



IOWA ADMINISTRATIVE BULLETIN

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Pages 1103 to 1355

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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>
9	Friday, October 13, 2023	November 1, 2023
10	Wednesday, October 25, 2023	November 15, 2023
11	Wednesday, November 8, 2023	November 29, 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 Agenda published in the September 20, 2023, Iowa Administrative Bulletin.

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

Uniform policies; future ready Iowa skilled workforce grant program; workforce grant and incentive program, amend ch 10; adopt chs 16, 34 Notice **ARC 7100C** 10/4/23

EDUCATION DEPARTMENT[281]

Organization and operation, ch 1 Notice **ARC 7082C** 10/4/23

Agency procedure for rulemaking and petitions for rulemaking, ch 2 Notice **ARC 7083C** 10/4/23

Declaratory orders, ch 3 Notice **ARC 7084C** 10/4/23

Waivers from administrative rules, ch 4 Notice **ARC 7085C** 10/4/23

Appeal procedures, ch 6 Notice **ARC 7088C** 10/4/23

Criteria for grants, ch 7 Notice **ARC 7089C** 10/4/23

Statewide voluntary preschool program, ch 16 Notice **ARC 7090C** 10/4/23

School fees, ch 18 Notice **ARC 7091C** 10/4/23

Charter schools, adopt ch 19; rescind ch 68 Notice **ARC 7092C** 10/4/23

Educating homeless children and youth, ch 33 Notice **ARC 7087C** 10/4/23

Veterans' education and training, adopt ch 51; rescind ch 52 Notice **ARC 7093C** 10/4/23

School breakfast and lunch program; nutritional content standards for other foods and beverages, ch 58 Notice **ARC 7094C** 10/4/23

Gifted and talented programs, ch 59 Notice **ARC 7081C** 10/4/23

Programs for students who are English learners, ch 60 Notice **ARC 7086C** 10/4/23

Programs for at-risk early elementary students, ch 65 Notice **ARC 7095C** 10/4/23

Standards for school administration manager programs, ch 82 Notice **ARC 7096C** 10/4/23

Financial incentives for national board certification, ch 84 Notice **ARC 7097C** 10/4/23

Equal employment opportunity and affirmative action in educational agencies, ch 95 Notice **ARC 7098C** 10/4/23

Business procedures and deadlines, ch 99 Notice **ARC 7099C** 10/4/23

REVENUE DEPARTMENT[701]

Setoff of qualifying debts owed to public agencies, ch 26 Filed **ARC 7080C** 10/4/23

TRANSPORTATION DEPARTMENT[761]

Special permits for operation and movement of vehicles and loads of excess size and weight, amendments to ch 511 Filed **ARC 7079C** 10/4/23

VETERINARY MEDICINE BOARD[811]

Licensure by verification, 6.6 Filed **ARC 7076C** 10/4/23

Auxiliary personnel—licensure by verification, 8.11 Filed **ARC 7077C** 10/4/23

Military service and veteran reciprocity, ch 15 Filed **ARC 7078C** 10/4/23

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER

ADMINISTRATION DIVISION[877]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Iowa office of apprenticeship, ch 29 Filed Emergency After Notice **ARC 7075C** 10/4/23

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

Senator Nate Boulton
Senate District 20

Senator Mike Bousset
Senate District 21

Senator Waylon Brown
Senate District 30

Senator Cindy Winckler
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House District 85

Representative Rick Olson
House District 39

Representative Mike Sexton
House District 7

Representative David Young
House District 28

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Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
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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.

CITY DEVELOPMENT BOARD[263]

Organization and administration,
ch 1
IAB 10/4/23
Regulatory Analysis

1963 Bell Ave.
Des Moines, Iowa

October 24, 2023
12:30 to 12:45 p.m.

Agency procedure for rulemaking,
ch 2
IAB 10/4/23
Regulatory Analysis

1963 Bell Ave.
Des Moines, Iowa

October 24, 2023
12:45 to 1 p.m.

Petitions for rulemaking, ch 3
IAB 10/4/23
Regulatory Analysis

1963 Bell Ave.
Des Moines, Iowa

October 24, 2023
1 to 1:15 p.m.

Declaratory orders, ch 4
IAB 10/4/23
Regulatory Analysis

1963 Bell Ave.
Des Moines, Iowa

October 24, 2023
1:15 to 1:30 p.m.

Fair information practices, ch 5
IAB 10/4/23
Regulatory Analysis

1963 Bell Ave.
Des Moines, Iowa

October 24, 2023
1:30 to 1:45 p.m.

Waiver rules, ch 6
IAB 10/4/23
Regulatory Analysis

1963 Bell Ave.
Des Moines, Iowa

October 24, 2023
1:45 to 2 p.m.

Voluntary annexation, ch 7
IAB 10/4/23
Regulatory Analysis

1963 Bell Ave.
Des Moines, Iowa

October 24, 2023
2:15 to 2:45 p.m.

Petitions for involuntary city
development action, ch 8
IAB 10/4/23
Regulatory Analysis

1963 Bell Ave.
Des Moines, Iowa

October 24, 2023
2:45 to 3:15 p.m.

Committee proceedings on
petitions for involuntary city
development action, ch 9
IAB 10/4/23
Regulatory Analysis

1963 Bell Ave.
Des Moines, Iowa

October 24, 2023
3:15 to 3:45 p.m.

CITY DEVELOPMENT BOARD[263](cont'd)

Board proceedings on petitions for involuntary boundary change after committee approval, ch 10 IAB 10/4/23	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 3:45 to 4:15 p.m.
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Regulatory Analysis

Islands—identification and annexation, rescind ch 11 IAB 10/4/23	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 4:15 to 4:30 p.m.
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Regulatory Analysis**COLLEGE STUDENT AID COMMISSION[283]**

Uniform policies; future ready Iowa skilled workforce grant program; workforce grant and incentive program, amend ch 10; adopt chs 16, 34 IAB 10/4/23 ARC 7100C	Commission Board Room 475 S.W. Fifth St., Suite D Des Moines, Iowa	October 25, 2023 4 to 4:30 p.m.
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Commission Board Room 475 S.W. Fifth St., Suite D Des Moines, Iowa	October 26, 2023 4 to 4:30 p.m.
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COMMERCE DEPARTMENT[181]

Organization and operation, ch 1 IAB 9/20/23	Iowa Insurance Division 1963 Bell Ave. Des Moines, Iowa	October 12, 2023 10 a.m.
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Regulatory Analysis**EDUCATIONAL EXAMINERS BOARD[282]**

Complaints, investigations, contested case hearings, 11.4(9) IAB 9/20/23	Board Room 701 East Court Ave., Suite A Des Moines, Iowa	October 11, 2023 1 p.m.
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Regulatory Analysis

Investigation of complaints or license reports, 11.5 IAB 9/20/23	Board Room 701 East Court Ave., Suite A Des Moines, Iowa	October 11, 2023 1 p.m.
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Regulatory Analysis

Renewal or extension fees—licenses, certificates, statements of professional recognition, authorizations, 12.2 IAB 9/20/23	Board Room 701 East Court Ave., Suite A Des Moines, Iowa	October 11, 2023 1 p.m.
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Regulatory Analysis**EDUCATION DEPARTMENT[281]**

Organization and operation, ch 1 IAB 10/4/23 ARC 7082C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
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Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
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EDUCATION DEPARTMENT[281](cont'd)

Agency procedure for rulemaking and petitions for rulemaking, ch 2 IAB 10/4/23 ARC 7083C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
Declaratory orders, ch 3 IAB 10/4/23 ARC 7084C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, IA 52803	October 24, 2023 5 to 5:30 p.m.
Waivers from administrative rules, ch 4 IAB 10/4/23 ARC 7085C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
Appeal procedures, ch 6 IAB 10/4/23 ARC 7088C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
Criteria for grants, ch 7 IAB 10/4/23 ARC 7089C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
Statewide voluntary preschool program, ch 16 IAB 10/4/23 ARC 7090C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.

EDUCATION DEPARTMENT[281](cont'd)

School fees, ch 18 IAB 10/4/23 ARC 7091C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Charter schools, adopt ch 19; rescind ch 68 IAB 10/4/23 ARC 7092C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
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.
Educating homeless children and youth, ch 33 IAB 10/4/23 ARC 7087C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10 to 10:30 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Veterans' education and training, adopt ch 51; rescind ch 52 IAB 10/4/23 ARC 7093C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10 to 10:30 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
School breakfast and lunch program; nutritional content standards for other foods and beverages, ch 58 IAB 10/4/23 ARC 7094C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10 to 10:30 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.

EDUCATION DEPARTMENT[281](cont'd)

Gifted and talented programs, ch 59 IAB 10/4/23 ARC 7081C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Programs for students who are English learners, ch 60 IAB 10/4/23 ARC 7086C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Programs for at-risk early elementary students, ch 65 IAB 10/4/23 ARC 7095C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10 to 10:30 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Standards for school administration manager programs, ch 82 IAB 10/4/23 ARC 7096C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10:30 to 11 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5:30 to 6 p.m.
Financial incentives for national board certification, ch 84 IAB 10/4/23 ARC 7097C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10:30 to 11 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5:30 to 6 p.m.
Equal employment opportunity and affirmative action in educational agencies, ch 95 IAB 10/4/23 ARC 7098C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10:30 to 11 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5:30 to 6 p.m.

EDUCATION DEPARTMENT[281](cont'd)

Business procedures and deadlines, ch 99 IAB 10/4/23 ARC 7099C	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5:30 to 6 p.m.
	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10:30 to 11 a.m.

INSURANCE DIVISION[191]

Organization, ch 1 IAB 9/20/23 Regulatory Analysis	1963 Bell Ave., 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 Ave., 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 Ave., 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 Ave., 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 Ave., 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 Ave., 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 Ave., Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.
Property and casualty insurance, amendments to ch 20 IAB 9/20/23 Regulatory Analysis	1963 Bell Ave., 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 Ave., Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.

INSURANCE DIVISION[191](cont'd)

Military sales practices, 25.2, 25.3 IAB 9/20/23 Regulatory Analysis	1963 Bell Ave., 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 Ave., 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 Ave., Suite 100 Des Moines, Iowa	October 12, 2023 10 a.m.

