written agreement is conditioned upon the following:

36.13(1) All terms and conditions of the agreement are in writing;

36.13(2) The attendance boundary of each school that is party to the agreement is contiguous to or contained within the attendance boundary of one of the other schools, unless the activity is not offered at any school contiguous to the party district, or all schools that are contiguous refuse to negotiate an agreement with the party district, in which case the contiguous requirement may be waived by the applicable governing organization. For the purposes of this rule, a nonpublic school member will utilize the attendance boundaries of the public school in which its attendance center is located;

36.13(3) Any interscholastic activity not available to students of the schools participating in the agreement may be included in the agreement. A school's students may be engaged in cooperative activities under the terms of only one agreement.

However, if several schools are in a consortia cooperative agreement for a specific activity, they are not precluded from having a separate agreement with one or more of the same schools for a different activity as long as all schools of the consortia agree to such a separate agreement;

36.13(4) Agreements will be for a minimum of one school year. Amendments may be made to agreements, including allowing additional member schools to join an existing agreement, without necessarily extending the time of existence of the agreement;

36.13(5) All students participating under the agreement are enrolled in one of the schools, are in good standing, and meet all other eligibility requirements of these rules;

36.13(6) A copy of the written agreement between the governing boards of the particular schools involved, and all amendments to the agreement, will be filed with the appropriate governing organization(s) no later than April 30 for the subsequent year, unless exception is granted by the organization for good cause shown. The agreements and amendments are deemed approved unless denied by the governing organization(s) within ten calendar days;

36.13(7) It is the purpose of this rule to allow individual students participation in interscholastic competition in activities not available to them at the school they attend, through local policy or arrangements made between the governing boards of the schools involved, so long as the interscholastic activities of other schools are not substantially prejudiced. Substantial prejudice includes situations where a cooperative effort may result in an unfair domination of an activity or substantial disruption of activity classifications and management. In the event an activity organization determines, after investigation, that an agreement between schools that was developed under the terms of this rule results in substantial prejudice to other schools engaged in the activity, or the terms of the agreement are not in conformity with the purpose and terms of this rule, the activity organization may give timely notice to the schools involved that the local policy or agreement between them is null and void for the purposes of this rule, insofar as cooperative student participation is concerned with a particular activity. Determinations are appealable to the director of education under the applicable terms of rule 281—36.10(280). For notice to be timely, it must be given at least 45 calendar days prior to the beginning of the activity season.

This rule is intended to implement Iowa Code section 280.13.

These rules are intended to implement Iowa Code sections 256.46, 280.13, and 282.18.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 37
“Extracurricular Athletic Activity Conference for Member Schools”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 280.13
State or federal law(s) implemented by the rulemaking: Iowa Code section 280.13

Public Hearing

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

October 10, 2023
10 to 11 a.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

The Department proposes to revise Chapter 37 related to activity conference membership by removing unnecessarily restrictive language, as well as consolidating rules for improved organization.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Activity conferences bear the costs of compliance with the proposed rulemaking, which are limited to instances in which there is a membership dispute.
 - Classes of persons that will benefit from the proposed rulemaking:
This proposed chapter is intended to benefit Iowans by ensuring that Iowa schools have membership in an activity conference.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no discernable quantitative impact of the revised chapter.
 - Qualitative description of impact:
There is no discernable qualitative impact of the revised chapter.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

There is a minimal cost to the State in instances where schools cannot agree on conference membership and the dispute is resolved by the Director.

- Anticipated effect on state revenues:

There is no discernable impact on state revenues.

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

Inaction is not an option. Without these rules, there would be no mechanism to ensure a school was not unfairly excluded from a conference.

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

There is not a less costly or less intrusive method. Without these rules, there would be no mechanism to ensure a school was not unfairly excluded from a conference.

6. Alternative methods considered by the agency:

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

The Department considered eliminating the chapter; however, there would be no mechanism by which schools could object to unfair exclusion from an activity conference.

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

Without these rules, there would be no mechanism to ensure a school was not unfairly excluded from a conference.

Small Business Impact

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

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

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

There is no discernable effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 37 and adopt the following **new** chapter in lieu thereof:

CHAPTER 37 EXTRACURRICULAR ATHLETIC ACTIVITY CONFERENCE FOR MEMBER SCHOOLS

281—37.1(280) General. It is the policy of the state of Iowa that each school desiring to be a member of a conference providing extracurricular athletic contests and competitions for students is granted this opportunity. For purposes of this chapter, “member school” means a school or school district granted

such status by any corporation, association, or organization registered with the state department of education pursuant to Iowa Code section 280.13 and includes associate members.

37.1(1) Criteria. To the maximum extent appropriate, membership shall be with other schools of comparable size and within reasonable geographic proximity.

37.1(2) Initial responsibility. The initial authority and responsibility for conference development, membership, and alignment rests with the board of directors of each public school district and the authorities in charge of each nonpublic school.

281—37.2(280) Complaint to the director, department of education. A member school that believes it has been unfairly excluded or prevented from obtaining membership in an athletic activity conference that would provide the opportunity for participation of its students in athletic events or contests with students from other member schools of comparable size and within reasonable geographic proximity may file a complaint stating this concern with the director of the department of education. The complaint is to set forth in a plain and concise manner the reasons the member school believes the director should intervene in conference alignment decisions and the specific relief requested by the member school. The complaint is to be signed by the president of the board of directors of a public school district or a representative of the officials in charge of an accredited nonpublic school. The director or the director's designee will, within ten days, acknowledge to the member school receipt of the complaint in writing.

281—37.3(280) Mediation. The director of the department of education will establish a mediation team consisting of the executive director of the Iowa High School Athletic Association (hereinafter association) and the executive secretary of the Iowa Girls' High School Athletic Union (hereinafter union) organizations recognized in 281—Chapter 36, or their designees, to meet with the complainant and representatives of other affected member schools. If the complaint involves conference alignment for athletic activities represented by only one of the organizations, only that organization will be involved in the mediation. A copy of all materials filed with the director by the complainant member school will be provided to the mediation team.

The mediation team will meet with administrators or board members of schools potentially affected by changes in conference alignment related to the complaint. Schools will send representatives who have knowledge of the impact of a conference realignment and full authority to respond on behalf of their member school. Factors to be weighed in reaching resolution include school enrollment figures (current and projected), travel distances, comparability of instructional programs, traditional rivalries, number of existing and proposed schools in the conference, and comparability of athletic programs and other school-sponsored programs.

281—37.4(280) Resolution or recommendation of the mediation team. If mediation results in resolution of the complaint, no further action is necessary on the part of the director and the implementation of the mediation agreement will be left with the boards of directors of school districts and the authorities in charge of nonpublic schools. If no resolution is reached within 50 days of the start of the mediation process, the mediation team will make a recommendation to the director as to the best resolution of the complaint. Copies of this recommendation will be given to all affected member schools. The director will establish a time for a hearing on this recommendation within 45 days of the receipt of the mediation team's recommendation. The director or director's designee will conduct the hearing, at which time all affected parties will be given the opportunity to provide oral or written testimony or submit other evidence. The director or director's designee reserves the right to establish time limits on appearances at the hearing.

281—37.5(280) Decision; effective date. In reaching a decision on the complaint, the director will consider information gathered by the mediation team and its recommendation as well as the written and oral testimony from the hearing. In addition, the director or the director's designee may consult with other individuals, organizations, or conference representatives able to provide input on a decision. If a designee of the director conducts the hearing and review process, the findings of the designee shall be reviewed

by the director. A final decision on the complaint will be made by the director. The decision may affect conference realignment or direct other appropriate relief to remedy the complaint. The director will make a decision within 60 days of the hearing, and copies of the decision will be provided to all affected parties.

If the decision results in conference realignment, the date of this change shall be made with deference given to existing contracts and commitments. Alignment changes will be made for four-year periods with automatic review by the director after two years so that further necessary changes take effect at the conclusion of the four-year period, unless agreement exists that implementation of the changes can occur at an earlier date.

These rules are intended to implement Iowa Code section 280.13.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapters 48 and 49
“Future Ready Iowa Skilled Workforce Last-Dollar Scholarship Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.7(34)
State or federal law(s) implemented by the rulemaking: Iowa Code section 256.7(34)

Public Hearing

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

October 10, 2023
10 to 11 a.m.

State Board Room, Second Floor
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

The Department proposes to rescind 281—Chapter 48, regarding work-based learning, and adopt the remaining rule from that chapter in 281—Chapter 49. The other rules in 281—Chapter 48 were editorially transferred to the Department of Workforce Development under the provisions of 2023 Iowa Acts, Senate File 514.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The Department bears the costs of ensuring compliance with this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed amendments to Chapter 49 are intended to benefit Iowa students and employers by increasing high-quality work-based learning opportunities. In the most recent monitoring year, Iowa students had 80,180 in-person work-based learning experiences.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no discernable quantitative impact of these proposed amendments.
 - Qualitative description of impact:
There is no discernable qualitative impact of these proposed amendments.
3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
There is a minimal cost to the State in monitoring compliance with this rulemaking.
- Anticipated effect on state revenues:
There is no discernable impact on state revenues.

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

The current rule 281—48.5(256) and Chapter 49 follow the structure of the statute, which requires a rulemaking. Inaction is not an available option.

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

The statute requires rules. The Department intends to adopt a new Chapter 49 that provides the greatest return by the least intrusive means.

6. Alternative methods considered by the agency:
- Description of any alternative methods that were seriously considered by the agency:
No alternative methods were considered. The statute requires rules.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
No alternative methods were considered. The statute requires rules.

Small Business Impact

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

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

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

There is no discernable effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **281—Chapter 48**.

ITEM 2. Renumber rules **281—49.5(279)** to **281—49.7(279)** as **281—49.6(279)** to **281—49.8(279)**.

ITEM 3. Adopt the following **new** rule 281—49.5(256):

281—49.5(256) Program established. The provisions of this rule implement the future ready Iowa state-recognized work-based learning program as authorized under Iowa Code sections 256.7 and 261.131.

49.5(1) Definitions. As used in this rule:

“*Apprenticeship program*” means an apprenticeship program authorized under federal statute or by the Iowa office of apprenticeship.

“*Eligible program*” means a program eligible under the future ready Iowa skilled workforce last-dollar scholarship program.

49.5(2) *Alignment with last-dollar scholarship.* The rules governing eligibility for students, programs, and institutions are the same as the eligibility criteria specified in 283—Chapter 15 for the future ready Iowa skilled workforce last-dollar scholarship program.

49.5(3) *Eligibility.* Pursuant to 283—subparagraph 15.3(1) “j”(2), a student enrolled in an apprenticeship program aligned to an eligible program may be enrolled in an eligible program on a part-time basis.

ITEM 4. Amend renumbered rule 281—49.7(279) as follows:

281—49.7(279) Career information and decision-making systems. Each district shall use a career information and decision-making system that meets the minimum requirements established in subrule 49.6(3) 49.7(3).

49.7(1) *Review process.* The department shall establish a process for the review of vendor-provided career information and decision-making systems to determine which career information and decision-making systems meet the minimum requirements established in subrule 49.6(3) 49.7(3).

49.7(2) *State-designated system.* The department shall establish a process for the review and approval of a single state-designated career information and decision-making system from among the systems approved through the process established in subrule 49.6(1) 49.7(1) which districts may use in compliance with this chapter.

49.7(3) No change.

49.7(4) *Supplemental systems.* The department shall maintain a list of supplemental systems which districts may use to satisfy components of rule 281—49.3(279).

a. The department shall establish a process for the review of supplemental systems. The review shall, at a minimum, identify the components of rule 281—49.3(279) and paragraphs 49.6(3) “b,” 49.7(3) “b,” “c,” and “d” ~~which~~ that are satisfied through the supplemental system. All supplemental systems shall comply with paragraphs 49.6(3) “f” 49.7(3) “f” and “g.”

b. A district ~~which~~ that chooses to utilize a supplemental system shall specify which components of rule 281—49.3(279) are satisfied through the use of the supplemental system in the district plan required under rule 281—49.5(279) 281—49.6(279). A district ~~which~~ that chooses to utilize a supplemental tool must continue to utilize and make available to students an approved system.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 1
“Organization”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

Rule 191—1.6(502,505) provides the organizational structure for the Division. The Division proposes updating the Division’s organizational structure and removing duplicative language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowans will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowans will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.
 - Anticipated effect on state revenues:
There is no effect on state revenues.

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

The proposed amendments update organizational structure and eliminate redundant and repetitive language.

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

The Division did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

Alternative methods were not considered by the agency.

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

The rules are required by statute.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 191—1.6(502,505) as follows:

191—1.6(502,505) Organization. The division is headed by the commissioner, who is assisted by a first deputy commissioner, a second deputy commissioner, a deputy commissioner for supervision, and other deputy commissioners and assistant commissioners. The functions of the division are divided into eight bureaus.

1.6(1) No change.

1.6(2) Company regulation bureau. The company regulation bureau is responsible for the following:
a. and b. No change.

c. Serving as a general insurance information repository and resource for both insurers and consumers regarding, for example, insurance companies' statuses, addresses, telephone numbers, certifications, and financial statements; statutory construction; life and health insurance guaranty association fund calculations; compilation of statistics; and publication publishing of the division's annual report to the governor required by Iowa Code section 505.12.

d. to l. No change.

1.6(3) to 1.6(6) No change.

1.6(7) *Fraud bureau.* The fraud bureau confronts the problem of insurance and securities fraud by prevention, investigation, and prosecution of fraudulent insurance acts in an effort to reduce the amount of premium dollars used to pay fraudulent insurance claims, as set forth in Iowa Code chapter 507E. ~~Matters investigated by the fraud bureau may be referred to the attorney general's office or to local prosecutors, and may refer such matters to the appropriate jurisdiction for potential action or prosecution.~~

1.6(8) *Product and producer regulation bureau.* The product and producer regulation bureau is responsible for the following:

a. to c. No change.

d. ~~Overseeing the senior health insurance information program (SHIP) and senior Medicare patrol (SMP) and other Medicare beneficiaries and their families and caregivers. SHIP's mission is to advocate for, inform, educate and assist consumers on Medicare and related health insurance information issues so Iowans can make informed decisions and access resources to address their needs. SMP seeks to increase public awareness on how to prevent, detect, and report health care fraud, errors and abuse through grassroots education and community engagement. Iowa SHIP-SMP services are local, carried out by a statewide network of certified, trained volunteer counselors located at sponsor site offices across Iowa. Iowa SHIP-SMP volunteers provide one-to-one Medicare counseling and conduct community education on Medicare and fraud prevention. The Administration for Community Living (ACL), Office of Healthcare Information and Counseling, manages the competitively obtained Iowa SHIP and SMP grants. ACL is a part of the U.S. Department of Health and Human Services. These programs include providing information needed to make informed decisions about care and benefits; access financial assistance to cover related costs; and prevent Medicare fraud, errors and abuse.~~

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 2
“Public Records and Fair Information Practices”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

Chapter 2 provides rules about public records and fair information practices. The Division proposes removing duplicative language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowans will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowans will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.
 - Anticipated effect on state revenues:
There is no effect on state revenues.

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

The proposed amendments streamline and eliminate duplicative language.

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

The Division did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency: Alternative methods were not considered by the agency.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking: The rules are required by statute.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 191—2.1(17A,22) as follows:

191—2.1(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound division determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This division is committed to the policies set forth in Iowa Code chapter 22. The division's website provides access to all public records. Division staff will cooperate with members of the public in implementing the provisions of that chapter.

ITEM 2. Amend rule 191—2.2(17A,22) as follows:

191—2.2(17A,22) Definitions. The definitions in Iowa Code section 22.1 are incorporated into this chapter by this reference. In addition to the definitions in rule 191—1.1(502,505), the following definitions apply:

“*Confidential record*” means a record that is not available as a matter of right for inspection and copying by members of the public under applicable provisions of law. Confidential records ~~include records or information contained in records that the division is prohibited by law from making available for inspection by members of the public, and records or information contained in records that are~~ may be specified as confidential by Iowa Code section 22.7, or other provisions of law, but ~~that~~ may be disclosed

upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Division*” means the insurance division of the department of ~~commerce~~ insurance and financial services, created by Iowa Code section 505.1. The division is both the “government body” and the “lawful custodian” as defined in Iowa Code sections 22.1(1) and 22.1(2), respectively. The division is also the ~~“state agency”~~ “agency” as defined in Iowa Code chapter 17A and referenced in Iowa Code chapter 22. For purposes of this chapter, “division” includes both the commissioner of insurance and the administrator as defined in Iowa Code ~~chapter~~ chapters 502 and 505.

“*File*,” “*filed*,” or “*filing*,” when used as a verb, means submitting or having submitted to the division a record or information. “File” or “filing,” when used as a noun, means a record or information.

“*Inspect*” or “*inspection*” means the same as “examine” or “examination” in Iowa Code chapter 22. The term “examination” in this chapter does not mean the same as “examination” as used in Iowa Code chapter 22.

“*Lawful custodian*,” as used in Iowa Code section 22.1(2), is the division, the division’s record officer, or an employee lawfully delegated authority by the division to act for the division in implementing Iowa Code chapter 22.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means all or part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the division.

“*Record system*” means any group of records under the control of the division from which a record may be retrieved by a personal identifier ~~such as the name of the individual, number, symbol or other unique retriever assigned to the individual.~~

ITEM 3. Amend rule 191—2.3(17A,22) as follows:

191—2.3(17A,22) General provisions.

2.3(1) *Entities holding division records covered by this rule.* This rule applies to records belonging to, required by, or created by the division. ~~This rule applies to, as well as records held by third parties, including other state agencies, that do any of the following:~~

a. to d. No change.

2.3(2) *Existing records.* A request for access shall apply only to records that exist at the time the request is made and access is provided. The division is not required to create, compile or procure a record solely for the purpose of making it available except as described in Iowa Code section 22.3A and ~~subrule 2.4(6)~~ 2.4(5).

2.3(3) and **2.3(4)** No change.

~~**2.3(5)** *Internet access.* The division provides public access to many public records, with no request for access necessary, on the division’s website.~~

~~**2.3(6)** **2.3(5)** *Office hours.* Open records are available for inspection during customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.~~

~~**2.3(7)** *Data processing system.* Some agency data processing systems that have common data elements can match, collate and compare personally identifiable information.~~

~~**2.3(8)** **2.3(6)** *Scope.* This chapter does not:~~

a. to d. No change.

e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. ~~The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations.~~

f. No change.

ITEM 4. Amend rule 191—2.4(17A,22) as follows:

191—2.4(17A,22) Requests for access to records.

2.4(1) Request for access. Requests for access to open records not available on the division’s website may be made in writing, ~~or in person. A request may be made by mail, by~~ email, or online as instructed on the division’s website. Requests must identify the particular records sought by name or description in order to facilitate the location of the record. Requests must include the name, address, email address if available, and telephone number of the person requesting the information. A person is not required to give a reason for requesting an open record. If the division has records in its possession that may be public records but that are copies of materials from another agency or public organization, the division may refer ~~persons seeking inspection of those records~~ individuals to the originating ~~agency or public organization entity~~.

2.4(2) Response to requests.

a. Access. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the division must comply with the request as soon as feasible. ~~The division requests that members of the public make appointments for the in-person inspection of public records because the division needs time to locate stored records and office space is limited.~~

b. and c. No change.

2.4(3) No change.

~~**2.4(4) Copying.** A reasonable number of copies of an open record may be made in the division’s office. If photocopy equipment is not available in the division office where an open record is kept, the division must permit the record’s inspection in that office and arrange to have copies promptly made elsewhere.~~

~~**2.4(5) 2.4(4) Fees.** The division may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. Under Iowa Code section 22.3, the fee for the copying service, whether electronic or hard copy, or mailing shall not exceed the cost of providing the service. An hourly fee may be estimated in advance and charged for actual division expenses in the inspection, reviewing, and copying of requested records when the total staff time dedicated to fulfilling the request requires an excess of two hours. ~~When the open records request will cause time required in excess of the allotted two hours, the division may require a requester to make an advance payment to cover all of the estimated fee.~~~~

~~**2.4(6) 2.4(5) Information released.** If a person is provided access to less than an entire record, the division shall take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released or a copy of the record from which the information not to be released has been otherwise redacted.~~

ITEM 5. Rescind paragraph **2.5(1)“c.”**

ITEM 6. Reletter paragraph **2.5(1)“d”** as **2.5(1)“c.”**

ITEM 7. Amend rule 191—2.6(17A,22) as follows:

191—2.6(17A,22) Requests for confidential treatment. The division may treat a record as a confidential record and withhold it from inspection or refuse to disclose that record to members of the public only to the extent that the division is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order. All other information submitted to the division shall be treated as if that person has no objection to its disclosure to members of the public.

2.6(1) to 2.6(3) No change.

2.6(4) Request denied. If the request for confidential treatment of a record is denied, the requester may apply to the commissioner for reconsideration of the request. ~~However, the record shall not be withheld from public inspection for any period of time if the division determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record.~~

2.6(5) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the division from treating it as a confidential record. ~~However, if a person who has submitted information to the division does not request that it be withheld from public inspection, the division may proceed as if that person has no objection to its disclosure to members of the public.~~

ITEM 8. Amend rule 191—2.9(17A,22) as follows:

191—2.9(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record may consent to have a copy of the portion of that record that concerns the subject disclosed to a third party. A request for such a disclosure must be in writing, and ~~must identify the particular record or records that may be disclosed and the particular person or class of persons to whom the record may be disclosed.~~ The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Appearance of counsel before the division on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the division to disclose records about that person to the person's attorney.

ITEM 9. Amend rule 191—2.10(17A,22) as follows:

191—2.10(17A,22) Notice to suppliers of information. When the division requests a person to supply information about that person, the division must notify the person by reasonable means of the use that will be made of the information, which persons outside the division might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. ~~This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.~~

2.10(1) and 2.10(2) No change.

2.10(3) License renewal. Licensees are requested to supply a wide range of information in connection with license renewal, ~~including continuing education information, criminal history and disciplinary actions, as provided by division statutes, rules and application forms,~~ both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information may be confidential under state or federal law.

2.10(4) to 2.10(6) No change.

ITEM 10. Amend paragraph **2.11(1)“f”** as follows:

f. Personnel files. The division maintains files containing information about employees of the division and applicants for positions with the division. ~~The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.~~

ITEM 11. Amend subrule 2.11(3) as follows:

2.11(3) Means of storage. Paper and various electronic means of storage are used to store records containing personally identifiable information. ~~Some information is stored electronically by third parties on behalf of the division.~~

ITEM 12. Amend rule 191—2.12(17A,22) as follows:

191—2.12(17A,22) Confidential records. This rule describes the types of agency information or records that are confidential. This rule is not exhaustive. The following records shall be kept confidential. ~~Records are listed by category and include a citation to the legal basis for withholding that category from public inspection.~~

2.12(1) to 2.12(15) No change.

2.12(16) Determination of any suspension of an insurance producer's or other licensee's pending application for licensure, pending request for renewal, or current license, when the suspension is related to failure to pay child support, foster care, or state debt, pursuant to rule 191—10.21(252J). ~~Notwithstanding any statutory confidentiality provision, the division may share information with the child support recovery unit or the centralized collection unit of the department of revenue, through manual or automated means, for the sole purpose of identifying registrants, applicants or licensees subject to enforcement under Iowa Code chapter 252J or 272D, respectively.~~

~~**2.12(17)** Information which is confidential under the law governing a person providing information to the division and pursuant to a written sharing agreement referencing that law and how it applies to allow the division to share the information.~~

~~**2.12(18)**~~ **2.12(17)** All other information or records that by law are or may be confidential.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 3
“Contested Cases”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

Chapter 3 provides rules about contested cases. The Division is proposing to update the Division’s processes and remove duplicative language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowans will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowans will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.
 - Anticipated effect on state revenues:
There is no effect on state revenues.

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

The proposed rulemaking streamlines the chapter and eliminates duplicative language.

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

The Division did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

Alternative methods were not considered by the agency.

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

The rules are required by statute.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule **191—3.2(17A)**, definition of “Presiding officer,” as follows:

“*Presiding officer*” means the commissioner, the commissioner’s designee or an administrative law judge from the department of inspections, ~~and appeals, and licensing.~~

ITEM 2. Amend rule 191—3.5(17A,507B) as follows:

191—3.5(17A,507B) Commencement of hearing; service; delivery; notice of hearing; answer.

3.5(1) Service and delivery of the notice of hearing.

a. and b. No change.

c. *Consent to service upon the commissioner.* ~~Certain persons regulated by the division have an obligation to keep their contact information, including their mailing address, current.~~ For such persons who have consented in writing to have the commissioner accept service of process on their behalf, delivery of the notice of hearing referred to in this rule is accomplished at the time the notice of hearing is signed by the commissioner, unless otherwise provided by law.

3.5(2) Notice of hearing. The notice of hearing shall be prepared in the form of an order and contain the following information in the notice of hearing or accompanying charging document:

a. to f. No change.

g. Reference to the procedural rules governing ~~informal~~ settlement;

h. to k. No change.

3.5(3) to 3.5(5) No change.

ITEM 3. Amend subrule 3.9(2) as follows:

3.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 3.9(3) and ~~3.23(9)~~ 3.23(8).

ITEM 4. Amend rule 191—3.12(17A) as follows:

191—3.12(17A) Service and filing of pleadings and other papers.

3.12(1) and 3.12(2) No change.

3.12(3) Required filing. After the notice of hearing, all pleadings, motions, and notices of discovery in a contested case proceeding shall be filed with the division’s designated filing clerk. If a contested case is assigned to an administrative law judge with the department of inspections, ~~and~~ appeals, and licensing, filing shall be conducted in accordance with the rules of the department of inspections, ~~and~~ appeals, and licensing, unless ordered otherwise.

3.12(4) No change.

3.12(5) Proof of mailing and emailing. Proof of mailing and emailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Insurance Division at the address disclosed in 191—1.4(502,505) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail). I emailed copies of (describe document) addressed to the Insurance Division at the email address disclosed in 191—subrule 3.12(4) and to the names and email addresses of the parties listed below by transmitting the same from (sending email address).

(Date)

(Signature)

~~**3.12(6) Proof of emailing.** Proof of emailing includes a certification in substantially the following form:~~

~~I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of emailing), I emailed copies of (describe document) addressed to the Insurance Division at the email address disclosed in 191—subrule 3.12(4) and to the names and email addresses of the parties listed below by transmitting the same from (sending email address).~~

~~(Date)~~

~~(Signature)~~

ITEM 5. Amend rule 191—3.13(17A) as follows:

191—3.13(17A) Discovery.

3.13(1) and 3.13(2) No change.

3.13(3) Notice of discovery. Discovery is only permitted after a party has filed, pursuant to rule 191—3.12(17A), a notice of discovery no later than 15 days after the filing of an answer unless extended by the presiding officer for good cause shown or by agreement of the parties. The notice of discovery shall be a general notice that the party is serving discovery. The notice should include a statement regarding

the type of discovery being conducted and the due date ~~but the actual discovery requests do not need to be filed.~~

3.13(4) to 3.13(6) No change.

ITEM 6. Amend rule 191—3.16(17A) as follows:

191—3.16(17A) Prehearing conference.

3.16(1) ~~Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than 14 days prior to the hearing date. A prehearing conference shall be scheduled not less than seven business days prior to the hearing date. The presiding officer shall give written notice of the prehearing conference to all parties.~~

~~The presiding officer shall give written notice of the prehearing conference to all parties.~~

3.16(2) No change.

3.16(3) Each party shall exchange and receive prior to the prehearing conference:

a. No change.

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

3.16(4) and 3.16(5) No change.

ITEM 7. Amend rule 191—3.19(17A,507B) as follows:

191—3.19(17A,507B) Intervention.

3.19(1) No change.

3.19(2) Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. ~~Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.~~

3.19(3) and 3.19(4) No change.

ITEM 8. Amend rule 191—3.20(17A) as follows:

191—3.20(17A) Hearing procedures.

3.20(1) to 3.20(3) No change.

3.20(4) Parties have the right to participate ~~or~~ and to be represented by an attorney in all hearings or prehearing conferences related to their case. ~~Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent.~~ Any party may be represented by an attorney or another person authorized by law, subject to Iowa Court Rule ~~413~~ 31.14.

3.20(5) to 3.20(7) No change.

ITEM 9. Amend rule 191—3.22(17A) as follows:

191—3.22(17A) Default.

3.22(1) to 3.22(8) No change.

3.22(9) A default decision may award any relief ~~consistent with the request for relief made in the petition, notice of hearing, or charging document and embraced in its issues~~ authorized by statute or rule.

3.22(10) No change.

ITEM 10. Amend rule 191—3.23(17A) as follows:

191—3.23(17A) Ex parte communication.

3.23(1) Unless required for the disposition of ex parte matters specifically, through communication either written, oral, or other forms, authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the division or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 3.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

3.23(2) No change.

~~**3.23(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.~~

3.23(4) 3.23(3) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 191—3.12(17A) and may be supplemented by telephone, facsimile, ~~electronic mail~~ email or other means of notification.

~~**3.23(5)**~~ **3.23(4)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

~~**3.23(6)**~~ **3.23(5)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 191—3.16(17A).

~~**3.23(7)**~~ **3.23(6)** A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record, either under seal by protective order or in the public file, at the discretion of the presiding officer. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

~~**3.23(8)**~~ **3.23(7)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. ~~Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.~~

~~**3.23(9)**~~ **3.23(8)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the division. Violation of ex parte communication prohibitions by division personnel shall be reported to the first deputy commissioner or designee for possible sanctions including censure, suspension, dismissal or other disciplinary action.

ITEM 11. Amend rule 191—3.26(17A) as follows:

191—3.26(17A) Final decision.

3.26(1) and **3.26(2)** No change.

3.26(3) The presiding officer's decision shall specify in bold print either that the decision is final or that the decision shall become final without further proceedings after the time provided in rule 191—3.27(17A) ~~unless there is an appeal to, or review on motion of, the commissioner within the time provided in rule 191—3.27(17A).~~

3.26(4) and **3.26(5)** No change.

ITEM 12. Amend rule 191—3.33(17A,502,505) as follows:

191—3.33(17A,502,505) ~~Informal settlement~~ Settlement.

3.33(1) A party to a controversy that may culminate or has culminated in contested case proceedings may attempt ~~informal~~ settlement by complying with the procedures set forth in this subrule. No party shall be required to settle the controversy or contested case by submitting to ~~informal~~ settlement procedures.

3.33(2) Parties desiring ~~informal~~ settlement shall set forth in writing the various points of a proposed settlement, including findings of facts.

3.33(3) to **3.33(5)** No change.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 4
“Waiver of Rules and Declaratory Orders”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

Chapter 4 provides rules about the waiver process and declaratory orders. The Division is proposing to eliminate duplicative language from that chapter. The language in rule 191—4.7(17A) pertaining to petitions for rulemaking will be adopted in a future rulemaking as a new rule under the Commerce Department[181], which was renamed the Department of Insurance and Financial Services in 2023 Iowa Acts, Senate File 514.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowans will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowans will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.

- Anticipated effect on state revenues:
There is no effect on state revenues.
- 4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
The proposed rulemaking streamlines the chapter and eliminates duplicative language.
- 5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
The Division did not find any other less costly or less intrusive methods.
- 6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
Alternative methods were not considered by the agency.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The rules are required by statute.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

- ITEM 1. Amend **191—Chapter 4**, title, as follows:
**AGENCY PROCEDURE FOR RULE MAKING, WAIVER OF RULES,
AND DECLARATORY ORDERS**

- ITEM 2. Rescind the division heading before rule **191—4.1(17A)**.
- ITEM 3. Rescind rules **191—4.5(17A)** to **191—4.7(17A)**.
- ITEM 4. Rescind the implementation sentence after rule **191—4.7(17A)**.
- ITEM 5. Rescind the division heading before rule **191—4.21(17A)**.
- ITEM 6. Renumber rules **191—4.21(17A)** to **191—4.23(17A)** as **191—4.5(17A)** to **191—4.7(17A)**.
- ITEM 7. Adopt the following new division heading before renumbered rule **191—4.5(17A)**:

DIVISION I
WAIVER OF RULES

- ITEM 8. Amend renumbered rule 191—4.5(17A) as follows:

191—4.5(17A) Waivers.

4.5(1) Scope. ~~Division II of this~~ This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. ~~To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede the rules in this division with respect to any waiver from that rule.~~ Division II of this This chapter shall not preclude the division from granting waivers in other contexts or on the basis of other standards if a statute or agency rule authorizes the division to do so and the division deems it appropriate to do so.

4.5(2) No change.

4.5(3) Criteria for order for waiver. ~~In response to a petition completed pursuant to rule 191—4.22(17A), except for a petition seeking a waiver order issued pursuant to subrule 4.21(4),~~ The division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

- a. Application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. Waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. Provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and,
- e. ~~If the rule implements Iowa Code chapter 502 or is being applied in conjunction with implementation of Iowa Code chapter 502, the waiver is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of Iowa Code chapter 502.~~

4.5(4) Criteria for waiver related to approval of a manner of electronic delivery of notices of cancellation, nonrenewal or termination. ~~This subrule is intended to implement Iowa Code sections 17A.9A and 505B.1.~~

a. ~~For purposes of Iowa Code chapter 505B and this subrule, in addition to the definitions in rule 191—4.2(17A), the following definitions shall apply:~~

~~“Intended recipient” means the person to whom notice is required to be delivered, including but not limited to notices listed in the definition of “notice of cancellation, nonrenewal or termination” in this paragraph and in 191—paragraphs 20.80(1)“b,” 30.9(1)“b,” 35.9(1)“b,” 39.33(1)“b,” and 40.26(1)“b.”~~

~~“Notice of cancellation, nonrenewal or termination” means:~~

1. ~~Notice of an insurance company’s termination of an insurance policy at the end of a term or before the termination date;~~

2. ~~Notice of an insurance company's decision or intention not to renew a policy; and~~
 3. ~~For purposes of notices required by Iowa Code chapters 505B, 508, 509B, 513B, 514, 514B, 514D, 514G, 515, 515D, 518, 518A and 519, includes but is not limited to the following:~~

- ~~● An insurance company's notice of cancellation, nonrenewal, suspension, exclusion, intention not to renew, failure to renew, termination, replacement, rescission, forfeiture or lapse in an annuity policy, a life insurance policy, a long-term care insurance policy, or an insurance policy other than life;~~
- ~~● An insurance company's rescission or discontinuance of an accident and health insurance policy;~~
- ~~● An insurance company's notice of cancellation of personal lines policies or contracts;~~
- ~~● A health maintenance organization's notice to an enrollee of cancellation or rescission of membership;~~
- ~~● An employer's or group policyholder's notice to an employee or member of the termination or substantial modification of the continuation of an employer group accident or health policy; or~~
- ~~● A carrier's advance notice to affected small employers, participants, and beneficiaries of its decision to discontinue offering a particular type of health insurance coverage.~~

~~b. This subrule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance in Iowa, health maintenance organizations, employers, group policyholders, or carriers and to all requirements by statute or rule related to notices of cancellation, nonrenewal or termination. This subrule shall apply when an insurance company, health maintenance organization, employer, group policyholder, or carrier seeks the commissioner's approval of a manner for delivering by electronic means required notices of cancellation, nonrenewal or termination, as described in Iowa Code section 505B.1.~~

~~c. The commissioner, by order pursuant to this chapter, may approve a request for approval of a manner for delivering notices of cancellation, nonrenewal or termination by an electronic means if the commissioner has jurisdiction to enforce the statute or rule requiring the notice and if the requested approval is consistent with Iowa Code section 505B.1 and with this chapter.~~

~~d. In response to a petition submitted pursuant to rule 191—4.22(17A) and related statutes and rules, the commissioner may issue an order approving an insurer's proposed manner for delivering notices of cancellation, nonrenewal or termination by an electronic means rather than mail, if the commissioner finds, based on clear and convincing evidence, all of the following:~~

- ~~(1) The proposed manner allows the commissioner, the insurer and the intended recipient to verify receipt by the intended recipient;~~
- ~~(2) The proposed manner provides for consent, by the intended recipient, to have notices or documents delivered by electronic means, in compliance with Iowa Code chapter 505B; and~~
- ~~(3) The proposed manner provides that the insurance company shall maintain adequate records of notices, receipts and consents. The records shall be available for review upon request by the commissioner and the intended recipient and be shall maintained for a period of five years from the date of cancellation, nonrenewal or termination.~~

~~e. Such an order would constitute approval by the commissioner to satisfy Iowa Code chapter 505B.~~

~~f. Although any proposed manner that complies with the above requirements may be approved, the following system is provided as an example, for purposes of guidance, of an insurer's system of verifiable receipt that will be approved by the commissioner if the system includes all of the following aspects:~~

- ~~(1) The system provides that the intended recipients shall give written consent to the insurer of delivery of required notices of cancellation, nonrenewal and termination by electronic means, in compliance with Iowa Code section 505B.1.~~
- ~~(2) The system provides that when an insurer is required to provide notices of cancellation, nonrenewal and termination, the insurer shall provide to the intended recipients a link to the required notice by electronic mail.~~
- ~~(3) The system provides that the insurer provide intended recipients with user names and passwords to log in to the insurer's notice system website.~~

~~(4) The system provides that the link required by subparagraph 4.21(4) “f”(2) shall be to a secure website that requires the intended recipients’ user names and passwords for the intended recipients to access the insurer’s notice system website and the contents of the notices.~~

~~(5) The system provides that when the intended recipients log in to the insurer’s notice system website, either the insurer’s notice to the intended recipients or the intended recipients’ online inboxes will be the first thing automatically displayed.~~

~~(6) The system provides a procedure whereby, if the intended recipients do not log in to the intended recipients’ accounts within seven days after the insurer sent the link to the intended recipients by email, the insurer shall mail paper copies of the notices to the intended recipients’ last known physical addresses.~~

~~(7) The system provides for adequate maintenance of records by the insurer as required by subparagraph 4.21(4) “d”(3).~~

~~g. The commissioner may, upon proper request by an insurance company pursuant to rule 191—2.6(17A,22) or another applicable rule, maintain the confidentiality of information in any document or materials submitted in support of a request for approval under this rule:~~

~~(1) If release of the specific information would disclose trade secrets protected by law pursuant to Iowa Code section 22.7(3) and 191—subrule 2.12(12); or~~

~~(2) If the specific information otherwise must be withheld from public inspection pursuant to Iowa Code chapter 22 or rule 191—2.12(17A,22).~~

ITEM 9. Amend renumbered rule 191—4.6(17A) as follows:

191—4.6(17A) Petition for waiver. A petition for a waiver must be submitted in writing to the division as follows:

4.6(1) to 4.6(4) No change.