MANAGEMENT DEPARTMENT[541]

Organization and operation, ch 1 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. 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 Ave. 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 Ave. 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 Ave. 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 Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
Grants enterprise management system, ch 11 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. 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 Ave. 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 Ave. Des Moines, Iowa	October 18, 2023 9 a.m.

MANAGEMENT DEPARTMENT[541](cont'd)

Suspension and reinstatement of state funds, rescind ch 16 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
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REVENUE DEPARTMENT[701]

Collection of tax debt and debt owed to other state agencies, adopt chs 20 to 25, 27 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/toe-himx-omj PH: 252.590.0724 PIN: 233 808 257# Mute telephone or microphone upon entering the meeting	October 25, 2023 1 p.m.
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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.
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Definitions, ch 200 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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Elements included in and excluded from a taxable sale and sales price, ch 203 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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Rules necessary to implement the streamlined sales and use tax agreement, ch 204 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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Sourcing of taxable services, tangible personal property, and specified digital products, ch 205 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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Bundled transactions, ch 206 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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Resale and processing exemptions primarily of benefit to retailers, ch 225 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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Local option sales and services tax, ch 270 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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REVENUE DEPARTMENT[701](cont'd)

Local option sales tax urban renewal projects, ch 274 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
Facilitating business rapid response to state-declared disasters, ch 276 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
Sales and use tax refund for biodiesel production, ch 277 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
Refunds for eligible businesses under economic development authority programs, ch 278 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon

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.
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UTILITIES DIVISION[199]

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.
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.
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.

UTILITIES DIVISION[199](cont'd)

Assessments, ch 17 IAB 10/4/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 31, 2023 9 a.m.
Annual report, ch 23 IAB 10/4/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 26, 2023 1 p.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]
 City Development Board[263]
IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 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 263—Chapter 1
“Organization and Administration”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3 and 368.10
State or federal law(s) implemented by the rulemaking: Iowa Code sections 368.9 and 368.10

Public Hearing

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

October 24, 2023
12:30 to 12:45 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 1 and adopt a new chapter in lieu thereof. The new chapter will omit statutory language from the rules and use more concise language.

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 imposed by the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed rulemaking benefits persons interested in understanding the general organization and administration of the Board.

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 provides clarity about the organization and administration of the board.
No costs are imposed by the rulemaking.
 - Qualitative description of impact:
The proposed rulemaking provides clarity about the organization and administration of the Board.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The Iowa Economic Development Authority (IEDA) provides office space and staff assistance to the Board and covers expenses of the Board pursuant to Iowa Code section 368.9. No additional costs are imposed by the rulemaking.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

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

The proposed rulemaking does not impose any costs. A more concise description of the Board's general organizational and administration benefits those seeking information about the Board.

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

The Board has not identified any less costly methods or less intrusive methods of describing the organization and administration of the Board.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive methods.

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 rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 263—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1 ORGANIZATION AND ADMINISTRATION

263—1.1(368) Description. The primary function of the city development board is to supervise city development actions, including annexations, consolidations, discontinuances, incorporations and severances for the state of Iowa, pursuant to the provisions of Iowa Code chapter 368. Detailed information about the board's policies and procedures can be found in Iowa Code chapter 368, in rules adopted by the board, and at www.iowaeda.com/land-planning.

263—1.2(368) Office of the board. All official communications, including submissions and requests, may be addressed to City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or to cdb@iowaeda.com.

263—1.3(368) Membership and quorum requirements. The board annually elects from its members a chairperson and vice-chairperson at the first regular meeting of the calendar year. Three members of the board constitute a quorum, and a quorum must be present in order for the board to take action. The affirmative vote of a majority of board members is necessary for action taken by the board.

263—1.4(368) Meetings. The board conducts regular meetings at least every other month at 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or at such other location as the board may designate. The chairperson or the chairperson's designee prepares an agenda for each meeting, listing matters to be addressed. Meetings of the board are subject to the requirements of Iowa Code chapter 21.

These rules are intended to implement Iowa Code sections 368.9 and 368.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 263—Chapter 2
“Agency Procedure for Rulemaking”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 368.10
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 24, 2023
12:45 to 1 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind 263—Chapter 2 and adopt a new chapter in lieu thereof. The new chapter will incorporate anticipated updates to the applicable Uniform Rules on Agency Procedure.

The text of the new chapter is not available at this time. The Board has adopted, with amendments and exceptions noted, the Uniform Rules on Agency Procedure. It is the Board’s understanding that the uniform rules relating to procedures for rulemaking will be rewritten prior to December 31, 2023. The Board anticipates repromulgating Chapter 2 after the updated uniform rules chapter is available.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Persons who want to participate in the Board’s rulemaking process may incur the costs described below.

- Classes of persons that will benefit from the proposed rulemaking:

The rulemaking will benefit persons interested in understanding the procedures for rulemaking for the Board.

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

- Quantitative description of impact:

The rulemaking will provide clarity about the Board’s procedures for rulemaking. Members of the public who want to participate in the rulemaking process may incur costs to draft and submit documents to the Board relating to rulemakings or to participate in opportunities for oral proceedings.

- Qualitative description of impact:

The rulemaking will provide clarity about the Board's procedures for rulemaking.

3. Costs to the State:

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

The Iowa Economic Development Authority (IEDA) provides office space and staff assistance to the Board and covers expenses of the Board pursuant to Iowa Code section 368.9. No additional costs are imposed by the rulemaking.

- Anticipated effect on state revenues:

The rulemaking has no anticipated effect on state revenues.

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

Costs to participate in the rulemaking process are minimal and incurred only by those who choose to participate. Updating the rules to remove statutory language and maintaining consistency with the Uniform Rules on Agency Procedure benefits those seeking information about the Board.

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

The Board has not identified any less costly methods or less intrusive methods of describing procedures for rulemaking.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive method.

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 do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 263—Chapter 3
“Petitions for Rulemaking”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 368.10
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.7

Public Hearing

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

October 24, 2023
1 to 1:15 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 3 and adopt a new chapter in lieu thereof. The proposed new chapter will clarify how to access the Uniform Rules on Agency Procedure and omit unnecessary words.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Persons who want to petition the Board to make rules may incur the costs described below.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed rulemaking benefits persons interested in understanding the procedures for submitting petitions for rulemaking to the Board.
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 provides clarity about the process by which petitions for rulemaking will be submitted to and considered by the Board. Petitioners may incur costs to draft and submit a petition or other documents requested by the Board relating to a petition or to participate in meetings relating to the petition.
 - Qualitative description of impact:
The proposed rulemaking provides clarity about petitions for rulemaking.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The Iowa Economic Development Authority (IEDA) provides office space and staff assistance to the Board and covers expenses of the Board pursuant to Iowa Code section 368.9. IEDA may incur staff time to implement the petition for rulemaking process, including time to review petitions for rulemaking; time to prepare a denial; and time to prepare an adoption, an amendment, or a rescission of an administrative rule if the Board grants the rulemaking petition.

- Anticipated effect on state revenues:

The rulemaking has no anticipated effect on state revenues.

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

Costs to submit petitions for rulemaking are minimal and incurred only by those who choose to submit such petitions. Updating the rules to remove statutory language and maintaining consistency with the Uniform Rules on Agency Procedure benefits those seeking rulemaking action by the Board.

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

The Board has not identified any less costly methods or less intrusive methods of addressing petitions for rulemaking.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive methods.

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 rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 263—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3 PETITIONS FOR RULEMAKING

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

263—3.1(17A) Petition for rulemaking. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

In lieu of “(AGENCY NAME)” as the caption of the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

263—3.3(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

These rules are intended to implement Iowa Code section 17A.7.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 263—Chapter 4
“Declaratory Orders”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 368.10
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.9

Public Hearing

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

October 24, 2023
1:15 to 1:30 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 4 and adopt a new chapter in lieu thereof. The new chapter will clarify how to access the Uniform Rules on Agency Procedure and omit unnecessary words.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Persons who want to petition the Board for declaratory orders or file petitions for intervention may incur the costs described below.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed rulemaking benefits persons interested in understanding the procedures for submitting petitions for declaratory orders to the Board.
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 provides clarity about the process by which petitions for declaratory orders will be submitted to and considered by the Board. Petitioners may incur costs to draft and submit a petition or other documents requested by the Board relating to a petition or to participate in meetings relating to the petition.
 - Qualitative description of impact:
The proposed rulemaking provides clarity about petitions for declaratory orders.
3. Costs to the State:

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

The Iowa Economic Development Authority (IEDA) provides office space and staff assistance to the Board and covers expenses of the Board pursuant to Iowa Code section 368.9. IEDA may incur staff time to review petitions and supporting documentation and time to prepare a response as set forth in Iowa Code section 17A.9(5).

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

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

Costs to submit petitions for declaratory orders are minimal and incurred only by those who choose to submit such petitions.

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

The Board has not identified any less costly methods or less intrusive methods of addressing petitions for declaratory orders.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive methods.

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 rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 263—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4 DECLARATORY ORDERS

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to declaratory orders, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

263—4.1(17A) Petition for declaratory order. In lieu of “(designate agency)”, insert “city development board”. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

In lieu of “(AGENCY NAME)” as the caption on the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

263—4.2(17A) Notice of petition. In lieu of “__ days (15 or less)”, insert “15 days”.

263—4.3(17A) Intervention.

4.3(1) In lieu of “__ days”, insert “15 days”.

263—4.5(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

These rules are intended to implement Iowa Code section 17A.9.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 263—Chapter 5
“Fair Information Practices”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 368.10
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 24, 2023
1:30 to 1:45 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 5 and adopt a new chapter in lieu thereof. The new chapter will clarify how to access the Uniform Rules on Agency Procedure and omit unnecessary words.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Persons wishing to request records from the Board, request confidential treatment of Board records or request changes to Board records may incur costs to do so.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed rulemaking benefits persons interested in understanding the Board’s processes for requesting records and other information practices of the Board.
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:
Persons wishing to request records from the Board may be charged fees for review and production of records. Persons who request confidential treatment of Board records or request that additions, dissents, or objections are entered into a record may incur costs to prepare such requests.
 - Qualitative description of impact:
The proposed rulemaking provides clarity about the Board’s information practices.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The Iowa Economic Development Authority (IEDA) provides office space and staff assistance to the Board and covers expenses of the Board pursuant to Iowa Code section 368.9. IEDA may incur staff time to review and produce records that are requested or to evaluate requests for confidential treatment of Board records or requests that additions, dissents, or objections are entered into a record.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

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

Under current rules, most records requests received by the Board are addressed without charging fees to the requester. The costs incurred to submit requests for confidential treatment of Board records or requests that additions, dissents, or objections are entered into a record are likely to be minimal and incurred only by those who choose to submit such requests.

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

The Board has not identified any less costly methods or less intrusive methods of addressing fair information practices.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive methods.

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 rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 263—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5 FAIR INFORMATION PRACTICES

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

263—5.1(17A,22) Definitions. As used in this chapter:

“*Agency.*” In lieu of “(official or body issuing these rules)”, insert “city development board”.

263—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of “(insert agency head)”, insert “city development board”. In lieu of “(insert agency name and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

5.3(2) Office hours. In lieu of “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays”.

5.3(7) Fees.

c. Supervisory fee. In lieu of “(specify time period)”, insert “two hours”.

263—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

These rules are intended to implement Iowa Code section 22.11.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 263—Chapter 6
“Waiver Rules”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 368.10
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.9A

Public Hearing

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

October 24, 2023
1:45 to 2 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 6 and adopt a new chapter in lieu thereof. The new chapter will omit repetition of statutory language and clarify Board policies and procedures regarding waivers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Persons who want to petition the Board for waivers may incur costs to do so.
 - Classes of persons that will benefit from the proposed rulemaking:
The rulemaking benefits persons interested in understanding the Board’s processes for waivers.

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:
Petitioners for waivers may incur costs to prepare a petition for waiver. The amount of the costs will vary depending on the complexity of the issues and the compensation of staff or service providers, such as attorneys, involved in drafting a petition for waiver.
 - Qualitative description of impact:
The rulemaking provides clarity about waivers.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The Iowa Economic Development Authority (IEDA) provides office space and staff assistance to the Board and covers expenses of the Board pursuant to Iowa Code section 368.9. IEDA may incur staff

time to implement the waiver process, including time to review petitions for waiver. If the petition for waiver is filed within a pending Board action, staff time is required to hold a hearing in accordance with contested case hearing procedures.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

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

Costs to submit petitions for waivers are minimal and incurred only by those who choose to submit such petitions.

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

The Board has not identified any less costly methods or less intrusive methods of addressing petitions for waivers.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive methods.

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 rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 263—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6 WAIVER RULES

263—6.1(17A) Definitions.

“Board” means the same as defined in Iowa Code section 368.1(3).

“Petitioner” means a person who petitions an agency for the waiver of a rule.

“*Waiver*” means the same as defined in Iowa Code section 17A.9A(5) as applied to an action by the board.

263—6.2(17A) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where 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 this chapter with respect to any waiver from that rule.

263—6.3(17A) Applicability. The board may grant a waiver of a rule as permitted by Iowa Code section 17A.9A(1).

263—6.4(17A) Criteria for waiver. In response to a petition completed pursuant to rule 263—6.6(17A), the board may issue a waiver if the board makes the applicable findings in Iowa Code section 17A.9A(2).

263—6.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

6.5(1) Pending matters. If the petition relates to a pending petition or application for city development action, the petition requesting a waiver shall be filed in the pending proceeding, using the caption of that matter.

6.5(2) Other. If the petition does not relate to a pending matter, the petition may be submitted to the board chairperson.

263—6.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related city development proceeding.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in Iowa Code section 17A.9A(2). 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 will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the activity affected by the proposed waiver, including a description of each related city development action by the requester within the past five years.
6. Any information known to the requester regarding the board’s treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.
8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition, including all parties to the proceeding if the petition relates to a matter pending before the board.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

263—6.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner’s request, schedule a meeting between the petitioner and the board’s chair, or a committee of the board, or a quorum of the board.

263—6.8(17A) Notice. The board will acknowledge a petition upon receipt. The board shall 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 board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver and provide a written statement to the board attesting that notice has been provided.

263—6.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a pending city development action pursuant to subrule 6.5(1). If a petition for waiver is filed with the board pursuant to subrule 6.5(2), the provisions of Iowa Code sections 17A.10 to 17A.18A apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

263—6.10(17A) Ruling. Iowa Code section 17A.9A(3) describes certain procedural aspects for considering a petition for waiver and issuing a ruling thereon, including the burden of persuasion; the manner in which a petition for waiver must be evaluated; the limits of the waiver, if one is issued; and the circumstances under which the board may place a condition on the waiver. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons. The board shall have the sole discretion to decide whether to grant a waiver.

6.10(1) Form of ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver, if one is issued.

6.10(2) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 90 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a pending city development action, the board shall grant or deny the petition no later than the time at which the final decision in that matter is issued.

6.10(3) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

6.10(4) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

6.10(5) Filing of waiver ruling. Within 60 days of granting or denying a waiver, the board shall submit information as required by Iowa Code section 17A.9A(4).

263—6.11(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
2. 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
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

263—6.12(17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

263—6.13(17A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

These rules are intended to implement Iowa Code section 17A.9A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 263—Chapter 7
“Voluntary Annexation”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 368.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 368

Public Hearing

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

October 24, 2023
2:15 to 2:45 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 7 and adopt a new chapter in lieu thereof. The new chapter will omit repetition of statutory language and consolidate other redundant language that was previously repeated in multiple rules within the chapter. Additionally, the new chapter will clarify Board policies and procedures. The citation in the proposed chapter to rule 263—8.10(368) is to that rule as proposed in the Regulatory Analysis for 263—Chapter 8 (IAB 10/4/23).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Cities requesting the Board’s approval of annexations may incur costs described below.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed rulemaking benefits persons interested in understanding the policies and procedures of the Board relating to voluntary annexations.

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:
Cities requesting the Board’s approval of annexations incur costs to compile and submit documentation to the Board and to participate in any necessary Board meetings or hearings where a proposed annexation is considered. Additionally, the cost of recording Board orders approving annexations are paid by the city that is annexing territory.
 - Qualitative description of impact:

The documentation and procedures outlined in the chapter ensure the Board can fulfill its oversight obligations as outlined in Iowa Code chapter 368. The proposed rulemaking benefits persons interested in understanding the policies and procedures of the Board relating to voluntary annexations.

3. Costs to the State:

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

Pursuant to Iowa Code section 368.9, the Economic Development Authority (IEDA) provides office space and staff assistance to the Board and budgets funds to cover expenses of the Board and committees created pursuant to Iowa Code chapter 368. IEDA will incur staff time to review documents submitted to the Board and administer the Board's activities.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

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

The Board's oversight obligations are described in Iowa Code chapter 368. The documentation and procedures outlined in the chapter are no more than necessary to fulfil those obligations.

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

The Board has not identified any less costly methods or less intrusive methods for overseeing voluntary annexations.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive methods.

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 rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 263—Chapter 7 and adopt the following new chapter in lieu thereof:

CHAPTER 7
VOLUNTARY ANNEXATION

263—7.1(368) Purpose and scope. This chapter addresses the requirements and processes for city development board approval of voluntary annexation within another city’s urbanized area; voluntary annexation, including property without the owner’s consent; and boundary adjustments between cities by petition and consent. Such requests for board approval shall be initiated pursuant to Iowa Code section 368.7 or 368.25A and this chapter. A city’s request for board approval of such actions will be referred to in this chapter as a petition.

263—7.2(368) Contents of petition. This rule describes the information and documentation a city is required to include in its petition.

7.2(1) Landowner application requirements. The board will verify that each landowner’s application for annexation includes the items required by Iowa Code section 368.7(1) “c” and is dated and signed by all owners of record or their authorized representatives. If voluntary annexation is requested for a parcel of land being sold on contract, the contract seller and the contract buyer should both approve the application. If voluntary annexation is requested for property owned by a business organization or entity other than a natural person or persons, the applicant should provide documentation establishing authorization to act on behalf of the owner entity.

7.2(2) City requirements. In addition to any applicable landowner applications submitted in compliance with subrule 7.2(1), a city’s petition must include all of the following:

a. A general statement of the proposed annexation, briefly describing the current and expected use of the annexation territory, any services that the city currently provides to the territory, and the reasons for a landowner’s request for annexation, if known.

b. A statement indicating whether the city is a party to an existing moratorium agreement entered pursuant to Iowa Code section 368.4 and, if so, whether the proposed annexation is consistent with the terms of that agreement.

c. A complete legal description of the territory proposed to be annexed, including the right-of-way to the center line of all secondary roads adjoining the territory. If the applicable county and city have entered an agreement pursuant to Iowa Code chapter 28E that allows exclusion of the right-of-way, a copy of the agreement shall be included with the petition.

d. Documentation that the county auditor has verified the accuracy and completeness of the legal description of all territory proposed to be annexed and verified current ownership of the parcel(s) included in the proposed territory. If the auditor fails to respond to the city’s request for verification within 14 days, the city may provide a copy of the request and a statement indicating that no response was received.

e. A map clearly showing the entire boundary of the existing city, all territory proposed to be annexed, adjacent roadways, and the relationship of the territory to the petitioning city and, if the annexation territory is within the urbanized area of another city, the relationship of the territory to the neighboring city. More than one map may be submitted if necessary to provide all information required by this paragraph.

f. A statement indicating whether state-owned property or county-owned road right-of-way has been included in the proposed annexation and, if so, certification that the city has complied with the notice requirements of Iowa Code section 368.5. If the territory proposed for annexation includes right-of-way for a state highway, documentation of consultation with the Iowa department of transportation should also be included.

g. Certification that the city has complied with all applicable notice and hearing requirements of Iowa Code section 368.7, including proof of mailing of the application and affidavit of publication of the required public notice. If railway right-of-way or public land is included without the written consent of the owner or agency with jurisdiction over the public land, the city shall certify notice was given to the owner or agency as required by Iowa Code section 368.7(1) “c.” For purposes of calculating the required

period of notice, business days include Monday through Friday of each week, except legal holidays as set forth in Iowa Code section 4.1(34).

h. A city council resolution approving the landowner's application, including, if applicable, the terms of the transition of city taxes as provided by Iowa Code sections 368.7(5) and 368.11(3) "m."