4.6(5) The petition shall provide the following information in separate numbered paragraphs:

1. to 3. No change.

4. The relevant facts that the petitioner believes would justify a waiver under each of the criteria described in subrule ~~4.21(3)~~ **4.5(3)**. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes justify a waiver.

5. to 10. No change.

4.6(6) Notice. The division must acknowledge a petition upon receipt. ~~The division must~~ and ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the division attesting that notice has been provided.

ITEM 10. Amend renumbered rule 191—4.7(17A) as follows:

191—4.7(17A) Waiver hearing procedures and ruling.

4.7(1) to 4.7(12) No change.

4.7(13) Cancellation of a waiver. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, modified or revoked if, after appropriate notice and hearing, the division issues an order finding any of the following:

a. No change.

b. The alternative means for ensuring that the public health, safety and welfare will be ~~adequately~~ protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. and d. No change.

4.7(14) No change.

ITEM 11. Rescind the division heading before rule **191—4.37(17A)**.

ITEM 12. Renumber rules **191—4.37(17A)** to **191—4.48(17A)** as **191—4.8(17A)** to **191—4.19(17A)**.

ITEM 13. Adopt the following new division heading before renumbered rule **191—4.8(17A)**:

DIVISION II
DECLARATORY ORDERS

ITEM 14. Amend renumbered rule 191—4.8(17A) as follows:

191—4.8(17A) Petition for declaratory order.

4.8(1) to **4.8(3)** No change.

4.8(4) The petition for declaratory order must provide the following information in separate numbered paragraphs:

1. to 7. No change.

8. Any request by the petitioner for a meeting provided for by rule ~~191—4.43(17A)~~ ~~191—4.14(17A)~~.

4.8(5) to **4.8(7)** No change.

ITEM 15. Amend renumbered rule 191—4.9(17A) as follows:

191—4.9(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division must give notice of the petition to all persons not served by the petitioner pursuant to rule ~~191—4.42(17A)~~ ~~191—4.13(17A)~~ to whom notice is required by any provision of law. The division may also give notice to any other persons deemed appropriate.

ITEM 16. Amend renumbered rule 191—4.10(17A) as follows:

191—4.10(17A) Intervention.

4.10(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order (after time for notice under rule ~~191—4.38(17A)~~ ~~191—4.9(17A)~~ and before 30-day time for division action under rule ~~191—4.44(17A)~~ ~~191—4.15(17A)~~) shall be allowed to intervene in a proceeding for a declaratory order.

4.10(2) and **4.10(3)** No change.

4.10(4) The petition must be dated and signed by the intervenor or the intervenor's representative. ~~It must also and~~ include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 14
“Life Insurance Illustrations Model Regulation”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 507B.12
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 507B

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

The rules in Chapter 14 provide illustration formats, prescribe standards to be followed when illustrations are used, and specify the disclosures that are required in connection with illustrations. The rules conform with model laws issued by the National Association of Insurance Commissioners (NAIC).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Insurers doing the business of group and individual life insurance in the state of Iowa will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Consumers and purchasers of group and individual life insurance products will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.

- Anticipated effect on state revenues:
There is no effect on state revenues.
- 4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
The proposed rulemaking streamlines and eliminates redundant and repetitive language.
- 5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
The Division did not find any other less costly or less intrusive methods.
- 6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
Alternative methods were not considered by the agency.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The rulemaking aligns the rules with current model law and industry standards.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 191—14.5(507B) as follows:

191—14.5(507B) Policies to be illustrated.

14.5(1) Each insurer marketing policies to which these rules are applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. ~~For all policy forms being actively marketed on February 1, 1997, the insurer shall identify in writing those forms and whether or not an illustration will be used with them.~~ For policy forms filed after February 1, 1997, the illustration identification shall be made at the time of filing. ~~Any previous identification may be changed by notice to the commissioner.~~

14.5(2) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

14.5(3) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with these rules is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals.

The illustration ~~furnished~~ given an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

14.5(4) Potential enrollees of nonterm group life subject to these rules shall be ~~furnished~~ given a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of these rules, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for nonterm group life who enroll for ~~more than the minimum premium necessary to provide~~ pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee ~~who requests it~~ upon request.

ITEM 2. Amend subrule 14.7(4) as follows:

14.7(4) Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policyowner in the case of an illustration provided at time of delivery, as required in these rules.

a. A statement to be signed and dated by the applicant or policyowner reading as follows: “I have received a copy of this illustration and understand that ~~any nonguaranteed~~ elements illustrated are subject to change and could be either higher or lower. The producer has told me they are not guaranteed.”

b. No change.

ITEM 3. Amend rule 191—14.13(507B) as follows:

191—14.13(507B) Separability Severability. If any provision of these rules or their application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the rules and their application to other persons or circumstances shall not be affected.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 15
“Unfair Trade Practices”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 507B.12
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 507B

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

The rules in Chapter 15 establish certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance as prohibited by Iowa Code chapter 507B. The rules conform with model laws issued by the National Association of Insurance Commissioners (NAIC). The proposed rulemaking streamlines the chapter and eliminates redundant and repetitive language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Insurers doing the business of insurance in the state of Iowa will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Consumers and purchasers of insurance products will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.

- Anticipated effect on state revenues:
There is no effect on state revenues.
- 4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
The proposed rulemaking streamlines the chapter and eliminates redundant and repetitive language.
- 5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
The Division did not find any other less costly or less intrusive methods.
- 6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
Alternative methods were not considered by the agency.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The rulemaking aligns the rules in Chapter 15 with current model laws and industry standards.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 191—15.2(507B) as follows:

191—15.2(507B) Definitions.

“*Advertisement*” for the purpose of these rules ~~shall be~~ means material designed to create public interest in insurance or an insurer, or to induce the public to purchase, increase, modify, reinstate or retain a policy including:

1. Printed and published material, audio and visual material, and descriptive literature of an insurer or producer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards, computer on-line networks and similar displays; and descriptive literature and sales aids of all kinds issued by an insurer or producer for presentation to members of the public, ~~including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and sales talks, presentations, and material for use by producers.~~

2. However, for the purpose of these rules “advertisement” shall not include: communications or materials used within an insurer’s own organization and not intended for dissemination to the public; communications with policyholders other than material urging policyholders to purchase, increase,

modify, reinstate, or retain a policy; and a general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.

"Aftermarket crash parts" means replacement parts as defined in Iowa Code section 537B.4.

"Certificate" means a statement of the coverage and provisions of a policy of group accident and sickness insurance ~~which~~ that has been delivered or issued for delivery in this state and includes riders, endorsements and enrollment forms, if attached.

"Duplicate Medicare supplement insurance" ~~shall mean~~ means the sale or the attempt to knowingly sell to an individual a policy of insurance designed to supplement Medicare benefits as provided in ~~The Health Insurance for the Aged Act, Title XVII Title XVIII, Health Insurance for the Aged and Disabled,~~ of the Social Security Amendments of 1965 as then constituted or later amended, when the individual is already insured under such a policy.

"Duplication" means policies of the same coverage type according to minimum standards classifications outlined in ~~191 IAC 36.6(514D) which~~ rule 191—36.6(514D) that overlap to the extent that a reasonable individual would not consider the ownership of the policies to be beneficial.

"Exception" for the purpose of these rules shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.

"Illustrated scale" ~~shall mean~~ means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policyholder than the lesser of the disciplined current scale or the currently payable scale as defined in ~~191 IAC 14.4(507B) rule 191—14.4(507B).~~

"Institutional advertisement" means an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of accident and sickness insurance, or the promotion of the insurer as a seller of accident and sickness insurance.

"Insurer" ~~shall mean~~ means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's, fraternal benefit society, and any other legal entity engaged in the business of insurance.

"Invitation to contract" means an advertisement for accident and sickness insurance that is neither an invitation to inquire nor an institutional advertisement.

"Invitation to inquire" means an advertisement having as its objective the creation of a desire to inquire further about accident and sickness insurance and that is limited to a brief description of the loss for which benefits are payable. An invitation to inquire may not refer to cost but may contain the dollar amount of benefits payable and the period of time during which benefits are payable.

"Limitation" for the purpose of these rules ~~shall mean~~ means any provision ~~which~~ that restricts coverage under the policy other than an exception or a reduction.

"Limited benefit health coverage" ~~shall have the same meaning~~ means the same as defined in 191—subrule 36.6(10).

"Person" ~~shall mean~~ means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including insurance producers and adjusters. "Person" ~~shall also mean~~ also means any corporation operating under the provisions of Iowa Code chapter 514 and any benevolent association as defined and operated under Iowa Code chapter 512A. For purposes of this chapter, corporations operating under the provisions of Iowa Code ~~chapter~~ chapters 514 and ~~Iowa Code chapter~~ 512A shall be deemed to be engaged in the business of insurance.

"Policy" ~~shall include~~ includes any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement ~~which~~ that provides for insurance benefits.

"Preneed funeral contract or prearrangement" ~~shall mean~~ means an agreement by or for an individual before the individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

"Producer" ~~shall mean~~ means a person who solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance for risks residing, located or to be performed in this state.

“*Prominently*” or “*conspicuously*” means that the information to be disclosed will be presented in a manner that is noticeably set apart from other information or images in the advertisement.

“*Reduction*” for the purpose of these rules ~~shall mean~~ means any provision ~~which that~~ reduces the amount of the benefit; a risk of loss is assumed, but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

“*Twisting*” ~~shall mean~~ means any action by a producer or insurer to induce or attempt to induce any individual to lapse, forfeit, surrender, terminate, retain, assign, borrow, or convert a policy or an annuity in order that such individual procure another policy or annuity, when such action would operate to the overall detriment of the interests of the individual.

ITEM 2. Amend rule 191—15.3(507B) as follows:

191—15.3(507B) Advertising.

15.3(1) No change.

15.3(2) *Prohibited terms and disclosure requirements for health insurance.*

a. No advertisement shall contain or use words or phrases such as “all”; “full”; “complete”; “comprehensive”; “unlimited”; “up to”; “as high as”; “this policy will help fill some of the gaps that Medicare and your present insurance leave out”; “this policy will help to replace your income” (when used to express loss of time benefits); or similar words and phrases, in a manner ~~which that~~ exaggerates any benefits beyond the terms of the policy.

b. No change.

c. No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as “tax free,” “extra cash” and substantially similar phrases ~~which that~~ have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable an individual to make a profit from being hospitalized.

d. No change.

e. An advertisement ~~which that~~ refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, shall also disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.

f. An advertisement may contain a brief description of coverage in an invitation to inquire so long as it is limited to a brief description of the loss for which benefits are payable. The brief description may ~~also contain the dollar amount of benefits payable or the period of time during which benefits are payable, or both, but may~~ not refer to the cost of the policy.

g. An advertisement for a policy ~~which that~~ contains a waiting, elimination, probationary, or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss shall prominently disclose the existence of such periods.

h. No change.

15.3(3) *Prohibited terms in life insurance and annuity policies.* No advertisement for a life insurance or annuity policy shall use the terms “investment,” “investment plan,” “founder’s plan,” “charter plan,” “expansion plan,” “profit,” “profits,” “profit sharing,” “interest plan,” “savings,” “savings plan,” “retirement plan,” or other similar term ~~which that~~ has the capacity or tendency to mislead an insured or prospective insured to believe that the insurer is offering something other than an insurance policy or some benefit not available to other individuals of the same class and equal expectation of life. An advertisement shall not state that there are “no more premiums” or that premiums will “vanish” or “disappear” or use similar terms when such statement is not based on the guaranteed rates.

15.3(4) and 15.3(5) No change.

15.3(6) *Introductory, initial or special offers.*

a. No change.

b. An advertisement shall not offer a policy ~~which that~~ utilizes a reduced initial premium rate in a manner ~~which that~~ overemphasizes the availability and the amount of the initial reduced premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium

payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium, and both the initial reduced premium and the renewal premium must be stated in each portion of the advertisement where the initial reduced premium appears. This paragraph shall not apply to annual renewable term policies.

15.3(7) *Testimonials or endorsements by third parties.*

a. Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using a testimonial, makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to ~~all the provisions of~~ these rules.

b. If the person making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, such fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial or endorsement, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." ~~This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for such "scale" for TV or radio performances.~~ The payment of substantial amounts, directly or indirectly, for "travel and entertainment" for filming or recording of TV or radio advertisements constitutes compensation and requires disclosure. ~~This rule does not apply to an institutional advertisement which has as its sole purpose the promotion of the insurer.~~

c. An advertisement ~~which~~ that states or implies that an insurer or an insurance product has been approved or endorsed by any person or other organizations must also disclose any proprietary or other relationship between the parties.

15.3(8) *Disparaging and incomplete comparisons and statements.* An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of noncomparable policies of other insurers, and shall not disparage other insurers, their policies, services or business methods, and shall not disparage or unfairly minimize competing methods of marketing insurance. An advertisement shall not contain statements ~~which~~ that are untrue in fact, or by implication misleading, with respect to the assets, corporate structure, financial standing, age or relative position of an insurer in the insurance business.

15.3(9) *Identity of insurer.*

a. The name of the actual insurer shall be clearly identified in all advertisements for a particular policy. An advertisement shall not use a trade name, insurance group designation, name of a parent company, name of a particular company division, service mark, slogan, symbol or other device ~~which~~ that would have the capacity and tendency to misrepresent the true identity of an insurer.

b. No advertisement shall use any combination of words, symbols, or physical materials ~~which~~ that by its content, phraseology, shape, color or other characteristics is so similar to combinations of words, symbols, or physical materials used by a municipal, state or federal agency that it would lead a reasonable individual to believe that the advertisement is approved, endorsed or accredited by an agency of the municipal, state, or federal government.

15.3(10) *Disclosure requirements for life insurance and annuities.*

a. to d. No change.

e. An advertisement that states the projected values of a policy must use the guaranteed interest rates in determining such projected values and, in addition, may show other projected values based on interest rates ~~which~~ that comply with the illustrated scale. Any statements containing or based upon an interest rate higher than the guaranteed accumulation interest rates shall likewise set forth with equal prominence comparable statements containing or based upon the guaranteed accumulation interest rates. If the policy does not contain a provision for a guaranteed interest rate, any advertisement showing projected values must clearly state that the rates are not guaranteed. This subrule does not apply to an illustration or supplemental illustration subject to the provisions of the Life Insurance Illustrations Model Regulation, ~~191-IAC-14~~ 191—Chapter 14.

f. An advertisement or presentation ~~which~~ that does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such advertisement may be used for the purpose of demonstrating the

cash flow pattern of a policy if such advertisement is accompanied by a statement disclosing that the advertisement does not recognize that, because of interest, a dollar in the future may not have the same value as a dollar at the time of the presentation.

g. and *h.* No change.

i. A life insurance cost index ~~which~~ that reflects dividends or an equivalent level annual dividend shall be accompanied by a statement that it is based on the insurer's illustrated scale and is not guaranteed.

15.3(11) and **15.3(12)** No change.

15.3(13) *Group or quasi-group implications.*

a. No change.

b. This rule prohibits the solicitation of a particular class, such as governmental employees, by use of advertisements ~~which~~ that state or imply that their class membership entitles the member to reduced rates on a group or other basis when, in fact, the policy being advertised is sold only on an individual basis at regular rates.

c. to *e.* No change.

15.3(14) *Compliance with Medicare supplement advertising rules.* Insurers and producers shall comply with the Medicare supplement advertising rules set forth in 191—Chapter 37, ~~Division II.~~

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 16
“Replacement of Life Insurance and Annuities”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 507B.12
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 507B

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

The rules in Chapter 16 regulate the activities of insurance producers and establish minimum standards of conduct with respect to the replacement of existing life insurance and annuities. The rules conform with model laws issued by the National Association of Insurance Commissioners (NAIC). The proposed rulemaking streamlines the chapter and eliminates redundant and repetitive language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Insurers and producers offering life insurance and annuity products in the state of Iowa will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Consumers and purchasers of life insurance and annuity products will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

There are no known costs.

- Anticipated effect on state revenues:

There is no effect on state revenues.

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

The proposed rulemaking streamlines the chapter and eliminates redundant and repetitive language.

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

The Division did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

Alternative methods were not considered by the agency.

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

The rulemaking aligns the rules with current model law and industry standards.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 191—16.23(507B) as follows:

191—16.23(507B) Exemptions.

16.23(1) Unless otherwise specifically included, these rules shall not apply to transactions involving:

a. to e. No change.

f. Except as noted below, policies or contracts used to fund:

- (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
- (2) A plan described by Section 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
- (3) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the Internal Revenue Code; or

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

These rules shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. ~~As used in this subrule, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee.~~

g. to j. No change.

16.23(2) No change.

ITEM 2. Amend rule 191—16.24(507B) as follows:

191—16.24(507B) Duties of producers.

16.24(1) No change.

16.24(2) If the applicant does have an existing policy or contract, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or other substantially similar form approved by the commissioner. ~~No approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced.~~

a. and b. No change.

16.24(3) and **16.24(4)** No change.

ITEM 3. Amend rule 191—16.25(507B) as follows:

191—16.25(507B) Duties of all insurers that use producers on or after January 1, 2001.

16.25(1) to **16.25(5)** No change.

16.25(6) In connection with a replacement transaction, each replacing insurer that uses producers shall be able to produce copies of any sales material required by subrule 16.24(4), the basic illustration and any supplemental illustrations related to the specific policy or contract ~~which that~~ that is purchased and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract.

16.25(7) and **16.25(8)** No change.

16.25(9) Records required to be retained by this rule may be maintained ~~in paper, photographic, microprocessed, magnetic, mechanical or electronic media~~ or by any process ~~which that~~ that accurately reproduces the actual document.

ITEM 4. Amend rule 191—16.26(507B) as follows:

191—16.26(507B) Duties of replacing insurers that use producers.

16.26(1) No change.

16.26(2) Where a replacement is involved in the transaction and where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. ~~With regard to financed purchases, the credit may be limited to the amount that the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.~~

16.26(3) No change.

ITEM 5. Amend rule 191—16.27(507B) as follows:

191—16.27(507B) Duties of the existing insurer. Where a replacement is involved in the transaction, the existing insurer shall:

16.27(1) and 16.27(2) No change.

16.27(3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send to the applicant a notice, advising the policyowner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policyowner. ~~In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.~~

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 20
“Property and Casualty Insurance”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 515F.37
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 515, 515A and 515F

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

Chapter 20 sets forth the form and rate requirements and rules governing the Iowa Fair Access to Insurance Requirements (FAIR) Plan. The proposed rulemaking streamlines the chapter and eliminates redundant language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Insurers writing property and casualty insurance in Iowa will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Consumers purchasing property and casualty insurance and others encountering difficulty in obtaining property coverage will benefit.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.
 - Anticipated effect on state revenues:

There is no effect on state revenues.

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

The proposed rulemaking streamlines the chapter and eliminates redundant language.

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

The Division did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

Alternative methods were not considered by the agency.

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

The proposed changes align the rules with current industry and FAIR Plan practices.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 191—20.1(505,509,514A,515,515A,515F) as follows:

191—20.1(505,509,514A,515,515A,515F) General requirements for filing rates and forms.

20.1(1) ~~Insurance companies~~ Insurers required to file rates or forms with the division shall submit required rate and form filings and any fees required for the filings electronically using the National Association of Insurance Commissioners' System for Electronic Rate and Form Filing (SERFF). ~~Insurance companies~~ Insurers must comply with the division's requirements for submissions, including both the Iowa general instructions and the specific submission requirements for the type of insurance for which the companies are submitting forms or rates, as set out on the SERFF website at serff.com.

20.1(2) No change.

ITEM 2. Amend rule 191—20.5(515A) as follows:

191—20.5(515A) Rate or manual rule filing.

20.5(1) Every insurer shall determine and file its final rates with the commissioner pursuant to provisions of Iowa Code chapter 515F, except for insurers of workers' compensation who are specifically excluded by Iowa Code section 515F.3(2) and residual market mechanisms.

a. Advisory organizations, defined in Iowa Code section 515F.2 and licensed pursuant to Iowa Code section 515F.8, may file on behalf of their member and subscriber companies prospective loss costs, supplementary rating information and supporting information as defined in Iowa Code section 515F.2. Advisory organization filings shall be filed and made effective in accordance with the provisions of Iowa Code sections 515F.4 to 515F.6 or 515F.23 to 515F.25 that apply to the filing and approval of rates and supplementary rating information.

b. An insurer may satisfy its obligation to make rate filings and supplementary rating information by becoming a participating insurer of a licensed advisory organization that makes reference filings of advisory prospective loss costs and by authorizing the commissioner to accept such filings on its behalf, subject to any modifications filed by the insurer. The insurer's rates shall be the prospective loss costs filed by the advisory organization ~~which that~~ have been put into effect in accordance with paragraph 20.5(1) "a," combined with the loss cost adjustments ~~which that~~ are filed in accordance with paragraph 20.5(1) "a."

~~*c.* An insurer may satisfy its obligation to make filings of supplementary rating information by becoming a participating insurer of a licensed advisory organization that makes such filings and by authorizing the commissioner to accept such filings on its behalf, subject to any modifications filed by the insurer.~~

~~*d. c.* If an insurer has previously filed forms modifying coverage provided by the applicable advisory organization forms, such fact should be noted in the rate filing.~~

20.5(2) Rate filings shall reflect that due consideration has been given to the factors enumerated in Iowa Code section 515F.4(1), and shall be accompanied by supporting statistical exhibits. In addition, each filing shall note the date of the last revision of rates affecting this coverage and briefly describe the nature of that revision. Such filings shall identify each page filed by placing their own name thereon.

~~**20.5(3)** Insurers making filings on their own behalf and advisory organizations making a filing on behalf of an insurer shall identify each page filed by printing, typing or stamping their own name thereon.~~

20.5(4) 20.5(3) If a company filing rates used the manuals of an advisory organization in its filings, any portion of the manuals of the advisory organization that will not be followed by the filing must be clearly shown as deleted or amended by use of an appropriately numbered exception page.

~~**20.5(5) 20.5(4)** For residual market mechanisms, insurers making filings on their own behalf shall identify the submission as an independent filing or a deviation from the previously filed form, rate, or rule. A deviation filing is a submission which that represents modification of a form or rate or rule previously filed by an authorized rating organization or advisory organization on behalf of its member and subscriber companies. If an insurer has An insurer shall note in its filing if it has previously filed forms modifying coverage provided by the applicable standard forms, such fact should be noted in the rate filing.~~

ITEM 3. Amend rule 191—20.11(515) as follows:

191—20.11(515) Exemption from form and rate filing requirements.

20.11(1) The following lines of insurance shall be exempt from the form and rate filing requirements of Iowa Code section 515.102:

a. to i. No change.

~~**20.11(2)** Insurers shall be exempt from filing rates for the lines of insurance exempted in 20.11(1).~~

20.11(3) 20.11(2) An insurer shall, within 30 days of the commissioner's request, provide the commissioner with any of the information ~~which that~~ is exempted from form and rate filing requirements.

ITEM 4. Amend rule 191—20.43(515,515F) as follows:

191—20.43(515,515F) Definitions. In addition to the definitions of in Iowa Code sections 514F.2 and 515F.32 and rule 191—20.1(505,509,514A,515,515A,515F), the following definitions apply:

~~"Basic property insurance" means insurance against direct loss to property as defined in the standard fire policy and extended coverage, vandalism, and malicious mischief endorsements;~~

homeowners insurance; and such other coverage or classes of insurance as may be added to the FAIR Plan by the commissioner. Basic property insurance shall include:

1. Coverage provided in the customary fire policy and in the customary extended coverage and builders risk endorsements.

2. Coverage against loss or damage by burglary or theft, or both.

3. Coverage at least equivalent to that provided in a modified coverage form homeowners policy.

"Habitational risk" means:

1. Dwellings, permanent or seasonal, designed for occupancy by not more than four families or containing not more than four apartments.

2. Private outbuildings used in connection with any of the risks described in "1."

3. Trailer homes at a fixed location.

4. Household and personal property in risks described in "1" to "3."

5. Tenants' contents in dwellings or apartment houses.

"Iowa FAIR Plan Association" or *"the Plan"* means the nonprofit, unincorporated mandatory risk-sharing facility established and governed by Iowa Code sections 515F.30 through 515F.38 and this division to provide for basic property insurance.

"Location" means a single building and its contents, or contiguous buildings and their contents, under one ownership.

"Manufacturing risks" means those risks eligible to be written under the customary manufacturing business interruption policy forms approved by the commissioner. The following are not considered manufacturing risks:

1. Dry cleaning and laundering—Carpet, rug, furniture, or upholstery cleaning; diaper service or infants' apparel laundries; dry cleaning; laundries; linen supply.

2. Installation, servicing and repair—Electrical equipment; electronic equipment; glazing; household furnishings and appliances; office machines; plumbing, heating and air conditioning; protective systems for premises, vaults and safes.

3. Laboratories—Blood banks; dental laboratories; medical or X-ray laboratories.

4. Duplicating or similar services—Blueprinting and photocopying services; bookbinding; electrotyping; engraving; letter service (mailing or addressing companies); linotype or hand composition; lithographing; photo engraving; photo finishing; photographers (commercial).

5. Warehousing—Cold storage (locker establishments); cold storage warehouse; furniture or general merchandise warehouse.

6. Miscellaneous—Barber shops; beauty parlors; cemeteries; dog kennels; electroplating; equipment rental (not contractors' equipment); film and tape rental; funeral directors; galvanizing, tinning, and detinning; radio broadcasting, commercial wireless and television broadcasting; taxidermists; telephone or telegraph companies; textiles (bleaching, dyeing, mercerizing or finishing of property of others); veterinarians and veterinary hospitals.

"Motor vehicles" means vehicles ~~which~~ that are self-propelled.

"Weighted premiums written" means:

1. Gross direct premiums less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits, with respect to property in this state excluding premiums on risks insured under the Iowa FAIR plan association (the Plan), for basic property insurance, for homeowners multiple peril policies, for farm dwelling policies and for the basic property insurance premium components of all other multiple peril policies.

2. In addition, 100 percent of the premiums obtained for homeowners multiple peril policies shall be added to 100 percent of the premiums obtained for basic property insurance and the basic property insurance premium components of all other multiple peril policies. The basic year for the computation shall be the first preceding calendar year.

ITEM 5. Amend rule 191—20.44(515,515F) as follows:

191—20.44(515,515F) Eligible risks.

~~20.44(1)~~ All risks at a fixed location shall be eligible for inspection and considered for insurance under the Plan except motor vehicles, inland marine risks, and manufacturing risks as defined above.

~~20.44(2)~~ The maximum limits of coverage for the type of basic property insurance for customary fire and extended coverage which may be placed under the Plan are those established by the governing committee from time to time.

~~20.44(3)~~ The maximum limits of coverage for the type of basic property insurance for burglary and theft which may be placed under the Plan are those established by the governing committee from time to time.

~~20.44(4)~~ The maximum limits of coverage for the type of basic property insurance for homeowners coverage which may be placed under the Plan are those established by the governing committee from time to time.

ITEM 6. Amend rule 191—20.45(515,515F) as follows:

191—20.45(515,515F) Membership.

~~20.45(1)~~ Every insurer licensed to write one or more components of basic property insurance shall be considered a member of the Plan. Any other insurer may, upon application to and approval by the governing committee, become a member.

~~20.45(2)~~ An insurer's membership terminates when the insurer is no longer authorized to write basic property insurance in Iowa, but the effective date of termination shall be the last day of the fiscal year of the Plan in which termination occurs. Any insurer so terminated shall continue to be governed by the provisions of this division until the insurer completes all of its obligations under the Plan.

~~20.45(3)~~ Any voluntary insurer member may terminate its membership only as of the last day of the fiscal year of the Plan by giving written notice to the Plan 30 days prior to the last day of the fiscal year of the Plan. The governing committee upon a majority vote may terminate the membership of a voluntary insurer. Any such terminated member shall continue to be governed by the provisions of this division until the insurer completes all of its obligations under the Plan.

~~20.45(4)~~ Subject to the approval of the commissioner, the governing committee may charge a reasonable annual membership fee.

ITEM 7. Amend rule 191—20.47(515,515F) as follows:

191—20.47(515,515F) Duties of the governing committee.

~~20.47(1)~~ to ~~20.47(3)~~ No change.

~~20.47(4)~~ The manager shall annually prepare an operating budget which shall be subject to approval of the governing committee.

~~20.47(5)~~ 20.47(4) The governing committee shall submit to the commissioner periodic reports setting forth information as the commissioner may request. On or before April 1 of each year, the governing committee shall submit a report summarizing any new programs or reforms in operation undertaken during the preceding calendar year in order to comply with any new legislation, regulations or directives affecting the Plan. This report shall contain a statistical tabulation on business written in accordance with the Plan.

~~20.47(6)~~ 20.47(5) The governing committee shall separately code all policies written by the Plan so that appropriate records may be compiled for purposes of performing loss prevention and other studies of the operation of the Plan.

~~20.47(7)~~ 20.47(6) The governing committee shall authorize the manager to file rates, surcharge schedules and forms for prior approval by the commissioner.

~~20.47(8)~~ 20.47(7) The governing committee shall prepare such agreements and contracts as may be necessary for the execution of this division consistent with its provisions.

ITEM 8. Amend rule 191—20.52(515,515F) as follows:

191—20.52(515,515F) Reasonable underwriting standards for property coverage.

20.52(1) The following characteristics may be used in determining whether a risk is acceptable for property coverage. Where there is more than one cause for declination, all causes shall be listed and complied with before the property may be accepted for insurance purposes.

a. to c. No change.

d. Physical condition of buildings ~~which~~ that results in an outstanding order to vacate, in an outstanding demolition order or in being declared unsafe in accordance with the applicable law.

e. No change.

~~*f.* Vandalism and malicious mischief coverage shall not be provided for a dwelling or commercial property where the property has been subject to two vandalism and malicious mischief losses, each loss amounting to at least \$500, in the immediately preceding 12-month period, or three or more such losses in the immediately preceding 24-month period.~~

~~*g.*~~ *f.* Previous loss history or matters of public record concerning the applicant or any person defined as an insured under the policy.

~~*h.*~~ *g.* Any other guidelines ~~which~~ that have been approved by the commissioner.

20.52(2) Reserved.

ITEM 9. Amend rule 191—20.53(515,515F) as follows:

191—20.53(515,515F) Reasonable underwriting standards for liability coverage.

20.53(1) The following characteristics may be used in determining whether a risk is acceptable for liability insurance on homeowner policies:

a. No change.

b. Downspouts or drains ~~which~~ that discharge onto sidewalks or driveways.

c. to f. No change.

g. Junk cars, empty refrigerators, trampolines or other potentially dangerous objects in the yard ~~which~~ that are an attraction to children.

h. No change.

i. Any other guidelines ~~which~~ that have been approved by the commissioner.

20.53(2) and **20.53(3)** No change.

~~**20.53(4)** Liability insurance may not be provided where there is a business operating at the insured location, unless the applicant has in force a business liability policy with limits of at least \$100,000 per occurrence providing premises liability coverage.~~

~~**20.53(5)** Liability insurance shall not be provided where the applicant owns three or more horses or other riding animals, unless the applicant has in force a liability policy with limits of at least \$100,000 per occurrence providing coverage for the ownership and use of the horses or other riding animals.~~

ITEM 10. Amend rule 191—20.54(515,515F) as follows:

191—20.54(515,515F) Cancellation; nonrenewal and limitations; review of eligibility.

20.54(1) The Plan shall not cancel or refuse to renew a policy issued by the Plan except for the following reasons:

a. Facts as confirmed by inspection or investigation ~~which~~ that would have been grounds for nonacceptance of the risk by the Plan had they been known to the Plan at the time of acceptance.

b. Changes in the physical condition of the property or other changed conditions as confirmed by inspection or investigation that make the risk uninsurable pursuant to ~~paragraphs “j” and “k.”~~ paragraph 20.54(1) “i.”

c. No change.

d. At least 65 percent of the rental units in the building are unoccupied, and the insured has not received prior approval from the Plan of a rehabilitation program ~~which~~ that necessitates a high degree of unoccupancy.

e. Unrepaired damage exists and the insured has stated that repairs will not be made, or such time has elapsed as clearly indicates that the damage will not be repaired. ~~The elapsed time under this~~

paragraph is a length of time over 60 days where the damage remains unrepaired, unless there are known to be extenuating circumstances.

f. No change.

~~*g.* Property has been abandoned for 90 days or more.~~

~~*h. g.* There is good cause to believe, based on reliable information, that the building will be burned for the purpose of collecting the insurance on the property. The removal of damaged salvageable items, such as normally permanent fixtures, from the building shall be considered under this paragraph when the insured can provide no reasonable explanation for such removal.~~

~~*i. h.* A named insured or loss payee or other person having a financial interest in the property being convicted of the crime of arson or a crime involving a purpose to defraud an insurance company. The fact that an appeal has been entered shall not negate the use of this paragraph.~~

~~*j. i.* The property has been subject to more than two losses, each loss amounting to at least \$500 or 1 percent of the insurance in force, whichever is greater, in the immediately preceding 12-month period, or more than three such losses in the immediately preceding 24-month period, provided that the cause of such losses is due to the conditions which that are the responsibility of the owner named insured or due to the actions of any person defined as an insured under the policy.~~

~~*k.* Theft frequency in which there have been more than two thefts, each loss amounting to at least \$500, in a 12-month period.~~

~~*l. j.* Material misrepresentation in any statement to the Plan.~~

~~*m. k.* On homeowners policies, excessive theft or liability losses. If a given property has been subject to two vandalism and malicious mischief losses, each loss amounting to at least \$500, in the immediately preceding 12-month period, or three or more such losses in the immediately preceding 24-month period, the Plan may convert the homeowners policy to a dwelling policy without vandalism and malicious mischief coverage.~~

20.54(2) and 20.54(3) No change.

ITEM 11. Amend rule 191—20.55(515,515F) as follows:

191—20.55(515,515F) Assessments.

20.55(1) Participation and assessments by and upon each insurer in the Plan for losses and expenses in connection with Plan business shall be levied and assessed by the governing committee of the Plan on the basis of participation factors determined annually, giving effect to the proportion which that such insurer's weighted premiums written bears to the aggregate weighted premiums written by all insurers in the Plan.

20.55(2) De minimis assessments. Any assessment of less than \$20 \$100 shall not be billed to an insurer, but will be accumulated as a deferred assessment until the cumulative amount deferred is at least \$20.

20.55(3) and 20.55(4) No change.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 21
“Surplus Lines Insurance”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 515I.15
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 515 and 2023 Iowa Acts,
Senate File 549

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.gov

Purpose and Summary

The rules in Chapter 21 provide duties and procedures for insurance producers and nonadmitted insurers in order to provide excess and surplus lines insurance in Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Insurers and licensees providing excess and surplus lines insurance in Iowa will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Insurers and licensees providing excess and surplus lines insurance in Iowa will benefit.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.
 - Anticipated effect on state revenues:

The reduction of premium tax as authorized by 2023 Iowa Acts, Senate File 549, will impact state revenues.

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

The proposed amendments streamline and update the rules to reflect recent legislative changes.

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

The Division did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

Alternative methods were not considered by the agency.

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

This chapter codifies industry practices and ensures a competitive and fair market for excess and surplus lines insurance. No alternative methods were considered.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 21.3(1) as follows:

21.3(1) *Surplus lines insurance producer's collection of tax.* A surplus lines insurance producer who places insurance with an eligible surplus lines insurer must collect premium tax from the eligible surplus lines insurer by withholding ~~1 percent of the premiums for such tax~~ the applicable percentage of premiums pursuant to Iowa Code section 432.1(3) and 432.1(4).

ITEM 2. Amend subrule 21.5(1) as follows:

21.5(1) *Application and procedures for initial qualification as an eligible surplus lines insurer.*

a. Any ~~nonadmitted~~ insurer or domestic surplus lines insurer who wishes to qualify under Iowa Code chapter 515I as an eligible surplus lines insurer must have been actively in operation for at least three years without significant changes in ownership or management during the three-year period and make an application with the division in a format prescribed by the division, as instructed on the division's website. The management requirement may be waived pursuant to the division's waiver process in 191—Chapter 4.

b. The application must include:

- (1) The name of an Iowa resident surplus lines insurance producer whom the insurer is designating as the person to accept inquiries and notices on behalf of the insurer.
- (2) Payment of the greater of a \$100 filing fee or a retaliatory fee, and an examination fee for all new applicants.
- (3) Demonstrated maintenance of the capital and surplus required pursuant to Iowa Code chapter 515I.