7.2(3) Additional information for petitions, including nonconsenting landowners. In addition to the information to be included pursuant to subrule 7.2(2), a petition that includes property without the consent of the owner(s) must provide the additional information indicated in this subrule.

a. Names and addresses of all owners of land included without the owners' consent and a legal description of all land owned by each nonconsenting owner.

b. Documentation submitted pursuant to paragraph 7.2(2) "d" relating to county auditor verification, including verification of the legal description of land owned by each nonconsenting owner.

c. The acreage of each parcel or parcels owned by each voluntary applicant and nonconsenting landowner, the acreage of any railroad right-of-way included pursuant to Iowa Code section 368.7(1), and the acreage of any state- or county-owned property included pursuant to Iowa Code section 368.5.

d. A calculation showing the percentage of the territory for which voluntary annexation applications have been received by the city and the percentage of territory included without the consent of the owner(s), prepared in a manner consistent with Iowa Code section 368.7(1) "a." Only contiguous land area may be considered for purposes of calculating the amount of the land area which may be included without the owner's consent.

e. A map indicating the relationship of the parcels included without the consent of the owner(s) to the rest of the territory and to the city.

f. The city council's resolution approving the annexation submitted pursuant to paragraph 7.2(2) "h" that must set forth the reason(s) that land is included without the consent of the owner(s).

263—7.3(368) Filing. A city shall send two copies of its petition, including all supporting documentation, to the board. The petition will be deemed filed with the board on the date it is received by board staff. Board staff will acknowledge receipt of a petition.

263—7.4(368) Staff review. Within two weeks of receiving a petition filed pursuant to this chapter, board staff will review the petition to determine whether the city has included all required information. If the petition is incomplete, staff shall notify the petitioning city, identifying the required item(s) omitted and offering the city an opportunity to provide the omitted information prior to submission of the petition to the board.

263—7.5(368) Submission to the board—notice.

7.5(1) A petition filed pursuant to this chapter will be considered by the board at the first board meeting conducted 31 or more days after the petition is filed. The board shall provide notice of all meetings at which the board will consider a petition to the petitioning city and the entities required by Iowa Code section 368.7(3) to receive notice of an application. Such notices will be provided by regular mail.

7.5(2) If rule 263—7.8(368) applies, the board may proceed as described in that rule at a board meeting less than 31 days after the petition is filed, at the request of the petitioning city. However, if the board considers a petition pursuant to this subrule, the filings to complete an annexation approved by the board will only be made if no other petition for any or all of the applicable territory is filed with the board within 30 days of the filing of the petition.

263—7.6(368) Amendment of petition.

7.6(1) After a petition has been filed with the board, it may not be amended to include additional territory.

7.6(2) A city may, upon its own motion or at the request of the board, seek amendment to delete one or more parcels included in the territory proposed for annexation.

a. A motion to amend a petition may be made at any time prior to issuance of the board order approving or denying the petition.

b. The board shall provide notice of a proposed amendment to all owners of land included in the petition, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and all other parties of record in the board proceeding. Such notices will be provided by regular mail.

c. A party to the proceeding may file a resistance to the motion to amend within 14 days of the date of service of notice provided pursuant to paragraph 7.6(2) “*b.*”

d. The board may grant a motion to amend a petition if it determines that the amendment serves the public interest.

263—7.7(368) Initial board review.

7.7(1) The board shall review all petitions filed pursuant to this chapter to determine compliance with the requirements of Iowa Code chapter 368 and this chapter. If a petition is incomplete or otherwise not in compliance with the requirements of Iowa Code chapter 368 or this chapter, the board may request further information from a landowner or city or may dismiss the petition.

7.7(2) If the annexation requested in the petition is barred pursuant to Iowa Code section 368.17, the board shall deny the petition, stating in its order the reason(s) for the denial.

263—7.8(368) Board proceedings on unanimous petitions when no conflicting petition is received within 30 days.

7.8(1) *Applicability.* Petitions will be considered pursuant to this rule when all territory proposed for annexation is included upon application of the owner, by notice to the owner of railway right-of-way pursuant to Iowa Code section 368.7(1), or by notice to the Iowa attorney general or a county attorney pursuant to Iowa Code section 368.5.

7.8(2) *Information considered.* Any interested person or party may submit written comment prior to or at the time of board consideration of the petition. The board may:

- a.* Allow an opportunity for oral comment;
- b.* Consider public documents; or
- c.* Request additional information from affected cities, counties or persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.8(3) *Criteria.* The board shall consider whether the proposed annexation serves the public interest and may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code section 368.16.

263—7.9(368) Board proceedings on petitions which include nonconsenting landowners.

7.9(1) *Applicability.* Petitions will be considered pursuant to this rule when not more than 20 percent of the land area of the territory proposed for annexation is included without the consent of the owner, pursuant to Iowa Code section 368.7(1) “*a.*”

7.9(2) *Hearing and information considered.*

a. If a petition to which this rule applies is complete and in proper form, the board will conduct a public hearing on the petition. The board shall provide notice of the hearing to all owners of land included in the petition, the petitioning city, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and the state department of transportation. Such notice shall be provided by regular mail sent at least ten days prior to the hearing.

b. The board hearing will be conducted informally. Representatives of the petitioning city shall be given an opportunity to explain the proposed annexation, the city’s reason for including nonconsenting landowners, and any other information the city believes will assist the board in acting on the petition. The county, all owners of property within the territory proposed for annexation, the regional planning authority, affected public utilities, and any other person affected by the annexation will be provided an opportunity to submit information to the board during the hearing or in writing prior to the hearing.

c. The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.9(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3). The board may not approve a petition considered pursuant to this rule unless the board finds that the land of the nonconsenting owners was included to avoid creating an island or create more uniform boundaries. A petition considered pursuant to this rule shall not be approved unless four members of the board vote in favor of approving the petition.

263—7.10(368) Board proceedings when one or more conflicting petitions are received within 30 days.

7.10(1) Applicability. Petitions will be considered pursuant to this rule if any other petitions containing common territory are submitted to the board pursuant to Iowa Code chapter 368 within 30 days. If all conflicting petitions are validly dismissed or denied by the board, the board will proceed on a remaining petition as if no conflicting petition had been filed.

7.10(2) Hearing and information considered. If conflicting petition(s) are complete and in proper form, the board shall consider any petitions, including voluntary application(s) submitted by a landowner pursuant to Iowa Code section 368.7(4), and shall conduct a public hearing pursuant to the procedure set forth in subrule 7.9(2).

7.10(3) Criteria. Within 90 days of receipt of the petition, the board or a committee appointed by the board shall meet to assess the petition, including voluntary application(s) submitted by a landowner and any evidence received at the public hearing. If the petition meets the applicable requirements of Iowa Code chapter 368, the board or committee shall approve the petition unless the board makes an applicable finding as described in Iowa Code section 368.7(4)“a.”

7.10(4) Conversion to an involuntary petition. If the petition is not approved, the board shall issue an order setting forth its reason(s) for failing to approve the petition and requiring conversion of the petition into an involuntary petition. Within 30 days of the board’s order issued pursuant to this subrule, the city shall withdraw its petition or convert its petition into an involuntary petition containing all information required by Iowa Code section 368.11 and any rules adopted by the board applicable to involuntary petitions.

7.10(5) Local committee. Following conversion to an involuntary petition, the board shall order appointment of a special local committee to consider all pending petitions for annexation of common territory, pursuant to Iowa Code section 368.14A and rule 263—8.10(368). The special local committee shall conduct a public hearing to receive evidence and comment on all petitions pending before it. The committee will determine the order of presentation prior to commencement of the hearing. The committee will conduct the hearing pursuant to 263—Chapter 9.

7.10(6) Committee action. The committee shall, within a reasonable time following conclusion of the public hearing, meet to determine appropriate means to resolve the common territory issues among the petitions before it.

a. The committee shall resolve common territory issues by amending or denying one or more of the pending petitions.

b. Upon resolution of the common territory issues, the committee shall proceed with consideration of each remaining petition in accordance with Iowa Code sections 368.16 and 368.17 and any applicable rules adopted by the board.

c. A petition converted to an involuntary petition pursuant to subrule 7.10(4) that contains some land without the consent of the owner shall not be approved unless at least four of the board members and at least one-half of the local representatives vote in favor of approval.

d. The committee shall issue a separate decision setting forth its findings and conclusions relating to each of the petitions. The committee shall file its decision with the board and promptly notify the parties of the decision, as required by Iowa Code section 368.19.

7.10(7) Board action. Upon receipt of a committee decision approving all or a portion of a petition pursuant to subrule 7.10(6), the board shall proceed in acting on the decision pursuant to 263—Chapter 10.

263—7.11(368) Board proceedings when a conflicting involuntary petition was filed more than 30 days before a voluntary petition.

7.11(1) Applicability. Petitions will be considered pursuant to this rule if a petition that includes voluntary application(s) submitted by a landowner is filed more than 30 days following filing of a conflicting involuntary petition filed pursuant to Iowa Code section 368.11 and 263—Chapter 8.

7.11(2) Delay. The board will receive the petition including voluntary application(s) submitted by a landowner and table action on it until processing of the petition for involuntary annexation is complete.

7.11(3) Same city. If the petition including voluntary application(s) submitted by a landowner proposes to annex territory to the same city filing the involuntary petition, the board may proceed on the voluntary petition pursuant to rule 263—7.8(368).

263—7.12(368) Board proceedings on boundary adjustments between cities by petition and consent.

7.12(1) Petition. A petition to sever real property from one city and to annex the same real property to another city shall be initiated pursuant to Iowa Code section 368.25A. The petition pursuant to this rule shall be in substantially the same form as a petition submitted pursuant to Iowa Code section 368.7 and rule 263—7.2(368).