~~e. In addition to the above requirements, the nonadmitted insurer must have been actively in operation for at least three years without significant changes in ownership or management during the three-year period. This management requirement may be waived pursuant to the division's waiver process in 191 Chapter 4.~~

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 25
“Military Sales Practices”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 505.27A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 505

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

Chapter 25 shields members of the United States Armed Forces from abusive and misleading sales practices and protects from certain life insurance products that are improperly marketed as investment products pursuant to the Military Personnel Financial Services Protection Act.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Insurers and licensees soliciting life insurance products for sale to service members will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Service members and their beneficiaries will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.
 - Anticipated effect on state revenues:

There is no effect on state revenues.

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

The proposed changes streamline and eliminate redundant language.

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

The Division did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

Alternative methods were not considered by the agency.

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

This is National Association of Insurance Commissioners (NAIC) model legislation, which is critical to maintaining the Division's national accreditation.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 191—25.2(505) as follows:

191—25.2(505) Scope. This chapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to ~~an active-duty~~ a service member of the United States armed forces.

ITEM 2. Amend rule 191—25.3(505) as follows:

191—25.3(505) Exemptions.

25.3(1) This chapter shall not apply to solicitations or sales involving:

- a. Credit insurance;
- b. Group life insurance or group annuities where in-person, face-to-face solicitation of individuals by an insurance producer does not occur or where the contract or certificate does not include a side fund;
- c. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, when the existing policy or contract is

being replaced by the same insurer pursuant to a program filed with and approved by the commissioner, or when a term conversion privilege is exercised among corporate affiliates;

~~d. Individual stand-alone health policies, including disability income policies;~~

~~e. d.~~ Contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;

~~f. e.~~ Life insurance contracts offered through or by a nonprofit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

~~g. f.~~ Contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Section 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, if established or maintained by an employer;

(3) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC; or

~~(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;~~

~~(5) (4)~~ Settlements of or assumptions of liabilities associated with personal injury litigation or of any dispute or claim resolution process; ~~or.~~

~~(6) Prearranged funeral contracts.~~

25.3(2) and **25.3(3)** No change.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code rule 191—60.4(515A)
“Rate or Manual Rule Filing”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 515A.7
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 515A

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

Chapter 60 clarifies and guides insurers regarding the deviations in workers’ compensation filings as permitted under Iowa Code section 515A.7.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Insurers writing workers’ compensation insurance in the state of Iowa will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Insurers writing workers’ compensation insurance in the state of Iowa will benefit.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no known costs.
 - Anticipated effect on state revenues:
There is no effect on state revenues.

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

The proposed rulemaking streamlines and eliminates redundant language.

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

The Division did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

Alternative methods were not considered by the agency.

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

This rule codifies industry practices and ensures a competitive and fair market for workers' compensation insurance.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule 191—60.4(515A) as follows:

191—60.4(515A) Rate or manual rule filing.

60.4(1) Every insurer, either on its own or via a licensed rating organization, shall file with the division, pursuant to provisions of Iowa Code chapter 515A, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing ~~which that it proposes to use.~~

~~a. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings on its behalf.~~

~~b. Every insurer shall adhere to the filings made on its behalf by a rating organization except that any such insurer may file a deviation from the class rates, schedules, rating plans, or rules, or a combination thereof for approval by the division, at any time during the year and, once approved, the deviation need only be refiled to propose changes to any filing.~~

~~c. Deviations may be filed at any time during the year and, once approved, need only be refiled to propose changes to the approved deviations filing.~~

60.4(2) An insurer may file for approval by the division a uniform percentage rate deviation to be applied to the class rates of the rating organization's filing.

a. A rate deviation from the approved class rates of a rating organization shall not exceed 15 percent nor shall it cause the rate charged a policyholder to exceed the approved assigned risk rates but must state whether or not the proposed deviation is to be applied to minimum premiums.

b. No change.

~~*c.* A filing must specify whether or not the proposed deviation is to be applied to minimum premiums.~~

60.4(3) No change.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 90
“Financial and Health Information Regulation”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 505.8
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 505 and 12 CFR Part 1016, Regulation P (Privacy of Consumer Financial Information)

Public Hearing

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

October 12, 2023
10 a.m.

1963 Bell Avenue, Suite 100
Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

The National Association of Insurance Commissioners (NAIC) model law provides for sample privacy notices to be consistent with the privacy model notice form issued by federal regulatory agencies for use by financial institutions as a safe harbor of compliance with the privacy notification requirements of the federal Gramm-Leach-Bliley Act (GLBA). The proposed rulemaking streamlines Chapter 90 and eliminates unnecessary burdens on licensees.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Insurers, producers, and other licensees and their affiliates will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Consumers and purchasers of insurance products will benefit.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

There are no known costs.

- Anticipated effect on state revenues:

There is no effect on state revenues.

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

The proposed rulemaking streamlines Chapter 90 and eliminates unnecessary burdens on licensees.

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

The Division did not find any other less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

Alternative methods were not considered by the agency.

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

The proposed rulemaking implements NAIC model law and is critical to maintaining the Division's national accreditation.

Small Business Impact

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

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

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

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule **191—90.2(505)**, definitions of “Consumer,” “Consumer reporting agency,” “Customer relationship,” “Opt out” and “Publicly available information,” as follows:

“*Consumer*” means an individual, or that individual’s legal representative, who seeks to obtain, obtains or has obtained from a licensee an insurance product or service that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information. “*Consumer*” includes any of the following:

1. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

2. An applicant for insurance prior to the inception of insurance coverage is a licensee’s consumer.

3. An individual is a licensee’s consumer if:

- The individual is a beneficiary of a life insurance policy underwritten by the licensee;

- The individual is a claimant under an insurance policy issued by the licensee;
- The individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or
 - The individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and
 - The licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under rules 191—90.12(505), 191—90.13(505) and 191—90.14(505) ~~of this chapter~~.

An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

An individual is not the consumer of the licensee provided that the licensee provides the initial, annual and revised notices required under rules 191—90.3(505), 191—90.4(505), and 191—90.7(505) to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant, or further, provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under rules 191—90.12(505), 191—90.13(505) and 191—90.14(505) and solely due to any of the following:

- a. The consumer is a participant in or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary,
- b. The consumer is covered under a group or blanket insurance policy or group annuity contract issued by the licensee, or
- c. The consumer is a beneficiary in a workers' compensation plan.

However, an individual described in "a" through "c" is a consumer of a licensee if the licensee does not meet all the above conditions. In no event shall an individual solely by virtue of the status described in "a" through "c" above be deemed a customer for purposes of this chapter.

An individual is not a licensee's consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee or because the individual has designated the licensee as trustee for a trust.

"Consumer reporting agency" means ~~"consumer reporting agency"~~ the same as defined in Section 603(f) of the federal Fair Credit Reporting Act.

"Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides to the consumer one or more insurance products or services that are to be used primarily for personal, family or household purposes.

A consumer has a continuing relationship with a licensee if the consumer is a current policyholder of an insurance product issued by or through the licensee or if the consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

A consumer does not have a continuing relationship with a licensee under the following examples:

1. The consumer applies for insurance but does not purchase the insurance;
2. The licensee sells the consumer airline travel insurance in an isolated transaction;
3. The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;
4. The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;
5. The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;
6. The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;
7. The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or
8. ~~For the purposes of these rules, the individual's last known address according to the licensee's record is deemed invalid.~~ An address of record is deemed invalid if mail sent to that address by the

licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

“*Opt out*” means a direction by the consumer that the licensee not disclose nonpublic personal financial information about the consumer to a nonaffiliated third party other than as permitted by rules 191—90.12(505), 191—90.13(505), and 191—90.14(505).

“*Publicly available information*” means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records, widely distributed media sources or disclosures to the general public that are required to be made by federal, state or local law.

~~A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine that the information is the type that is available to the general public and whether an individual can direct that the information not be made available to the general public and, if so, that the licensee’s consumer has not done so.~~

Examples of “publicly available information” include:

- Publicly available information in government records, which includes information in government real estate records and security interest filings.
- Publicly available information from widely distributed media, which includes information from a telephone book, a television or radio program, a newspaper or a ~~Web site~~ website that is available to the general public on an unrestricted basis. A ~~Web site~~ website is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.
- A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

ITEM 2. Amend rule 191—90.3(505) as follows:

191—90.3(505) Initial privacy notice to consumers required.

90.3(1) A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to the following persons and at the following times:

- a. No change.
- b. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by rules 191—90.13(505) and 191—90.14(505).

90.3(2) A licensee is not required to provide an initial notice to a consumer under subrule 90.3(1) if:

- a. The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party other than as authorized by rules 191—90.13(505) and 191—90.14(505) and the licensee does not have a customer relationship with the consumer; or
- b. No change.
- c. ~~The licensee has a customer relationship with the consumer and the consumer consents to the licensee’s searching for insurance coverage to replace existing coverage or the licensee is selling the agency expiration lists or the agency contract is canceled and the licensee is required to move the existing coverage to a new carrier.~~

90.3(3) No change.

90.3(4) When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subrule 90.3(1) as follows:

- a. The licensee provides a revised policy notice under rule 191—90.7(505) that covers the customer’s new insurance product or service; or
- b. No change.

90.3(5) A licensee may provide the initial notice required by paragraph 90.3(1)“a” within a reasonable time after the licensee establishes a customer relationship if:

- a. Establishing the customer relationship is not at the customer’s election; or

b. Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

Examples of notice within a reasonable time are as follows:

- The establishment of the customer relationship is not at the customer's election. Establishing the customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

- There is substantial delay in the customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

- Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a ~~Web site~~ website.

90.3(6) When a licensee is required by this rule to deliver an initial privacy notice, the licensee shall deliver it according to rule 191—90.8(505). If the licensee uses a short-form initial notice for noncustomers according to subrule 90.5(6), the licensee may deliver its privacy notice according to subrule 90.5(6).

ITEM 3. Amend rule 191—90.4(505) as follows:

191—90.4(505) Annual privacy notice to customers required.

90.4(1) No change.

90.4(2) A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

A licensee no longer has a continuing relationship with an individual if the individual's policy lapsed, expired or is otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual notices, material required by law or regulation, or promotional materials.

For purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last-known address according to the licensee's records is deemed invalid. ~~An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.~~

A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

90.4(3) When a licensee is required by this rule to deliver an annual privacy notice, the licensee shall deliver it according to rule 191—90.8(505).

90.4(4) No change.

ITEM 4. Amend rule 191—90.5(505) as follows:

191—90.5(505) Information to be included in privacy notices.

90.5(1) The initial annual and revised privacy notices that a licensee provides under rules 191—90.3(505), 191—90.4(505) and 191—90.7(505) shall include each of the following items of

information in addition to any other information the licensee wants to provide and that apply to the licensee and to the consumers to whom the licensee sends its privacy notice:

a. and *b.* No change.

c. The categories of affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information, other than those parties to which the licensee discloses information under rules 191—90.13(505) and 191—90.14(505);

d. The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to which the licensee discloses information under rules 191—90.13(505) and 191—90.14(505);

e. A separate description of the categories of information the licensee discloses and the categories of third parties with which the licensee has contracted if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under rule 191—90.12(505) and no other exception in rules 191—90.13(505) and 191—90.14(505) applies to that disclosure;

f. to *i.* No change.

90.5(2) If a licensee discloses nonpublic personal financial information as authorized under rules 191—90.13(505) and 191—90.14(505), the licensee is not required to list those exceptions in the initial or annual privacy notices required by rules 191—90.3(505) and 191—90.4(505). ~~When describing the categories of parties to which disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable and permitted by law.~~

90.5(3) Examples of nonpublic personal financial information are as follows:

a. No change.

b. *Categories of nonpublic personal financial information a licensee discloses.* A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in paragraph “*a.*” 90.5(3) “*a.*” as applicable, and provides examples to illustrate the types of information in each category. ~~These might include the following:~~

~~(1) Information from the consumer, including application information, such as assets and income and identifying information such as name, address and social security number;~~

~~(2) Transaction information, such as information about balances, payment history and parties to the transaction; and~~

~~(3) Information from consumer reports, such as a consumer's creditworthiness and credit history.~~

~~A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.~~

~~If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.~~

c. *Categories of affiliates and nonaffiliated third parties to which the licensee discloses.* A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which the affiliate and nonaffiliated third parties engage.

Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term “financial products or services” if it includes appropriate examples of significant lines of business, such as life insurer, automobile insurer, consumer banking or securities brokerage.

A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

90.5(4) If a licensee discloses nonpublic personal financial information under the exception in rule 191—90.12(505) to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of paragraph 90.5(1) “*e.*” if it does the following:

a. and *b.* No change.

90.5(5) If a licensee does not disclose and does not wish to reserve the right to disclose nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under rules 191—90.13(505) and 191—90.14(505), the licensee may simply state that fact, in addition to the information it shall provide under paragraphs 90.5(1) “*a*,” “*h*,” and “*i*” and subrule 90.5(2).

90.5(6) No change.

90.5(7) A licensee may satisfy the initial notice requirements in paragraph 90.3(1) “*b*” and subrule 90.6(4) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt-out notice as required in rule 191—90.6(505).

a. No change.

b. The licensee shall deliver its short-form initial notice according to rule 191—90.8(505). The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee’s short-form notice requests the licensee’s privacy notice, the licensee shall deliver its privacy notice according to rule 191—90.8(505).

c. No change.

90.5(8) No change.

ITEM 5. Amend rule 191—90.6(505) as follows:

191—90.6(505) Form of opt-out notice to consumers and opt-out methods.

90.6(1) No change.

90.6(2) Examples of the opt-out notice include the following:

a. No change.

b. Reasonable opt out. A licensee provides a reasonable means to exercise an opt-out right if it provides the following:

(1) and (2) No change.

(3) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee’s ~~Web site~~ website, if the consumer agrees to the electronic delivery of information; or

(4) No change.

c. and *d.* No change.

90.6(3) A licensee may provide the opt-out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with rule 191—90.3(505).

90.6(4) If a licensee provides the opt-out notice later than required for the initial notice in accordance with rule 191—90.3(505), the licensee shall also include in writing or, if the consumer agrees, electronically a copy of the initial notice with the opt-out notice.

90.6(5) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee’s opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

a. to *c.* No change.

d. ~~Examples of opt-out notice requirements for joint consumers. If John and Mary are both names of policyholders on a homeowner’s insurance policy issued by a licensee and the licensee sends policy statements to John’s address, the licensee may do any of the following, but it shall explain in its opt-out notice which of the following opt-out policies the licensee will follow:~~

~~(1) Send a single opt-out notice to John’s address, but the licensee shall accept an opt-out direction from either John or Mary.~~

~~(2) Treat an opt-out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John’s opt-out direction.~~

~~(3) Permit John and Mary to make different opt-out directions. If the licensee does so, it shall provide for the following:~~

1. ~~Permit John and Mary to opt out for each other;~~
2. ~~Permit both of them to notify the licensee in a single response such as on a form or through a telephone call if both opt out; and~~
3. ~~Allow the licensee to disclose nonpublic personal financial information about one of them such as Mary but not about John if John opts out and Mary does not and not about John and Mary jointly.~~

90.6(6) to 90.6(9) No change.

90.6(10) When a licensee is required to deliver an opt-out notice by this rule, the licensee shall deliver it according to rule 191—90.8(505).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 541—Chapter 1
“Organization and Operation”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8.6 and 25.1
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 8

Public Hearing

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

October 18, 2023
9 a.m.

State Capitol, Room G14
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Gloria Van Rees
Iowa Department of Management
State Capitol, Room G13
1007 East Grand Avenue
Des Moines, Iowa 50319
Email: gloria.vanrees@iowa.gov

Purpose and Summary

The proposed chapter describes the organization of the Department for the public, including coordination of policy planning, reports, program development, and interagency programs.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Iowa citizens will bear a \$5 fee to file a state appeal board claim as laid out in subrule 1.5(1).
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa citizens will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Organization allows for coordinating analysis of government budgets within the state.
 - Qualitative description of impact:
The Department holds government budgets to account statewide.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There is no cost to the agency, other than that which is expected to come with standard budget compliance.
 - Anticipated effect on state revenues:

Department organization allows for accountable budgeting throughout the state.

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

Department organization is vital to executing the Department's mandate to hold government budgets accountable throughout the state.

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

There are no less costly methods or less intrusive methods for achieving the purpose of the proposed rulemaking. Minimal costs are already incurred for the organization of the Department.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered by the agency. Organization is vital to performing the services of the Department.

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

There were no alternative methods seriously considered by the agency.

Small Business Impact

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

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

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

The Department deals more closely with government entities throughout the state, with minimal interaction with small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 541—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1 ORGANIZATION AND OPERATION

541—1.1(8) Purpose. This chapter describes the organization and operation of the department of management (department), including the coordination of policy planning, management of interagency programs, economic reports and program development.

541—1.2(8) Scope of the rules. The rules for the department are promulgated under Iowa Code chapter 8 and apply to all matters before the department. No rule, in any way, relieves a person affected by

or subject to these rules, or any person affected by or subject to the rules promulgated by the various divisions of the department, from any duty under the laws of this state.

541—1.3(8) Waiver. The purpose of these rules is to facilitate the business before the department and to promote a just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise provided for by law, may be waived by the department to prevent undue hardship to a party, to a departmental proceeding, or to a person transacting business with the department. The reasons for granting a waiver of an administrative rule stated in writing will be a part of the record of the proceeding or a part of the departmental file in other matters.

541—1.4(8) Duties of the department. The department plans, develops, and recommends policy decisions for management of state government; administers local budget laws (cities, counties, and schools); oversees and ensures compliance with affirmative action; implements policies through coordination and budget processes; and monitors and evaluates the consistent, efficient, and effective operation of state government. The department consists of budgeting, planning, and early childhood operations and the following agencies or boards: state appeal board, city finance committee, county finance committee, and early childhood Iowa state board.

541—1.5(8) Definitions.

“*City budget*” means the budget adopted by city officials that incorporates specified requirements as stated in Iowa Code section 384.16.

“*Contract compliance director*” means the individual designated to oversee and impose sanctions in connection with state programs emphasizing equal opportunity through affirmative action, contract compliance, policies, and procurement set-aside requirements.

“*County budget*” means the budget adopted by the board of supervisors pursuant to Iowa Code chapter 331.

“*Department*” means the department of management.

“*Director*” means the director of the department of management as appointed by the governor and subject to senate confirmation.

1.5(1) State appeal board—fees. The state appeal board considers the protests of local government budgets, as well as all general and tort claims against the state, as interpreted by the three members: treasurer of state, auditor of state and director of the department of management. Department of management staff implement proper procedures as directed by the state appeal board as assigned by Iowa Code chapter 24. The processing fee for filing a general claim with the state appeal board is \$5, which is billed and paid quarterly by the state agency which incurred the liability of the claim. This fee is not reimbursable from the vendor to the state agency.

1.5(2) City finance committee. The city finance committee promulgates rules relating to city budget amendments, establishes guidelines for the capital improvement program, reviews and comments on city budgets and conducts studies of municipal revenues and expenditures as specified in Iowa Code section 384.13.

1.5(3) County finance committee. The county finance committee establishes guidelines for program budgeting and accounting, reviews and comments on county budgets, and conducts studies of county revenues and expenditures. In addition, the committee performs other duties as assigned by law pursuant to Iowa Code section 333A.4.

541—1.6(8) Central office and communications. Correspondence and communications with the department, state board of appeals, county finance committee, or city finance committee are to be addressed or directed to the department’s office located at Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015; telephone 515.281.3322.

These rules are intended to implement Iowa Code sections 8.6 and 25.1.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 541—Chapter 5
“Petitions for Rulemaking”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 8

Public Hearing

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

October 18, 2023
9 a.m.

State Capitol, G14
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Gloria Van Rees
Iowa Department of Management
1007 East Grand Avenue, G13
Des Moines, Iowa 50319
Email: gloria.vanrees@iowa.gov

Purpose and Summary

The proposed chapter clarifies the rulemaking procedure for the Department.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
There is no cost to the public. The proposed chapter strictly covers rulemaking procedures.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa citizens will gain underlying benefits from Department procedures.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Department rulemaking procedure is not impacted or determined by financial losses.
 - Qualitative description of impact:
The Department amends its rules to provide clarity for the public.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no anticipated costs.
 - Anticipated effect on state revenues:
There is no anticipated impact on state revenues.

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

Inaction is not an option. Department rulemaking procedures are vital to the execution of the Department's purpose.

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

Rulemaking procedures are not costly for the Department or to state revenues. Amendments are proposed here to remove restrictive words and make rulemaking procedures much clearer.

6. Alternative methods considered by the agency:

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

No alternative methods were considered. Rulemaking is vital to performing the services of the Department.

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

No alternative methods were considered.

Small Business Impact

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

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

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

The Department deals more closely with government entities throughout the state, with minimal interaction with small businesses. There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 541—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5 PETITIONS FOR RULEMAKING

The department of management hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to petitions for rulemaking which are published on the Iowa general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

541—5.1(17A) Petition for rulemaking. In lieu of “(designate office)”, insert “State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015.” In lieu of “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE DEPARTMENT OF MANAGEMENT

541—5.3(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “Director, Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015”.

These rules are intended to implement Iowa Code section 8.6 and chapter 17A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 541—Chapter 6
“Declaratory Orders”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.9
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 18, 2023
9 a.m.

State Capitol, G14
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Gloria Van Rees
Iowa Department of Management
1007 East Grand Avenue, G13
Des Moines, Iowa 50319
Email: gloria.vanrees@iowa.gov

Purpose and Summary

This proposed chapter clarifies declaratory orders in regards to uniform rules and agency procedure.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
There is no cost to the public.
 - Classes of persons that will benefit from the proposed rulemaking:
The Department reaps the benefit of clear declaratory procedures.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The proposed chapter makes it easier to follow declaratory orders by the Department.
 - Qualitative description of impact:
Department staff have been proactive in removing outdated and obsolete language and requirements in this chapter.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
Anticipated costs are minimal or nonexistent.
 - Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction is not an option. Department declaratory orders are vital to the execution of the Department's purpose.

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

Rulemaking procedures are not costly for the agency or to state revenues. Amendments are proposed here to remove restrictive words and make rulemaking procedures much clearer.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Declaratory order rules are lean to begin with; therefore, no alternative methods were considered.

Small Business Impact

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

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

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

The Department deals more closely with government entities throughout the state, with minimal interaction with small businesses. There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 541—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6 DECLARATORY ORDERS

The department of management hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to declaratory orders which are published on the Iowa general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

541—6.1(17A) Petition for declaratory order. In lieu of “(designate agency)”, insert “department”. In lieu of “(designate office)”, insert “the Director’s Office, Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015”. In lieu of “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE DEPARTMENT OF MANAGEMENT

541—6.2(17A) Notice of petition. In lieu of “___ days (15 or less)”, insert “15 days”. In lieu of “(designate agency)”, insert “the department”.

541—6.3(17A) Intervention.

6.3(1) In lieu of “within ___ days”, insert “within 15 days”. Strike “(after time for notice under X.2(17A))”. In lieu of “X.8(17A))”, insert “6.8(17A))”.

6.3(2) In lieu of “(designate agency)”, insert “the department”.

6.3(3) In lieu of “(designate office)”, insert “the Director’s Office, Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015”. In lieu of “(designate agency)”, insert “department”. In lieu of “(AGENCY NAME)”, the heading on the petition form should read:

BEFORE THE DEPARTMENT OF MANAGEMENT

541—6.4(17A) Briefs. In lieu of “(designate agency)”, insert “department”.

541—6.5(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “the Director, Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015”.

541—6.6(17A) Service and filing of petitions and other papers.

6.6(2) In lieu of “(specify office and address)”, insert “the Director’s Office, Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015”. In lieu of “(agency name)”, insert “department”.

6.6(3) In lieu of “(uniform rule on contested cases X.12(17A))”, insert “rule 481—10.12(17A))”.

541—6.7(17A) Consideration. In lieu of “(designate agency)”, insert “department”.

541—6.8(17A) Action on petition.

6.8(1) In lieu of “(designate agency head)”, insert “director”.

6.8(2) In lieu of “(contested case uniform rule X.2(17A))”, insert “rule 481—10.1(10A))”.

541—6.9(17A) Refusal to issue order.

6.9(1) In lieu of “(designate agency)”, insert “department”.

541—6.12(17A) Effect of a declaratory order. In lieu of “(designate agency)”, insert “department”.

These rules are intended to implement Iowa Code section 17A.9.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 541—Chapter 7
“Agency Procedure for Rulemaking”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A and 25B.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

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

October 18, 2023
9 a.m.

State Capitol, G14
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Gloria Van Rees
Iowa Department of Management
1007 East Grand Avenue, G13
Des Moines, Iowa 50319
Email: gloria.vanrees@iowa.gov

Purpose and Summary

The proposed chapter clarifies rulemaking in regard to uniform rules and agency procedure.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
There is no cost to the public.
 - Classes of persons that will benefit from the proposed rulemaking:
The agency reaps the benefit of clear rulemaking procedures.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The proposed chapter makes it easier for the agency to follow appropriate rulemaking procedures.
 - Qualitative description of impact:
The proposed chapter makes rulemaking clearer for the public and easier to hold the Department accountable for its rules and rulemaking.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
Costs are minimal or nonexistent.
 - Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

Inaction is not an option. Department rulemaking procedures are vital to the execution of the Department's purpose.

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

Rulemaking procedures are not costly for the agency or to state revenues. Amendments are proposed here to remove restrictive words and make rulemaking procedures much clearer.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Rulemaking producers are lean to begin with; therefore, no alternative methods were considered.

Small Business Impact

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

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

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

The Department deals more closely with government entities throughout the state, with minimal interaction with small businesses. There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 541—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7 AGENCY PROCEDURE FOR RULEMAKING

The department of management hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to agency procedure for rulemaking which are published on the Iowa general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

541—7.5(17A) Public participation.

7.5(1) Written comments. In lieu of the words “(identify office and address)”, insert “Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015”.

7.5(5) Accessibility. In lieu of the words “(designate office and telephone number)”, insert “the department of management at 515.281.3322”.

541—7.6(17A) Regulatory analysis.

7.6(2) Mailing list. In lieu of the words “(designate office)”, insert “Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015”.

541—7.10(17A) Exemptions from public rulemaking procedures.

7.10(1) Omission of notice and comment. The department may adopt a rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption pursuant to Iowa Code section 17A.4(3)“a” when the statute so provides or with the approval of the administrative rules review committee.

7.10(2) Public proceedings on rules adopted without them. The department may, at any time, commence a standard rulemaking proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 7.10(1). After a standard rulemaking proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 7.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

541—7.11(17A) Concise statement of reasons.

7.11(1) General. In lieu of the words “(specify office and address)”, insert “Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015”.

These rules are intended to implement Iowa Code chapter 17A and section 25B.6.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 541—Chapter 8
“Public Records and Fair Information Practices”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 22.11
State or federal law(s) implemented by the rulemaking: Iowa Code section 22.11

Public Hearing

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

October 18, 2023
9 a.m.

State Capitol, Room G14
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Gloria Van Rees
Iowa Department of Management
State Capitol, Room G13
1007 East Grand Avenue
Des Moines, Iowa 50319
Email: gloria.vanrees@iowa.gov

Purpose and Summary

The proposed Chapter 8 clarifies rulemaking in regards to uniform rules and agency procedure.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
There is no cost to the public.
 - Classes of persons that will benefit from the proposed rulemaking:
The agency reaps the benefit of clear rulemaking procedures.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The proposed rulemaking makes it easier for the agency to follow appropriate rulemaking procedures.
 - Qualitative description of impact:
The proposed rulemaking makes rulemaking clearer for the public and makes it easier to hold the Department accountable for its rules and rulemaking.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The costs of this proposed rulemaking are minimal or nonexistent.
 - Anticipated effect on state revenues:

There is no impact on revenues from this proposed rulemaking.

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

The Department's rulemaking procedures are vital to the execution of the Department's purpose.

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

Rulemaking procedures are not costly for the agency or to state revenues. This proposed rulemaking removes restrictive language and makes rulemaking procedures much clearer.

6. Alternative methods considered by the agency:

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

There were no alternative methods seriously considered by the agency.

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

The agency's rulemaking procedures are lean to begin with.

Small Business Impact

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

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

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

The Department deals more closely with government entities throughout the state with minimal interaction with small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 541—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of management hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to public records and fair information practices, which are published on the Iowa general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

541—8.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of “(official or body issuing these rules)” insert “department of management”.

“*Nonincidental retrieval or supervisory service*” means services provided by the department’s staff (or staff from the department of administrative services) to persons requesting access to public documents, which exceed 20 hours in duration.

“*Nonproprietary records*” means those records that are in the possession of the department but that are generated for the purposes of other units of government.

“*Public record*” means a record as defined in Iowa Code section 22.1. A public record includes both confidential and open records.

541—8.2(17A,22) Public record retention and access.

8.2(1) *Record policy.* The department of management is committed to ensuring that the workings of the department are open to public inspection. To that end, a public record in the custody of the department will be maintained and archived through a standard record retention policy, with public access to be given in full compliance with applicable provisions of law.

The record retention program will provide economy and efficiency in the creation, organization, administrative use, maintenance, security, availability, and disposition of public records to ensure that a needless record will not be created or retained, and a valuable record will be preserved, as provided under Iowa law. The department will preserve the integrity of public records, and reply to all open records requests in a timely, responsive, and efficient manner in full compliance with applicable provisions of law.

8.2(2) *Record retention requirements.* Every record made or received under the authority of, or coming into the custody, control, or possession of, department of management personnel, in connection with the transaction of official business of state government, and that has sufficient legal, fiscal, administrative, or historical value will be retained in accordance with Iowa law. The director of the department of management will designate a records retention officer to oversee the department’s record retention program and to serve as the primary point of contact with the state archives.

The department will follow the records retention protocol that is established by the Iowa records retention commission. The department of management records retention officer will select retention mechanisms that are designed to implement the commission protocol and arrange for training for the department’s personnel on each selected mechanism.

8.2(3) *Confidential records.* Confidential records may be withheld, and confidential information within an otherwise open record may be redacted, prior to a record’s release for public examination and copying. If a confidential record is withheld from examination and copying, or confidential information within an otherwise open record is redacted, the department of management will identify the document(s) and cite the applicable provision of law that supports the decision to withhold the confidential information from public examination.

541—8.3(17A,22) Requests for access to records.

8.3(1) *Open records.* Open records will be available to the public during customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday (except holidays). Immediate access to records may be affected by a good-faith effort to verify the scope of the records requested and to determine whether any of the records or information contained therein is confidential in nature.

In the event circumstances prolong a timely response, the department will notify the requester at once and attempt an alternate arrangement to provide the response in a manner satisfactory to the requester. For nonproprietary records, the department is only a repository and is not the “lawful custodian” of the records under the meaning of Iowa Code chapter 22. Nonproprietary records will be provided only to the unit of state government that is the lawful custodian of such records under Iowa Code chapter 22.

8.3(2) *Requesting records.* Requests for access to a public record may be made by mail, electronically, by telephone or in person. A request for access to a public record should be made to the director, who will be responsible for implementing the requirements of public records laws inside the department.

a. A person who submits a request for public records will provide the person's name, address, and telephone number in order to facilitate effective communication with the department regarding the request.

b. Mail requests will be addressed to: Director, Department of Management, State Capitol Room 13, 1007 East Grand Avenue, Des Moines, Iowa 50319-0015.

c. Electronic requests will include the term "Public Records Request" in the subject field, and should be sent to the director's email address as found on the department's website at www.dom.state.ia.us.

d. Telephone requests should be made to 515.281.3322.

e. A person who submits a request orally will receive a verification letter or electronic communication, whichever is preferred by the requester, from the department verifying the specific scope of the search requested. The verification letter or electronic communication will be transmitted before the request for documents is processed.

In the event that a request cannot be fulfilled within a reasonable time, the requester will be so notified and an estimated completion date will be provided.

8.3(3) Record identification. Requests for access to a public record will identify the particular public record to which access is requested by name or description in order to identify efficiently the desired record.

a. The requester's description should specify:

(1) The particular type of record sought.

(2) The particular time period to be searched by start and end date.

(3) The author or recipient, or both, of the record requested, to the extent possible.

(4) To the extent possible, the particular records medium to be searched (e.g., letters, memoranda, reports, recordings).

(5) Any other pertinent information that will assist the department in locating the record requested.

b. The requester will specify if the request applies to a record stored in an electronic form and shall list the search terms to be used.

8.3(4) Record search. Department of management personnel should direct public records requests to the director for docketing and processing. Before a search is conducted, the director may contact the requester if there are questions concerning the scope of the record request. The department of management will employ a staff member who is proficient in conducting electronic records searches within the department. This individual will be responsible for conducting all searches for electronic records that are accessible inside the department of management.

a. Upon receipt of a request for access to a public record, the department will promptly take all reasonable steps to preserve a public record while the request is pending.

b. Every public record that is gathered pursuant to a records request will be examined to determine whether the record is confidential and for completeness in response to the request.

c. Every record that is presented to the public for review will be attached to a transmittal letter that specifies the manner in which the records search was performed.

d. Questions by the public regarding the scope of a records search or requests for an expanded search should be submitted to the director in writing.

8.3(5) Fees. A fee for time spent retrieving an open record or supervising the public examination of an open record, or both, may be charged to the requester of the record in an amount equal to the actual cost of time spent providing nonincidental retrieval or supervisory services, or both, as provided under applicable law. Whenever possible, an estimate of fees will be provided to the requester before a search is initiated.

a. The actual cost for nonincidental retrieval or supervisory services, or both, may vary according to the nature of the search that is specified by the requester. However, the fees for nonincidental retrieval or supervisory services, or both, performed by department of management staff pursuant to a request for records that are accessible inside the department of management will ordinarily be set at \$15 per hour. The fees for department of management records that are accessible only with the assistance of department of administrative services or state archives personnel will be based on the fee structure that

is established by those agencies. Requesters are generally billed for fees after their request has been processed. However, if total fees are expected to exceed \$250, the department of management may need payment in advance of processing.

b. Photocopies of open records located in the department office will be provided at no charge for the first 25 pages, and 20 cents per page for each additional page.

541—8.9(17A,22) Disclosures without the consent of the subject.

8.9(1) Open records are routinely disclosed without the consent of the subject.

8.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 541—8.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

541—8.10(17A,22) Routine use.

8.10(1) “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose that is compatible with the purpose for which the record was collected. It includes disclosures obligated to be made by statute other than the public records law, Iowa Code chapter 22.

8.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

541—8.11(17A,22) Consensual disclosure of confidential records.

8.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 541—8.7(17A,22).

8.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official who seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

541—8.12(17A,22) Release to subject.

8.12(1) The agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as mandated by the Iowa Code. (Please refer to Iowa Code section 22.7(5))

d. As otherwise authorized by law.

8.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

541—8.13(17A,22) Availability of records.

8.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

8.13(2) *Confidential records.* The department of management may withhold information reflecting departmental budget recommendations for the following fiscal year until it is made public by the governor.

8.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law.

541—8.14 Reserved.

541—8.15(17A,22) Other records. The agency maintains a variety of records that do not generally contain information pertaining to named individuals. The agency maintains the following records, not heretofore listed, which do not generally contain personally identifiable or confidential information: Annual reports; press releases; budget information (following presentation by the governor); receipt statements; revenue information; newsletters; public meeting agendas and minutes; budget information relating to cities, counties or school districts; state revenue forecasts; policy information as recommended to the governor; progress review materials and targeted small business compliance reports.

541—8.16(17A,22) Applicability. This chapter does not:

1. Mandate the agency to index or retrieve records that contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency that are governed by the rules of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings will be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 541—Chapter 11
“Grants Enterprise Management System”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8.6(8)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 8.9 and 8.10

Public Hearing

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

October 18, 2023
9 a.m.

State Capitol, Room G14
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Gloria Van Rees
Iowa Department of Management
State Capitol, Room G13
1007 East Grand Avenue
Des Moines, Iowa 50319
Email: gloria.vanrees@iowa.gov

Purpose and Summary

The Grants Enterprise Management System (GEMS) is for Iowans and Iowa businesses to apply for grants offered by or managed by state government entities. The proposed rules provide for the ability to implement GEMS for use by state agencies to provide grants for which Iowans, including businesses and individual Iowans, can apply and seek grant funds. As of November 2022, there were 17 participating agencies, 26,498 users, and 4,249 participating organizations.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
There is no cost to apply to or access GEMS for the public or agencies.
 - Classes of persons that will benefit from the proposed rulemaking:
State agencies that use the platform and the public, including small businesses that use the system to apply for state grants, will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
GEMS makes it easier for agencies to provide grants and the public to apply for state grants.
 - Qualitative description of impact:
GEMS allows for better grant applications for individuals and businesses to apply for grants.
3. Costs to the State:

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

The annual cost to the state for GEMS for FY 2023 was \$96,905, due a one-time cost for a systems upgrade. It is anticipated at the end of FY 2024 the carry forward will be under \$20,000. Beginning in FY 2025, it will go back to a \$70,000 annual request.