7.12(2) Hearing and information considered. If the petition is complete and in proper form, the board shall hold a public hearing on the severance, annexation, and any agreement between the cities pursuant to the procedure set forth in subrule 7.9(2). The board shall give notice of the public hearing in the same manner as notice given pursuant to Iowa Code section 368.11(5). The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.12(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3).

263—7.13(368) Board decisions—costs.

7.13(1) Board approval. If the board approves a petition considered pursuant to this chapter, the board shall issue a written decision and provide a copy of the decision to the clerk of the annexing city; the entities required by Iowa Code section 368.7(3) to receive notice of an application; the state department of transportation; and any other parties of record in the board's proceeding, including, if applicable, a city from which territory is severed pursuant to rule 263—7.12(368). Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the board's proceedings, as required by Iowa Code section 368.20(2). The cost of recording the board order shall be paid by the city to which territory is annexed.

7.13(2) Board denial. If the board denies a petition considered pursuant to this chapter, the board shall issue an order setting forth the reasons for the denial. A copy of the order shall be provided to the clerk of any impacted city, the entities required by Iowa Code section 368.7(3) to receive notice of an application, the state department of transportation, and any other party of record in the board's proceeding.

These rules are intended to implement Iowa Code chapter 368.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 263—Chapter 8
“Petitions for Involuntary City Development Action”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 368.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 368

Public Hearing

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

October 24, 2023
2:45 to 3:15 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 8 and adopt a new chapter with the same title in lieu thereof. The proposed chapter will omit repetition of statutory language and clarify board policies and procedures.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Cities, counties, regional planning authorities, and registered voters (petitioners) may petition the Board for approval of involuntary city development actions and may incur costs to do so.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed rulemaking benefits persons interested in understanding the policies and procedures of the Board.

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:
Petitioners seeking the Board’s approval of involuntary actions may incur costs to compile and submit documentation to the Board and to participate in any necessary Board meetings or hearings.
 - Qualitative description of impact:
The documentation and procedures outlined in the proposed chapter ensure that the Board can fulfill its oversight obligations as imposed by Iowa Code chapter 368. The proposed rulemaking benefits persons interested in understanding the policies and procedures of the Board.

3. Costs to the State:

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

Pursuant to Iowa Code section 368.9, the Iowa Economic Development Authority (IEDA) provides office space and staff assistance to the Board and budgets funds to cover expenses of the Board and committees created pursuant to Iowa Code chapter 368. Staff time is required to review documents submitted to the Board and administer the Board's activities.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

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

The Board's oversight obligations are imposed by Iowa Code chapter 368. The documentation and procedures outlined in the proposed chapter are no more than necessary to fulfil those obligations.

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

The Board has not identified any less costly methods or less intrusive methods for overseeing involuntary city development actions.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive method.

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 rules do not have a substantial impact on small business. The proposed rules do not establish compliance or reporting requirements. The proposed rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 263—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8 PETITIONS FOR INVOLUNTARY CITY DEVELOPMENT ACTION

263—8.1(368) Purpose. This chapter addresses the requirements and processes for city development board approval of petitions for involuntary city development action, including incorporation, discontinuance, annexation, severance, or consolidation. Such petitions shall be initiated pursuant to Iowa Code section 368.11 or 368.13 and this chapter. The body or bodies initiating the petition will be referred to in this chapter as the petitioner.

263—8.2(368) Contents of the petition. This rule describes the information and documentation a petitioner is required to include in its petition.

8.2(1) General requirements. The petition must provide all applicable information required by Iowa Code section 368.11(3). The petition must clearly identify the petitioner, the proposed action, and the name and address of each property owner within the affected territory. Affected territory shall be identified by complete legal description including, if applicable, right-of-way to the center line of secondary roads. The petition shall state that it does not propose any action prohibited by Iowa Code section 368.17. The petition shall include an overview of the proposed action and briefly describe the affected city or cities, the affected territory and the reasons for the proposed action.

8.2(2) Moratorium. The petition shall contain a statement indicating whether an applicable city is a party to an existing moratorium agreement entered pursuant to Iowa Code section 368.4 and, if so, whether the proposed annexation is consistent with the terms of the agreement.

8.2(3) Map. The map or maps included in the petition shall clearly show all boundaries of the affected city or cities and all affected territory, adjacent roadways, the relationship of the affected territory to any city, and all geographic features deemed relevant to the proposed action. If the petition proposes incorporation, the proposed city boundary shall be shown. The board may request that the petitioner provide information demonstrating the existing and anticipated use of the territory.

8.2(4) County auditor verification. The petition shall include documentation that the county auditor has verified the accuracy and completeness of the legal description of all affected territory and verified current ownership of the parcel(s) included. If the auditor fails to respond to the petitioner's request for verification within 14 days, the petitioner may provide a copy of the request and a statement indicating that no response was received.

8.2(5) Assessed valuations. The petition shall include the assessed valuation and classification assigned for tax purposes (agricultural, residential, commercial, etc.) for each parcel of platted and unplatted land within the affected territory. Documentation shall be provided that the information required by this subrule has been verified in writing by the applicable city or county assessor. If the assessor fails to provide the requested verification within 14 days, the petitioner may provide a copy of the request and a statement indicating that the verification was not provided.

8.2(6) Population density. Population density shall be delineated for the existing city, for the territory, and for the resulting city if the proposal is approved. Population density shall be expressed as persons per acre if the petition proposes annexation or persons per square mile if the petition proposes incorporation, discontinuance, severance or consolidation.

8.2(7) Population growth. If the petition seeks annexation, consolidation or incorporation, the petition shall include projected population growth for the city and the territory. Population projections shall be for a 10- or 20-year period and may be taken from an existing comprehensive plan or may be calculated based on relevant data if no comprehensive plan exists.

8.2(8) Regulations and projections. The petition shall include a description of current and proposed zoning regulations that apply to the affected territory. Projected development and land use patterns shall be described as if existing land use regulations will be continued and as if new applicable land use regulations would be applied after annexation, if approved. Residential, commercial, and industrial development projections shall be provided based on population projections for the city and territory.

If the petition proposes annexation, the amount of vacant developable land within the existing corporate limits and within the territory, as well as an estimate of the amount of developable land needed to accommodate future growth, shall be provided.

8.2(9) Topography. Topographical information shall be in map and narrative form. Maps shall include any affected city and the affected territory and shall consist of contour lines at ten-foot intervals

as may be taken from contour maps of the United States Geological Survey or any other source acceptable to the board. A narrative description shall identify flood plains, drainage areas, drainage ways, slopes and bluffs. In petitions proposing annexation or incorporation, the narrative shall also address potential impacts of topography on development of urban uses and the extension of municipal services.

8.2(10) Plans. Petitions shall describe plans for disposal of assets, assumption of liabilities, and provision of services as applicable to the action requested in the petition.

a. Petitions for annexation, consolidation and incorporation shall describe existing and proposed municipal services and facilities, including but not limited to water supply, sewage disposal, police and fire protection, and street and road maintenance, and the estimated cost of providing proposed services.

b. Petitions for annexation shall describe the capability of the existing city sewage system; water system; transportation infrastructure; park and recreation system; and police, fire, and public works departments to accommodate the addition of territory and projected development. The petition shall also include an analysis of existing bonding capacity and bonded indebtedness and the assets a city may receive including property tax, increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

c. Petitions for incorporation shall describe the capability of the proposed city to develop a sewage system; water system; transportation infrastructure; park and recreation system; and police, fire, and public works departments to accommodate the territory proposed for incorporation and an explanation of the assets the proposed city may receive, including property tax, an increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

d. Petitions for severance and discontinuance shall describe the adequacy of sewage disposal, water supply, police and fire protection, and other municipal services being provided to the territory by the city. Such petitions shall also include a statement of the capability and intent of the county in which the city or territory is located to assume responsibility for police protection, street and road maintenance and repair, and other services and an analysis of the capability of the township fire district to provide fire protection.

e. Petitions for discontinuance shall include an inventory of all real estate, funds, and personal property owned by the city and all existing liabilities of the city, and a proposal for disposition of all assets and satisfaction or assumption of all liabilities.

8.2(11) Committee consideration. The petition shall include documentation to allow assessment of the relevant considerations for committee approval in Iowa Code section 368.16.

8.2(12) Service agreements. The petition shall identify services that may be provided through agreement with township fire districts and rural water and sanitary districts and proposed agreements with any county or city for police protection, ambulance service, or any other service deemed to be of importance to the proposed boundary adjustment and shall present examples of existing service agreements.

8.2(13) Shared roads. The petition shall include a proposed formal agreement between affected municipal corporations and counties for the maintenance and improvement and traffic control of any road that is divided as a result of an incorporation or a boundary adjustment.

263—8.3(368) Preliminary notice and public meeting. A petitioner initiating an involuntary city development proceeding shall comply with the applicable notice, publication, and public meeting requirements contained in Iowa Code section 368.11. For purposes of calculating the required period of notice, business days include Monday through Friday of each week, except legal holidays as set forth in Iowa Code section 4.1(34). Proof of substantial compliance with these requirements, including copies of certified mail receipts, certification of publication of notice of the meeting, minutes of the public meeting and copies of the documents received at the meeting, shall accompany each petition submitted pursuant to this chapter.

263—8.4(368) Filing and service. The petitioner shall send two copies of a petition, including all supporting documentation, to the board. A petition will be deemed filed with the board on the date it is received by board staff. The board shall acknowledge receipt of the petition. The petitioner shall serve notice of the filing as required by Iowa Code section 368.11(1) within seven days of filing a petition with the board. The petitioner shall file proof of compliance with the service requirement with the board.

263—8.5(368) Costs. All costs that are incurred in drafting a petition, preparing supporting documents, mailing and publishing notices and other preliminary proceedings and the cost of recording, if the proposal is approved, shall be borne by the petitioner.

263—8.6(368) Staff review of petition. Within two weeks of receiving a petition filed pursuant to this chapter, board staff will review the request to determine whether the petitioner has filed all required information. If the petition is incomplete, staff shall notify the petitioner, identifying the required item(s) omitted and offering the petitioner an opportunity to provide the omitted information prior to submission of the petition to the board.