- Anticipated effect on state revenues:

The FY 2023 appropriation request was \$70,000. The cost in FY 2021 was \$50,863; in FY 2022, \$51,984; and in FY 2023, \$96,905. FY 2023 was higher due to a scheduled system upgrade to the software system.

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

The cost to run GEMS is minimal in comparison to the benefit the grants have on state projects.

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

Relative to the cost of other state grant management systems, the current system is very cost effective.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

No alternative methods were seriously considered.

Small Business Impact

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

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

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

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

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

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

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

The impact on small businesses for GEMS is a benefit of the ability to receive grant funds from state entities.

Text of Proposed Rulemaking

ITEM 1. Rescind 541—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11 GRANTS ENTERPRISE MANAGEMENT SYSTEM

541—11.1(8) Purpose. These rules are designed to establish a grants enterprise management system (GEMS) under Iowa Code sections 8.9 and 8.10. The primary goals of GEMS include:

1. Securing additional nonstate funding;

2. Fostering cooperation and coordination between state agencies;
3. Discouraging duplication of competitive grant application efforts;
4. Providing a mechanism for the timely exchange of information among state agencies on proposals potentially affecting the agencies; and
5. Providing policy makers, legislators and the citizens of Iowa with information on grant funds received and state agencies' competitive grant applications.

541—11.2(8) Definitions. As used in this chapter:

“Applicant agency” means the agency intending to apply for, or applying for, a competitive grant.

“Competitive grant application” means a grant application that is in competition with other applications for limited funds.

“Federal Executive Order 12372” means the federal executive order that provides for the establishment of a process for the coordination and review of proposed federal financial assistance. In the Order, states are encouraged to develop their own processes, and federal agencies, to the extent permitted by law, utilize the state process.

“GEMS coordinator” means the person appointed by the director of the department of management to coordinate GEMS.

“I/3 grant tracking module” means Integrated Information for Iowa (I/3) and the portion of the I/3 cost accounting module designed to collect data on all nonstate funds received by state government agencies.

“Single point of contact” means the GEMS coordinator.

“State agency” means any department or agency of state government except the board of regents.

541—11.3(8) GEMS coordinator. The GEMS facilitator will coordinate all aspects of GEMS under Iowa Code sections 8.9 and 8.10. The GEMS coordinator will:

1. Identify and execute strategies to secure nonstate funds;
2. Ensure that all agencies utilize the Iowa grants database to track all competitive grant applications;
3. Ensure that all agencies utilize the I/3 grant tracking module for all grants received;
4. Operate as the state's single point of contact, pursuant to Federal Executive Order 12372;
5. Establish a grants network, representing all state agencies, to operate in an advisory capacity;
6. Assign a state application identifier (SAI) number at each stage of the application process: notification of intent, application submitted, and final status;
7. Review competitive grant applications of special significance, at the coordinator's discretion;
8. Serve as liaison with the state single point of contact in contiguous states;
9. In cooperation with other state agencies, monitor and refine the GEMS competitive grants review procedures;
10. Maintain a list of state agency grants coordinators;
11. Ensure, to the greatest degree practicable, that all GEMS competitive grants reviews are conducted in accordance with these rules;
12. Provide training and policy guidance; and
13. Provide status and results reports to appropriate contacts on an as-needed basis.

541—11.4(8) Grants network. The grants network includes representation from all state agencies. Agency representatives will serve as agency grants coordinators. All agency grants coordinators will work with the GEMS coordinator to implement Iowa Code section 8.10 and do the following:

1. Communicate relevant information to the GEMS coordinator;
2. Utilize the Iowa grants database to track all competitive grant applications;
3. Utilize the I/3 grant tracking module for all grants received;
4. Inform the Iowa office for state-federal relations of initiatives for which the agency is seeking federal funds; and
5. Participate in issue-specific, federal legislation work groups.

541—11.5(8) GEMS competitive grants review system. The purpose of the GEMS competitive grants review system is to allow state government coordination and review of all competitive grant applications in order to avoid duplication and conflicts.

11.5(1) Agency competitive grants review coordinator. Agency grants coordinators will:

a. Serve as the agency's competitive grants review coordinator and as liaison between the agency and the GEMS coordinator for the GEMS competitive grants review process.

b. Assist in the evaluation of the GEMS competitive grants review process.

11.5(2) GEMS competitive grants review process. The following is a generalized summary of the GEMS competitive grants review process that will be followed by state agencies with respect to review of applications for competitive grants.

a. *Step 1—intent to apply.*

(1) The applicant agency will complete the intent to apply section of the Iowa grants database when the applicant agency identifies a competitive grant opportunity.

(2) Upon submission of the intent to apply, a notification will be sent to all state agencies.

(3) Any state agency, or the GEMS coordinator, may request a GEMS competitive grants review meeting to explore the project in greater detail, identify opportunities for collaboration and resolve possible conflicts.

(4) The applicant agency and the GEMS office will receive the agency request for a GEMS competitive grants review meeting within two working days of submission of the intent to apply notification.

(5) The GEMS review meeting will be held within 12 working days of submission of the intent to apply notification. The applicant agency will work with the GEMS office to schedule the meeting.

b. *Step 2—application submitted.*

(1) Upon completion of the GEMS competitive grants review process, but prior to submission of the grant application, the applicant agency will enter the grant application information in the application section of the Iowa grants database.

(2) When all necessary fields are completed, the Iowa grants database will automatically generate written confirmation of completion of the GEMS competitive grants review to the applicant agency.

(3) The applicant agency will keep a file copy of the confirmation. The applicant agency will include the written confirmation with all federal competitive grant applications pursuant to Federal Executive Order 12372.

c. *Step 3—status.*

(1) The applicant agency will enter the grant's status in the Iowa competitive grants database upon withdrawal of the application or notification of the receipt or denial of the grant.

(2) The GEMS office and the legislative services agency will be notified of the final grant status.

These rules are intended to implement Iowa Code sections 8.9 and 8.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 541—Chapter 12
“DAS Customer Council”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8.6(15)
State or federal law(s) implemented by the rulemaking: Iowa Code section 8.6(15)

Public Hearing

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

October 18, 2023
9 a.m.

State Capitol, Room G14
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Gloria Van Rees
Iowa Department of Management
State Capitol, Room G13
1007 East Grand Avenue
Des Moines, Iowa 50319
Email: gloria.vanrees@iowa.gov

Purpose and Summary

In the proposed Chapter 12, the Department of Administrative Services (DAS) Customer Council provides oversight for fees paid by government entities when DAS is the sole provider of the service.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Without the DAS Customer Council, state agencies may pay more for services without the proper oversight.
 - Classes of persons that will benefit from the proposed rulemaking:
State agencies, and thus, taxpayers, will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The DAS Customer Council regulates the potential cost of services to state agencies.
 - Qualitative description of impact:
The DAS Customer Council reviews cost increases thoroughly to clarify a need within the state.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no implementation and enforcement costs borne by the agency or any other agency.
 - Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

If the DAS Customer Council was not in place, the cost of services to agencies could potentially increase and become an administrative burden.

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

There were no less costly or intrusive methods for achieving the purpose of the proposed rulemaking.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered by the Department.

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

The DAS Customer Council is important to determine the cost of services to the state agencies.

Small Business Impact

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

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

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

The Department deals more closely with government entities throughout the state with minimal interaction with small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 541—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12 DAS CUSTOMER COUNCIL

541—12.1(8) Definitions.

“DAS” means the department of administrative services created by Iowa Code chapter 8A.

“DAS customer council” means a group responsible for overseeing operations with regard to a service funded by fees paid by a governmental entity or subdivision receiving the service when the department and DAS have determined that DAS will be the sole provider of that service.

“Department” or “DOM” means the department of management created by Iowa Code chapter 8.

“Economies of scale” means mass purchasing of goods or services, which results in lower average costs.

“Leadership function” means a service provided by the department and funded by a general appropriation. Leadership functions typically relate to development of policy and standards and are appropriate when standardization is necessary and the ultimate customer is the taxpayer.

“Marketplace service” means a service that the department is authorized to provide, but which governmental entities may provide on their own or obtain from another provider of the service.

“Quorum” means the presence of no less than a simple majority (50 percent plus 1) of the members eligible to vote.

“Utility service” means a service funded by fees paid by the governmental entity receiving the service and for which DAS is the sole provider of the service.

541—12.2(8) Purpose. The purpose of this chapter is the same as Iowa Code section 8.6(15) “c.”

541—12.3(8) Utility determination. Services for which the department has determined that DAS will be the sole provider are designated “utilities” in Iowa state government. Customers may choose the amount of service they purchase, but should buy from the single source. Utilities are those services for which a monopoly structure makes sense due to economies of scale. The process for determining whether DAS will be the sole provider of a service will include consideration of economic factors, input from the DAS customer council and input from upper levels of the executive branch.

541—12.4(8) DAS customer council established. In order to ensure that DAS utilities provide effective, efficient, and high-quality services that benefit governmental entities and the citizens they serve, this chapter establishes a DAS customer council for services identified as utilities.

541—12.5(8) DAS customer council membership. DAS customer council membership will consist of the chairperson and vice chairperson, the Governor’s cabinet state agency directors, a judicial branch representative overseeing DAS services provided to the judicial branch, and two legislative branch representatives overseeing DAS services provided to the legislative branch.

12.5(1) Executive branch agency representation. The DAS customer council will include directors from the governor’s cabinet-level agencies and two noncabinet-level agencies.

12.5(2) Legislative and judicial branch representation. If the service to be provided may also be provided to the judicial branch and legislative branch, the provisions of Iowa Code section 8.6(15) “c”(2) apply.

541—12.6(8) Organization of DAS customer council. The operations of the DAS customer council will be governed by a set of bylaws as adopted by the DAS customer council. Bylaws will address the following issues.

12.6(1) Member participation. Each member is expected to attend and actively participate in meetings. Participation will include requesting input and support from the group each member represents.

a. Substitutes for members and alternates absent from meetings will be allowed; however, members may attend by telephone or other electronic means approved by the DAS customer council.

b. Upon the approval of the DAS customer council, an alternate member may be selected by an agency or group that provides a representative to the DAS customer council to participate in DAS customer council meetings and vote in place of the representative when the representative is unable to participate.

12.6(2) Voting. A quorum is necessary for a DAS customer council vote.

a. Eligible members may vote on all issues brought before the group for a vote. Members may be present to vote during a meeting in person, by telephone or other electronic means approved by the DAS customer council.

b. Each member, other than the chairperson, vice chairperson and ex officio members, has one vote. Designated alternates may only vote in the absence of the representative from the same organization. A simple majority of the members voting will determine the outcome of the issue being voted upon.

c. DAS customer council bylaws may be amended by a simple majority vote of all members.

12.6(3) Officers. The officers of the DAS customer council will be the chairperson and vice chairperson. The director of the department of management will serve as chairperson, and the director of the department of administrative services will serve as vice chairperson. The chairperson and vice chairperson cannot be voting members.

12.6(4) Duties of officers.

a. The chairperson will preside at all meetings of the DAS customer council.

b. The vice chairperson will assist the chairperson in the discharge of the chairperson's duties as requested and, in the absence or inability of the chairperson to act, will perform the chairperson's duties.

12.6(5) Committees.

a. The chairperson may authorize or dissolve committees as necessary to meet the needs of the DAS customer council.

b. Members of the DAS customer council and individuals who are not members of the DAS customer council may be appointed by the chairperson to serve on committees.

c. Committees will provide feedback to the chairperson and the DAS customer council at the council's request.

d. Committees will meet, discuss, study and resolve assigned issues as needed.

12.6(6) Administration. DAS will assist the department by providing staff support to assist the chairperson with the following administrative functions:

a. Keeping the official current and complete books and records of the decisions, members, actions and obligations of the DAS customer council;

b. Coordinating meeting notices and locations and keeping a record of names and addresses, including email addresses, of the members of the DAS customer council; and

c. Taking notes at the meetings and producing minutes that will be distributed to all members.

12.6(7) Open records. DAS customer council books and records are subject to the open records law as specified in Iowa Code chapter 22.

12.6(8) Meetings. DAS customer council meetings are subject to the open meetings law as specified in Iowa Code chapter 21. The DAS customer council is responsible for the following:

a. Determining the frequency and time of council meetings.

b. Soliciting agenda items from the members in advance of an upcoming meeting.

c. Sending electronic notice of meetings, including date, time and location of the meeting, at least one week prior to the meeting date.

d. Providing an agenda, including those items requiring action, at least two days prior to the meeting. The agenda should also include any information necessary for discussion at the upcoming meeting.

e. Conducting meetings using the most recent version of Robert's Rules of Order, Revised.

541—12.7(8) Powers and duties of DAS customer council.

12.7(1) Approval of business plans. The DAS customer council, in accordance with Iowa Code section 8.6(15) "c"(1)(b)(i), reviews and recommends business plans. Business plans will include levels of service, service options, investment plans, and other information.

12.7(2) Complaint resolution. The DAS customer council will approve the internal procedure for resolution of complaints in accordance with Iowa Code section 8.6(15) "c"(1)(b)(ii). The procedure will include, at a minimum, the following provisions:

a. A definition of "complaint," which will convey that this resolution process does not take the place of any other formal complaint, grievance or appeal process necessary by statute or rule.

b. Receipt of complaints.

c. Standards for prompt complaint resolution.

d. Provisions to aggregate, analyze and communicate issues and outcomes in a manner that contributes to overall organizational improvement.

e. Identification of the chairperson and vice chairperson's decision as the final step in the process.

12.7(3) Rate setting. A majority of all voting council members will approve the rate methodology and the resulting rates for the services that the DAS customer council oversees. Rates will be established no later than September 1 of the year preceding the rate change. Established rates may be amended after September 1 upon recommendation by the department in consultation with DAS and upon affirmative vote by the DAS customer council.

12.7(4) Biennial review. Every two years, the DAS customer council will review the decision made by the department that DAS be the sole provider of a service and make recommendations regarding that decision.

541—12.8(8) Customer input. The department will establish procedures to provide for the acceptance of input from affected governmental entities. Input may take various forms, such as unsolicited comments, response to structured surveys, or an annual report on service requirements.

541—12.9(8) Annual service listing. DAS will annually prepare a listing separately identifying services determined by the department and DAS to be leadership functions, marketplace services, and utilities. The listing will be completed no later than September 1 of the fiscal year preceding the proposed effective date of the change.

These rules are intended to implement Iowa Code section 8.6.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 541—Chapter 13
“Suspension and Reinstatement of State Funds”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 27A and 27B
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 27A and 27B

Public Hearing

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

October 18, 2023
9 a.m.

State Capitol, G14
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Gloria Van Rees
Iowa Department of Management
1007 East Grand Avenue, G13
Des Moines, Iowa 50319
Email: gloria.vanrees@iowa.gov

Purpose and Summary

The proposed chapter establishes procedures and guidelines to deny state funds to a local entity intentionally violating the provisions of Iowa Code chapter 27A and to reinstate eligibility funds when a local entity comes into compliance.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Costs to local entities are incurred as a result of noncompliance with the existing rules.
 - Classes of persons that will benefit from the proposed rulemaking:
No classes of persons will benefit because Iowa Code chapter 27A requires the suspension of funds to local entities in violation of the law.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The rulemaking creates the method to withhold funding for local entities that do not abide by Iowa Code chapters 27A and 27B.
 - Qualitative description of impact:
There is no cost to the State incurred by promulgating the proposed chapter. The impetus for the rulemaking and compliance with Iowa Code chapter 27A lies with local government entities.

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

There are no anticipated costs.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Inaction is not an option. Funds are only lost when local entities do not abide by the Iowa Code.

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

The Department did not discern any less costly or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

The language in 541—Chapter 13 is being expanded to include language from 541—Chapter 16 in order to ultimately rescind 541—Chapter 16.

Small Business Impact

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

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

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

There is no anticipated impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 541—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13 SUSPENSION AND REINSTATEMENT OF STATE FUNDS

541—13.1(27A) Definitions. For purposes of this chapter:

“*City*” means a municipal corporation but does not include a county, township, school district, or any special-purpose district or authority.

“*County*” means an administrative subdivision in the state governed by a locally elected board of supervisors and may be comprised of subdivisions including cities, townships, school districts, or any special-purpose district or authority.

“*Declaratory judgment*” means a judgment issued by a district court declaring a local entity is in full compliance with Iowa Code chapter 27A or 27B.

“Department” means the Iowa department of management pursuant to Iowa Code chapter 8.

“Final judicial determination” means a district court ruling on a civil action brought by the state attorney general’s office finding a local entity to have violated the provisions of Iowa Code chapter 27A or 27B.

“Fiscal year” means the time period beginning on July 1 and ending the following June 30 as defined in Iowa Code section 8.36.

“Governing body” means the mayor and city council of a city or the board of supervisors of a county.

“Local entity” means the same as defined in Iowa Code section 27A.1(4) or 27B.1(1).

“State agencies” means any boards, commissions, or departments, as defined by Iowa Code section 7E.4, or other administrative offices or units of the executive branch of the state.

“State funds” means those funds held by the state that originate from revenues, fees or receipts collected by the state and distributed to local entities. Funds held by the state that are not defined as state funds include:

1. Federal funds (unless provided to the state and awarded as a grant by the state).
2. Funds paid out per gubernatorial or presidential emergency proclamation.
3. Any revenue collected and administered by the state on behalf of a local entity due to a locally imposed tax, fee or fine.
4. Any state funds for the provision of wearable body protective gear used for law enforcement purposes.
5. Payment for public protection, utilities, or goods and services.
6. Payment of settlements.
7. Setoffs as defined by Iowa Code section 8A.504.

541—13.2(27A) Denial of state funds. State funds are denied to a local entity in circumstances authorized by Iowa Code section 27A.9(2) or 27B.5(2).

13.2(1) The department will send written notification to each state agency to deny state funds. Payments will continue to be made to the local entity until the beginning of the state fiscal year that begins after the date on which a final judicial determination is made, at which time payments will be denied.

13.2(2) If the local entity receives state funds through the county, the department will notify the county so that any needed changes may be made to apportionment systems for property tax credits, exemptions and replacements.

13.2(3) State agencies will contact federal granting agencies in writing to determine how to administer federal funds when state match funds are denied. State agencies may be obligated to discontinue drawing federal funds or issue repayments as instructed by federal granting agencies.

13.2(4) Funds will continue to be denied until the court issues a declaratory judgment declaring that the local entity is in full compliance with Iowa Code chapter 27A or 27B.

541—13.3(27A) Reinstatement of eligibility to receive state funds. In circumstances authorized by Iowa Code section 27A.10(3) or 27B.6(3), the local entity’s eligibility to receive state funds is reinstated.

13.3(1) The department will send written notification to each state agency to reinstate state funds. Payments will be reinstated to the local entity beginning on the first day of the month following the date on which the declaratory judgment is issued.

13.3(2) State agencies will contact federal partners in writing to determine how to reinstate the drawdown of federal funds when state match funds are reinstated.

These rules are intended to implement Iowa Code chapters 27A and 27B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 541—Chapter 16
“Suspension and Reinstatement of State Funds”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 27B
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 27B

Public Hearing

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

October 18, 2023
9 a.m.

State Capitol, Room G14
1007 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Gloria Van Rees
Department of Management
State Capitol, Room G13
1007 East Grand Avenue
Des Moines, Iowa 50319
Email: gloria.vanrees@iowa.gov

Purpose and Summary

The current Chapter 16 establishes procedure and guidelines to deny state funds to a local entity intentionally violating the provisions of Iowa Code chapter 27B and how to reinstate eligibility funds when a local entity comes into compliance. The Department proposes to rescind Chapter 16 and intends to transfer applicable language to Chapter 13 in the Regulatory Analysis for that chapter (IAB 9/20/23). The two chapters are similar, and it is more straightforward to include all sanctuary city language in a single chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Costs to local entities are incurred as a result of noncompliance with the Iowa code.
 - Classes of persons that will benefit from the proposed rulemaking:
There are no classes of persons that will benefit from the proposed rulemaking. Iowa Code chapter 27B requires the suspension of funds to local entities in violation of the law.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The existing Chapter 16 being rescinded in this rulemaking creates the method to withhold funding for local entities who do not abide by Iowa Code chapters 27A and 27B.
 - Qualitative description of impact:

There is no cost to the state incurred by having the proposed rulemaking. The impetus for the proposed rulemaking and compliance of Iowa Code chapter 27A lie with local government entities.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
There are no implementation or enforcement costs borne by the agency or any other agency.
- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

There are no costs related to the rulemaking because the only costs are related to the underlying statute.

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

Less costly or intrusive methods do not exist for achieving the purpose of the proposed rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
No alternative methods were seriously considered by the agency.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The language in Chapter 13 is being expanded to include language from Chapter 16 to ultimately rescind Chapter 16.

Small Business Impact

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

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

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

There is no substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **541—Chapter 16**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 115
“Property Assessment Appeal Board”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.1A, 441.37A
State or federal law(s) implemented by the rulemaking: 421.1A, 427.1(40), 441.37A, 441.37B,
441.42

Public Hearing

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

October 12, 2023
9:30 a.m.

PAAB Hearing Room 1N
Hoover State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Property Assessment Appeal Board (PAAB) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jessica Braunschweig-Norris
P.O. Box 10486
Des Moines, Iowa 50306
Phone: 515.725.0338
Email: paab@iowa.gov

Purpose and Summary

These rules primarily implement Iowa Code sections 421.1A, 441.37A, and 441.37B. They establish necessary processes for adjudication of contested case appeals before the PAAB. This rulemaking is proposed pursuant to Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Parties to PAAB contested cases will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Parties to PAAB contested cases will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
No quantitative impact is anticipated.
 - Qualitative description of impact:
No qualitative impact is anticipated.

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

Implementation of these rules is within PAAB's current allocated operating budget. No other state agencies are expected to bear any costs.

- Anticipated effect on state revenues:
No effect on state revenues is anticipated.

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

The rules are necessary to establish processes for adjudicating contested cases before PAAB. A lack of rules implementing a consistent, fair, and deliberate process is not feasible and would be detrimental to the parties participating in the contested cases. It would also hinder PAAB's ability to efficiently consider and issue orders on the contested cases.

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

The proposed rules are considered to be the least costly and least intrusive method for establishing a fair and consistent administrative appeal process as required by statute.

6. Alternative methods considered by the agency:
- Description of any alternative methods that were seriously considered by the agency:
No alternative methods were considered.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:

PAAB completed a comprehensive review of its administrative rules in 2022. At that time, input was obtained from constituent groups through deliberate engagement. PAAB considered that input and amended Chapter 15 in response. Pursuant to Executive Order 10, PAAB has further considered its rules to conform to the requirements therein.

Small Business Impact

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

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

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

This rulemaking is not expected to have a substantial impact on small businesses.

Text of Proposed Rulemaking

ITEM 1. Amend rules 701—115.1(421,441) to 701—115.11(22,421) as follows:

701—115.1(421,441) Applicability and definitions.

115.1(1) *Applicability and scope.* The rules ~~set forth~~ in this chapter govern the proceedings for all cases in which appeals filed under Iowa Code section 441.37A before the property assessment appeal board (board) ~~has jurisdiction to hear appeals from the action of a local board of review.~~ In cases filed

under Iowa Code section 427.1(40), Iowa Code section 441.42, or other applicable provision, the board may use these rules and issue other necessary orders consistent with law.

115.1(2) Definitions. For the purpose of these rules, the following definitions shall apply:

“Appellant” means the party filing the appeal with the property assessment appeal board.

“Appellee” means the party responding to the appeal.

“Board” means the property assessment appeal board as created by Iowa Code section 421.1A and governed by Iowa Code chapter 17A and section 441.37A.

“Department” means the Iowa department of revenue.

“Contested case” means a proceeding defined by Iowa Code section 17A.2(5) or 17A.10A.

“Custodian” means the board or a person lawfully delegated authority by the board to act for the board in implementing Iowa Code chapter 22.

“Decision” means the board’s findings of fact, conclusions of law, decision, and order in a contested case.

“Electronic filing” means the electronic transmission of a document to the electronic filing system together with the production and transmission of a notice of electronic filing.

“Electronic filing system” means the system established by the board for the filing of papers and service of the same to opposing parties.

“Electronic record” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

“Electronic service” means the electronic transmission of a notification to the registered users who are entitled to receive notice of the filing.

“Local board of review” means the board of review as defined by Iowa Code section 441.31.

“Nonelectronic filing” means a process by which a paper document or other nonelectronic item is filed with the board.

“Notice of electronic filing” means an email notification generated by the electronic filing system when a document is electronically filed.

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

“PDF” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

“Presiding officer” means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the board.

“Public access terminal” means a computer located at the board’s office where the public may view, print, and electronically file documents.

“Registered user” means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

“Remote access” means a registered user’s ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the board’s office.

“Secretary” means the secretary for the property assessment appeal board.

“Signature” means a registered user’s username and password accompanied by one of the following:

1. “Digitized signature” means an embeddable image of a person’s handwritten signature;
2. “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or

3. “Nonelectronic signature” means a handwritten signature applied to an original document.

“Written consideration” means the board’s consideration of an appeal without a hearing.

115.1(3) Waivers Waiver of procedures. A party may seek waiver from a rule adopted by the board following Iowa Code section 17A.9A.

a. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested;

~~(2) The waiver would not prejudice the substantial rights of any person;~~
~~(3) The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and~~

~~(4) Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.~~

~~b. Persons requesting a waiver may submit their request in writing. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if the reasons have not already been provided to the board in another pleading.~~

~~c. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.~~

115.1(4) *Time requirements.* Time shall be is computed as provided in Iowa Code section 4.1(34). For good cause, the board may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the board shall will afford all parties an opportunity to be heard or to file written arguments.

115.1(5) *Judgment of the board.* Nothing in this chapter should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

701—115.2(421,441) Appeal and answer.

115.2(1) *Appeal and jurisdiction.* The procedure for appeals and parameters for jurisdiction are as follows: The deadline for filing an appeal is as stated in Iowa Code section 441.37A. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery. An appeal filed using the electronic filing system must be filed by 11:59 p.m. on the last day for filing.

~~a. Jurisdiction is conferred upon the board by filing an appeal with the board. The appeal shall set forth the grounds for appeal and the relief sought. The appeal shall be filed with the board within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed. For an appeal filed through the electronic filing system to be timely, the appeal must be filed by 11:59 p.m. on the last day for filing.~~

~~b. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery.~~

115.2(2) *Form of appeal.* The appeal shall should include:

a. The appellant's name, mailing address, email address, and telephone number;

b. The address of the property being appealed and its parcel number;

c. The grounds for appeal;

d. A short and plain statement of the claim;

e. The relief sought; and

f. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, email address, and telephone number.

115.2(3) *Amendment of appeal.* The appellant may amend the appeal once as a matter of course within 20 days after it is filed to add or modify the grounds for appeal. Otherwise, the appellant may only amend the appeal by leave of the board or by written consent of the adverse party.

115.2(4) *Scope of review.*

a. Grounds for appeal. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof. The board considers grounds for appeal as listed in Iowa Code sections 441.37(1) "a"(1)(a) to (e) and 441.37(2) "a" in the manner described in Iowa Code section

441.37A(1) “b.” The board may order the appellant to clarify the grounds on which the appellant seeks relief.

~~New grounds in addition to those set out in the protest to the local board of review may be pleaded, and additional evidence to sustain those grounds may be introduced. The board may order the appellant to clarify the grounds on which the appellant seeks relief.~~

~~b. Burden of proof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. The burden of proof is as stated in Iowa Code section 441.21(3).~~

~~The burden of proof is on the appellant; however, when the appellant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold the valuation.~~

~~c.—The appeal is a contested case.~~

~~115.2(5) Notice to local board of review. The board shall will serve, through the electronic filing system, a copy of the appellant’s appeal to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is served on the local board of review.~~

~~115.2(6) Answer by local board of review. Using the form provided by the board or a conforming document, the local board of review’s attorney or representative shall file an answer within 30 days after service of the notice of appeal, unless the time period is shortened or extended by the board. The answer shall should include:~~

- ~~a. The subject property’s current assessed value;~~
- ~~b. A statement regarding the timeliness of the protest to the local board of review and the timeliness of the appeal to the board;~~
- ~~c. How the local board of review will participate in the hearing; and~~
- ~~d. If the local board of review is represented by an attorney or designated representative, the The local board of review’s attorney or designated representative’s name, mailing address, email address, and telephone number.~~

~~115.2(7) Docketing. Appeals shall be are assigned docket numbers. Electronic records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the board, as well as all filings made in the appeal. The board will maintain electronic records of the appeal name, the docket number, and all filings made in the appeal.~~

~~115.2(8) Consolidation and severance. The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.~~

~~a. Consolidation. The presiding officer board may consolidate any or all matters at issue in two or more appeal proceedings appeals where:~~

- ~~(1) The matters at issue involve common parties or common questions of fact or law;~~
- ~~(2) Consolidation would expedite and simplify consideration of the issues involved; and~~
- ~~(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings appeals.~~

~~b. Severance. The presiding officer board may, for good cause shown, order any appeal proceedings appeals or portions of the proceedings thereof severed.~~

~~115.2(9) Appearances. Any party may appear and be heard on its own behalf, or by its attorney or designated representative. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board’s rules.~~

701—115.3(421,441) Nonelectronic service on parties and filing with the board and filing of documents.

~~115.3(1) Applicability. This rule applies to all nonelectronic filings made with the board by parties not voluntarily using the electronic filing system or in all other cases for which the board has not ordered~~

~~the conversion of the case to an electronic file.~~ Electronic filing and service of documents using the board's electronic filing system is governed by rule 701—115.4(421,441).

115.3(2) *Service and filing of paper documents.* ~~After the appeal has been filed, all~~ All motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. Service on parties to the appeal. All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or emailed to the opposing party per mutual agreement.

b. Filing with the board. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; or mailed by first-class mail, so long as there is proof of mailing. A registered user of the board's electronic filing system may electronically file documents with the board pursuant to rule 701—115.4(421,441).

c. Proof of mailing. Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).
(Date) (Signature)

115.3(3) *Board-generated documents.* The board will mail copies of all board-generated documents to any party not served by the board's electronic filing system.

115.3(4) *Conversion of filed paper documents.* The board will convert all filed paper documents to an electronic ~~format viewable to registered users of record in~~ the electronic filing system.

115.3(5) *Form of paper documents.* Each document delivered to the board ~~must~~ should be printed on ~~only~~ one side and have no tabs, staples, or permanent clips. ~~The document~~ It may be organized with paperclips, clamps, or another type of temporary fastener or be contained in a file folder.

115.3(6) *Return of copies by mail.* If a party requests ~~that a paper document filed in paper form~~ be returned by mail, the party ~~must deliver to the board~~ provide a postage-paid, self-addressed envelope, with proper postage, large enough to accommodate the returned document.

701—115.4(421,441) Electronic filing system.

115.4(1) *Electronic filing and applicability.*

a. Electronic filing. The board will maintain an electronic filing system, which ~~shall be~~ is the preferred method for filing documents with the board.

b. Applicability. This rule applies to electronic filing and service of documents using the board's electronic filing system. Nonelectronic filing and service are governed by rule 701—115.3(421,441).

(1) The board may order the conversion of any ~~ease~~ appeal to an electronic file. Upon such an order, all future filings must be made using the board's electronic filing system in compliance with this rule, unless a filing is subject to the exception in paragraph 115.4(1)"c."

(2) In all other cases, a party or parties to a proceeding may voluntarily choose to use the electronic filing system in compliance with this rule.

c. Exceptions. Any item ~~that is~~ not capable of electronic filing shall be filed in a nonelectronic format pursuant to rule 701—115.3(421,441).

115.4(2) *Registration.*

a. Registration required. Every individual ~~who is filing documents or viewing or downloading documents filed in an appeal~~ filing, viewing, or downloading appeal documents must register as a registered user of the electronic filing system.

b. *How to register.* ~~To register, an~~ An individual must complete the registration process online at efile-paab.iowa.gov, consent to the user agreement, and obtain a username and password for the electronic filing system.

c. *Changing passwords.* Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user ~~must~~ should change the password immediately. The board may require password changes periodically.

d. *Changes in a registered user's contact information.* If a registered user's email address, mailing address, or telephone number changes, the registered user ~~must~~ should promptly ~~make the necessary changes to the registered user's~~ change the information ~~contained~~ in the electronic filing system. The registered user ~~shall~~ should promptly ~~give notice of changes in contact information to~~ notify any nonregistered party of changes in contact information in every active proceeding in which the registered user is a party.

e. *Duties of a registered user.* Each registered user ~~shall~~ will ensure ~~that~~ the user's email account information is current, ~~that~~ the account is monitored regularly, and ~~that~~ email notices sent to the account are timely opened.

f. *Canceling registration.* Withdrawal from participation in the electronic filing system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

g. *Use of username and password.* A registered user is responsible for all documents filed with the registered user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

h. *Username and password security.* If a username or password is lost, misappropriated, misused, or compromised, the registered user ~~of that username and password shall~~ will notify the board promptly.

i. *Denial of access.* The board may refuse to allow an individual to electronically file or download information in the electronic filing system due to misuse, fraud or other good cause.

115.4(3) Signatures.

a. *Registered user.* A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

b. *Documents requiring oaths, affirmations or verifications.* Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

c. *Format.* Any filing requiring a signature must be signed, with either a nonelectronic signature (~~actual signature scanned~~), an electronic signature (~~the symbol "/s/" or "/registered user's name/"~~), or a digitized signature (~~an inserted image of a handwritten signature~~).

d. *Multiple signatures.* By filing a document containing multiple signatures, the registered user confirms ~~that~~ the content of the document is acceptable to all persons signing the document and ~~that~~ all such persons consent to having their signatures appear on the document.

115.4(4) Format and redaction of electronic documents. ~~All documents must be converted to a PDF format before they are filed in the electronic filing system. Prior to~~ Except proposed orders, all electronically filed documents must be filed as a PDF. Before filing any document, the registered user shall ensure that the document is certified as confidential or that the confidential information is omitted or redacted.

115.4(5) Exhibits and other attachments. Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing. Each exhibit ~~shall~~ should be filed as a separate PDF. Exhibits ~~shall~~ should be labeled as required by paragraph 115.7(3)"d."

115.4(6) Filing and service using electronic filing.

a. *What constitutes filing.* The electronic transmission of a document to the electronic filing system ~~consistent with~~ following the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes the filing of the document.

b. *Electronic file stamp.* Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

c. Email or fax. ~~The emailing~~ Emailing or faxing of a document to the board will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise authorized by the board.

d. Public access terminal. A public access terminal is available at the reception desk on the first floor of the Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319.

e. Service of filings. When a document is electronically filed, the electronic filing system will produce and transmit a notice of electronic filing to all parties ~~to the appeal~~ who are registered users. The notice of electronic filing shall constitute service of the filing on registered users. No other service is required on registered users unless ordered by the board. The filing party is responsible for ensuring service, pursuant to paragraph 115.3(2) “a,” on any party that is not a registered user. Notices of electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until the users have filed a withdrawal of appearance.

f. Proof of service of nonelectronic filings. Parties filing a document nonelectronically pursuant to paragraph 115.3(2) “c” and rule 701—115.3(421,441) shall electronically file a notice of nonelectronic filing along with proof of service.

g. Electronic filing and service of board-generated documents. All board-generated documents issued in an appeal governed by this chapter ~~shall~~ will be electronically filed and served. The board ~~shall~~ will only mail paper copies of documents as provided in subrule 115.3(3).

115.4(7) Filing by the board on behalf of a party.

a. ~~Where the circumstances and administrative efficiency requires,~~ Board staff may file a motion on behalf of a party to an appeal pursuant to this subrule.

b. When a party ~~to an appeal~~ contacts board staff via telephone or other means and indicates the party’s desire to file a motion ~~or request~~ specified in paragraph 115.4(7) “c,” board staff may file the ~~request or~~ motion in the electronic filing system on behalf of the party. The ~~request or~~ motion ~~shall~~ will be consistent with the instructions and information provided by the party and shall only be filed with the permission of the party. Board staff ~~shall~~ will not file any motions ~~or requests~~ on behalf of a party if any opposing party requires nonelectronic service under subrule 115.3(2).

c. Only the following motions ~~or requests~~ may be filed by board staff on behalf of a party:

- (1) Request Motion to participate in a hearing in person, by telephone, or by video;
- (2) Motion for hearing;
- (3) Motion for continuance;
- (4) Motion to withdraw appeal.

d. Upon filing of the motion ~~or request~~, board staff will provide a courtesy copy of the filing to the party.

701—115.5(421,441) Motions and settlements.

115.5(1) Authority of board to issue procedural orders. The board may issue preliminary orders regarding procedural matters.

115.5(2) Motions. No technical form for motions is required. All prehearing motions ~~shall~~ should be in writing, ~~shall~~ be filed with the board and ~~shall~~ contain the reasons and grounds supporting the motion. The board ~~shall~~ will act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than ten days from the date the motion is filed, unless the time period is extended or shortened by the board ~~or presiding officer~~. The ~~presiding officer~~ board may schedule oral argument on any motion.

a. Filing of motions. Motions pertaining to the hearing, except motions discussed in paragraph 115.5(2) “b,” must be filed and served at least ten days ~~prior to~~ before the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board ~~or presiding officer~~.

b. Motions for summary judgment and motions to dismiss for lack of jurisdiction.

(1) Motions for summary judgment ~~shall~~ and motions to dismiss for lack of jurisdiction should comply with the requirements of Iowa Rule of Civil Procedure 1.981 ~~and shall~~. Notwithstanding the time for filing motions in Iowa Rule of Civil Procedure 1.981, motions should be filed within ten days

of issuance of a notice of hearing or written consideration. Responses should follow the provisions of Iowa Rule of Civil Procedure 1.981. Motions will be subject to disposition disposed of according to the requirements of that rule to the extent unless such requirements are not inconsistent with the provisions of this chapter or any other provision of law governing the procedure in contested cases.

~~(2) Motions for summary judgment and motions to dismiss for lack of jurisdiction must be filed and served no later than 90 days after service of the notice of appeal, unless good cause is shown for a later filing. Good cause may include, but is not limited to, information the moving party obtains through discovery. Any party resisting the motion shall file and serve a resistance within 20 days, unless otherwise ordered by the board or presiding officer, from the date a copy of the motion was served. The board may request oral argument on the motion or may issue a ruling without argument. A summary judgment order rendered on all issues in a contested case or order on motion to dismiss for lack of jurisdiction is subject to reconsideration pursuant to subrule 115.9(2).~~

c. Motions to withdraw. An appellant may withdraw the appeal. ~~Such a~~ A withdrawal of an appeal must be in writing and signed by the appellant or the appellant's designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board's granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

d. Motions for refund. If the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board's final agency action of the appellant's right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within ten days of the board's final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

115.5(3) Settlements. Parties to ~~a case an~~ appeal may propose to settle all or some of the issues in the ~~case~~ appeal at any time ~~prior to~~ before the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. ~~The board will not approve a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.~~ Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

701—115.6(421,441) Hearing scheduling and discovery plan.

115.6(1) When required. For appeals involving properties assessed at \$3 million or more, the parties shall ~~confer and~~ file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule 115.2(5). In any other appeal, the parties may jointly file a hearing scheduling and discovery plan or the board may, on its own motion or the motion of any party, require parties to file a hearing scheduling and discovery plan. The dates established in a hearing scheduling and discovery plan under this rule shall supersede any dates set forth ~~in any other rule~~ in this chapter.

115.6(2) Prehearing conference. A party may request a prehearing conference to resolve any disputed issue pertaining to the ~~hearing scheduling and discovery plan~~.

115.6(3) Modification. The parties may jointly agree to modify the plan. If one party seeks to modify the plan, the party must show good cause for the modification.

115.6(4) Failure to comply. A party that ~~fails to~~ does not comply with a plan ~~shall be required to~~ must show good cause for ~~failing to comply~~ not complying and that the other party is not substantially prejudiced by the noncompliance. Failing to comply with a plan may result in sanctions including, but not limited to, the exclusion of evidence or dismissal of the appeal.

701—115.7(421,441) Discovery and evidence.

115.7(1) Discovery procedure. The scope of discovery described in Iowa Rule of Civil Procedure 1.503 ~~shall apply~~ applies to ~~contested case proceedings~~ board appeals. When considering a question of relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 102, and other applicable law. The following discovery procedures ~~available~~ in the Iowa Rules of Civil Procedure

are available to the parties in a ~~contested case proceeding~~ an appeal: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in ~~specifie the~~ Iowa Rules of Civil Procedure govern ~~those specific procedures~~, unless lengthened or shortened by the board.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions ~~shall~~ apply to any depositions taken in an appeal. Any party taking a deposition in an appeal ~~shall be~~ is responsible for any deposition costs. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Subject to the limitations in paragraph 115.7(1) "h," Iowa Rule of Civil Procedure 1.509 ~~shall apply~~ applies to any interrogatories propounded ~~in an appeal~~.

c. Subject to the limitations in paragraph 115.7(1) "h," Iowa Rule of Civil Procedure 1.512 ~~shall apply~~ applies to any requests for production of documents, electronically stored information, and things; and entry upon land for inspection and other purposes ~~in an appeal~~.

d. Iowa Rule of Civil Procedure 1.510 ~~shall apply~~ applies to any requests for admission ~~in an appeal~~. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission ~~shall apply in an appeal~~ applies.

e. The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to appeals before the board.

f. Iowa Rule of Civil Procedure 1.508 ~~shall apply~~ applies to discovery of any experts identified by a party ~~to an appeal~~.

g. Discovery shall be served on all parties ~~to the appeal~~, but ~~shall~~ should not be filed with the board. Parties ~~shall~~ should file a notice with the board when a notice of deposition or a discovery request or response is served on another party. The notice filed with the board ~~shall~~ should include the date, the manner of service, and the names and addresses of the persons served. Other discovery materials ~~shall~~ should not be filed unless ordered by the ~~presiding officer~~ board.

h. In addition to the limits on discovery requests in Iowa Rule of Civil Procedure 1.509 and 1.512, the following limits ~~shall~~ apply to appeals of property assessed for less than \$1 million:

(1) A party shall not serve on any other party more than 15 interrogatories, including all discrete subparts.

(2) A party shall not serve on any other party more than ~~ten~~ requests for production of documents, electronically stored information, and things.

A party to the appeal may file a motion with the board requesting leave to serve additional discovery requests. The motion ~~shall set forth~~ must include the proposed interrogatories or requests for production of documents and the reasons establishing good cause for their use.

115.7(2) Discovery motions. ~~Prior to~~ Before filing any motion related to discovery, parties ~~shall~~ must make a good-faith effort to resolve discovery disputes without the involvement of the board ~~or presiding officer~~. Any motion related to discovery ~~shall allege that~~ should state the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties ~~shall be given the opportunity to~~ may respond within ~~40~~ ten days of the filing of the motion unless the time is shortened by order of the board ~~or presiding officer~~. The board ~~or presiding officer~~ may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

115.7(3) Evidence.

a. *Admissibility.* The ~~presiding officer shall~~ board will rule on admissibility of evidence and may take official notice of facts in accordance with all applicable legal requirements ~~of law~~. Evidence obtained in discovery may be used in the ~~ease proceeding~~ appeal if that evidence would otherwise be admissible ~~in that proceeding~~.

b. *Stipulations.* Stipulation of facts by the parties is encouraged. The ~~presiding officer~~ board may make a decision based on stipulated facts.

c. *Scope of admissible evidence.* ~~Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such~~

~~notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision in accordance with the provisions of Iowa Code section 441.21, 701—Chapter 102, or other applicable law. Admission of evidence is governed by Iowa Code section 17A.14. Upon an objection pursuant to paragraph 115.7(3)“e,” irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.~~

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit ~~prior to~~ before the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days ~~prior to~~ before the hearing, unless the time period is extended or shortened by the board ~~or presiding officer~~ or the parties have filed a hearing scheduling and discovery plan under rule 701—115.6(421,441). Upon an objection pursuant to paragraph 115.7(3)“e,” late-filed exhibits may be excluded. Rebuttal evidence need not be exchanged or served on the opposing party ~~prior to~~ before the hearing. All exhibits and briefs admitted into evidence ~~shall~~ will be appropriately marked and be made part of the record. The appellant ~~shall~~ should mark each exhibit with consecutive numbers. The appellee ~~shall~~ should mark each exhibit with consecutive letters.

The local board of review must file the following exhibits:

- (1) ~~The local board of review’s Exhibit A shall be the subject~~ appealed property’s property record card after implementation of the final decision of the board of review, including the cost report showing the property listing, costs, and multipliers.
- (2) ~~The local board of review’s Exhibit B shall be the~~ final decision of the local board of review.
- (3) ~~The local board of review’s Exhibit C shall be the~~ appellant’s petition to the local board of review.

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

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

g. Judicial notice of property record cards. Without additional notice, the board may take judicial notice of the property record card or cost report of the subject property if electronically available to the public through the assessor’s website. At its discretion, the board may take judicial notice of property record cards or cost reports of comparable properties identified by the parties as provided under Iowa Code section 17A.14(4) if electronically available to the public through the assessor’s website. Where such information is not publicly available or the public information lacks the formulas and methods used to determine the actual value, including all listing data, costs, and multipliers, the board may order a party to file the full property record card. If the board takes judicial notice or orders the filing of any property record card or cost report, such card or report shall become part of the ~~board’s official agency appeal record for the appeal.~~

115.7(4) Subpoenas.

a. Issuance.

- (1) Pursuant to Iowa Code section 17A.13(1), a subpoena shall be issued to a party on request, unless otherwise excluded pursuant to this subrule. The request shall be in writing and include the name,

address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

(3) The board ~~shall~~ will refuse to issue a subpoena when there is reasonable ground to believe the subpoena is requested for the purpose of harassment; may seek irrelevant information as provided under Iowa Code section 441.21, 701—Chapter 102, or other applicable law; or is untimely. If the board refuses to issue a subpoena, the board shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before the board regarding the refusal by filing with the board and serving on all parties a written request for hearing.

b. Motion to quash or modify. Upon motion, the board ~~or presiding officer~~ may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

701—115.8(421,441) Hearings before the board.

115.8(1) Prehearing conference. An informal conference of parties may be ordered at the discretion of the board ~~or presiding officer~~ or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board ~~or presiding officer~~.

115.8(2) Notice of hearing. ~~Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. Unless subject to a hearing scheduling and discovery plan, if a hearing is requested the board shall serve a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 115.8(3). The notice of hearing shall contain the following information: The notice of hearing will contain information required by Iowa Code section 17A.12.~~

- ~~a. — A statement of the date, time, and place of the hearing;~~
- ~~b. — A statement of legal authority and jurisdiction under which the hearing is to be held;~~
- ~~c. — A reference to the particular sections of the statutes and rules involved;~~
- ~~d. — That the parties may appear and present oral arguments;~~
- ~~e. — That the parties may submit evidence and briefs;~~
- ~~f. — That the hearing will be electronically recorded by the board;~~
- ~~g. — That a party may obtain a certified court reporter for the hearing at the party's own expense;~~
- ~~h. — That audiovisual aids and equipment are to be provided by the party intending to use them;~~
- ~~i. — A statement that, upon submission of the appeal, the board will take the matter under advisement. An order will be issued to the parties; and~~
- ~~j. — A compliance notice required by the Americans with Disabilities Act (ADA).~~

115.8(3) Waiver of 30-day notice. The parties ~~to the appeal~~ may jointly waive the 30-day written notice requirement for a hearing in Iowa Code section 441.37A by submitting a mutually agreed upon hearing date approved by the board.

115.8(4) Continuance. ~~Any hearing may be continued for “good cause.” “Good cause” is equated to any cause not growing out of the fault or negligence of the movant, which satisfies the board that substantial justice will more nearly be obtained if the case is continued. A motion to continue the hearing or written consideration shall be in writing and, except in exigent or other unusual circumstances the case of unanticipated emergencies, filed not later than 7 seven days before the hearing or immediately upon “the cause” becoming known written consideration. The motion must contain sufficient specific information or be supported by sufficient evidentiary materials or both to allow the board to determine whether there is “good cause” and whether the alleged cause grows out of the fault or negligence of the moving party should state the specific reason for the request and indicate whether the opposing party was contacted and agrees to a continuance. An emergency oral continuance may be obtained from the board or presiding officer based on “good cause” and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:~~

- a. Prior continuances;*

- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors, including the existence of a hearing scheduling and discovery plan.

~~115.8(5) Telephone and video proceedings.~~ The board or presiding officer may conduct a telephone or video conference in which all parties have an opportunity to participate to resolve preliminary procedural motions. ~~Other proceedings, including contested case hearings, may be held by telephone or video. The board will determine the location of the parties and witnesses for telephone and video hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.~~

~~115.8(6) 115.8(5) Hearing procedures.~~ A party to the appeal may request a hearing, or the appeal may proceed as a written consideration. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members. Hearings and any preliminary proceedings may be conducted in person, by telephone, or by video, or the appeal may proceed as a written consideration.

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

~~b. a. Representation.~~ Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative. A partnership, corporation, or association may be represented by any member, officer, director, or duly authorized agent.

~~e. b. Participation in hearing.~~ The parties to the appeal Parties have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review on appeal. Subject to terms and conditions prescribed by the ~~presiding officer board~~, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument. The hearing will proceed as provided by Iowa Code sections 17A.12 and 17A.14.

~~d. Decorum.~~ The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

~~e. Conduct of the hearing.~~ The presiding officer shall conduct the hearing in the following manner:
(1) ~~The presiding officer shall give an opening statement briefly describing the nature of the proceedings;~~

~~(2) The parties shall be given an opportunity to present opening statements;~~

~~(3) The parties shall present their cases in the sequence determined by the presiding officer;~~

~~(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. Witnesses may be sequestered during the hearing. The presiding officer may limit questioning in a manner consistent with law; and~~

~~(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.~~

~~115.8(7) 115.8(6) Dismissal.~~ If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest. If a party fails to appear, the appeal may be dismissed under Iowa Code section 441.37A(2) "a."

~~115.8(8) 115.8(7) Hearing recordings.~~ All hearings shall be electronically recorded. Any party may request a copy of the hearing recording and pay a fee associated with preparing the copy. Any party may provide a certified court reporter at the party's own expense.

~~115.8(9) *Members participating.* Each appeal may be considered by one or more members of the board, and the chairperson of the board may assign members to consider appeals. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.~~

~~115.8(10) *115.8(8) Ex parte communications with board members.* Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate. Ex parte communications between a person or party and any board members in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of Ex parte communications are prohibited in appeals before the board following the provisions of Iowa Code section 17A.17 apply to proceedings before the board.~~

~~115.8(11) *115.8(9) Disqualification of board member.* A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification under Iowa Code sections 17A.11(2) through 17A.11(4) and 17A.17(8).~~

~~a.—A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:~~

- ~~(1) Has a personal bias or prejudice concerning a party or a representative of a party;~~
- ~~(2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;~~
- ~~(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;~~
- ~~(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;~~
- ~~(5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;~~
- ~~(6) Has a spouse or relative within the third degree of relationship who:

 - ~~1. Is a party to the appeal, or an officer, director or trustee of a party;~~
 - ~~2. Is a lawyer in the appeal;~~
 - ~~3. Is known to have an interest that could be substantially affected by the outcome of the appeal;~~~~

~~or~~

- ~~4. Is likely to be a material witness in the appeal; or~~
- ~~(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that appeal.~~

~~b.—Motion for disqualification.~~

~~(1) If a party asserts disqualification on any appropriate ground, including those listed in paragraph 115.8(11) “a,” the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.~~

~~(2) If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect.~~

~~c.—The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work~~

~~product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.~~

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

701—115.9(421,441) Posthearing motions.

~~115.9(1) Motion to reopen records. The board or presiding officer, on the board's or presiding officer's~~ On its own motion or on the motion of a party, the board may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime ~~prior to~~ before the issuance of a final decision. A motion to reopen the record filed after issuance of the final decision will not be considered. In ruling on a motion to reopen the record from a party filed ~~prior to~~ before issuance of the final decision, the board may consider:

- a. Whether the information sought to be admitted is material;
- b. The timeliness of the motion;
- c. Whether the information sought to be admitted was available as of the date for hearing or written consideration and whether there is good cause for failing to present it;
- d. The prejudice on the other party;
- e. Any and all other factors deemed relevant by the board.

115.9(2) Rehearing and reconsideration.

a. ~~Application for rehearing or reconsideration. Any party to a case may file an application for rehearing or reconsideration of the final decision under Iowa Code section 17A.16. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the case is issued. The board's consideration of the application shall be limited to the admitted exhibits and testimony offered at the hearing. No new evidence will be accepted or considered.~~

b. ~~Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a statement of the alleged grounds of error and the relief sought~~ comply with Iowa Code section 17A.16. If a claim of error of fact is asserted, the application should clearly specify the factual error and cite to admitted exhibits or testimony in support of the claim. If a claim of error of law is asserted, the application should clearly specify the legal error and cite statutes, case law, administrative rules, or other sources of law in support of the claim.

c. ~~Notice to other parties. The applicant shall serve a copy of the application on all parties to the contested case in accordance with rules 701—115.3(421,441) and 701—115.4(421,441). If the application does not contain a certificate of service, the board shall serve copies on all parties.~~

d. ~~Resistance to applications for rehearing or reconsideration. A resistance to an application for rehearing or reconsideration must be filed within ten days of the date the application was filed with the board, unless otherwise ordered by the board.~~

e. ~~Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.~~

701—115.10(17A,441) Judicial review.

115.10(1) Appeals of board decisions.

a. ~~A party may seek judicial review of a decision rendered by the board under Iowa Code sections 441.37B and 17A.19. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.~~

~~a. A party may seek judicial review of a decision rendered by the board by filing a petition for judicial review with the clerk of the district court where the property is located within 30 days after the board's action pursuant to Iowa Code chapter 17A. Within ten days of filing for judicial review, the party seeking judicial review must serve notice on the board and notice on all parties to the contested case proceeding pursuant to Iowa Code chapter 17A.~~

b. The party or parties seeking judicial review shall bear the costs of preparing the transcription of the board hearing, if a transcription is required by the reviewing court.

~~115.10(2) *Stays of agency actions.* Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. The board may grant a stay during the pendency of judicial review under Iowa Code section 17A.19(5). In determining whether to grant a stay, the board or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) "c."~~ A stay may be vacated by the board upon application of any other party.

701—115.11(22,421) Records access.

115.11(1) *Location of record.* A request for access to a record should be directed to the custodian.

115.11(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

115.11(3) *Request for access.* Requests for access to open records may be made in writing, in person, by email, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, email, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

115.11(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court or board order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the applicable provisions of law. Open records are routinely disclosed without the consent of the parties.

115.11(5) *Security of record.* No person may, without permission from the secretary custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the secretary custodian. Records shall be protected from damage and disorganization.

115.11(6) *Copying.* A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

115.11(7) *Fees.*

a. *When charged.* The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. *Copying and postage costs.* Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and made available by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

115.11(8) *Retention of board records.* The board will follow the records retention schedule for administrative case files established by the state records commission.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 493—subrules 12.4(1) and 12.5(4)

“Claims for Indigent Defense Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 13B.4(8)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 815.7(6), 815.7(7), and 815.7(7A) as amended by 2023 Iowa Acts, Senate File 562, and section 815.7A as enacted by 2023 Iowa Acts, Senate File 562

Public Hearing

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

October 17, 2023
11 a.m.

Fourth Floor Conference Room
Lucas State Office Building
Des Moines, Iowa

Public Comment

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

Kurt Swaim
First Assistant State Public Defender
Office of the State Public Defender
Lucas State Office Building, Fourth Floor
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.242.6158
Email: kswaim@spd.state.ia.us

Purpose and Summary

The purpose of the proposed rulemaking is to remove portions of the former administrative rules that became obsolete, outdated, inconsistent, and incompatible with the new statutory enactments in 2023 Iowa Acts, Senate File 562. The legislation increased the hourly rate for payment of claims from the Indigent Defense Fund for attorney and guardian ad litem fees and allowed payment for associated travel time in situations where payment had not been allowed prior to the legislative change.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Payment for the increased hourly rates and travel time allowed will be paid initially from the indigent defense fund. The indigent defense fund is funded primarily by a state appropriation, but indigent clients who are appointed an attorney by the court may be ordered to reimburse the state for all or a portion of the fees to the extent the indigent person has the reasonable ability to pay.

- Classes of persons that will benefit from the proposed rulemaking:

Private attorneys and guardians ad litem who are appointed by the court to represent indigent persons will benefit directly from the increased payments allowed by these statutory changes. Also, all Iowans generally benefit from the state’s criminal and juvenile justice systems, which are designed to fairly

protect the rights of all Iowans. These increased payments are intended to enlarge the pool of attorneys who will accept court appointments to represent indigent clients. Representation of indigent persons who are charged with a crime or involved in our juvenile justice system is a key component of our constitutional and statutory guarantees to all Iowans. To the extent the increased payments are successful in increasing the number of attorneys willing to accept court appointments to represent indigent persons, all Iowans will benefit.

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

- Quantitative description of impact:

The estimated annual cost of the increase in the hourly rate of the fees for attorneys and guardians ad litem will be approximately \$2,600,000. The estimated annual cost of the increase in travel time allowed will be approximately \$1,500,000.

- Qualitative description of impact:

The principal economic impact of the rulemaking will likely be in rural areas, where younger attorneys are needed to replace retiring attorneys. The younger attorneys will likely enlarge their law practices beyond court appointments to other areas in the general practice of law. The increased payments for indigent defense representation should make it more economically feasible for young attorneys to locate in rural areas of Iowa, which will benefit these communities by generally increasing the availability of legal services in those parts of the state.

There will also likely be a qualitative impact on the quality of life for private attorneys who are willing to accept court appointments. With fewer attorneys willing to accept such appointments, the burden of covering them has fallen on fewer and fewer attorneys. The burden has taken a toll on the mental and physical health of some of those attorneys, and increasing the pool of attorneys will decrease the strain and stress on those attorneys still willing to accept such appointments. This is likely to result in a positive impact on the quality of life and well-being of those willing to shoulder this constitutional responsibility in our indigent defense system.

Another impact of the increased payments for travel time is that the increased payments will likely make our indigent defense justice system more efficient because the additional payments for travel time are conditioned on the attorney first requesting and being denied a remote hearing on uncontested matters. Since an in-person hearing is generally unnecessary on uncontested matters, the impact of the added efficiencies of increased remote hearings are expected to be substantial.

A final impact of the proposed rulemaking is the improvement to the Office's administrative rules generally by updating them to avoid inconsistencies with the new statutory provisions and added simplicity by the elimination of portions that are now obsolete and extraneous, all consistent with Executive Order 10. The Office's contract attorneys and the general public will benefit from the simplification and streamlining of these administrative rules.

3. Costs to the State:

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

No additional enforcement costs are anticipated. The implementation costs are expected to be the amounts set forth above. The amount for the increased travel time allowed is expected to be paid initially from the Indigent Defense Fund, with reimbursement from the judicial branch to the extent that requests for remote hearings on uncontested proceedings are denied. The amount of the reimbursement is unknown because the number of requests for uncontested hearings that will be denied is unknown. However, the Office's estimate is that approximately \$250,000 of the \$1,500,000 increase projected for the new travel time allowance will be reimbursable to the Indigent Defense Fund from the judicial branch.

- Anticipated effect on state revenues:

No effect on state revenues is expected.

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

There are no added costs for inaction because the additional cost of the newly enacted statutes results from the statutory enactments, which supersede the Office's administrative rules. The benefits derive from the avoidance of confusion resulting from the inconsistency of the Office's rules with the new statutory enactments.

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

The Office has considered less costly alternatives, but the Office has found none that would honor and give full effect to the statutory intent of the new legislative enactments.

6. Alternative methods considered by the agency:

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

The Office considered ways in which the office could avoid requiring a written application for a hearing in uncontested cases for payment of travel time.

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

The Office could find no alternative that would give effect to the language in the new statute, which requires the judicial branch to reimburse the State Public Defender for travel time paid for uncontested hearings for which a request for a remote hearing had been denied.

Small Business Impact

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

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

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

Establish less stringent compliance or reporting requirements in the rule for small business:

As stated above, this Office could find no alternative to the requirement for attorneys and guardians ad litem in private practice to file a motion for the hearing in uncontested cases to be held remotely because the statutory language requires a motion for and denial of a request for a remote hearing in uncontested cases as a condition of payment for the travel time and reimbursement from the judicial branch to the Office for the payment of the travel time.

Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business: Any deadlines in the proposed rulemaking are established by the practical aspects of the need for the attorney or guardian ad litem to timely request a remote hearing in uncontested matters to secure payment for travel time, which is a requirement in the new statute itself, not one newly imposed by this proposed rulemaking.

Consolidate or simplify the rule's compliance or reporting requirements for small business: The Office's statement immediately above also answers this prompt.

Establish performance standards to replace design or operational standards in the rule for small business: These proposed amendments do not establish performance standards or replace design or operational standards.

Exempt small business from any or all requirements of the rule: The proposed amendments adopt the new statutory provisions, largely by incorporating them by reference. The Office is not capable of exempting anyone from the new statutory requirements, but it tries in all instances to accommodate all parties in meeting the requirements imposed by statute to the maximum extent allowed by law.

Text of Proposed Rulemaking

ITEM 1. Rescind subrule 12.4(1) and adopt the following **new** subrule in lieu thereof:

12.4(1) Unless the attorney has a contract that provides for a different manner or rate of payment, reasonable compensation for the payment of all claims for cases in which the attorney has been appointed shall be calculated on the basis of the hourly rate specified in Iowa Code section 815.7 applicable to the type of case and for the fiscal year during which the appointment was made for attorney or guardian ad litem time, and on the basis of the hourly rate of \$25 per hour for paralegal time to the extent paralegal time is payable under these rules.

ITEM 2. Amend subrule 12.5(4) as follows:

12.5(4) Travel time. Time spent by an attorney or guardian ad litem traveling is only payable at the full hourly rate provided in subrule 12.4(1) when the travel is reasonable and necessary to represent the indigent client and the attorney or guardian ad litem is traveling:

a. to j. No change.

Otherwise, travel time for an attorney or guardian ad litem is only payable at the rate and in the manner provided in Iowa Code section 815.7A as enacted by 2023 Iowa Acts, Senate File 562. For all uncontested hearings, the attorney or guardian ad litem must file an application for a remote hearing to be entitled to travel time. If the court denies the application, the attorney or guardian ad litem must submit a copy of the application and the denial order with the claim for payment of travel time. If the client wishes to have an uncontested hearing in person, and the attorney or guardian ad litem has no other reason to request an in-person hearing other than to be paid for travel time to attend the hearing in person in view of the client's request, the request for hearing shall be sent to the state public defender at claims@spd.state.ia.us. No application is required to be filed for contested hearings, but the travel time must be clearly identified as being for a contested hearing in the description of the travel on the claim. Travel time payable at any hourly rate counts toward the maximum daily hours allowed pursuant to subrule 12.5(1). No amount is payable for travel time at any hourly rate if the time is otherwise being paid at the full hourly rate provided in subrule 12.4(1).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 2
“Forms”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3, 474.5 and 476.2
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.3

Public Hearing

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

October 18, 2023
9 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

The purpose of Chapter 2 is to inform the public of the location of Board-approved forms that the public may use in connection with requests for Board action or in proceedings before the Board. However, the forms will be available for public use on the Board’s website irrespective of Chapter 2; therefore, the chapter is being rescinded.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Chapter 2 imposes no costs to the public.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowans, especially pro se Iowans, who wish to request Board action or who wish to participate in Board proceedings benefit from the chapter.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The Board publishes a number of forms to assist the public with Board proceedings (e.g., complaint forms, comment forms, ten forms for electric transmission line cases, three forms for natural gas pipeline permit cases). However, the forms will be available for public use on the Board’s website irrespective of Chapter 2. The Board does not believe a significant number of Iowans become aware of the availability of the forms solely by virtue of reading Chapter 2. The chapter does not impose costs on the public or any agency, including the Board.
 - Qualitative description of impact:

Chapter 2 has some level of qualitative impact because it assists Iowans who may wish to appear before the Board or may wish to request Board action. Additionally, Iowa Code section 17A.3(1)“b” requires agencies, including the Board, to adopt rules that include a “description of all forms and instructions that are to be used by the public in dealing with the agency.”

However, the information contained in Chapter 2 is also available on the Board’s website and within other Board rules. For example, in the Board’s declaratory order chapter, subrule 4.1(2) notes that “a sample form of a petition for a declaratory order is available at the board’s website.” Additionally, for electric transmission franchise proceedings, subrule 11.5(1) provides that petitions for a new franchise should be “filed on forms prescribed by the board.”

3. Costs to the State:

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

Because Chapter 2 merely provides information, there are no costs to the public, the agency, or any other agency.

- Anticipated effect on state revenues:

The Board does not anticipate an effect on state revenues.

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

Because Chapter 2 imposes no costs on the public and no costs on the Board (or any other agency), and because the public does benefit from the availability of the forms, the benefits of providing the information outweigh the costs. However, the Board believes the information is being conveyed to the public through other Board rules and the Board’s website.

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

Because Chapter 2 imposes no costs or requirements, the Board does not believe there is a less costly or intrusive method.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

No alternative methods were considered.

Small Business Impact

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

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

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

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

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

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

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

The agency does not believe rescinding Chapter 2 will have an adverse impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **199—Chapter 2**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 14
“Electronic Filing”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.4 and 476.2
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.4

Public Hearing

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

October 18, 2023
2 to 4 p.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

The purpose of this proposed rulemaking is to inform the public of the Board’s requirements, exceptions, and procedures for electronic filing and service of documents.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Filing electronically with the Board does not have any direct costs. There are indirect costs that may be incurred by persons electronically filing with the Board, such as Internet connection and a computer, tablet, phone, or other method of having Internet connection. There are exceptions to the electronic filing requirements, which would have a cost; for example, mailing would require postage in addition to the costs of the supplies to generate the item that is mailed.

- Classes of persons that will benefit from the proposed rulemaking:

Iowans, especially pro se Iowans, who wish to request Board action or who wish to participate in Board proceedings will benefit from the rulemaking.

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

- Quantitative description of impact:

The Board provides a number of chapters to assist the public with Board proceedings (e.g., complaints, procedures, filing). Proposed Chapter 14 is especially helpful to a person when that person is not familiar with Board procedure since the rules provide the information about filing, when electronic filing is not necessary, and how service is completed. The chapter does not impose costs on the public or any agency, including the Board; however, if the public does choose to file, there are indirect costs that go with any form of electronic communication. The public would not incur direct

costs to access the public information filed in accordance with Chapter 14. Since this is part of the everyday work of the Board, there is no additional impact to the Board, economic or otherwise.

- Qualitative description of impact:

Proposed Chapter 14 has some level of qualitative impact because it assists Iowans who may wish to appear before the Board or may wish to request Board action. This chapter ensures that persons who choose to participate in Board proceedings are aware of filing expectations and procedures.

3. Costs to the State:

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

Because proposed Chapter 14 merely provides information, there are no costs to the public unless the public chooses to file with the Board; in that case, there would be indirect costs to the person, the agency, or any other agency.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Because proposed Chapter 14 imposes no direct costs on the public and no costs on the Board (or any other agency), and because the public benefits from the availability of the information contained within proposed Chapter 14, the benefits of providing the information outweigh the costs. Inaction is not advised because the public would not be aware of what was needed to fully participate in Board proceedings.

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

Because proposed Chapter 14 imposes no direct costs, the Board does not believe there is a less costly or intrusive method.

6. Alternative methods considered by the agency:

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

Inaction was considered by the Board.

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

As stated above, inaction is not advisable because there is value provided in letting the public know the Board's expectations, exceptions, and procedures for filing with the Board.

Small Business Impact

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

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

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

The Board does not believe that proposed Chapter 14 has an adverse impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14
ELECTRONIC FILING

199—14.1(17A,476) Purpose. The purpose of these rules is to establish an electronic filing requirement, to identify exceptions to the electronic filing requirement, and to specify procedures regarding electronic filing and service of documents filed with or issued by the board.

199—14.2(17A,476) Scope and applicability of electronic filing requirement. Electronic filing is mandatory, unless specifically excepted by these rules or the board. The board will accept filings electronically pursuant to the rules in this chapter and the board's published standards for electronic information, available on the board's website (iub.iowa.gov) or from the board's customer service bureau, or as delineated in the board order or other official statement requiring those filings.

199—14.3(17A,476) Definitions. Except where otherwise specifically defined by law:

"Accepted for filing" ordinarily means a filing will be published on the board's website. Certain documents will be accepted for filing without being published on the board's website. A filing that has been accepted for filing can be rejected if found not to comply with a board rule or order.

"Electronic filing" means the process of transmitting a document or collection of documents via the Internet to the board's electronic filing system for the purpose of submitting the document for board consideration.

"Electronic filing system" means the system used by the board's customer service bureau to accept and publish documents filed electronically and that allows the public and parties to view most documents filed with or issued by the board on the board's website.

"Guest user" means a person who uses the electronic filing system without a user ID and password. Guest users are able to view and file documents via the electronic filing system.

"Publish" means to make a document available for public viewing or download by posting it on the board's website.

"Registered user" means a person who has complied with the board's requirements in rule 199—14.6(17A,476) to obtain a user ID and password in order to submit filings for the board's consideration through the board's electronic filing system.

199—14.4(17A,476) Exceptions; number of paper copies. The following types of filings are not subject to the electronic filing requirement:

14.4(1) Filings made by any person who has been excused from the requirement by board order granting a request for permission to file paper documents. Upon request, the board may issue an order granting permission to file paper documents and specifying the number of paper copies to be filed.

14.4(2) Informal consumer complaints. Consumers may submit complaints electronically by using the online complaint form available on the board's website or by email; on paper by mail or facsimile; or by personally delivering the written complaint to the board's customer service bureau. Informal consumer complaint files are available for public inspection from the board's customer service bureau. An informal complaint file will be made available on the board's website, to the extent reasonable.

14.4(3) Written objections to applications for electric transmission line franchises, pipeline permits, or hazardous liquid pipeline permits. Written objections in these cases may be submitted through the electronic filing system or may be submitted in writing. Electronic filing of objections is preferred. A suggested objection form is available on the board's website.

14.4(4) Comments from persons in any other proceeding in which comments from the public are permitted. Persons may submit comments through the electronic filing system pursuant to these rules,

by using any applicable online comment form available on the board's website, by email, or by letter. Comments from persons will ordinarily be published in the electronic filing system.

199—14.5(17A,476) Electronic filing procedures and formats. Electronic documents shall be filed in accordance with the following procedures and formats:

14.5(1) Persons who make infrequent filings with the board may file as a guest user. Persons who make regular filings with the board may register to obtain a user ID and password pursuant to registration procedures specified in rule 199—14.6(17A,476). The board may direct an infrequent filer to become a registered user.

14.5(2) Electronic filings are made by uploading a document or collection of documents into the electronic filing system. Emailing a document to the board does not constitute filing the document.

14.5(3) A filer should provide all necessary information when electronically filing a document.

14.5(4) Electronically filed documents are to be named in a way that accurately describes the contents of each document.

14.5(5) All documents are to be formatted in accordance with the board's standards for electronic information, which are available on the board's website or from the board's customer service bureau.

14.5(6) Any text-based document that has been scanned for electronic filing should be full-text searchable to the extent that is reasonably possible.

14.5(7) Spreadsheets included in filings shall include all cell formulae and cell references. Where a filer requests confidential treatment of cell formulae and cell references or any other information included in a spreadsheet, workbook, or database, the filer may file a request for confidential treatment and two versions of the document: a public version of the document with the cell formulae deactivated and other confidential information redacted and a version not for publication containing live formulae and the information for which confidential treatment is requested.

14.5(8) Hyperlinks and other navigational aids may be included in an electronically filed document. Each hyperlink should contain a text reference to the target of the link. Although hyperlinks may be included in a document as an aid to the reader, the material referred to by the hyperlinks is not considered part of the official record or filing unless the referenced material itself is filed (e.g., hyperlinking a document previously filed in the board's electronic filing system). Hyperlinks to cited authority does not replace standard citation format for constitutional citations, statutes, cases, rules, or other similarly cited materials.

14.5(9) The electronic filing system will display an "Upload Complete" notice when the upload of the filing is completed. If the "Upload Complete" notice does not appear, the filer may contact the board's customer service bureau during regular business hours to determine the status of the filing.

14.5(10) After reviewing the filing, the board's customer service bureau will either accept or reject the filing. If the filing is accepted, the document (if not confidential) will be published on the board's website, and an electronic file stamp indicating the docket number(s) and date of filing will be added to the published document. A Notice of Electronic Filing containing a link to the filing will be sent by email to the filer and to all parties identified on the service list as able to receive electronic service. From the link, the recipient of the notice can view each published document included in the filing. Where a document is accompanied by a request for confidential treatment, the filing will include the public version of the document, in which information identified as confidential has been redacted. Where a filing consists only of a confidential document, such as a response to a board survey or other inquiry, that the board has deemed confidential pursuant to an order requiring the response, the document will not be published. Acceptance of a document for filing is not a final determination that the document complies with all board requirements and is not a waiver of such requirements. If a filing is rejected, a Notice of Rejection explaining why the filing has been rejected will be sent by email to the filer, or the filer will be contacted by other appropriate means.

14.5(11) Errors. If a filer discovers an error in the electronic filing or publishing of a document, the filer should contact the board's customer service bureau as soon as possible. The customer service bureau will review the situation and advise the filing party how the error will be addressed by the customer service bureau and what further action by the filer may be necessary, including a revised filing with the

board. If errors in the filing or publishing of a document are discovered by the board's customer service bureau, board staff will ordinarily notify the filer of the error and advise the filer of what further action, if any, is necessary to address the error.

14.5(12) Electronic documents and the hearing process. Any prefiled testimony or exhibit that is altered or corrected at the hearing in any way and admitted into evidence, and any paper documents that are newly admitted into evidence as exhibits at the hearing, must be electronically filed at the earliest opportunity but no later than three business days after the material is admitted into evidence.

199—14.6(17A,476) Registration. A person may become a registered user by completing the registration form, which is available on the board's website, and obtaining a user ID and password. If a user believes the security of an existing password has been compromised, the user should change the password immediately and may contact the board's customer service bureau.

199—14.7(17A,476) Electronic file. The official agency record in any proceeding is the electronic file maintained in the electronic filing system and any paper filings accepted by the board that are not stored in electronic form.