263—8.7(368) Submission of petition to the board—notice. A petition filed pursuant to this chapter will be considered by the board at the first meeting conducted 31 days or more after the petition is filed. The board shall provide the petitioner with notice of all meetings at which the board will consider the petition.

263—8.8(368) Board review of petition—waiver. Upon submission of a petition, the board shall review the petition for substantial compliance with Iowa Code section 368.11 and this chapter. In conducting this review, the board will presume that factual assertions made within the petition are accurate. The board may, however, request and examine appropriate public records or request additional information from the petitioner if deemed necessary to its review. The board may waive any requirement of this chapter upon finding the requirement inapplicable to the petition under review.

263—8.9(368) Board action on petition. The board shall accept for further proceedings any petition that it finds to be in substantial compliance with Iowa Code section 368.11 and this chapter. The board may dismiss a petition pursuant to Iowa Code section 368.12.

263—8.10(368) Formation of local committee. If the petition is accepted by the board for further proceedings, the board shall direct the appointment of local representatives to a committee as required by Iowa Code section 368.14. Committee appointments shall be made by resolutions of the appropriate governing bodies within 45 days of issuance of the board's order. The resolutions shall state that the local representative selected is qualified to serve on the committee pursuant to Iowa Code section 368.14. Copies of the resolutions and the address and telephone number of each local representative shall be promptly submitted to the board. In the event a city or county fails to timely notify the board of appointment of its local representative, the committee may conduct its proceedings in the absence of that local representative so long as a quorum is present.

These rules are intended to implement Iowa Code chapter 368.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 263—Chapter 9
“Committee Proceedings on Petitions for Involuntary City Development Action”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 368.10

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 368

Public Hearing

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

October 24, 2023
3:15 to 3:45 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 9 and adopt a new chapter with the same name in lieu thereof. The proposed chapter will omit repetition of statutory language and clarify board policies and procedures. Citations to rules in 263—Chapter 8 are to the newly proposed chapter in the Regulatory Analysis for 263—Chapter 8 (IAB 10/4/23).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Cities, counties, regional planning authorities, and registered voters (petitioners) may petition the Board for approval of involuntary city development actions and may incur costs to do so and to participate in subsequent committee proceedings.
 - Classes of persons that will benefit from the proposed rulemaking:
The proposed rulemaking benefits persons interested in understanding the policies and procedures of the Board.

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:
Petitioners seeking the Board’s approval of involuntary actions may incur costs to compile and submit documentation to a committee and to participate in any necessary meetings or hearings.
 - Qualitative description of impact:
The documentation and procedures outlined in the proposed chapter ensure committees established to evaluate petitions for involuntary city development action can fulfill their oversight obligations

as imposed by Iowa Code chapter 368. The proposed rulemaking benefits persons interested in understanding the policies and procedures of the Board.

3. Costs to the State:

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

Pursuant to Iowa Code section 368.9, the Iowa Economic Development Authority (IEDA) provides office space and staff assistance to the Board and budgets funds to cover expenses of the Board and committees created pursuant to Iowa Code chapter 368. Staff time is required to review documents submitted to the Board or committees and administer the Board's or committee's activities.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

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

Committee oversight obligations are imposed by Iowa Code chapter 368. The documentation and procedures outlined in the proposed chapter are no more than necessary to fulfil those obligations.

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

The Board has not identified any less costly methods or less intrusive methods for committee oversight of involuntary city development actions.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive methods.

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 rules do not have a substantial impact on small business. The proposed rules do not establish compliance or reporting requirements. The proposed rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 263—Chapter 9 and adopt the following new chapter in lieu thereof:

CHAPTER 9
COMMITTEE PROCEEDINGS ON PETITIONS
FOR INVOLUNTARY CITY DEVELOPMENT ACTION

263—9.1(368) Formation of committee. A committee formed pursuant to Iowa Code section 368.14 and rule 263—8.10(368) shall conduct proceedings consistent with Iowa Code sections 368.15 through 368.19. The board shall notify all parties that the committee has been formed and direct the parties to file all motions, pleadings, and submissions relating to the petition with the committee, in care of the board.

263—9.2(368) Meetings. Meetings of the committee shall be conducted in compliance with Iowa Code chapter 21.

9.2(1) Scheduling. Committee hearings shall be scheduled by the board and may be tentatively scheduled when the board accepts a petition. Board staff shall verify the availability of local representatives to participate on the scheduled hearing date and will notify the board if the local representatives are not all available on the date initially selected by the board.

9.2(2) Quorum. A quorum of the committee, as established by Iowa Code section 368.14, must be present in order for the committee to conduct a meeting or hearing.

9.2(3) Chairperson. The chairperson of the board, or the chairperson's designee, shall serve as chairperson of all committee proceedings.

9.2(4) Notice. Notice of the time, place, and purpose of each meeting shall be provided by regular mail to all parties, posted at the office of the board, and made available to all interested persons upon request. Notice of a committee public hearing will also be published as required by Iowa Code section 368.15.

9.2(5) Meeting format or location. The committee chairperson may, on the chairperson's own motion or as requested by a party, order hearings or argument to be held by electronic means in which all parties have an opportunity to participate. The chairperson will consider convenience of the witnesses or parties, as well as the nature of the case, when a meeting format or location is chosen. Objections, if any, shall be filed with the committee and served on all parties at least three business days in advance of the hearing.

263—9.3(368) Parties to proceedings. An individual or entity may become a party by filing a written appearance identifying one person upon whom the board or committee may serve all orders or correspondence. The written appearance may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed. If available, the appearance shall include reference to the applicable docket numbers. The city for which the boundary adjustment is proposed, any city whose urbanized area contains the territory, and any county or regional planning authority that contains the territory will be considered a party without filing an appearance.

263—9.4(368) Filing of documents. Each party shall serve any document that it files with the board or committee on all other parties and provide proof of service. The board or committee shall give all parties a copy of any document filed with the board or committee that was not served on all other parties or that was provided by someone other than a party. All parties shall have an opportunity to comment on any such document either orally or in writing as the board or committee so specifies. Except as otherwise provided by law, a document is deemed filed at the time it is received by board staff.

9.4(1) Form of motions.

a. No technical form for motions is required. Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

b. Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the committee.

c. In ruling on a motion, the committee may consider a failure to respond within the required time period as evidence of a lack of objection to the motion.

9.4(2) Proof of service.

a. Proof of mailing includes either a legible United States Postal Service nonmetered 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 (insert board title) 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).

(Date)

(Signature)

b. The committee chairperson may by order permit service or filing of a particular document by email or similar electronic means, unless precluded by a provision of law. In the absence of such an order, electronic transmission shall not satisfy service or filing requirements but may be used to supplement service or filing.

9.4(3) Time requirements.

a. Time shall be computed as provided in Iowa Code section 4.1(34).

b. For good cause, the committee 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 committee shall afford all parties an opportunity to be heard or to file written arguments.

263—9.5(17A) Ex parte communication.

9.5(1) There shall be no communication, directly or indirectly, between the committee members that would constitute prohibited ex parte communications pursuant to Iowa Code section 17A.17. Nothing in this provision is intended to preclude the committee members from seeking the advice or help of board staff or persons other than those with a personal interest in, 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 a committee member any ex parte communications they have received of a type that the committee member would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

9.5(2) Prohibitions on ex parte communications pursuant to subrule 9.5(1) commence with the receipt of a petition for board members and with appointment to a committee for local representatives and continue for as long as the case is pending.

9.5(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 in any communications with the committee. Notice of written communications shall be provided in compliance with rule 263—9.4(368) and may be supplemented by telephone, email or other means of notification. Where permitted, oral communications may be initiated through electronic means including all parties or their representatives.

9.5(4) Committee members may communicate with each other without notice or opportunity for parties to participate, provided that a quorum of the committee is not present.

9.5(5) Board staff or other persons may be present in deliberations or otherwise advise the committee members without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 9.5(1).

9.5(6) Communications with the committee members 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 committee members when feasible and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 263—9.9(368).

9.5(7) A committee member who receives a prohibited ex parte communication must initially determine if the effect of the communication is so prejudicial as to warrant disqualification pursuant to rule 263—9.6(17A). If 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 committee member received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the committee member determines that disqualification is not warranted, the documents identified in this subrule shall be included in the record of the proceeding 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.

9.5(8) Promptly after being assigned to serve as committee member, a committee member 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 a petition or similar document need not be separately disclosed by the committee member as long as such documents have been or will shortly be provided to the parties.

9.5(9) The committee 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 committee.

263—9.6(17A) Disqualification.

9.6(1) A committee member shall withdraw from participation in the making of any proposed or final decision in a proceeding pursuant to this chapter if that person:

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

9.6(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 that 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 board functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as committee member in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 9.5(9) and 9.6(3).

9.6(3) If a committee member knows of information that might reasonably be deemed a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant

information for the record by affidavit, including a statement of the reasons for the determination that withdrawal is unnecessary.

9.6(4) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

9.6(5) 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.

263—9.7(368) Prehearing activities.

9.7(1) *Prehearing conference.* An informal conference of parties may be ordered at the discretion of the committee chairperson or at the request of any party prior to a hearing in any proceeding. A written request for prehearing conference or an order for prehearing conference on the committee chairperson's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date.

a. Notice of a prehearing conference shall be provided as described in subrule 9.2(4).
b. A prehearing conference may be ordered for the purpose of formulating issues and considering the following:

(1) The simplification of issues.
(2) The necessity or desirability of amending the petition or other filings for the purpose of clarification, amplification or limitation.

(3) Stipulations of law or fact or on the admissibility of exhibits.
(4) The procedure at the hearing.
(5) The propriety of prior mutual exchange of prepared testimony and exhibits between or among the parties.

(6) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

c. Action agreed upon at the conference shall be made a part of the record in such manner as may be prescribed by the committee chairperson at the close of the conference.

9.7(2) *Discovery.* Parties involved in involuntary boundary adjustment proceedings shall follow the discovery procedures specified in the Iowa Rules of Civil Procedure. At the public hearings, such evidence may be introduced and entered into the record if the evidence would otherwise be admissible.

a. Discovery procedures applicable in civil actions apply to proceedings conducted pursuant to this chapter. Unless lengthened or shortened by these rules or by order of the committee chairperson, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the committee. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 9.4(3). The committee may rule on the basis of the written motion and any response or may order argument on the motion.

c. Interrogatories, depositions and other documents and evidence discovered shall not be submitted to the committee prior to the public hearings. Evidence obtained in discovery may be used in the boundary adjustment proceeding if that evidence would otherwise be admissible in that proceeding.