199—14.8(17A,476) Paper copies. Any map, plan and profile drawing, or oversized document that is to be filed with the board should be electronically filed as a PDF (Portable Document Format) or such electronic format as designated by the board. If the map, drawing, or oversized document cannot be printed on 11-by-17-inch or smaller-sized paper in legible and usable form, as determined by the board, the original and four paper copies of each map, drawing, or other document filed pursuant to this rule should also be filed, unless more copies are directed by board order or request. Maps and other documents should be drawn to a scale appropriate for the level of detail to be shown. However, if the map, drawing, or other document is not electronically filed, then the number of paper copies filed is governed by 199—Chapter 7 or other applicable rules.

199—14.9(17A,476) When electronic filings can be made; official filing date. Unless otherwise ordered, an electronic filing can be made at any time outside of any maintenance periods during which the system will not be available. The Notice of Electronic Filing generated when the document is accepted for filing will record the date of the filing of the document. This date will be the official filing date of the document regardless of when the filer actually submitted the document to the electronic filing system.

199—14.10(17A,476) Technical difficulties. It is the responsibility of the filer to ensure that a document is timely filed to comply with jurisdictional deadlines. A technical failure of the electronic filing system, the filer's own computer equipment, or any other part of the filing system will not excuse the filer from compliance with a jurisdictional filing deadline. If a filer is not able to meet a nonjurisdictional deadline because of a technical failure, the filer should, by the earliest available conventional or electronic means, file the document and seek appropriate relief from the board.

199—14.11(17A,476) Documents containing confidential material. Confidential documents will not be published in the electronic filing system. When filing a document containing confidential information, a person shall file one public version of the document with the confidential information redacted according to the board's standards for electronic information and one version of the document containing the confidential information. The two versions of the document should be named according to the following convention: "Document Title—Public" and "Document Title—Confidential." It is the responsibility of the person submitting a public version of the electronic document to take appropriate measures to ensure that any embedded information for which confidential treatment is sought is nonviewable, nonsearchable, and nonreversible. A minimum of the first page of the confidential version of the document shall be marked in a way that identifies it as belonging to the confidential version of the document. The confidential material itself is to be highlighted or otherwise distinguished on the page to identify what specific information is confidential. A filing including a document the filer asserts

contains confidential information is also to include a separate document containing the request for confidential treatment pursuant to 199—Chapter 1. Documents that the filer asserts contain confidential information will not be electronically served by the board’s electronic filing system, as provided in 199—Chapter 14.

199—14.12(17A,476) Signatures.

14.12(1) Filings by registered users. The use of a user ID and password in accordance with the registration procedures specified in rule 199—14.6(17A,476) constitutes the filer’s signature. Filers should use “/s/” followed by the signer’s name to indicate a signature where applicable. All pleadings should also include a signature block containing the signer’s name, title, address, email address, and telephone number. All electronic filings are presumed to have been made by the person whose user ID and password have been used to make the electronic filing.

14.12(2) Filings by guest users. The personal information provided to submit a filing as a guest user constitutes the filer’s signature. Filers should use “/s/” followed by the signer’s name to indicate a signature where applicable. All pleadings should also include a signature block containing the signer’s name, title, address, email address, and telephone number.

199—14.13(17A,476) Original documents. When a board rule directs the filing of an original document not prepared by the filer or the party on whose behalf the document is filed, such as an invoice or other document, the filer should scan the original document and file the scanned document in the electronic filing system or request advance board approval of other arrangements.

199—14.14(17A,476) Electronic service.

14.14(1) Service on parties able to receive electronic service. Unless otherwise provided by board rule or order, whenever a document is filed electronically, a Notice of Electronic Filing will be generated and sent to the filer and to representatives of the other parties who are able to receive electronic service and who are on the service list. This notice will constitute valid service of electronically filed documents and board orders on parties accepting electronic service. The notice will include a service list providing names, addresses, and email addresses of the persons who were sent the notice. No additional proof or certificate of service is necessary in matters in which all parties are able to receive electronic service. It is the responsibility of the filer to review the notice to ensure that all parties have been provided notice. All parties are responsible for ensuring that their email accounts are monitored regularly and that email notices sent to the account are opened in a timely manner.

14.14(2) Service on parties for whom electronic service is not available. The service list in each proceeding will be available on the board’s website. The list will identify the representatives for each party and will also indicate the parties for whom electronic service is not available. A filer is to serve a paper copy of any electronically filed document on all persons entitled to service for whom electronic service is not available, unless the parties agree to other arrangements. The date of service is the day when the document served is deposited in the United States mail or overnight delivery, is delivered in person, or otherwise as the parties may agree. A party serving a paper copy of any electronically filed document on a person for whom electronic service is not available is to file a certificate of service stating the manner in which service on such person was accomplished.

14.14(3) Service of board-generated documents. Orders issued by the board will be electronically filed. The electronic filing system will electronically transmit notice of posting of orders to all parties on the service list that are able to receive electronic service. This notice will constitute valid service of the order. The board’s customer service bureau will mail paper copies of orders to parties who are not able to receive electronic service and to others as ordered.

14.14(4) Exceptions. Electronic service through the board’s electronic filing system to parties other than the consumer advocate division of the department of justice is not to be used to serve a document that (1) the filer asserts contains confidential material or (2) initiates a proceeding, such as a complaint or application, except for orders opening inquiries, investigations, or rulemaking proceedings, or other similar proceedings where the board has an electronic service list on file.

14.14(5) *Changes to service list.* Filers wishing to change information on the service list may contact the board's customer service bureau. Other changes to the service list, such as a withdrawal of appearance or substitution of counsel, may be requested by means of an appropriate filing.

These rules are intended to implement Iowa Code sections 17A.4 and 476.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 31
“Access to Affiliate Records, Requirements for Annual Filings, and Asset and Service Transfers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 476.73 and 476.74

State or federal law(s) implemented by the rulemaking: Iowa Code sections 476.73 and 476.74

Public Hearing

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

October 19, 2023
2 p.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

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

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

Purpose and Summary

The purpose of proposed Chapter 31 is to identify the records and filings that need to be filed with the Board when a rate-regulated public utility has affiliates.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Rate-regulated utilities with affiliates will be affected by the proposed chapter and will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Customers of rate-regulated utilities with affiliates will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Implementing this chapter is part of the everyday work of the Board, so there is no additional impact to the Board, economic or otherwise. Rate-regulated utilities may have costs due to the filing requirements. There are no costs to see the public information filed in the Board’s electronic filing system, but there may be a time-value cost to review the information filed.
 - Qualitative description of impact:
This proposed chapter helps ensure that rate-regulated utilities are not favoring affiliates or overpaying affiliates to the detriment of ratepayers.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

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

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

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

There is a huge benefit in ensuring that rate-regulated utilities are not favoring or overpaying an affiliate to the detriment of others. There are minimal costs involved in administering this proposed chapter. Inaction would likely be detrimental and potentially raise the cost of rate cases and other proceedings.

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

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

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
Inaction and reduced filing requirements were considered by the Board.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Inaction is not feasible due to the utilities functioning as a monopoly. Reduced filing requirements were rejected due to the Board's and other parties' needs to have timely updates to changes in affiliate status.

Small Business Impact

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

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

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

The Board does not anticipate a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 31 and adopt the following **new** chapter in lieu thereof:

CHAPTER 31 ACCESS TO AFFILIATE RECORDS, REQUIREMENTS FOR ANNUAL FILINGS, AND ASSET AND SERVICE TRANSFERS

199—31.1(476) Applicability and definition of terms. This chapter applies to all rate-regulated gas, electric, water, sanitary sewage, or storm water drainage service public utilities. All terms used in this chapter are defined in Iowa Code section 476.72 unless further defined in this chapter.

“*Fully distributed cost*” is a costing approach that fully allocates all current and embedded costs to determine the revenue contribution of regulated and nonregulated affiliate operations.

“*Net book value*” means the original purchase price minus depreciation.

199—31.2(476) Availability of records.

31.2(1) *Separate records.* All affiliates of a public utility shall maintain records that are separate from the records of the public utility.

31.2(2) *Records to be maintained.* The records maintained by each affiliate and made available for inspection through the public utility include, but are not limited to, ledgers; balance sheets; income statements, both consolidated and consolidating; documents depicting accounts payable and vouchers; purchase orders; time sheets; journal entries; source and supporting documents for all transactions; supporting documents and models for all forecasts of affiliates used by the public utility; all contracts, including summaries of unwritten contracts or agreements; a description of methods used to allocate revenues, expenses, and investments among affiliates or jurisdictions, including supporting detail; and copies of all filings required by other state and federal agencies.

31.2(3) *Method of inspection.* The records of each affiliate are to be made available to the board at the principal place of business of the public utility. Upon receipt of a formal request in writing from the board for information, the public utility shall produce the requested information within seven days. Upon a showing of good cause, the board may approve additional time for response.

199—31.3(476) Annual filing.

31.3(1) On or before June 30 of each year, all public utilities are to file with the board the following information:

a. An executive summary of each contract, arrangement, or other similar transaction between the public utility and an affiliate. The executive summary includes the start and end date of the contract, the providing affiliate, the receiving affiliate, the total estimated dollar value, the dollar amount reported for the calendar year, and a description of the service or goods covered.

b. Copies of contracts, arrangements, or other similar transactions between the public utility and an affiliate are to be provided to the board upon request. This includes all contracts, arrangements, or other similar transactions as required by Iowa Code sections 476.74(1) through 476.74(4).

31.3(2) Contracts, arrangements, or other similar transactions with an affiliate where the consideration is not in excess of \$250,000 or 5 percent of the capital equity of the utility, whichever is smaller, are exempt from this filing requirement. In lieu of the filing requirement, the public utility shall file on or before June 30 of each year a report of the total amount of each contract, arrangement, or other similar transactions with affiliates qualifying under this exemption. Each affiliate is to be identified separately.

31.3(3) After an initial filing under this rule, only new contracts, arrangements, or other similar transactions and modifications or amendments to existing contracts, arrangements, or other similar transactions need to be reported on an annual basis. If there have been no new contracts, arrangements, or other similar transactions, the public utility may file a statement to that effect.

31.3(4) If a new affiliate is created, if an existing affiliate is dissolved or merged, if a contractual arrangement or other similar transactional relationship between the public utility and an affiliate is created, or if a contractual arrangement or other similar transactional relationship is terminated between the public utility and an affiliate, the public utility shall notify the board in writing within 60 days of the date of the event. This subrule does not apply if a proposal for reorganization pursuant to 199—Chapter 32 is to be filed with the board or the affiliate does not conduct business with the public utility.

199—31.4(476) Confidential treatment. When a public utility files contracts, arrangements, or other similar transactions with the board, all such contracts or arrangements for which confidential treatment is sought are to be clearly marked and are subject to 199—Chapter 1.

199—31.5(476) Comparable information. For the purpose of satisfying the filing requirements of this chapter, the public utility may request approval to file alternative but comparable information that the public utility files with other state or federal regulatory agencies. If the proposal is approved by the board, the public utility may file the information as a partial substitute for, or in lieu of, the information stipulated in rule 199—31.3(476) and the board may provide that the public utility continue to file the approved alternative information in future filings. The public utility is to file the same information, whether it is the alternative information filed with other agencies or the information stipulated in rule 199—31.3(476), for at least five consecutive years. Proposals to file alternative information may be filed by the public utility on or before December 1 of the year preceding the year for which approval is sought.

199—31.6(476) Standards for costing service transfers between regulated operations and nonregulated affiliates.

31.6(1) *Nonregulated affiliate provides service to a regulated affiliate.* The service shall be priced to the regulated affiliate's operations at the price charged to nonaffiliates. If no such price is available, the service may be priced at the lower of fully distributed cost, the lowest price actually charged to other affiliates, or a market price of comparable services. If a market price of comparable services is not reasonably determinable, the service may be priced at the lower of fully distributed cost or the lowest price actually charged to other affiliates. Under no circumstances is the service to be priced to a regulated affiliate's operations at a higher cost than what the regulated affiliate actually paid the unregulated affiliate for the service.

31.6(2) *Service provided by the utility to a nonregulated affiliate.* Utility service shall be provided at the tariffed price. If it is not a tariffed service, the service is to be recorded at fully distributed cost.

199—31.7(476) Standards for costing asset transfers between regulated operations and nonregulated affiliates valued at less than \$2 million.

31.7(1) *Asset of a nonregulated affiliate transferred to a regulated affiliate.* The asset transfer is to be recorded at the lesser of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets. Under no circumstances is the asset to be recorded at a cost higher than what the regulated affiliate actually paid for the asset.

31.7(2) *Asset of a regulated affiliate transferred to a nonregulated affiliate.* The asset transfer to the nonregulated affiliate is to be recorded at the greater of net book value, a price actually charged to other affiliates or nonaffiliates, or the market price of comparable assets.

These rules are intended to implement Iowa Code sections 476.73 and 476.74.

ARC 7069C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 52, “Marketing,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in 2023 Iowa Acts, House File 700.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 700.

Purpose and Summary

The proposed rulemaking implements 2023 Iowa Acts, House File 700, by creating rules for the Dairy Innovation Program.

The proposed rules create definitions, provide eligibility criteria, and establish the application and review process as well as criteria to score applications. The proposed rules also establish grant agreement terms and provide an explanation for how grant funds will be disbursed to awardees.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on October 13, 2023. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.gov

Public Hearing

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

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

October 13, 2023
1 p.m.

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

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Reserve rules **21—52.25** to **21—52.40**.

ITEM 2. Adopt the following **new** division heading after rule **21—52.40**:

DAIRY INNOVATION PROGRAM

ITEM 3. Adopt the following **new** rules 21—52.41(159) to 21—52.47(159):

21—52.41(159) Definitions. For purposes of this division:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

“*Applicant*” means a person applying for assistance under the program. This includes but is not limited to an individual or business.

“*Grant*” means an award of financial assistance with the expectation that, with the fulfillment of the conditions, terms, and obligations of the agreement with the department for the project, repayment of funds is not required by the recipient.

“*Project*” means an activity or activities undertaken by the applicant to be carried out to meet the goals of the program.

“*Recipient*” means a person who has applied for and been chosen to receive financial assistance through the program.

21—52.42(159) Eligibility.

52.42(1) Eligible businesses. The department has the sole authority in determining the eligibility of an applicant for participation in the program. To be eligible for a grant under the dairy innovation program, an applicant shall meet all the eligibility requirements in Iowa Code section 159.31A(4) as enacted by 2023 Iowa Acts, House File 700, as well as the following:

a. The business must currently be permitted by the department or actively working with the department to obtain a permit.

b. The business must not have been subject to any department license or permit suspension or revocation within the last five years from the date of the application submission.

52.42(2) Eligible projects. To be eligible for a grant under the program, a project shall meet the requirements of Iowa Code section 159.31A as enacted by 2023 Iowa Acts, House File 700, as well as the following requirements:

a. Not be in progress until a grant is awarded.

b. Be completed in 12 months or less.

c. Be conducted in Iowa.

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

52.42(3) Ineligible expenses. The following items are not eligible expenses under the program:

- a. Expenses incurred prior to the awarding of a grant.
- b. Start-up costs including but not limited to inventory, license, or permit fees or working capital.
- c. Advertising, public relations, or entertainment costs.
- d. Employee benefits and wages.
- e. Paying off existing debt, related collection costs, or legal costs.
- f. Paying off existing fines, penalties, or settlements from failure to comply with any applicable law or regulations.

52.42(4) Grant amount and terms. The maximum amount of financial assistance awarded to a recipient under the program shall not exceed \$100,000.

21—52.43(159) Application and review process.

52.43(1) The department will establish a uniform application process and make information about applying available on its website.

52.43(2) Applications will only be accepted during the times established by the department. Late submissions will not be accepted.

52.43(3) An applicant must demonstrate the ability to provide matching support for the project on a one-to-one basis. The matching financial support shall be from private sources.

52.43(4) A scoring committee established by the department will review and evaluate applications based on the scoring criteria described in rule 21—52.44(159).

52.43(5) Projects for processing and projects for labor-reducing technology will be scored independently of each other.

52.43(6) The department, after considering the recommendations made by the scoring committee, will determine which applications to fund and how much should be awarded to each applicant. The department has final decision-making authority on requests for financial assistance for the program. The department will notify the applicant in writing of the approval or denial.

21—52.44(159) Scoring criteria.

52.44(1) Application scoring. A scoring committee will be established by the department to evaluate applications with a score of 0 to 100. Projects receiving a score below 60 will not be considered.

52.44(2) Scoring criteria. The department will use the following criteria to evaluate each application:

- a. The extent to which the project addresses the goals of the program to create new jobs, expand opportunities and provide greater flexibility or convenience for local small-scale farmers, and reduce labor associated with the on-farm production and storage of milk: 25 points.
- b. The sufficiency of the project's budget and financing structure: 20 points.
- c. The sufficiency of the project's proposed work plan and timeline including a detailed description of the steps the applicant will take to complete the project as well as estimated dates: 20 points.
- d. The ability of the applicant to demonstrate sound business management, financial aptitude, and stability: 15 points.
- e. The extent to which measurable objectives can be determined that demonstrate the proposed project's benefit to the agriculture community: 10 points.
- f. The completeness of the application information and sufficiency of detail used to describe the project in the application: 10 points.

21—52.45(159) Grant agreement.

52.45(1) Agreement terms. An agreement shall not be for more than one year. The department, in its sole discretion, may grant an extension, not to exceed three months, if the department determines extenuating circumstances are likely to delay or have delayed the completion of the project.

52.45(2) Termination of agreement. An agreement shall be terminated if the recipient no longer meets the qualifications for an eligible business. Additionally, an agreement may be terminated if the recipient, in the sole opinion of the department, does any of the following:

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

- a. Substantially violates any applicable statute or rule;
- b. Violates any agreement between the department and the recipient; or
- c. Acts in a manner that may damage the reputation of the program.

21—52.46(159) Disbursement of funds. The department will disburse funds for a project only after an agreement has been executed between the recipient and the department and all the applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the agreement will be on a reimbursement basis for expenses incurred by the applicant and will be disbursed upon final completion of a project.

21—52.47(159) Authority of department. The department may enter upon the premises of any recipient to examine any records or materials necessary to ensure compliance with these rules.

ITEM 4. Adopt the following new division implementation sentence after rule **25—52.47(159)**:
This division is intended to implement 2023 Iowa Acts, House File 700.

ARC 7072C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Proposing rulemaking related to weights and measures and providing an opportunity for public comment

The Agriculture and Land Stewardship Department hereby proposes to rescind Chapter 85, “Weights and Measures,” Iowa Administrative Code, and adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 214.10, 214A.1A, 215.24 and 215A.3 and 2023 Iowa Acts, House File 666.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 214, 214A, 215 and 215A and 2023 Iowa Acts, House File 666.

Purpose and Summary

This proposed rulemaking updates the State’s weights and measures rules by removing outdated or redundant provisions that are covered by statute. The rulemaking also simplifies and restructures the chapter to enhance readability for the public.

Additionally, the proposed rulemaking implements 2023 Iowa Acts, House File 666, by adopting rules related to testing the accuracy and correctness of electric vehicle charging stations to assist in the proper collection of Road Use Tax Fund moneys. The standards being utilized are included in the 2023 version of the National Institute of Standards and Technology Handbook 44.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on October 13, 2023. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.gov

Public Hearing

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

October 13, 2023	Second Floor Conference Room
2 p.m.	Wallace State Office Building
	Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 21—Chapter 85 and adopt the following **new** chapter in lieu thereof:

CHAPTER 85
WEIGHTS AND MEASURES

21—85.1(215) Definitions.

“*Automatic grain scale*” means a scale constructed with a mechanical device so that a stream of grain flowing into its hopper can be checked at any given weight, long enough to register said weight and dump the load. The garner above the scale should have at least three times the capacity of the scale to ensure a steady flow at all times.

1. On automatic-indicating scales. On a particular scale, the maintenance tolerances applied shall be not smaller than one-fourth the value of the minimum reading-face graduation; the acceptance tolerances applied shall be not smaller than one-eighth the value of the minimum reading-face graduation.

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

2. However, on a prepacking scale (D.11, D.12) having graduated intervals of less than one-half ounce, the maintenance tolerances applied shall not be smaller than one-eighth ounce and the acceptance tolerances applied shall be not smaller than one-sixteenth ounce.

“*Counter scale*” means a scale of any type that is especially adopted on account of its compactness, light weight, moderate capacity and arrangements of parts for use upon a counter, bench, or table.

“*Motor truck scale*” means a scale built by the manufacturer for the use of weighing commodities transported by motor truck.

This rule is intended to implement Iowa Code section 215.18.

21—85.2(189,215) Weights and measures.

85.2(1) The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology (NIST) and published in NIST Handbook 44 amended or revised as of January 1, 2020, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

85.2(2) The NIST Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, Handbook 133, Checking the Net Contents of Packaged Goods, Type Evaluation, and all supplements to these handbooks, as published by the NIST amended or revised as of January 1, 2020, are adopted in their entirety by reference except as modified by state statutes, or by rules adopted and published by the department.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

21—85.3 to 85.9 Reserved.

WEIGHTS AND SCALES

21—85.10(215) Scale design. A scale shall be of such materials and construction that (1) it will support a load of its full nominal capacity without developing undue stresses or deflections, (2) it may reasonably be expected to withstand normal usage without undue impairment of accuracy or the correct functioning of parts, and (3) it will be reasonably permanent in adjustment.

85.10(1) Stability of indications. A scale shall be capable of repeating with reasonable precision its indications and recorded representations. This requirement shall be met irrespective of repeated manipulation of any scale element in a manner duplicating normal usage, including:

- a. Displacement of the indicating elements to the full extent allowed by the construction of the scale,
- b. Repeated operation of a locking device, and
- c. Repeated application or removal of unit weights.

85.10(2) Interchange or reversal of parts. Parts that may readily be interchanged or reversed in the course of normal usage shall be so constructed that their interchange or reversal will not materially affect the zero-load balance or the performance of the scale. Parts which may be interchanged or reversed in normal field assembly shall be:

- a. So constructed that their interchange or reversal will not affect the performance of the scale, or
- b. So marked as to show their proper positions.

85.10(3) Pivots. Pivots shall be made of hardened steel, except that agate may be used in prescription scales, and shall be firmly secured in position. Pivot knife-edges shall be sharp and straight, and cone-pivot points shall be sharp.

85.10(4) Position of equipment, primary or recording indicating elements (electronic weighing elements). A device equipped with a primary or recording element shall be so positioned that its indications may be accurately read and the weighing operations may be observed from some reasonable “customer” position; the permissible distance between the equipment and a reasonable customer

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

position shall be determined in each case upon the basis of individual circumstances, particularly the size and character of the indicating element; a window large enough should be placed in the building and the installation should be so arranged as to afford an unobstructed view of the platform.

This rule is intended to implement Iowa Code section 215.18.

21—85.11(215) Scale pit.

85.11(1) In the construction of a scale pit, walls must be of reinforced concrete. A slab floor must be installed in the pit. The floor must be at least 12 inches thick with a minimum of grade 40 reinforcement rod running into all piers and sidewalls, installed according to the manufacturer's specifications. There shall be an approach at each end of the scale of not less than ten feet, and said approach shall be of reinforced concrete 12 inches thick on a level with the scale deck. A slope of a one-inch drop across the ten-foot span may be allowed for drainage.

85.11(2) Electronic scales shall have a vertical clearance of not less than four feet from the floor line to the bottom of the I-beam of the scale bridge, thus providing adequate access for inspection and maintenance. The load-bearing supports of all scales installed in a fixed location shall be constructed to ensure the strength, rigidity and permanence required for proper scale performance.

This rule is intended to implement Iowa Code section 215.15.

21—85.12(215) Pitless scales. A person may install pitless electronic, self-contained and vehicle scales in a permanent location provided the following conditions for the construction are incorporated:

85.12(1) Scale installation applications and permits must be submitted to the department the same as the pit scale installation, with specifications being furnished by the manufacturer, for approval.

85.12(2) Piers shall extend below the frost line or be set on solid bedrock, and they shall be of reinforced concrete.

85.12(3) A reinforced concrete slab the width of the scale, at least six inches thick, shall run full length under the scale. Slab and piers shall be tied together with reinforcement rod, with a minimum clearance of eight inches between floor and weighbridge.

85.12(4) Reinforced Portland cement approaches at least 12 inches thick, ten feet long and as wide as the scale shall be provided on each end in a level plane with the scale platform.

85.12(5) A scale shall be installed at an elevation to ensure adequate drainage away from the scale.

85.12(6) A scale platform and indicator shall be protected from wind and other elements that could cause inaccurate operation of the scale. Protection modifications that attach to or touch the scale or parts attached to the scale shall be approved by the department prior to installation.

This rule is intended to implement Iowa Code section 215.14.

21—85.13(215) Master weights. Master scale test weights used for checking scales after being overhauled must be sealed as to their accuracy once every two years. Said weights after being sealed are to be used only as master test weights.

This rule is intended to implement Iowa Code section 215.17.

21—85.14(215) Provision for sealing coin slot. Provision shall be made on a coin-operated scale for applying a lead and wire seal in such a way that insertion of a coin in the coin slot will be prevented.

This rule is intended to implement Iowa Code section 215.18.

21—85.15(215) Lengthening of platforms. The length of the platform of a vehicle scale shall not be increased beyond the manufacturer's designed dimension except when the modification has been approved by a competent scale-engineering authority, preferably that of the engineering department of the manufacturer of the scale, and by the weights and measures bureau.

This rule is intended to implement Iowa Code section 215.18.

21—85.16(215) Accessibility for testing purposes. A large capacity scale shall be so located, or such facilities for normal access thereto shall be provided, that the test weights of the weights and measures official, in the denominations customarily provided, and in the amount deemed necessary by the weights

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

and measures official for the proper testing of the scale, may readily be brought to the scale by the customary means; otherwise, it shall be the responsibility of the scale owner or operator to supply such special facilities, including necessary labor, as may be required to transport the test weights to and from the scale, for testing purposes, as required by the weights and measures official. If the design, construction or location of a large-capacity scale is such as to require a testing procedure involving special accessories or an abnormal amount of handling of test weights, such accessories or needed assistance in the form of labor shall be supplied by the owner or operator of the scale, as required by the weights and measures official.

This rule is intended to implement Iowa Code sections 215.1A and 215.10.

21—85.17(215) Wheel-load weighers and axle-load scales. The requirements for wheel-load weighers and axle-load scales apply only to such scales in official use for the enforcement of traffic in highway laws or for the collection of statistical information by government agencies.

This rule is intended to implement Iowa Code section 215.18.

21—85.18 and 85.19 Reserved.

MEASURES

21—85.20(214A,208A) Motor fuel and antifreeze tests and standards.

85.20(1) In the interest of uniformity, the tests and standards for motor fuel, including but not limited to renewable fuels such as ethanol blended gasoline, biodiesel, and biodiesel blended fuel, and components such as an oxygenate, raffinate natural gasoline and motor vehicle antifreeze shall be those established by ASTM International in effect on December 1, 2022, with the following exceptions:

- a. Biodiesel blended fuel classified as higher than B-20 but less than B-99.
- b. Tests and standards that are otherwise required by statute.

85.20(2) The components used to produce biodiesel blended fuel classified as higher than B-20 but less than B-99 must meet the following department standards:

- a. The biodiesel must meet ASTM International specification D6751.
- b. The diesel must meet ASTM International specification D975.

85.20(3) Diesel fuel that does not comply with ASTM International specifications may be blended with biodiesel, additives, or other diesel fuel so that the finished blended product does meet the applicable specifications.

This rule is intended to implement Iowa Code sections 208A.5, 208A.6, 214A.2, and 215.18.

21—85.21(215) Tolerances on petroleum products measuring devices. All pumps or meters at filling stations may have a tolerance of not over five cubic inches per five gallons, minus or plus. All pumps or measuring devices of a large capacity shall have a maintenance tolerance of 50 cubic inches, minus or plus, on a 50-gallon test. An additional one-half cubic inch tolerance shall be added per gallon over and above a 50-gallon test. Acceptance tolerances on large capacity pumps and measuring devices shall be one-half the maintenance tolerances.

This rule is intended to implement Iowa Code sections 214.2 and 215.20.

21—85.22(215) Meter adjustments and tagging. If a meter is found to be incorrect and also capable of further adjustment, said meter shall be adjusted, rechecked and sealed. If a seal is broken for any cause other than by a state inspector, the department shall be promptly notified of same.

85.22(1) Companies specializing in testing and repairing gasoline and fuel oil dispensing pumps or meters shall be registered with the weights and measures bureau upon meeting requirements set forth by the department.

85.22(2) In accordance with the NIST Handbook 44, accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.

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

85.22(3) If a meter is found to be inaccurate, an inspection report shall be left by the inspector requiring repair. After the meter has been repaired and placed in service, the licensee shall notify the weights and measures bureau.

85.22(4) If the meter has not been repaired within 30 days, the meter may be condemned and a red condemned tag may be attached to the meter.

This rule is intended to implement Iowa Code sections 215.5, 215.12 and 215.20.

21—85.23(215) Servicer's license fee. The fee for a servicer's license shall be \$10.

This rule is intended to implement Iowa Code section 215.23.

21—85.24(215) Recording elements. All weighing or measuring devices shall be provided with appropriate recording or indicating elements, which shall be definite, accurate and easily read under any conditions of normal operation of the device. Graduations and a suitable indicator shall be provided in connection with indications and recorded representations designed to advance continuously. Graduations shall not be required in connection with indications or recorded representations designed to advance intermittently or with indications or recorded representations of the selector type.

This rule is intended to implement Iowa Code section 215.18.

21—85.25(215) Air eliminator. All gasoline or oil metering devices shall be equipped with an effective air eliminator to prevent passage of air or vapor through the meter. The vent from such eliminator shall not be closed or obstructed.

This rule is intended to implement Iowa Code section 215.18.

21—85.26(215) Delivery outlets. No means shall be provided by which any measured liquid can be diverted from the measuring chamber of the meter or the discharge line therefrom. However, two or more delivery outlets may be installed, if automatic means is provided to ensure that liquid can flow from only one such outlet at one time and the direction of flow for which the mechanism may be set at any time is definitely and conspicuously indicated.

This rule is intended to implement Iowa Code section 215.18.

21—85.27(215) LP-gas delivery. In the delivery of LP-gas by commercial bulk trucks (bobtail) across state lines, it shall be mandatory for all trucks delivering products in Iowa to be equipped with a meter that has been licensed by the state of Iowa and carries the seal of an accredited meter service and proving company.

This rule is intended to implement Iowa Code section 215.20.

21—85.28(215) LP-gas meter registration. The location of all LP-gas liquid meters in retail trade shall be listed, by the owner, with the department. Upon putting a new or used meter into service in the state of Iowa, the user shall report to the weights and measures bureau.

This rule is intended to implement Iowa Code section 215.20.

21—85.29(214A,215) Advertisement of the price of liquid petroleum products for retail use.

85.29(1) Nothing in this rule shall be deemed to require that the price per gallon or liter or any grade or kind of liquid petroleum product sold on the station premises be displayed or advertised except on the liquid petroleum metering distribution pumps.

85.29(2) Petroleum product retailers, if they elect to advertise the unit price of their petroleum products at or near the curb, storefront or billboard, shall display the price per gallon or liter. The advertised price shall equal the computer price settings shown on the metering pump or shall be displayed in a manner clear to the purchaser for discounts offered for cash payment. Product names displayed shall match the product names on the retail motor fuel dispensers and all consumer receipts.

85.29(3) Notwithstanding the provisions of subrule 85.29(2), cash only prices may be posted by the petroleum marketer on the following basis:

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

a. Cash only prices must be disclosed on the posted sign as “cash only” or similar unequivocal wording in lettering 3” high and ¼” in stroke when the whole number price being shown is 36” or less in height; or in lettering at least 6” high and ½” in stroke when the whole number price being shown is more than 36” in height.

b. Cash prices posted or advertised must be available to all customers, regardless of type of service (e.g., full service or self-service); or grade of product (e.g., regular, unleaded, gasohol and diesel).

c. Cash and credit prices or discounts must be prominently displayed on the dispenser.

d. A chart showing applicable cash discounts expressed in terms of both the computed and posted price shall be available to the customer on the service station premises.

85.29(4) On all outside display signs, the whole number shall not be less than 6” in height and not less than 3/8” in stroke, and any fraction shall be at least one-third of the size of the whole number in both height and width.

85.29(5) The price must be complete, including taxes, without any missing numerals or fractions in the price.

85.29(6) Price advertising signs shall identify the type of product (e.g., regular, unleaded, gasohol and diesel), in lettering at least 3” high and ¼” in stroke when the whole number price being shown is 36” or less in height, or in lettering at least 6” high and ½” in stroke when the whole number price being shown is more than 36” in height.

85.29(7) A price advertising sign shall display if the price is in liters, and may display if the price is in gallons, the unit measure in letters of 3” minimum.

85.29(8) Directional or informational signs for customer location of the type of service or product advertised shall be clearly and prominently displayed on the station premises in a manner not misleading to the public.

85.29(9) The advertising of other commodities or services offered for sale by petroleum retailers in such a way as to mislead the public with regard to petroleum product pricing shall be prohibited.

85.29(10) Ethanol blended gasoline classified with an octane rating of 87 or higher may be labeled or advertised as “super” or “plus.”

85.29(11) The octane rating of fuel offered for sale shall be posted on the pump in a conspicuous place. The octane rating shall be posted for registered fuels. No octane rating shall be posted on the pump for ethanol blended gasoline classified as higher than E-15. The minimum octane rating for gasoline offered for sale by a retail dealer is 87 for regular grade gasoline and 91 for premium grade gasoline.

85.29(12) A wholesale dealer selling ethanol blended gasoline or biodiesel fuel to a purchaser shall provide the purchaser with a statement indicating the actual volume percentage present. The statement may be on the sales slip provided or a similar document such as a bill of lading or invoice. This statement shall include the specific amount of biodiesel, even if the amount of renewable fuel is 5 percent or less.

This rule is intended to implement Iowa Code sections 214A.3, 214A.16 and 215.18.

21—85.30(214A,215) Gallonage determination for retail sales. The method of determining gallonage on gasoline or diesel motor vehicle fuel for retail sale shall be on a gross volume basis. Temperature correction or any deliberate methods of heating shall be prohibited.

This rule is intended to implement Iowa Code sections 214A.3 and 215.18.

21—85.31(214,214A,215) Blender pumps. Motor fuel blender pumps or blender pumps installed or modified after November 1, 2008, that sell both ethanol blended gasoline classified as higher than E-15 and gasoline need to have at least two hoses per pump to separate registered gasoline fuels from flex fuels.

This rule is intended to implement Iowa Code section 214A.2.

21—85.32 to 85.39 Reserved.

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MOISTURE-MEASURING DEVICES

21—85.40(215A) Testing devices. All moisture-measuring devices will be tested against a measuring device that will be furnished by the department, and all moisture-measuring devices will be inspected to determine whether they are in proper operational condition and supplied with the proper accessories.

This rule is intended to implement Iowa Code section 215A.2.

21—85.41(215A) Rejecting devices. Moisture-measuring devices may be rejected for any of the following reasons:

85.41(1) The moisture-measuring device tested is found to be out of tolerance with the measuring device used by the department by one of the inspectors so assigned by more than 0.7 percent on grain moisture content.

85.41(2) The person does not have available the latest charts for the type of device being used.

85.41(3) The person does not have available the proper scale or scales and thermometers for use with the type of device being used.

85.41(4) The moisture-measuring device is not free from excessive dirt, debris, or cracked glass or is not kept in good operational condition at all times.

This rule is intended to implement Iowa Code section 215A.6.

21—85.42(215,215A) Specifications and standards for moisture-measuring devices. The specifications and tolerances for moisture-measuring devices are those established by the United States Department of Agriculture as of November 15, 1971, in chapter XII of GR instruction 916-6, equipment manual, used by the Federal Grain Inspection Service; and those recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44 as of July 1, 1985.

This rule is intended to implement Iowa Code section 215A.3.

21—85.43(215) Testing high-moisture grain. When testing high-moisture grain, the operator of a moisture-measuring device shall use the following procedure: Test each sample six times, adding the six measurements thus obtained and dividing the total by six to obtain an average, which shall be deemed to be the moisture content of such sample.

This rule is intended to implement Iowa Code section 215A.7.

21—85.44 to 85.49 Reserved.

TESTING AND ACCURACY

21—85.50(452A) Electric vehicle charging stations.

85.50(1) The department will inspect licensed electric fuel dealers and users for accuracy and correctness from a list provided by the department of revenue.

85.50(2) The specifications and tolerances for electric fuel and charging stations shall be those as published in the NIST Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, amended or revised as of January 1, 2023, in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the department.

85.50(3) A charging station and each connector installed on a charging station will be tested for accuracy and correctness utilizing a measuring device that will be furnished by the department and tested against the electric fuel meter serving that charging station.

85.50(4) For purposes of this rule, “connector” means the portion of the charging station that directly interfaces, connects or plugs into an electric vehicle through which electric fuel is supplied to an electric vehicle.

This rule is intended to implement Iowa Code section 452A.21.

ARC 7070C**RACING AND GAMING COMMISSION[491]****Notice of Intended Action****Proposing rulemaking related to proceedings, wagering, and fantasy sports contests and providing an opportunity for public comment**

The Racing and Gaming Commission hereby proposes to amend Chapter 4, “Contested Cases and Other Proceedings,” Chapter 13, “Sports Wagering,” and Chapter 14, “Fantasy Sports Contests,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99D.7, 99E.3 and 99F.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 99D, 99E and 99F.

Purpose and Summary

Items 1 through 5 and 7 clarify the administrator’s authority in proceedings.

Item 6 clarifies the types of licensees to which the rules are applicable.

Item 8 enhances licensee requirements for messaging to applicants/customers with regard to underage wagering and account sharing.

Item 9 enhances licensee requirements with regard to identifying and preventing wagering by prohibited persons and enhances reporting requirements by the licensee with regard to account sharing.

Items 10 and 15 enhance licensee requirements for account verification at registration.

Item 11 enhances responsibilities of licensees to detect potential fraudulent or suspicious activity.

Item 12 enhances responsibilities of licensees to verify account funding sources.

Item 13 fixes a cross-reference issue caused by restructuring in Item 10.

Item 14 adds a requirement of annual testing for geolocation system auditing.

Item 16 enhances licensee requirements with regard to identifying and preventing wagering by prohibited persons.

Item 17 enhances licensee requirements for messaging to applicants/customers with regard to underage wagering and account sharing and enhances responsibilities of licensees to verify account funding sources.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Commission no later than 4:30 p.m. on October 10, 2023. Comments should be directed to:

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Barb Blake
Iowa Racing and Gaming Commission
1300 Des Moines Street
Des Moines, Iowa 50309
Email: barb.blake@iowa.gov

Public Hearing

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

October 10, 2023
9 a.m.

Commission Office, Suite 100
1300 Des Moines Street
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Amend rule 491—4.1(17A) as follows:

491—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the racing and gaming commission. The chapter shall also apply to gaming boards' and board of stewards' proceedings and gaming representatives' or administrator's designees' actions.

ITEM 2. Amend rule 491—4.4(99D,99E,99F), catchwords, as follows:

491—4.4(99D,99E,99F) Gaming representatives and administrator's designees—licensing and regulatory duties.

ITEM 3. Amend paragraphs **4.4(2)“a”** and **“b”** as follows:

a. A ~~gaming representative shall make a~~ referral to the gaming board shall be in writing. The referral shall make reference to rules or statutory provisions at issue and provide a factual basis supporting the violation.

b. The gaming representative or the administrator's designee making the referral to the gaming board, or a designee of the gaming board, shall appear before the gaming board at the hearing to provide any information requested by the board.

ITEM 4. Amend subrule 4.4(7) as follows:

4.4(7) The gaming representative or the administrator's designee shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

ITEM 5. Amend subrule 4.5(3) as follows:

4.5(3) The gaming board, upon receipt of a referral, may review the referral prior to the hearing. The gaming board may return a referral to the initiating gaming representative or the administrator's designee on its own motion prior to hearing if the information provided appears insufficient to establish a violation.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 6. Amend subrule 4.5(9) as follows:

4.5(9) The gaming board has the power to interpret the rules and to decide all questions not specifically covered by them. The board has the power to determine all questions arising with reference to the conduct of gaming, sports wagering and fantasy sports contests, and the authority to decide any question or dispute relating to racing, ~~or gaming, sports wagering or fantasy sports contests~~ in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

ITEM 7. Amend subrule 4.5(13) as follows:

4.5(13) Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with a gaming representative or the administrator's designee. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the gaming board. Stipulations are considered final agency action and cannot be appealed.

ITEM 8. Amend subrule 13.2(4) as follows:

13.2(4) *Public notice.*

a. The public shall have access to the sports wagering rules, available wagers, odds or payouts, the payout period, and the source of the information used to determine the outcome of a sports wager. All licensees and advance deposit sports wagering operators shall require participants to follow the rules of play. The sports wagering rules shall be:

- ~~a.~~ (1) Displayed in the licensee's sports wagering area.
- ~~b.~~ (2) Posted on the internet site or mobile application used to conduct advance deposit sports wagering.
- ~~c.~~ (3) Included in any terms and conditions disclosure statements of the advance deposit sports wagering system.

b. Advance deposit sports wagering operators shall prominently display the following information on any interface that accepts wagers:

- (1) Account sharing is prohibited. Each account holder must not share usernames or passwords with other people. Each wager made on an account shall be made by only the registered account holder and shall not be made on behalf of any other individual.
- (2) Persons under the age of 21 are prohibited from wagering. No person shall attempt to circumvent account setup procedures designed to prohibit wagering from individuals under the age of 21. Registered account holders shall not attempt to assist in the placement of a wager by any individual under the age of 21.
- (3) Any other disclosures, as required by the administrator.

ITEM 9. Amend subrule 13.2(7) as follows:

13.2(7) *Internal controls.* Licensees and advance deposit sports wagering operators shall submit a description of internal controls to the administrator. The submission shall be made at least 30 days before sports operations are to commence unless otherwise approved by the administrator. All internal controls must be approved by the administrator prior to commencement of sports operations. The operator shall submit to the administrator any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by the administrator. It shall be the affirmative responsibility and continuing duty of each licensee and advance deposit sports wagering operator and their employees to follow and comply with all internal controls. The submission shall include controls and reasonable methods that provide for the following:

a. To prohibit wagering by coaches, athletic trainers, officials, players, or other individuals who participate and persons employed in a position with direct involvement with coaches, athletic trainers, officials, players or other individuals who participate in an authorized sporting event in which wagers may be accepted. Licensees shall demonstrate the capability, subject to review and approval by the

RACING AND GAMING COMMISSION[491](cont'd)

administrator, to prevent prohibited persons from wagering on events on which they are not allowed to wager by implementing one of the following:

(1) Organize and maintain a list of prohibited persons.

(2) Participate in a third-party association or group that organizes and maintains a list of prohibited persons.

~~b. To prohibit wagering by persons who are employed in a position with direct involvement with coaches, players, athletic trainers, officials, athletes or participants in an authorized sporting event in which wagers may be accepted~~ accounts opened by individuals on behalf of persons under the age of 21.

~~c. No change.~~

~~d. To promptly report to the commission, in a format approved by the administrator, any abnormal wagering activity or patterns that may indicate a concern about the integrity of an authorized sporting event or events, and any other conduct with the potential to corrupt a wagering outcome of an authorized sporting event for purposes of financial gain, including but not limited to match fixing, and suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, account sharing, or use of false identification. Integrity-monitoring procedures shall also provide for the sharing of information with other licensees, other governing authorities, and accredited sports governing entities by participating in an integrity-monitoring association or group or by another method as approved by the administrator.~~

~~e. to i. No change.~~

ITEM 10. Amend subrule 13.5(2) as follows:

13.5(2) Account registration. A person must have an established account in order to place advance deposit sports wagers. The process for establishing an account is subject to the administrator's approval. An account may be established through on-site registration under procedures previously approved by the administrator, or through remote registration. To establish an account, an application for an account shall be signed or otherwise authorized in a manner approved by the administrator and shall include the applicant's full legal name, principal residential address, date of birth, social security number, and any other information required by the administrator. The account registration process shall also include:

~~a. No change.~~

~~b. Player verification of legal name, physical address, and age to correctly identify account holders.~~ An applicant verification process that includes an exact match of the following:

(1) Date of birth, including month, date and year of birth.

(2) Social security number, including matching the full number or matching the last four digits.

(3) Last name.

~~c. An applicant verification process that permits a flexible match by allowing the following:~~

(1) First name may include nicknames and abbreviations.

(2) Address may include abbreviations.

~~d. Authentication of identification by:~~

(1) Answering knowledge-based questions based on the applicant's public or private data; or

(2) Verifying that device ID and phone number match the applicant's publicly known data; or

(3) Comparing of valid government-issued ID to applicant's picture taken at time of account registration; or

(4) Another method as approved by the administrator.

~~e. e.~~ Verification that the ~~player~~ applicant is not on the statewide self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

~~f. f.~~ Availability and acceptance of a set of terms and conditions that is also readily accessible to the player before and after registration and noticed when updated. Notices shall include, at a minimum, the following:

(1) to (5) No change.

~~g. g.~~ Availability and acceptance of a privacy policy that is also readily accessible to the player before and after registration and noticed when updated and that includes, at a minimum, the following:

(1) to (4) No change.

RACING AND GAMING COMMISSION[491](cont'd)

~~f. h.~~ If an advance deposit sports wagering operator has an agreement with more than one licensee, the advance deposit sports wagering operator shall submit an agreement to the administrator that indicates the manner in which customer net receipts shall be assigned with its licensee partners. The agreement shall include all partnering licensees and their respective qualified sponsoring organizations, and the net receipts shall be allocated using one of the following methods:

(1) to (4) No change.

The agreement shall be made available for public inspection.

ITEM 11. Amend paragraphs **13.5(3)“b”** and **“e”** as follows:

~~b.~~ Location detection procedures to reasonably detect and dynamically monitor the location of a player attempting to place any wager or perform other activity related to an Iowa authorized account. The advance deposit sports wagering operator or licensee shall utilize and monitor geolocation activity to detect potential fraudulent and suspicious activity, which shall be reported in accordance with paragraph 13.2(7)“d.” A player outside the permitted boundary attempting to make a wager shall be rejected, and the player shall be notified. The confidence radius shall be entirely located within the permitted boundary.

~~e.~~ Authentication for log in ~~through a username and password~~ using a multifactor authentication process or other secure alternative means as authorized by the commission. After successful log in, multifactor authentication will need to be performed at least every seven days for each unique device. Processes for retrieving lost usernames and passwords shall be available, secure, and clearly disclosed to the player. Players shall be allowed to change their passwords.

ITEM 12. Amend subrule 13.5(4) as follows:

13.5(4) Account funds. The following requirements apply to the maintenance of funds associated with a player account:

~~a.~~ Positive player identification, including any personal identification number (PIN) entry or other approved secure methods, must be completed before the withdrawal of any moneys held by the advance deposit sports wagering operator or licensee can be made. An advance deposit sports wagering account shall not be funded by an outside financial account of an individual under the age of 21.

~~b.~~ Prior to the deposit of any funds into or withdrawal of any funds out of the advance deposit sports wagering account using any outside financial account, the financial account shall be verified against the advance deposit sports wagering account to confirm that the player is an authorized user of the outside financial account.

~~c.~~ Account transactions that take place in person shall require positive player identification of the player associated with the advance deposit sports wagering account.

~~b. d.~~ Payments from an account are to be paid directly to an account with a financial institution in the name of the player or made payable to the player and forwarded to the player’s address or through another method that is not prohibited by state or federal law.

~~e. e.~~ An advance deposit sports wagering operator or licensee must have in place security or authorization procedures to ensure that only authorized adjustments can be made to player accounts and that changes are auditable.

~~d. f.~~ It shall not be possible to transfer funds between two player accounts.

~~e. g.~~ An advance deposit sports wagering operator or licensee shall provide a transaction log or account statement history at no cost to players upon request. Information provided shall include sufficient information to allow players to reconcile the statement or log against their own financial records.

~~f. h.~~ Requests for withdrawals shall not be unreasonably withheld and shall be completed in a timely manner.

~~g. i.~~ An advance deposit sports wagering operator or licensee shall provide a fee-free method for players to deposit or withdraw funds from player accounts.

~~h. j.~~ If the method of reserve utilized to comply with subrule 13.2(6) is not in the form of cash or cash equivalents segregated from operational funds, an advance deposit sports wagering operator or licensee shall segregate player account funds from operational funds.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 13. Amend subrule 13.5(7) as follows:

13.5(7) *Expiration or termination of an Iowa Code section 99F.7A operating agreement.* In the event an advance deposit sports wagering operating agreement between a licensee under Iowa Code section 99F.7A and another entity expires, terminates, or is no longer valid, notice of termination must be given to the commission and all customers affiliated with the licensee. A customer shall be given an opportunity to close an account. If the advance deposit sports wagering operator has an operating agreement with other licensees in the state of Iowa, the customer shall have the option to select another partner licensee to which their net receipts shall be assigned, or the customer's net receipts shall be assigned to any remaining partner licensees in accordance with an agreement submitted to the administrator pursuant to paragraph ~~13.5(2)"f."~~ 13.5(2)"h."

ITEM 14. Amend subrule 13.6(3) as follows:

13.6(3) *Annual testing.*

a. No change.

b. A geolocation system and integrity test shall be performed annually on the advance deposit wagering system.

(1) The testing organization must be independent of the licensee and the licensed geolocation vendor and shall be qualified by the administrator.

(2) The geolocation test shall be completed and the results submitted no later than March 31 of each year.

(3) Geolocation testing shall review existing licensee procedures for detecting and reporting fraudulent activity associated with any account activity detected by the geolocation system, and shall recommend updates to those procedures to align with any current or updated industry standard or commission guidance.

b. c. At the discretion of the administrator, additional assessments or specific testing criteria may be required.

ITEM 15. Amend subrule 14.7(2) as follows:

14.7(2) ~~Customer verification of legal name, physical address and age to correctly identify account holders.~~

a. A customer verification process shall include an exact match of the following:

(1) Date of birth, including month, date and year of birth.

(2) Social security number, including matching the full number or matching the last four digits.

(3) Last name.

b. A customer verification process shall permit a flexible match by allowing the following:

(1) First name may include nicknames and abbreviations.

(2) Address may include abbreviations.

c. A customer verification process shall authenticate identification by the following:

(1) Answering knowledge-based questions based on the applicant's public or private data; or

(2) Verifying that device ID and phone number match the applicant's publicly known data; or

(3) Comparing a valid government-issued ID to a photo of the applicant taken at the time of account registration; or

(4) Another method as approved by the administrator.

ITEM 16. Amend paragraph **14.8(1)"c"** as follows:

c. Restriction of entries from coaches, officials, athletes, contestants, or other individuals who participate in a game or contest that is the subject of an internet fantasy sports contest in which the outcome is determined, in whole or in part, by the accumulated statistical results of a team of individuals in the game or contest in which they participate. Licensees shall demonstrate the capability, subject to review and approval by the administrator, to prevent prohibited persons from participating in contests in which they are not allowed to participate by implementing one of the following:

(1) Organize and maintain a list of prohibited persons.

(2) Participate in a third-party association or group that organizes and maintains a list of prohibited persons.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 17. Amend subrule 14.8(5) as follows:

14.8(5) Operating requirements. A fantasy sports contest service provider shall ensure the following:

- a.* No change.
- b.* A player account shall not be funded by an outside financial account of an individual under the age of 21.
- c.* Prior to the deposit or withdrawal of any funds into or out of the player account using any outside financial account, the financial account shall be verified against the player account to confirm that the player is an authorized user of the outside financial account.
- b. d.* Player withdrawal of funds maintained in the player account shall be completed within five business days of the request unless the licensed fantasy sports contest service provider believes, in good faith, that the player engaged in fraud or other illegal activity pursuant to Iowa Code chapter 99D, 99E or 99F.
- e. e.* Procedures allow for a player to close an account and to access the player's history, including all fantasy sports contests in which the player participated.
- d. f.* Employees of the licensee are prohibited from participation in any fantasy sports contest offered by the licensee in which a cash prize is offered to the public. This includes prohibiting relatives living in the same household as such employees from competing in any fantasy sports contests offered by any licensee.
- e. g.* Prohibition of the sharing of confidential information that could affect fantasy sports contest play with third parties until the information is made publicly available.
- f. h.* Players are allowed to voluntarily self-exclude in compliance with Iowa Code section 99F.4(22), and a fantasy sports contest service provider shall follow all resolutions associated with the process.
- i.* Authentication for log in using a multifactor authentication process or other secure alternative means as authorized by the commission. After successful log in, multifactor authentication will need to be performed at least every seven days for each unique device. Processes for retrieving lost usernames and passwords shall be available, secure, and clearly disclosed to the player. Players shall be allowed to change their passwords.
- j.* Fantasy sports contest service providers shall prominently display the following information on any interface that accepts wagers:
 - (1) Account sharing is prohibited. Each account holder must not share usernames or passwords with other people. Each wager made on an account shall be made by only the registered account holder and shall not be made on behalf of any other individual.
 - (2) Persons under the age of 21 are prohibited from wagering. No person shall attempt to circumvent account setup procedures designed to prohibit wagering from individuals under the age of 21. Registered account holders shall not attempt to assist in the placement of a wager by any individual under the age of 21.
 - (3) Any other disclosures, as required by the administrator.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Roby Smith, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for September is 6.00%.

TREASURER OF STATE[781](cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective September 9, 2023, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum 1.70%
180-364 days	Minimum 1.50%
One year to 397 days	Minimum 1.75%
More than 397 days	Minimum 1.25%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Roby Smith, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 2022 — October 31, 2022	5.00%
November 1, 2022 — November 30, 2022	5.50%
December 1, 2022 — December 31, 2022	6.00%
January 1, 2023 — January 31, 2023	6.00%
February 1, 2023 — February 28, 2023	5.50%
March 1, 2023 — March 31, 2023	5.50%
April 1, 2023 — April 30, 2023	5.75%

USURY(cont'd)

May 1, 2023 — May 31, 2023	5.75%
June 1, 2023 — June 30, 2023	5.50%
July 1, 2023 — July 31, 2023	5.50%
August 1, 2023 — August 31, 2023	5.75%
September 1, 2023 — September 30, 2023	6.00%
October 1, 2023 — October 31, 2023	6.25%

ARC 7071C**WORKFORCE DEVELOPMENT DEPARTMENT[871]****Notice of Intended Action****Proposing rulemaking related to physician assistants
and providing an opportunity for public comment**

The Director of the Workforce Development Department hereby proposes to amend Chapter 24, “Claims and Benefits,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 90A and 96 as amended by 2022 Iowa Acts, House File 803.

Purpose and Summary

This proposed rulemaking aligns with the changes implemented in 2022 Iowa Acts, House File 803. In particular, the proposed amendments allow claimants to utilize advice from a physician assistant in addition to a physician. A public hearing was held on August 29, 2023, for the Regulatory Analysis for this chapter.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on October 10, 2023. Comments should be directed to:

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Jeffrey Koncsol
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: jeffrey.koncsol@iwd.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 rulemaking 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

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

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

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

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

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

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

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

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

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

ARC 7073C

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

Rulemaking related to retail alcohol licenses

The Alcoholic Beverages Division hereby amends Chapter 1, “Organization and Operation,” Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Chapter 5, “License and Permit Division,” and Chapter 8, “Transportation and Warehouse”; rescinds Chapter 17, “Class ‘E’ Liquor Control Licenses”; and amends Chapter 18, “Public Records and Fair Information Practices,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 123.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2022 Iowa Acts, Senate File 2374.

Purpose and Summary

The amendments to these rules, which are now administered by the Department of Revenue (Department), are in response to 2022 Iowa Acts, Senate File 2374. The legislation revised alcoholic beverage license and permit classifications and fees, removed the additional privilege of Sunday sales, removed the \$5,000 bond requirement for wine direct shipper permittees that are not native wineries, and removed the 100,000-proof gallon production cap on native distilleries.

Additionally, this rulemaking aligns with current agency practices by updating the methods of payment accepted by class “E” retail alcohol licensees for alcoholic liquor, and also by promoting the Department’s electronic licensing system for license transfers, bond endorsement, and wine gallonage tax report filing requirements. The amendments also eliminate outdated and redundant language instances, including where rule language is duplicative of statutory language. Other nonsubstantive clarifying amendments are also made.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 26, 2023, as **ARC 7049C**. Public hearings were held on August 15, 2023, at 2 p.m. and August 16, 2023, at 9 a.m., both in the Iowa Alcoholic Beverages Division Boardroom and via video/conference call. No one attended the public hearings. No public comments were received.

Based on an informal comment from an external stakeholder and further review, the following changes from the Notice have been made:

1. Revised subparagraph 4.2(4)“b”(8) by not adopting the change of inserting language referencing certificate of compliance holders since that is not a classification pertaining to 185—Chapter 4. Also, the word “permittee” has been stricken because Iowa Code section 123.39(1)“b”(3) only applies to retail alcohol licensees.

2. Revised rule 185—4.4(123) by not adopting the change of inserting language referencing certificate of compliance holders since that is not a classification pertaining to 185—Chapter 4.

3. Amended renumbered subrule 4.7(5) to remove the redundant language regarding miniature liquor bottles during the holiday season and also to provide clarity that mixed drinks or cocktails are allowed to be removed from a retail alcohol licensee’s licensed premises pursuant to Iowa Code section 123.49(2)“d”(3). Additionally, language was stricken regarding containers of beer being taken off of a licensed premises because the statutory authority under Iowa Code section 123.131 was repealed under 2022 Iowa Acts, Senate File 2374.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

4. Amended rule 185—4.11(123) to add the new special class “C” retail native wine license where applicable, which was created by 2023 Iowa Acts, House File 677. The rule implementation sentence was also amended to include Iowa Code section 123.31C as enacted by 2023 Iowa Acts, House File 677.

5. Amended rule 185—4.28(123) with a grammatical fix from singular “employee” to plural “employees.”

Adoption of Rulemaking

This rulemaking was adopted by the Administrator, with the approval of the Alcoholic Beverages Commission, on August 30, 2023.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on October 25, 2023.

The following rulemaking action is adopted:

ITEM 1. Amend rule 185—1.2(123,17A) as follows:

185—1.2(123,17A) Scope and rules. Promulgated under Iowa Code chapters 17A and 123, these rules shall apply to all matters before the alcoholic beverages division. No rule shall in any way relieve a certificate of compliance holder, manufacturer, ~~micro-distiller~~ native distiller, vintner, brewer, wholesaler, alcohol carrier, wine direct shipper, ~~liquor control~~ retail alcohol licensee or wine permittee or beer permittee, or an agent or employee thereof from any duty under the laws of this state.

This rule is intended to implement Iowa Code section 123.4.

ITEM 2. Amend **185—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 123.4, 123.5, 123.6, 123.9, 123.10, ~~123.21(10)~~, and 17A.3.

ITEM 3. Amend **185—Chapter 4**, title, as follows:

LIQUOR RETAIL ALCOHOL LICENSES—BEER PERMITS—WINE PERMITS

ITEM 4. Amend rule 185—4.1(123) as follows:

185—4.1(123) Definitions.

“Act” means the alcoholic beverage control Act.

“Administrator” means the chief administrative officer of the alcoholic beverages division or a designee.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

“Beverages” as used in Iowa Code section ~~123.3(18)~~ 123.3(21) does not include ~~alcoholic liquor, wine, or beer as defined in Iowa Code sections 123.3(4), 123.3(5), 123.3(7), 123.3(19), 123.3(28), 123.3(30), 123.3(43) and 123.3(47)~~ any alcoholic beverage as defined in Iowa Code section 123.3(4).

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

This rule is intended to implement Iowa Code sections 123.3 and 123.4.

ITEM 5. Amend subparagraph **4.2(4)“b”(8)** as follows:

(8) A pattern or practice by the licensee or permittee of failing to report any change in the ownership or interest of the business pursuant to Iowa Code section 123.39(1) “b”(3).

ITEM 6. Amend rule 185—4.4(123) as follows:

185—4.4(123) Licensed premises. The following criteria must be met before a “place” (as used in Iowa Code section ~~123.3(25)~~ 123.3(29)) may be licensed as a “place susceptible of precise description satisfactory to the administrator.”

4.4(1) The “place” must be owned by or under the control of the prospective licensee or permittee.

4.4(2) The “place” must be solely within the jurisdiction of one local approving authority.

4.4(3) The “place” must be described by a sketch of the “premises” as defined in Iowa Code section ~~123.3(25)~~ 123.3(29) and showing the boundaries of the proposed “place”; showing the locations of selling/serving areas within the confines of the “place”; showing all entrances and exits; and indicating the measurements of the “place” and distances between selling/serving areas.

4.4(4) The “place” must satisfy the health, safety, fire and seating requirements of the division, local authorities and the Iowa department of inspections and appeals.

4.4(5) Any other criteria as required by the administrator.

This rule is intended to implement Iowa Code sections ~~123.3(25)~~ 123.3(29) and 123.4.

ITEM 7. Amend rule 185—4.5(123) as follows:

185—4.5(123) Mixed drinks or cocktails not for immediate consumption. ~~An on-premises liquor control~~ A class “C,” class “D,” or class “F” retail alcohol licensee may mix, store, and allow the consumption of mixed drinks or cocktails which are not for immediate consumption for up to 72 hours, subject to the requirements and restrictions provided in 2012 Iowa Acts, House File 2465, section 22, Iowa Code section 123.49(2) “d” and this rule.

4.5(1) Definitions.

“Immediate consumption.” ~~For purposes of Iowa Code section 123.49(2) “d” as amended by 2012 Iowa Acts, House File 2465, section 22, and this rule,~~ “immediate consumption” is defined as for the purposes of this rule, means the compounding and fulfillment of a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

“Mixed drink or cocktail.” ~~A mixed drink or cocktail is a beverage composed in whole or in part of alcoholic liquors, combined with other alcoholic beverages or nonalcoholic beverages or ingredients including but not limited to ice, water, soft drinks, or flavorings~~ for the purposes of this rule, means an alcoholic beverage as defined in Iowa Code section 123.3(32).

4.5(2) Location. Mixed drinks or cocktails which are not for immediate consumption shall be mixed, stored, and consumed on the ~~liquor control~~ retail alcohol licensed premises. ~~Mixed drinks or cocktails shall not be removed from the licensed premises.~~

4.5(3) No change.

4.5(4) Container. A mixed drink or cocktail which is not for immediate consumption shall at all times be in a container compliant with applicable state and federal food safety statutes and regulations.

a. to c. No change.

d. An original package of alcoholic liquor as purchased from the division or an original package of wine shall not be used to mix, store, or dispense a mixed drink or cocktail, pursuant to Iowa Code section 123.49(2) “d” as amended by 2012 Iowa Acts, House File 2465, section 22, and section 123.49(2) “e.” and “e.”

e. No change.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

4.5(5) to 4.5(7) No change.

4.5(8) Records. A licensee shall maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. and *b.* No change.

c. Records shall be maintained on the licensed premises for a period of three years and shall be open to inspection pursuant to Iowa Code section ~~423.30(1)~~ 123.33.

4.5(9) to 4.5(12) No change.

This rule is intended to implement Iowa Code ~~subsection~~ section 123.49(2) as amended by 2012 Iowa Acts, House File 2465, section 22.

ITEM 8. Amend rule 185—4.6(123) as follows:

185—4.6(123) Filling and selling of beer in a container other than the original container. Class “B,” class “C,” and special class “C₂” ~~liquor control~~ and class “E” retail alcohol licensees, ~~class “B” and class “C” beer permittees,~~ and the licensee’s or ~~permittee’s~~ employees may fill, refill, and sell beer in a container other than the original container, otherwise known as a growler, subject to the requirements and restrictions provided in Iowa Code section ~~423.131~~ as amended by 2020 Iowa Acts, House File 2540, section 14; Iowa Code section ~~423.132;~~ 123.31A and this rule.

4.6(1) to 4.6(3) No change.

4.6(4) Restrictions.

a. to *f.* No change.

g. An original container shall only be opened on the premises of a class “C” ~~beer permittee~~ “B” or class “E” retail alcohol licensee for the limited purposes of filling or refilling a growler as provided in this rule, or for a tasting in accordance with rule 185—16.7(123).

h. ~~A class “C” beer permittee shall only fill a growler at the time of an in-person sale.~~

4.6(5) No change.

This rule is intended to implement Iowa Code ~~sections 423.123, 423.131, and 423.132~~ section 123.31A.

ITEM 9. Amend rule 185—4.7(123) as follows:

185—4.7(123) Improper conduct.

4.7(1) Illegality on premises. ~~Illegality on premises.~~ No retail alcohol licensee, ~~permittee, their~~ or the licensee’s agent or employee, shall engage in any illegal occupation or illegal act on the licensed ~~premise~~ premises.

4.7(2) Cooperation with law enforcement officers. ~~Cooperation with law enforcement officers.~~ No retail alcohol licensee, ~~permittee, their~~ or the licensee’s agent or employee, shall refuse, fail or neglect to cooperate with any law enforcement officer in the performance of such officer’s duties to enforce the provisions of the Act.

4.7(3) Illegal activities. ~~Illegal activities.~~ No retail alcohol licensee, ~~permittee, their~~ or the licensee’s agent or employee, shall knowingly allow in or upon the licensed premises any conduct as defined in Iowa Code sections 725.1, 725.2, 725.3, 728.2, 728.3 and 728.5.

4.7(4) Frequenting premises. ~~Frequenting premises.~~ No retail alcohol licensee, ~~permittee, their~~ or the licensee’s agent or employee, shall knowingly permit the licensed premises to be frequented by, or become the meeting place, hangout or rendezvous for known pimps, panhandlers or prostitutes, or those who are known to engage in the use, sale or distribution of narcotics, or in any other illegal occupation or business.

4.7(5) Prohibited interest in business of licensee. ~~Rescinded IAB 5/15/91, effective 6/19/91.~~

4.7(6) 4.7(5) Open containers of alcoholic beverages. No retail alcohol licensee, ~~permittee, its~~ agents or employees or the licensee’s agent or employee, shall allow any filled, partially filled, or empty liquor glasses or liquor bottles, ~~including miniature liquor bottles during the holiday season,~~ to be taken off the licensed premises, ~~excluding mixed drinks or cocktails pursuant to Iowa Code section 123.49(2)“d”(3).~~ However, unopened and opened containers and glasses of beer may be allowed

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

~~to be taken off the licensed premises. A class "E" liquor control retail alcohol licensee, its agents or employees or the licensee's agent or employee, shall not permit other liquor control licensees or consumers to remove partially filled, empty, open or unsealed containers of alcoholic liquor from the class "E" retail alcohol licensed premises.~~

~~4.7(7)~~ 4.7(6) Identifying markers. ~~Identifying markers.~~ A licensee shall not keep on the licensed premises nor use for resale alcoholic liquor which does not bear identifying markers as prescribed by the administrator of ~~this the~~ division. Identifying markers shall demonstrate that the alcoholic liquor was lawfully purchased from ~~this the~~ division.

~~4.7(8)~~ A licensee or permittee, or an agent or employee of a licensee or permittee, who sells, gives or otherwise supplies alcoholic liquor, wine or beer to a person 19 or 20 years old does not subject the license or permit to suspension or revocation. The division or the local authority shall not impose any administrative sanction, including license suspension or revocation, upon a licensee or permittee who is convicted of a violation of Iowa Code section 123.47A, nor shall administrative proceedings pursuant to Iowa Code chapter 17A and Iowa Code section 123.39 be commenced against a licensee or permittee for a violation of Iowa Code section 123.47A.

~~4.7(9)~~ The holder of a class "E" liquor control license shall sell alcoholic liquor in original, sealed and unopened containers only for off-premises consumption.

This rule is intended to implement Iowa Code ~~subsection~~ section 123.49(2).

ITEM 10. Amend rule 185—4.8(123) as follows:

185—4.8(123) Violation by agent, servant or employee. Any violation of the Act or the rules of the division by any employee, agent or servant of a licensee ~~or permittee~~ shall be deemed to be the act of the licensee ~~or permittee~~ and shall subject the license ~~or permit~~ of said licensee ~~or permittee~~ to suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49(2).

ITEM 11. Amend rule 185—4.9(123) as follows:

185—4.9(123) Gambling evidence. The intentional possession or willful keeping of any gambling device, ~~machine or apparatus~~ as defined in Iowa Code section ~~99A.1~~ 725.9 upon the premises of any establishment licensed by the division shall be prima facie evidence of a violation of Iowa Code section 123.49(2) "a" and subject the license of said licensee ~~or permittee~~ to suspension or revocation.

This rule is intended to implement Iowa Code sections 123.4 and 123.49.

ITEM 12. Amend rule 185—4.11(123) as follows:

185—4.11(123) Filling and selling of wine and native wine in a container other than the original container. ~~Class "C" liquor control licensees; class "B," class "B" native, and class "C" native wine permittees Class "B," class "C," special class "C," and class "E" retail alcohol licensees; special class "B" and special class "C" retail native wine licensees; and the licensee's or permittee's employees may fill, refill, and sell wine or native wine in a container other than the original container, otherwise known as a growler, subject to the requirements and restrictions provided in Iowa Code sections 123.178, 123.178A, and 123.178B as amended by 2020 Iowa Acts, House File 2540, sections 4, 5, 6, 7, 8, and 9, 123.30, 123.31A, and 123.31B and in this rule.~~

4.11(1) Definitions.

"Growler," for the purposes of this rule, means any fillable and sealable glass, ceramic, plastic, aluminum, or stainless steel container designed to hold wine or native wine.

"Native wine," for the purposes of this rule, means ~~wine manufactured in Iowa by fermentation of fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients by a class "A" wine permittee the same as defined in Iowa Code section 123.3(36).~~

"Original container," for the purposes of this rule, means a vessel containing wine or native wine that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture.

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“Wine,” for the purposes of this rule, means “~~wine~~” the same as defined in Iowa Code section ~~123.3(54)~~ 123.3(53).

4.11(2) Filling and refilling requirements.

- a. No change.
- b. A growler shall be filled or refilled only by the licensee ~~or permittee~~ or the licensee’s ~~or permittee’s~~ employees who are 18 years of age or older.
- c. and d. No change.
- e. ~~Class “B” native and class “C” native wine permittees~~ Special class “B” and special class “C” retail native wine licensees shall fill a growler with only native wine.
- f. and g. No change.

4.11(3) Sealing requirements. A filled or refilled growler shall be securely sealed at the time of the sale by the licensee ~~or permittee~~ or the licensee’s ~~or permittee’s~~ employees in the following manner:

- a. to d. No change.

4.11(4) Restrictions.

- a. to c. No change.
- d. A licensee ~~or permittee~~ or a licensee’s ~~or permittee’s~~ employees shall not allow a consumer to fill or refill a growler.
- e. and f. No change.
- g. An original container shall only be opened on the premises of a class “B” ~~or class “B” native wine permittee~~ and class “E” retail alcohol licensee for the limited purposes of filling or refilling a growler as provided in this rule, or for a tasting in accordance with rule 185—16.7(123).

4.11(5) Violations. Failure to comply with the requirements and restrictions of this rule shall subject the licensee ~~or permittee~~ to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections ~~123.172, 123.178, 123.178A, and 123.178B~~ 123.30, 123.31A, and 123.31B and section 123.31C as enacted by 2023 Iowa Acts, House File 677, section 5.

ITEM 13. Amend rule 185—4.13(123) as follows:

185—4.13(123) Outdoor service. Any licensee ~~or permittee~~ having an outdoor, contiguous, discernible area on the same property on which their licensed establishment is located may serve the type of alcoholic liquor ~~or beer~~ beverage permitted by the license ~~or permit~~ in the outdoor area. After a licensee ~~or permittee~~ satisfies the requirements of this rule, ~~they~~ the licensee may serve and sell ~~beer or liquor~~ alcoholic beverages in both ~~their~~ the licensee’s indoor licensed establishment and in ~~their~~ the licensee’s outdoor area at the same time because an outdoor area is merely an extension of ~~their~~ the licensee’s licensed ~~premise~~ premises and is not a transfer of their license. A licensee ~~or permittee~~, prior to serving in the outdoor area, must file with ~~this~~ the division:

1. A new diagram showing the discernible outdoor area.
- ~~2. A letter from licensee or permittee telling what dates the outdoor area will be used.~~
- ~~3.~~ 2. A letter from local Local authority approving approval of the outdoor area.
- ~~4.~~ 3. A letter from the insurance and bonding companies acknowledging Insurance company acknowledgment that the outdoor area is covered by the dramshop insurance policy and the bond.

This rule is intended to implement Iowa Code sections ~~123.3(20)~~ 123.3(29), 123.4 and 123.38.

ITEM 14. Amend rule 185—4.14(123) as follows:

185—4.14(123) Revocation or suspension by local authority. When the local authority revokes or suspends a ~~beer permit, wine permit, or liquor control~~ retail alcohol license, ~~they~~ the local authority shall notify the division in written form stating the reasons for the revocation or suspension and in the case of a suspension, the length of time of the suspension.

This rule is intended to implement Iowa Code sections 123.4, 123.32, and 123.39.

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ITEM 15. Amend rule 185—4.15(123) as follows:

185—4.15(123) Suspension of ~~liquor control retail alcohol~~ license, wine permit, or beer permit. At the time of the suspension of any retail alcohol license, wine permit, or beer permit by the division, there shall be placed, in a conspicuous place in the front door or window of the licensed establishment, a placard furnished by the division showing that the license or permit of that establishment has been suspended by the division and such placard shall also show the number of days and reason for the suspension. No licensee or permittee shall remove, alter, obscure or destroy said placard without the express written approval of the division.

This rule is intended to implement Iowa Code sections 123.4 and 123.39.

ITEM 16. Rescind and reserve rule **185—4.16(123)**.

ITEM 17. Amend rule 185—4.17(123) as follows:

185—4.17(123) Prohibited storage of alcoholic beverages ~~and wine~~. No licensee shall permit alcoholic beverages ~~and wine~~, purchased under authority of a retail alcohol license or retail permit, to be kept or stored upon any premises other than those licensed. However, under special circumstances, the administrator may authorize the storage of alcoholic beverages ~~and wine~~ on premises other than those covered by the license or permit. The administrator may allow class “D” ~~liquor control retail alcohol~~ licensees to store alcoholic liquor and wine in a bonded warehouse to be used for consumption in Iowa, under the authority of a class “D” liquor control retail alcohol license.

This rule is intended to implement Iowa Code sections 123.4 and ~~423.24(11)~~ 123.10(11).