9.7(3) *Subpoenas.* Witnesses who are subpoenaed are entitled to the same fees as subpoenaed witnesses in the district court of Iowa. These fees shall be paid by the party at whose insistence the testimony is to be given. Service of subpoenas shall be in like manner as provided by law for service of subpoenas in the district court of Iowa.

a. Board staff shall issue subpoenas upon written request. Subpoenas issued may compel the attendance of witnesses at depositions or hearings and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at depositions or hearings or may be issued separately.

- b.* A request for a subpoena shall include the following information, as applicable:
- (1) The name, address and telephone number of the person requesting the subpoena;
 - (2) The name and address of the person to whom the subpoena shall be directed;
 - (3) The date, time and location at which the person shall be commanded to attend and give testimony;
 - (4) Whether the testimony is requested in connection with a deposition or hearing;
 - (5) A description of the books, papers, records or other real evidence requested;
 - (6) The date, time and location for production or inspection and copying.
- c.* Each subpoena shall contain, as applicable:
- (1) The caption of the case;
 - (2) The name, address and telephone number of the person who requested the subpoena;
 - (3) The name and address of the person to whom the subpoena is directed;
 - (4) The date, time and location at which the person is commanded to appear;
 - (5) Whether the testimony is commanded in connection with a deposition or hearing;
 - (6) A description of the books, papers, records or other real evidence the person is commanded to produce;
 - (7) The date, time, and location for production, or inspection and copying;
 - (8) The time within which a motion to quash or modify the subpoena must be filed;
 - (9) The signature, address and telephone number of the board's administrator or designee;
 - (10) The date of issuance;
 - (11) A return of service.
- d.* Board staff shall mail or provide the subpoenas to the requesting party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena and providing copies of the subpoena to all parties to the proceeding.
- e.* Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the committee a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.
- f.* Upon receipt of a timely motion to quash or modify a subpoena, the committee may issue a decision. The committee may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the committee may schedule oral argument or hearing by electronic means or in person.

263—9.8(368) Notice of public hearings. Notices shall comply with subrule 9.2(4).

9.8(1) Notice of the public hearing shall include:

- a.* A statement of the time, place and nature of the hearing;
- b.* A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c.* A reference to the particular sections of the statutes and rules involved; and
- d.* A short and plain statement of the matters asserted.

9.8(2) Notice of the public hearing shall comply with Iowa Code section 362.3 and chapter 21.

263—9.9(368) Continuance. Hearings or proceedings relating to matters that are within the jurisdiction of the committee may be continued by the committee, and notice thereof shall be given to all parties. Prior to the commencement of the hearing or other proceeding, a party may, upon written motion to the committee, request a continuance. Copies of said written motion must include proof of service upon all parties to the proceedings. All parties shall have an opportunity to file resistances to said motion, and the committee may, in its discretion, allow the parties to present oral arguments relative to the motion pursuant to rule 263—9.4(368). A party may, during said hearing or proceeding, but not *ex parte*, request a continuance. All parties shall have an opportunity to comment on a request for a continuance made at the hearing either orally or in writing as specified by the committee.

9.9(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

9.9(2) An oral application for a continuance may be made if the committee waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the committee. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

9.9(3) In determining whether to grant a continuance, the committee may require documentation of any grounds for continuance, and 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.

9.9(4) Board staff may enter an order granting an uncontested application for a continuance. Upon consultation with the committee chairperson or the chairperson's designee, board staff may deny an uncontested application for a continuance or rule on a contested application for continuance.

9.9(5) If a hearing is continued prior to the commencement of the hearing, notice of the continued hearing will be given as required in rule 263—9.8(368).

263—9.10(368) Public hearings.

9.10(1) General provisions.

a. Public hearings shall be held on dates and at locations determined by the committee. The hearing shall be held in a place open to the public.

b. The committee shall, prior to serving notice, make the petition or plan available for public inspection. The committee shall ensure that the petition or plan is available on or before the date of notice and publication.

c. Before testimony is presented, the record shall show the identity of the committee members present, identity of the assistant attorney general and board staff, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. The chairperson may also outline any ground rules and time limitations to allow all parties an opportunity to speak. The committee chairperson or assistant attorney general representing the committee may make a brief opening statement, including a summary of actions taken by the committee prior to the hearing.

d. The committee chairperson shall be in control of the proceedings and have the authority to admit or exclude testimony or other evidence and to rule on all motions and objections.

e. The committee shall listen to testimony and arguments from all those concerned and may ask questions of anyone at any point during any hearing.

f. Legal counsel shall be at the discretion and expense of any party to the proceedings.

g. Parties appearing before the committee should select one or two persons to serve as primary spokespersons for their positions.

h. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated either orally or in writing, shall be accompanied by a short statement of the grounds of such objections, and shall be included in the record. No such objection shall be deemed waived by further participation by the objector in the hearing or proceeding.

i. The committee may adjourn a hearing for good cause from time to time, upon request of either party or legal counsel representing the committee, for the purpose of a fair hearing.

j. The committee chairperson shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

9.10(2) *Format of public hearings.* The format of the public hearings will generally follow the procedure outlined below. However, the committee chairperson may tailor the format to the nature of the case. The petitioners shall have the burden of proof and shall present their evidence first. Other parties in the case will present their evidence following the petitioners as determined by the committee chairperson. The format will generally permit each party an opportunity to make an opening statement, including the names of any witnesses to be called to explain the party's basic arguments, and to present testimony, evidence and exhibits in support of the party's arguments.

a. After each party's presentation, questions may be asked of the presenters by members of the committee. Then the other parties may ask questions and cross-examine witnesses. Then others who are not parties may ask questions of the presenters.

b. After the cross-examination and questioning are completed, there will be a comment period during which those who are not parties may make comments expressing their views regarding the petition. Those who wish to comment need not preregister with the committee prior to the hearing but need only to sign up at the time of the hearing. The committee chairperson may limit the length of the comments when a large number of people wish to testify.

c. After the comment period, the parties will be offered an opportunity for rebuttal to evidence presented during the hearing. The petitioner will have the final opportunity for rebuttal.

d. At the conclusion of all presentation of evidence, each party shall be permitted an opportunity for a closing statement summarizing its arguments.

e. Failure to appear.

(1) If a party to a hearing fails to appear, that party shall be deemed to have waived opportunity for the hearing or to participate in the hearing unless there is a show of good cause for such failure.

(2) If a petitioner fails to appear at a proceeding, the hearing may be dismissed or postponed at the discretion of the committee or the committee may approve the petition on the basis of verified proof and affidavits, if any, filed in the case, which shall be considered as having been offered in evidence at the hearing by the petitioner.

9.10(3) *Testimony at hearings.* At the public hearing, evidence may be presented in narrative form or question and answer form for each witness at the discretion of the committee chairperson.

a. At the public hearing, all parties shall be allowed the opportunity to cross-examine witnesses and be given an opportunity for rebuttal.

b. The committee members have the right to examine witnesses at any stage of the witnesses' testimony. The committee chairperson may limit questioning in a manner consistent with law.

9.10(4) *Evidence.* Rules of evidence shall be those set forth in Iowa Code section 17A.14.

a. The committee chairperson shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

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

c. 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 committee chairperson, 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.

d. Individuals unable to attend a public hearing may submit written comments to the committee. Written comments shall become part of the permanent file of the hearing.

e. When any material or relevant matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. If, in the judgment of the committee, such immaterial or irrelevant

matter would unnecessarily encumber the record, such book, paper or document will not be received in evidence as a whole, but the material or relevant portions thereof, if otherwise admissible, may be read into the record or a true copy thereof supplied in the form of an exhibit.

f. The committee may take note of appropriate public documents and records of a general scientific or technical nature by notice to all parties involved, limiting the time within which such parties may object to the accuracy of the facts sought to be proved from such documents or records.

g. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies shall also be furnished to members of the committee. All exhibits admitted into evidence shall be appropriately marked, and the original exhibit shall be made part of the record. Written or printed materials shall be in sufficient quantity to supply one copy for each member of the committee and one copy for all other parties to the proceedings.

h. Stipulation of facts is encouraged. The committee chairperson may make decisions based on stipulated facts.

i. At any stage of the hearing or after the close of the hearing but prior to decision, the committee may call for further evidence to be presented by the parties concerned. All parties shall be given a copy of said additional evidence and shall have an opportunity to comment on said evidence either orally or in writing as the committee so specifies.

9.10(5) Record of public hearing.

a. Oral proceedings shall be recorded.

b. Board staff shall prepare an official record of all proceedings, including testimony and exhibits. Testimony taken by a mechanical recording device may be incorporated by reference if a transcript is not made. Transcription of the oral proceedings will be retained by the board for two years following the decision or until the case is resolved, whichever is later.

c. Upon request, the board shall provide a copy of the whole record or any portion of the record. The requesting party may be required to pay the cost of preparing a copy of the record.

9.10(6) Posthearing brief. The committee shall allow ten days after the final public hearing within which the parties may file briefs.

a. Unless otherwise ordered by the committee chairperson, initial briefs shall be filed simultaneously by all parties. Briefs shall contain a concise statement of the case. Arguments shall be based on evidence introduced during the proceeding and shall specify the portions of the record where the evidence is found. No new evidence may be included in the posthearing briefs absent a request from the committee and compliance with paragraph 9.10(4)“*i.*” The initial brief of the party who bears the burden of proof shall include all arguments it intends to offer in its brief in support of its case and against the record case of the adverse party or parties.

b. Reply briefs shall also be filed simultaneously, but only by those parties filing initial briefs, on a schedule set by the committee chairperson. A reply brief shall be confined to refuting arguments made in the brief of an adverse party.

c. A copy of such briefs shall be given to the committee and all parties and shall be accompanied by written evidence of service upon all parties.

d. A party’s failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the committee from deciding the issue on the basis of evidence appearing in the record.

e. The committee chairperson may set a date and time for oral argument (including a time limit for argument), either in addition to or in lieu of briefs, when deemed necessary or in the public interest by the chairperson. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

263—9.11(368) Committee decision.