ITEM 18. Amend rule 185—4.18(123) as follows:

185—4.18(123) Transfer of license or permit to another location. A licensee or permittee cannot transfer to anyone else the right to use the liquor retail alcohol license, wine permit, or beer permit of the licensee or permittee; the right of transfer is merely an opportunity for a licensee or permittee to use the licensee’s or permittee’s liquor retail alcohol license, wine permit, or beer permit at a different location. A liquor retail alcohol license, wine permit, or a beer permit may only be transferred within the boundaries of the local authority which approved the license or permit.

4.18(1) Permanent transfers. A person may ~~obtain an application~~ apply for a permanent transfer ~~from the local authority or the division~~. The application must be approved by the local authority and ~~sent to the division~~ prior to the transfer. ~~An endorsement from the~~ The insurance company holding the dramshop policy listing the new address ~~must be sent to the division~~ endorse the application prior to the transfer. When the above requirements are met, the division shall issue an amended license or permit showing the new permanent address.

4.18(2) Temporary transfers. If the transfer of a retail alcohol license or permit is for the purpose of accommodating a special event or circumstance temporary in nature, the minimum time of transfer is hereby set at 24 hours and transfer time shall not exceed seven days. ~~A letter from person may apply for a temporary transfer. The application must be approved by the local authority granting the temporary transfer must be sent to and the division. The insurance company holding the dramshop policy must be notified of any change of address~~ endorse the application prior to the transfer.

This rule is intended to implement Iowa Code sections 123.4 and 123.38.

ITEM 19. Amend rule 185—4.19(123) as follows:

185—4.19(123) Execution and levy on alcoholic liquor, wine, and beer. Judgments or orders requiring the payment of money or the delivery of the possession of property may be enforced against liquor control retail alcohol licensees, and beer permittees, and wine permittees by execution pursuant to the provisions of Iowa Code chapter 626, ~~entitled “Executions.”~~

4.19(1) A secured party as defined in Iowa Code section ~~554.9105(1) “m”~~ 554.9102(1) “by” may take possession of and dispose of a liquor control retail alcohol licensee’s or permittee’s alcoholic liquor, wine, and beer in which the secured party has a security interest in such collateral pursuant to

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the provisions of Iowa Code chapter 554. The secured party may operate under the ~~liquor control retail alcohol~~ license or permit of its debtor as defined in Iowa Code section ~~554.9105(1) "d"~~ 554.9102(1) "ad" for the purpose of disposing of the alcoholic liquor, wine, and beer. However, if the debtor is a class "E" ~~liquor control retail alcohol~~ licensee, the secured party may not purchase alcoholic liquor from the division to continue to operate its debtor's business. A secured party operating under the ~~liquor control retail alcohol~~ license or permit of its debtor shall dispose of the alcoholic liquor, wine, and beer by sale only to persons authorized under Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the debtor. When a secured party takes possession of a ~~liquor control retail alcohol~~ licensee's or permittee's alcoholic liquor, wine, and beer, the secured party shall notify the division in writing of such action. A secured party shall further inform the division of the manner in which it intends to dispose of the alcoholic liquor, wine, and beer and shall state the reasonable length of time in which it intends to operate under the ~~liquor control retail alcohol~~ license or permit of its debtor. The secured party shall notify the division in writing when the disposition of its collateral has been completed, and the secured party shall cease operating under the ~~liquor control retail alcohol~~ license or permit of its debtor.

4.19(2) A sheriff or other officer acting pursuant to Iowa Code chapter 626 may take possession of a ~~liquor control retail alcohol~~ licensee's or permittee's alcoholic liquor, wine, and beer and may dispose of such inventory according to the provisions of Iowa Code chapter 626; however, the sheriff or other officer must sell the alcoholic liquor, wine and beer only to those persons authorized by Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the ~~liquor control retail alcohol~~ licensee or permittee whose inventory is subject to the execution and levy. The sheriff or other officer shall notify the division in writing at the time the sheriff or officer takes possession of a ~~liquor control retail alcohol~~ licensee's or permittee's alcoholic liquor, wine, and beer and shall further notify the division of the time and place of the sale of such property.

This rule is intended to implement Iowa Code sections 123.4, ~~123.21(3)~~ 123.10, and 123.38.

ITEM 20. Amend rule 185—4.20(123) as follows:

185—4.20(123) ~~Liquor store checks~~ Class "E" retail alcohol licensee methods of payment accepted. The Iowa state liquor stores and the division may accept personal or business checks from holders of a retail liquor control license, including a class "E" licensee, under the following conditions: a class "E" retail alcohol licensee made payable to the division for the amount of the purchase which has been certified by the bank on which the check is drawn. Bank drafts, signed by the licensee, will be accepted.

1.—~~The check must be either the personal check of the licensee or the business check of the licensee. The business check must be the named establishment on the license and cannot be a check on another business owned or operated by the licensee.~~

2.—~~The check must be signed by the licensee. (For all holders of liquor control licenses this is interpreted as those persons whose authorized signatures are on file with the bank for the licensee's account). However, this does not preclude an agent of the licensee from presenting a check signed by the licensee in the normal transaction of buying liquor.~~

3.—~~Traveler's checks and bank drafts, signed by the licensee, will be accepted.~~

4.—~~Personal checks or traveler's checks may be accepted as payment for purchases in state liquor stores. Second party checks shall not be accepted as payment for purchases in state liquor stores. Vendors shall follow the policy established by the administrator of the division for accepting personal checks and traveler's checks for the purchase of alcoholic beverages.~~

4.20(1) ~~If a licensee presents this division with a check which is subsequently dishonored by the licensee's bank, the administrator of this division shall cause a written notice of nonpayment and penalty to be served upon the licensee. If the licensee fails to satisfy the obligation within ten days after service of the notice, the administrator or designee shall hold a hearing as in other contested cases pursuant to Iowa Code chapter 17A to determine whether or not the licensee failed to satisfy the obligation within ten days after service of the notice of nonpayment and penalty. If the administrator determines that the licensee has failed to satisfy the obligation, after notice and an opportunity to be heard, the administrator~~

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~~shall suspend the licensee's liquor control license for a period of not less than 3 and not more than 30 days.~~

~~4.20(2)~~ **4.20(1)** A retail ~~liquor~~ alcohol licensed establishment which tenders the division one insufficient funds ~~check~~ bank draft for the purchase of alcoholic liquor will lose its ~~check writing~~ bank draft privilege for 90 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period. A retail ~~liquor~~ alcohol licensed establishment which tenders the division more than one insufficient funds ~~check~~ bank draft for the purchase of alcoholic liquor will lose its ~~check writing~~ bank draft privilege for 180 days from the date the establishment pays the division even though the division does not suspend the liquor license because the establishment paid the division within the 10-day demand period.

During the period that a licensee may not tender ~~checks~~ bank drafts to the ~~state liquor stores or this~~ division in payment for alcoholic liquor, ~~state liquor stores and this~~ the division may accept from the licensee: ~~cash,~~ a money order payable to the division for the amount of the purchase, a bank cashier's check signed by a bank official and made payable to the division for the amount of the purchase, or the licensee's personal or business check made payable to the division for the amount of the purchase which has been certified by the bank on which the check is drawn.

~~4.20(3)~~ **4.20(2)** The division may collect from the licensee a \$10 fee for each dishonored ~~check~~ bank draft tendered to the division by a licensee for the purchase of alcoholic beverages.

~~4.20(4)~~ **4.20(4)** The division may accept from the general public for alcoholic beverages ~~traveler's checks issued in a foreign country if payment is in U.S. dollars.~~

~~4.20(5)~~ **4.20(3)** The division may require, at the discretion of the administrator, that a licensee submit a letter of credit in a reasonable amount to be determined by the administrator for future purchases of alcoholic liquor from the division, when a licensee tenders to the division a ~~check~~ bank draft which is subsequently dishonored by the bank ~~on which the check is drawn~~ if the licensee fails to satisfy the obligation within ten days after service of notice of nonpayment and penalty.

This rule is intended to implement Iowa Code sections 123.4 and 123.24.

ITEM 21. Rescind and reserve rule ~~185—4.21(123)~~.

ITEM 22. Rescind and reserve rule ~~185—4.22(123)~~.

ITEM 23. Amend rule 185—4.25(123) as follows:

185—4.25(123) Age requirements. Persons 21 years of age or older may hold a liquor retail alcohol license, wine permit, or beer permit; ~~however, persons who are between the ages of 18 and 21 and hold a liquor license, wine permit, or beer permit before September 1, 1986, are not affected by or subject to this rule, and may hold such license or permit even though the licensee or permittee has not attained the age of 21. Persons 18 years of age and older may be bartenders, waiters, waitresses, and may handle alcoholic beverages, wine, and beer during the course of the person's employment for a licensee or permittee in establishments in which alcoholic beverages, wine, and beer are consumed. Persons 16 years of age and older may sell beer and wine alcoholic beverages in off-premises beer and wine establishments. Persons must be 18 years of age or older to work in a state liquor store.~~

This rule is intended to implement Iowa Code sections 123.30, ~~123.47A~~ and 123.49.

ITEM 24. Amend rule 185—4.26(123) as follows:

185—4.26(123) Timely filed status.

4.26(1) In addition to the requirements which may be imposed by a local authority upon the holder of an ~~alcoholic beverages license or permit~~ a retail alcohol license to obtain timely filed status of a renewal application, the division may grant timely filed status if the applicant complies with the following conditions:

a. The applicant ~~files~~ submits a completed application with the local authority or the division as required by applicable law.

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b. ~~The applicant files a~~ A current dram shop dramshop liability certificate with the local authority or the division has been endorsed by the insurance company if proof of ~~dram shop dramshop~~ liability is required as a condition precedent to the issuance of the license ~~or permit~~.

c. The applicant pays the appropriate license ~~or permit~~ fee in full to the local authority or the division as required by applicable law.

d. ~~The applicant files a~~ A bond with the local authority or the division has been certified by the carrier if a bond is required as a condition precedent to the issuance of the license ~~or permit~~ under applicable law.

4.26(2) Timely filed status allows the holder of the license ~~or permit~~ to continue to operate under a license ~~or permit~~ after its expiration and until the local authority and the division have finally determined whether the license ~~or permit~~ should be issued. If the application for the license ~~or permit~~ is denied, timely filed status continues until the last day for seeking judicial review of the division's action.

4.26(3) An applicant for a new ~~alcoholic beverages retail alcohol~~ license ~~or permit~~ may not sell alcoholic liquor, wine or beer in the proposed establishment until a license ~~or permit~~ has been granted by the division.

This rule is intended to implement Iowa Code sections 123.32, 123.35 and 17A.18.

ITEM 25. Amend rule 185—4.28(123) as follows:

185—4.28(123) Use of establishment during hours alcoholic liquor, wine, and beer beverages cannot be consumed. No one, including a retail alcohol licensee, permittee, and employees the licensee's employees, can consume ~~beer, wine, or~~ alcoholic beverages in their licensed establishment during hours which ~~beer, wine, and~~ alcoholic beverages cannot be sold. An establishment covered by a ~~liquor retail alcohol~~ license, ~~wine permit, or beer permit~~ can be used as a restaurant or any other lawful purpose during hours which ~~beer, wine, or alcoholic liquor~~ alcoholic beverages cannot be sold as long as ~~beer, wine, or~~ alcoholic beverages are not consumed during these hours.

This rule is intended to implement Iowa Code section 123.49.

ITEM 26. Rescind and reserve rule **185—4.31(123)**.

ITEM 27. Rescind and reserve rule **185—4.33(123)**.

ITEM 28. Amend rule 185—4.34(123) as follows:

185—4.34(123) Determination of population. Decennial Censuses and Special Censuses done by the U.S. Census Bureau are recognized as being the official population of a town for the purpose of deciding the price of licenses ~~and permits~~ in that town, but estimates done by the U.S. Census Bureau cannot be viewed as being the official population when deciding the price of licenses ~~and permits~~.

This rule is intended to implement Iowa Code ~~subsection 123.21(11)~~ section 123.10(11).

ITEM 29. Amend rule 185—4.36(123) as follows:

185—4.36(123) Sale of alcoholic liquor and wine beverages stock when licensee or permittee sells business. When a retail alcohol licensee or permittee goes out of business, the licensee ~~or permittee~~ may sell the licensee's ~~or permittee's~~ stock of alcoholic ~~liquor and wine~~ beverages to the person who is going to operate a licensed establishment in the same location.

This rule is intended to implement Iowa Code ~~subsection 123.21(5)~~ section 123.10.

ITEM 30. Rescind and reserve rule **185—4.37(123)**.

ITEM 31. Rescind and reserve rule **185—4.38(123)**.

ITEM 32. Amend rule 185—4.40(123) as follows:

185—4.40(123) Warehousing of beer and wine. A person holding a class "A" wine permit or a class "A" ~~or "F"~~ beer permit shall warehouse their wine or beer inventory within the state of Iowa. ~~Persons issued a class "A" wine permit or class "A" or "F" beer permit prior to June 10, 1987, shall comply upon~~

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~~renewal or November 1, 1987, whichever date occurs first. A warehouse of a person holding a class "A" wine permit or a class "A" or "F" beer permit shall be considered a licensed premises.~~

~~This rule is intended to implement Iowa Code section sections 123.127 and 123.175.~~

ITEM 33. Amend rule 185—4.41(123) as follows:

185—4.41(123) Vending machines to dispense alcoholic beverages prohibited. A ~~liquor control retail alcohol~~ licensee ~~or beer or wine permittee~~ shall not install or permit the installation of vending machines on the licensed premises for the purpose of selling, dispensing or serving alcoholic beverages. A vending machine is defined as a ~~slug, coin, currency or credit card operated slug-, coin-, currency- or credit card-operated~~ mechanical device used for dispensing merchandise, including single cans of beer or other alcoholic beverages, and includes a mechanical device operated by remote control and used for dispensing single cans of beer or other alcoholic beverages. A vending machine is not a unit installed in individual hotel or motel rooms used for the storage of alcoholic beverages and intended for the personal use of hotel or motel guests within the privacy of the guests' rooms.

~~This rule is intended to implement Iowa Code sections 123.47, 123.47A, 123.49(1), 123.49(2) "b," 123.49(2) "h," and 123.49(2) "k." section 123.49.~~

ITEM 34. Amend rule 185—5.1(123) as follows:

185—5.1(123) Manufacture and sale of native wine. Manufacturers of native wine ~~from grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, as defined in Iowa Code section 123.3(36)~~ may sell, keep or offer for sale and deliver their native wine subject to the following regulations and restrictions.

~~**5.1(1) Manufacturer of native wine defined.** A manufacturer of native wine is a person in Iowa who processes grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wine.~~

~~**5.1(2) Residency requirements.** A manufacturer of native wine who is a sole proprietor must be a resident of Iowa. At least one of the partners of a partnership which is a manufacturer of native wine must be a resident of Iowa. A corporation which is a manufacturer of native wine must be registered to do business in Iowa with the Iowa secretary of state's office in lieu of any other residency requirements.~~

~~**5.1(3) 5.1(1) Licenses required.**~~

~~*a. Class "A" native wine permit.* Before selling its wine to the division, class "A" wine wholesalers, retail wine permittees, and liquor control licensees, a manufacturer of native wine shall apply for and shall obtain from the division one class "A" native wine permit and a \$5,000 bond for its wineries and for its retail establishments. A class "A" native wine permit obtained for a native winery and for retail establishments costs \$25 a year. A manufacturer of native wine may obtain an application for a class "A" native wine permit from the division and may submit the completed application and the \$25 fee to the division without having to get the application approved by a local authority. Each class "A" native wine permit is valid for one year from the effective date and must be renewed each year. A manufacturer of native wine must display the original or a copy of its class "A" native wine permit in each of its native wineries and in each of its retail establishments. ~~The \$25 fee paid for a class "A" native winery is not refundable.~~ A manufacturer of native wine must register its retail establishment on forms or systems provided by the division. ~~The division shall issue a manufacturer of native wine duplicate copies of its class "A" native wine permit so that a copy of it can be posted in each winery and retail establishment.~~~~

~~*b. Vintner's certificate of compliance.* In order for a manufacturer of native wine to be able to sell its wine to the division, it must obtain an application for a vintner's certificate of compliance from the division and must obtain a vintner's certificate from the division at no expense in addition to obtaining from the division its one class "A" native wine permit.~~

~~*c. Class "B" wine permit.* In order for a manufacturer of native wine to sell wine it did not manufacture, it must obtain a class "B" wine permit and a \$1,000 bond for each native winery or retail establishment.~~

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~~5.1(4) Exclusive operation of retail establishments. No person except a manufacturer of native wine can operate a class "A" native wine retail establishment.~~

~~5.1(5) Distance a retail establishment must be from a native winery. A manufacturer of native wine cannot have a retail establishment within five miles of a native winery not operated by the manufacturer of native wine.~~

~~5.1(6) Sale of native wine only. A manufacturer of native wine may sell wine it did not manufacture only if it obtains an appropriate retail wine permit for each location.~~

~~5.1(7) Hours of sale. A manufacturer of native wine can sell its native wine in its native winery and in its retail establishments on Mondays through Saturdays between the hours of 9 a.m. and 10 p.m. and on Sundays between the hours of 10 a.m. and 12 midnight.~~

~~5.1(8) Premises, books of account and records available for inspection. A manufacturer of native wine shall cause the premises, books of account, and records to be accessible and available at all reasonable times for inspection by representatives of the division, the law enforcement division of the Iowa department of public safety, or members of local police authority.~~

~~5.1(9) Delivery of native wine. A manufacturer of native wine may ship its native wine in closed containers to individual purchasers inside and outside Iowa.~~

~~5.1(10) 5.1(2) Reports required.~~

~~a. Monthly combined wine production and wine gallonage tax report. A monthly report is required showing the amount of wine on hand at the beginning of the month, the amount produced, the amount sold, the amount of wine gallonage tax due, and any other information requested. Report forms shall be furnished by the division. A manufacturer of native wine shall submit a report along with any wine gallonage tax payment to in the division's licensing division system by the tenth of each month for the preceding month's business. Reports and wine gallonage tax payments postmarked submitted by the tenth of each month for the preceding month shall be considered timely. This report must be mailed submitted for each month even if no wine sales were made during the month.~~

~~b. Annual report. A manufacturer of native wine shall, in January of each year, deliver to the division a complete report, sworn to under oath by the owner, a partner or corporate officer, showing the number of gallons of wine produced by the winery in the preceding year. Report forms shall be furnished by the division.~~

~~5.1(11) Wine gallonage tax. A manufacturer of native wine must pay to the division a \$1.75 wine gallonage tax on its native wine it sells at wholesale: (1) to retail liquor licensees, (2) to retail beer permittees, (3) to retail wine permittees, and (4) to the division. A manufacturer of native wine does not pay the \$1.75 wine gallonage tax on its native wine it: (1) sells at retail in Iowa in its winery and in its retail establishments, (2) ships to individuals inside and outside Iowa, and (3) sells to other class "A" wine permittees and to class "F" beer permittees.~~

This rule is intended to implement Iowa Code sections 123.4, ~~123.56~~ 123.49, 123.176, and 123.183.

ITEM 35. Amend rule 185—5.2(123) as follows:

185—5.2(123) Annual production Production of a native distillery.

~~5.2(1) Native distillery. A native distillery is a business with an operating still which produces and manufactures native distilled spirits and holds a class "A" native distilled spirits license as defined in Iowa Code section 123.3(35). The total number of proof gallons of native distilled spirits produced and manufactured by a native distillery on an annual basis shall be used to determine the amount of native distilled spirits that may be sold per person per day from the native distillery's licensed premises for off-premises consumption and to determine eligibility to obtain a class "C" native distilled spirits liquor control license.~~

~~5.2(1) 5.2(2) Definitions.~~

~~"Annual basis," for the purpose of this rule, means a year as defined in Iowa Code section 4.1(40) beginning January 1 and ending December 31.~~

~~"Native distilled spirits" means an alcoholic beverage as defined in Iowa Code section ~~123.3(28)~~ 123.3(28) 123.3(34).~~

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~~“Operating still,” for the purpose of this rule,~~ means a still that is registered with the Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 19.75(b) and is actively used to manufacture spirits.

~~“Proof gallon,” for the purpose of this rule,~~ means a United States gallon of proof spirits, or the alcoholic equivalent thereof, as defined by the Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 30.11.

~~5.2(2) The total number of proof gallons of native distilled spirits produced and manufactured by a native distillery on an annual basis shall combine all production facilities of the business and shall be determined based on the 12-month sum of line 26 of Alcohol and Tobacco Tax and Trade Bureau Form 5110.28, Monthly Report of Processing Operations, filed monthly by the native distillery with the division, pursuant to Iowa Code section 123.43A(5).~~

~~5.2(3) The amount of native distilled spirits that may be sold per person per day from a native distillery’s licensed premises for off-premises consumption shall be determined based on the total number of proof gallons of native distilled spirits as determined in subrule 5.2(2) for the preceding calendar year beginning January 1 and ending December 31.~~

~~5.2(4) As a condition of obtaining a class “C” native distilled spirits liquor control license, a native distillery shall report to the division, at the time of application, the total number of proof gallons of native distilled spirits as determined in subrule 5.2(2) for the preceding calendar year beginning January 1 and ending December 31.~~

This rule is intended to implement Iowa Code sections 123.3(29), 123.30(3) “c”(3), ~~123.31(6)~~ 123.43 and 123.43A.

ITEM 36. Rescind and reserve rule ~~185—5.3(123)~~.

ITEM 37. Rescind and reserve rule ~~185—5.4(123)~~.

ITEM 38. Rescind and reserve rule ~~185—5.6(123)~~.

ITEM 39. Amend rule ~~185—5.7(123)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 123.4, ~~123.21(11)~~ 123.10, 123.31 and ~~123.56~~ 123.49.

ITEM 40. Amend rule ~~185—5.8(123)~~ as follows:

185—5.8(123) Dramshop liability insurance requirements. For the purpose of providing proof of financial responsibility, as required under the provisions of Iowa Code section 123.92, a liability insurance policy shall meet the following requirements.

5.8(1) Current certificate required. The dramshop liability certificate of insurance shall be issued by a company holding a current certificate of authority from the Iowa insurance commissioner authorizing the company to issue dramshop liability insurance in Iowa or issued under the authority and requirements of Iowa Code sections 515.120 and 515.122. The dramshop policy shall take effect the day the license ~~or permit~~ takes effect and shall continue until the expiration date of the license ~~or permit~~. A new dramshop liability certificate of insurance shall be provided each time the division issues a new license. The dramshop liability certificate of insurance shall contain the following: the name of the insurance provider; the policy number; the name and address of the insured; the license ~~or permit~~ number of the insured, if applicable; and the policy effective dates. Upon request, an insurance company or an insured shall provide to the division a duplicate original of the policy and all pertinent endorsements.

5.8(2) and 5.8(3) No change.

5.8(4) Cancellation. An insurance company or an insured may cancel a liability policy by giving a minimum of 30 days’ prior written notice to the division of the party’s intent to cancel the liability policy. The 30-day period shall begin on the date that the division receives the notice of cancellation. The party seeking to cancel a liability policy shall mail written notice of such cancellation to the division in Ankeny, Iowa, by certified mail, or other method deemed acceptable by the division, and shall mail a copy of the notice of cancellation to the licensee ~~or permittee~~ at that party’s post office address. The notice of cancellation shall contain the following: the name of the party to whom the copy of the notice of cancellation was mailed, the address to which the copy of the notice of cancellation was sent, the date

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on which the notice of cancellation was mailed, the date the liability policy is being canceled, and the ~~liquor control~~ retail alcohol license or permit number of the licensee or permittee to be affected by such cancellation.

5.8(5) No change.

5.8(6) *Proof of financial responsibility.* A licensee or permittee shall be deemed to have furnished proof of financial responsibility as contemplated under the provisions of Iowa Code sections 123.92, 123.93, and 123.94 when the licensee or permittee has filed with the division at its offices in Ankeny, Iowa, a properly executed form as described by subrule 5.8(1), or by other method deemed acceptable by the division.

5.8(7) to 5.8(9) No change.

5.8(10) *Implementation dates.* ~~During the 12-month period commencing on September 1, 2003, all licensees and permittees applying for or renewing a license or permit shall obtain a dramshop insurance policy that conforms to the provisions of rule 5.8(123).~~

This rule is intended to implement Iowa Code sections 123.92, 123.93 and 123.94.

ITEM 41. Amend rule 185—5.9(123) as follows:

185—5.9(123) Surety bond requirements. ~~A \$5,000 surety bond shall be filed with the division with each application for a class “A” wine permit and with each application for a wine direct shipper license unless the applicant for the wine direct shipper license posted a surety bond as part of obtaining a class “A” wine permit. A \$10,000 surety bond shall be filed with the division for each application for a class “A” beer permit or special class “A” beer permit. A surety bond in an amount of at least \$5,000 but not more than \$15,000 shall be filed with the division with each application for a class “E” liquor control license. Each surety bond shall meet the following requirements.~~

5.9(1) and 5.9(2) No change.

5.9(3) *Cancellation.* A surety company or a principal may cancel a bond by giving a minimum of 30 days' written notice to ~~this~~ the division of the party's intent to cancel the bond. The 30-day period shall commence on the date that ~~this~~ the division receives the notice of cancellation. The party seeking to cancel a bond shall submit written notice of such cancellation to the division in Ankeny, Iowa, and further shall submit a copy of the notice of cancellation to the other party. The notice of cancellation shall contain the following: the name of the party to whom the copy of the notice of cancellation was submitted, the date on which the notice of cancellation was submitted, the date the bond is being canceled, and the license or permit number of the licensee or permittee to be affected by such cancellation.

5.9(4) *Proof of bond.* A licensee or permittee shall be deemed to have furnished a surety bond when the licensee or permittee has:

a. ~~filed~~ Filed with the division a form prescribed by the division containing the following: the name of the bond provider; the city and state where the bond provider is located; the bond number, the names of the principal, and the city and state where the principal is located; the amount of the bond; the type of license or permit guaranteed by the bond; the effective date of the bond; signatures of the principal and the bond provider; and any other information the administrator of the division may require,₂
or

b. Met this requirement by any other method deemed acceptable by the administrator of the division or a designee.

5.9(5) to 5.9(7) No change.

This rule is intended to implement Iowa Code sections 123.30, 123.50, 123.127, and 123.175, ~~and 123.187.~~

ITEM 42. Amend subrule 8.2(4) as follows:

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

a. A request for a special order will be placed with the division by a class “E” ~~liquor control~~ retail alcohol licensee. Special order requests shall be submitted electronically or in a manner prescribed by the administrator or the administrator's designee. The administrator, or the administrator's designee,

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may reject a special order request if it is determined that the requested product is in violation of the requirements set out in subparagraphs 8.3(3) “a”(1) and 8.3(3) “a”(2).

b. No change.

c. All special order products shall be sold and distributed by the division to class “E” ~~liquor control~~ retail alcohol licensees by the case only.

d. Special order products are not eligible for return to the division by a class “E” ~~liquor control~~ retail alcohol licensee without approval from the administrator or the administrator’s designee.

ITEM 43. Amend subrule 8.2(7) as follows:

8.2(7) Quantity limitations. Quantities of listed products available for purchase by class “E” ~~liquor control~~ retail alcohol licensees may be limited at the administrator’s, or the administrator’s designee’s, discretion.

ITEM 44. Amend subrule 8.6(3) as follows:

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

ITEM 45. Amend rule 185—8.8(123) as follows:

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

8.8(1) Barrel programs shall be uniformly offered to all class “E” ~~liquor control~~ retail alcohol licensees.

8.8(2) and **8.8(3)** No change.

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

8.8(5) and **8.8(6)** No change.

ITEM 46. Rescind and reserve **185—Chapter 17**.

ITEM 47. Amend 185—Chapter 18, introductory paragraph, as follows:

CHAPTER 18

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The alcoholic beverages division hereby adopts, with the following exceptions and amendments, rules of the Governor’s Task Force on Uniform Rules of on Agency Procedure relating to public records and fair information practices, which are ~~printed in the first Volume of the Iowa Administrative Code~~ published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the general assembly’s website.

ITEM 48. Amend subparagraph **18.10(2)“g”(2)** as follows:

(2) Information collected and maintained on licensees’ ~~and permittees’~~ dramshop liability insurance.

ITEM 49. Amend rule 185—18.14(123,22) as follows:

185—18.14(123,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 185—18.1(123,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that

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information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

18.14(1) *Licensing records.* Licensing records include, but are not limited to, information identifying ownership, location, form of business entity and statements concerning eligibility of applicants to hold ~~liquor~~ retail alcohol licenses and permits. These records are collected and maintained pursuant to Iowa Code sections ~~123.19~~ 123.23, 123.29, 123.30, 123.33, 123.42, ~~123.56~~ 123.49, 123.124, 123.125, 123.127 ~~to 123.129~~, 123.135, 123.173, 123.175, 123.176, and 123.180. Licensing records are stored on microfiche, in an automated data processing system, and in extant form. The information stored in the automated data system does not match, collate or permit comparison with other data processing systems. The information contained in licensing records is public information.

18.14(2) and 18.14(3) No change.

18.14(4) *Purchase orders, invoices, account numbers and personal identification numbers.* Purchase orders and invoices include, but are not limited to, records of purchases of alcoholic liquor made by ~~Class class "E" liquor control~~ retail alcohol licensees from the agency and related shipping and transmittal documents. Account numbers and personal identification numbers identify individual ~~Class class "E" liquor control~~ retail alcohol licensees and provide the agency with a method of filling orders, shipping and obtaining payment for liquor from telephone orders by ~~Class class "E" liquor control~~ retail alcohol licensees. These records are collected and maintained pursuant to Iowa Code sections 123.16, 123.24 and 123.30. Purchase orders are stored in extant form and in automated data processing systems. The automated data processing systems used to store these records do not match, collate, or permit comparison with other data processing systems except to the extent that such records may be used by warehouse personnel for inventory control, movement of alcoholic liquor within the warehouse, and filling and shipping orders to ~~Class class "E" liquor control~~ retail alcohol licensees. The information contained in these records which identifies purchases made by individual ~~Class class "E" liquor control~~ licenses retail alcohol licensees is confidential pursuant to Iowa Code section 22.7.

18.14(5) *Bailment shipments.* Records of bailment shipments include, but are not limited to, information derived from suppliers concerning shipments of alcoholic liquor into the state warehouse facility, information generated internally concerning alcoholic liquor received from suppliers, information generated by the agency for accounting purposes concerning liquor purchases from suppliers, and information generated by the agency for purposes of inventory control. Records of bailment shipments may contain personally identifiable information on ~~Class class "E" liquor control~~ retail alcohol licensees, and to the extent that such record contains information on purchases of liquor by individual ~~Class class "E" liquor control~~ retail alcohol licensees, the record is confidential. These records are collected and maintained pursuant to Iowa Code section 123.30. Records of bailment shipments are stored in extant form and in automated data processing systems. The method of storage does not match, collate, or permit comparison with other data processing systems, except that comparisons may be made for purposes of agency tracking or auditing liquor inventory.

18.14(6) and 18.14(7) No change.

18.14(8) *Inspections and audits of licensees' books and records.* Inspections and audits of licensees' books and records contain personally identifiable information relating to the operation of licensed establishments and beer and wine wholesalers' operations. These records are collected and maintained pursuant to Iowa Code sections 123.33, ~~and~~ 123.138, ~~and~~ 123.185. These records are stored in extant form, and the manner of storage does not permit comparison with automated data processing systems. The information is public information, except to the extent that the records concerning purchases of liquor made by ~~Class class "E" liquor control~~ retail alcohol licensees from the agency are confidential. To the extent that these records may be used in anticipation of formal administrative proceedings, criminal or civil proceedings against a licensee or permittee, this chapter does not apply to these records.

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18.14(9) and **18.14(10)** No change.

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ARC 7074C

MEDICINE BOARD[653]

Adopted and Filed

Rulemaking related to licensing regulation, veterans and military spouses

The Board of Medicine hereby amends Chapter 9, "Permanent and Administrative Medicine Physician Licensure," and Chapter 18, "Military Service and Veteran Reciprocity," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 147 and 2022 Iowa Acts, Senate File 2383.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 272C.12 and 2022 Iowa Acts, Senate File 2383.

Purpose and Summary

These amendments implement the licensure-related provisions of 2022 Iowa Acts, Senate File 2383, which established requirements for licensure by verification and updated the requirements and parameters of licensure for veterans and their spouses.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on June 28, 2023, as **ARC 7042C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on August 17, 2023.

Fiscal Impact

This rulemaking will have limited fiscal impact. The provisions of the rulemaking will waive the initial application and renewal fees for veterans who were honorably or generally discharged within the previous five years. However, the overall number of applications that meet these criteria is low.

Jobs Impact

After analysis and review of this rulemaking, there may be a positive impact on jobs since the rulemaking will streamline and remove some of the requirements related to licensure by verification. Additionally, the rulemaking will clearly provide an alternative pathway to licensure of spouses of veterans when moving to Iowa.

Waivers

MEDICINE BOARD[653](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on October 25, 2023.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** rule 653—9.5(272C):

653—9.5(272C) Licensure by verification. Licensure by verification is available in accordance with the following:

9.5(1) Eligibility. A person may seek licensure by verification if the person is currently licensed as a physician in at least one other jurisdiction that has a scope of practice substantially similar to that of Iowa.

9.5(2) Board application. The applicant must submit the following:

- a. A completed application for licensure by verification.
- b. Payment of the application fee.
- c. A completed fingerprint packet to facilitate a criminal history background check by the DCI and FBI.
- d. A verification form, completed by the licensing authority in the jurisdiction that issued the applicant's license, verifying that the applicant's license in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the licensing authority to the board.
- e. Proof of passing an examination as required by rule 653—9.7(147,148).
- f. A copy of the complete criminal record, if the applicant has a criminal history.
- g. A copy of the relevant disciplinary documents, if another jurisdiction has taken disciplinary action against the applicant.
- h. A written statement from the applicant detailing the scope of practice in the other state.
- i. Copies of relevant laws setting forth the scope of practice in the other state.

9.5(3) Applicants with prior discipline. If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person who has had a license revoked, or who has voluntarily surrendered a license, in another jurisdiction is ineligible for licensure by verification.

9.5(4) Applicants with pending licensing complaints or investigations. If an applicant is currently the subject of a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

9.5(5) Temporary licenses. Applicants who satisfy all requirements for a license under this section except for passing a required examination specific to the laws of this state may be issued a temporary license that is valid for a period of three months and may be renewed once for an additional period of three months. The applicant must submit proof of passing the required examination before the temporary license expires.

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ITEM 2. Rescind the definition of “Provisional license” in rule **653—18.1(272C)**.

ITEM 3. Adopt the following **new** definition of “Temporary license” in rule **653—18.1(272C)**:
 “*Temporary license*” means a temporary license issued pursuant to rule 653—10.5(147,148).

ITEM 4. Amend rule 653—18.3(272C) as follows:

653—18.3(272C) Veteran and spouse reciprocity.

18.3(1) and **18.3(2)** No change.

18.3(3) Upon receipt of a fully completed licensure application, the board shall promptly determine if the ~~professional or occupational licensing requirements of~~ scope of practice in the jurisdiction where the veteran or spouse is licensed ~~are~~ is substantially equivalent to the licensing requirements in Iowa. The board ~~may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, and postgraduate experiences~~ shall make this determination based on information supplied by the applicant and such additional information as the board may acquire from the applicable jurisdiction.

18.3(4) The board shall promptly grant a license to the ~~veteran or spouse~~ applicant if the ~~veteran or spouse applicant~~ is licensed in the same or similar profession in another jurisdiction whose ~~licensure requirements are~~ scope of practice is substantially equivalent to ~~those required~~ the scope of practice in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example, the applicant’s disciplinary or malpractice history or criminal background.

18.3(5) If the board determines that the ~~licensing requirements~~ scope of practice in the jurisdiction in which the ~~veteran or spouse applicant~~ is licensed ~~are~~ is not substantially equivalent to ~~those required~~ the scope of practice in Iowa, the board shall promptly inform the applicant of the additional ~~experience,~~ education, or ~~examinations~~ training required for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or malpractice history or criminal background, the following shall apply:

a. If the applicant has not passed the required examination(s) for licensure, the applicant may not be issued a temporary license but may request that the application be placed in pending status.

b. If additional ~~experience or education or training~~ is required ~~in order for the applicant’s qualifications to be considered substantially equivalent,~~ the applicant may request that the board issue a provisional temporary license for a specified period of time during which the applicant will successfully complete the necessary ~~experience or education or training~~. The board shall issue a provisional temporary license for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare or safety of the public, unless the board determines that the deficiency is of a character that the public health, welfare or safety will be adversely affected if a provisional temporary license is granted.

c. If a request for a provisional temporary license is denied, the board shall issue an order fully explaining the decision and shall inform the applicant of the steps the applicant may take in order to receive a provisional temporary license.

d. If a provisional temporary license is issued, the application for full licensure shall be placed in pending status until the necessary ~~experience or education or training~~ has been successfully completed or the provisional temporary license expires, whichever occurs first. The board may extend a provisional temporary license on a case-by-case basis for good cause.

18.3(6) ~~A veteran or spouse~~ An applicant who is aggrieved by the board’s decision to deny an application for a reciprocal license or a provisional temporary license or is aggrieved by the terms under which a provisional temporary license will be granted may request a contested case (administrative hearing) and may participate in a contested case by ~~telephone~~ video conferencing. A request for a contested case shall be made within 30 days of issuance of the board’s decision. There shall be no fees

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or costs assessed against the ~~veteran or spouse~~ applicant in connection with a contested case conducted pursuant to this subrule.

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