9.11(1) After the final public hearing and filing of briefs, the committee will meet to decide whether or not to approve the petition.

a. Notice of the meeting will be provided pursuant to subrule 9.2(4).

b. The committee may consider all information and arguments presented at the public hearing and in the briefs that were filed.

c. No additional oral or written testimony will be taken or considered.

d. The committee may conduct its deliberations in closed session pursuant to Iowa Code section 21.5 but shall announce its decision in open session.

e. Within 90 days after the final public hearing, the committee shall approve or disapprove the petition or plan and shall file its written decision for record.

f. The committee may amend the petition or plan prior to approving it.

g. Decisions shall be in writing and rendered following the hearing. The decision shall include:

(1) Identification of parties and basic issues.

(2) Summary of findings of fact.

(3) Summary of conclusions of law.

(4) Ruling.

(5) Reasons for ruling.

(6) Order for implementation of the decision.

9.11(2) Committee decisions, orders or rulings shall be signed by the chairperson or the chairperson's authorized designee. Copies of the written decision shall be mailed to the parties.

9.11(3) A request for a decision that seeks only a change in the effective date shall be made by motion filed, served and acted upon in a like manner as other motions.

263—9.12(368) Appeal of a committee decision.

9.12(1) An appeal of a committee decision or the legality of an election on the proposed boundary adjustment may be made pursuant to Iowa Code sections 17A.19 and 368.22.

9.12(2) Within 30 days of being notified of the filing of an appeal, board staff shall transmit a certified copy of the entire record of proceedings to the reviewing court. By stipulation of all parties to the appeal, the record of the proceedings may be shortened.

263—9.13(368) Rehearing procedures.

9.13(1) Any party to a boundary adjustment proceeding may file an application for rehearing of the committee decision to approve or disapprove a proposed boundary adjustment.

9.13(2) The application for rehearing shall be filed within 20 days of the date of the committee decision as specified in the order. If no date is specified in the order, the date of the committee decision is the date it is mailed or the date of delivery if service is by another means.

9.13(3) The party applying for rehearing shall transmit a copy of the application for rehearing to all parties to the proceeding on the date of filing with the committee. If the application does not contain a certificate of service, the board shall file copies of the application on all parties, with the time for response beginning then.

9.13(4) Contents of application.

a. An application for rehearing shall specify the findings of fact and conclusions of law claimed to be erroneous and include a brief statement of the grounds of error.

b. The application shall state whether the applicant desires reconsideration of all or part of the committee decision on the existing record and whether, on the basis of paragraph 9.13(4)“c,” the applicant requests an opportunity to provide additional evidence.

c. A party may request the taking of additional evidence only by establishing:

(1) The facts or other evidence arose after the original proceeding;

(2) The party offering such evidence could not reasonably have provided such evidence at the original proceeding; or

(3) The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

d. No further hearing will be granted when it is apparent that the added evidence will merely be cumulative.

e. Any party may object to or resist an application for rehearing by filing a resistance with the committee within ten days of the filing of the application.

f. The committee may grant or deny an application with or without a hearing on the application.

(1) The application for rehearing shall be deemed denied unless the committee grants the application within 20 days of its filing.

(2) An order granting or denying an application for rehearing is deemed issued on the date it is mailed by the committee or the date it is received if another method of delivery is used.

(3) If the committee grants an application for rehearing, the committee may schedule oral argument or rehearing on the application if additional evidence will be received. If additional evidence will not be received, the committee may issue a ruling without oral argument or hearing. The committee may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues.

(4) If the committee denies an application, the committee shall proceed as if no application had been filed.

These rules are intended to implement Iowa Code chapters 17A and 368.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 263—Chapter 10
“Board Proceedings on Petitions for Involuntary Boundary Change After Committee Approval”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 368.10

State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.19 and chapter 368

Public Hearing

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

October 24, 2023
3:45 to 4:15 p.m.

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 City Development Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.gov

Purpose and Summary

Pursuant to Executive Order 10, the Board proposes to rescind Chapter 10 and adopt a new chapter in lieu thereof. The new chapter will omit repetition of statutory language and clarify Board policies and procedures.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Cities, counties, regional planning authorities, and registered voters (petitioners) may petition the Board for approval of involuntary city development actions and may incur costs to participate in the Board’s processes following committee approval.
 - Classes of persons that will benefit from the proposed rulemaking:
The rulemaking benefits persons interested in understanding the policies and procedures of the Board.
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:
Petitioners seeking the Board’s approval of involuntary actions may incur costs to compile and submit documentation to the Board and to participate in any necessary Board meetings or hearings.
 - Qualitative description of impact:
The documentation and procedures outlined in Chapter 10 ensure the Board can fulfill its oversight obligations as imposed by Iowa Code chapter 368. The rulemaking benefits persons interested in understanding the policies and procedures of the Board.

3. Costs to the State:

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

Pursuant to Iowa Code section 368.9, the Iowa Economic Development Authority (IEDA) provides office space and staff assistance to the Board and budgets funds to cover expenses of the Board and committees created pursuant to Iowa Code chapter 368. Staff time is required to review documents submitted to the Board and administer the Board's activities.

- Anticipated effect on state revenues:

The rulemaking has no anticipated effect on state revenues.

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

The Board's oversight obligations are imposed by Iowa Code chapter 368. The documentation and procedures outlined in Chapter 10 are no more than necessary to fulfil those obligations.

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

The Board has not identified any less costly methods or less intrusive methods for overseeing involuntary city development actions.

6. Alternative methods considered by the agency:

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

The Board did not consider any alternative methods.

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

The Board did not consider any alternative methods because the Board did not identify any less costly or less intrusive method.

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 chapter does not have a substantial impact on small business. The chapter does not establish compliance or reporting requirements. The chapter does not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 263—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
BOARD PROCEEDINGS ON PETITIONS FOR INVOLUNTARY BOUNDARY
CHANGE AFTER COMMITTEE APPROVAL

263—10.1(368) Election. If a petition or plan is approved, the board shall submit the proposal at an election held pursuant to Iowa Code section 368.19, regardless of appeal or applications for rehearing filed pursuant to rule 263—9.13(368).

263—10.2(368) Final order. The board will issue an order stating the boundary change is complete in conjunction with the procedure after approval specified in Iowa Code section 368.20 and include such order with documents filed or recorded.

263—10.3(368) Record.

10.3(1) The record of an involuntary boundary adjustment proceeding shall include the following as applicable:

- a.* The original petition or plan and any amendment;
- b.* Proofs of service and publication of required public hearing notices;
- c.* All pleadings filed with the board and committee and any answers or rulings on the pleadings;
- d.* The public hearing transcript and all evidence received at public hearing;
- e.* All briefs and documents filed on the board or committee by parties to the proceedings and all other filings made by those not parties;
- f.* Public documents referenced by the board or committee;
- g.* The committee's findings of fact, conclusions of law and determination;
- h.* The board's election order;
- i.* Certification and proof of publication of election results;
- j.* The board's final order.

10.3(2) The record shall be opened when a petition is filed with the board and shall be closed when the board has issued its final order.

263—10.4(368) Appeal.

10.4(1) When an appeal is filed pursuant to Iowa Code section 368.22, the appellant shall notify the board and provide a copy of the appeal.

10.4(2) Within 30 days after the filing of the petition, the board shall transmit to the reviewing court the original or a certified copy of the entire record of the case that is the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened.

263—10.5(368) Board supervision of proposal execution. The board shall proceed accordingly in the following cases:

10.5(1) Discontinuance. The board will supervise discontinuance of a city pursuant to Iowa Code section 368.21. The board shall take control of all city balances, property, and records during the six-month period following the last notice of discontinuance published by the board. Upon the close of the six-month period, the board shall determine the extent of any unpaid allowed claims and such determination shall be verified by a certified public accountant or by the state auditor. In the case of unpaid allowed claims, the board shall approve payment from the discontinued city's account or shall direct the appropriate governing body to levy the necessary taxes.

10.5(2) Boundary adjustment. The board may, upon request of the applicable governing bodies, provide advisory assistance in implementation of an annexation, severance, or consolidation.

10.5(3) Consolidation. After a consolidation has been approved in an election held pursuant to Iowa Code section 368.19, the board may authorize the cities to continue to operate as individual cities until an election of a new city council has been held and the result certified. The election of a new city council shall be held within 90 days of the date of the appeal period authorized by Iowa Code section 368.22.

These rules are intended to implement Iowa Code section 17A.19 and chapter 368.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapters 20 to 25 and 27
“Collection of Tax Debt and Debt Owed to Other State Agencies”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.17, 422.25, 252J, 453B, and 472D
State or federal law(s) implemented by the rulemaking: Iowa Code sections 421.17, 422.20, 422.26, 422.72, 272D.2, 272D.5, 272D.6, 272D.7, and 272D.9 and chapters 626 and 642

Public Hearing

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

October 25, 2023
1 p.m.

Via video/conference call:
meet.google.com/toe-himx-omj
PH: 252.590.0724
PIN: 233 808 257#
Mute telephone or microphone upon entering the meeting

Participants attending the meeting in person will need to be escorted to the meeting room. Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this Regulatory Analysis.

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 of Revenue and advise of specific needs.

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 no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this rulemaking is to readopt several chapters related to the collection of tax debt and debt owed to other state agencies and to adopt one new chapter on related topics. The proposed chapters were revised to remove unnecessary or obsolete language and language that is duplicative of statute and to clarify readopted rules.

Chapter 20 provides practices and procedures the Department will follow in filing liens on property to establish a priority interest in assets of the taxpayer for unpaid debt. Chapter 21 provides when and how the Department may offset a taxpayer’s federal refund via the Treasury Offset Program to satisfy state income tax obligations. Chapter 22 contains requirements for other state agencies and local government entities to place their debt with the Department for collection. Chapter 23 contains a rule implementing the Department’s authority to seize and sell property to collect tax debt and other delinquent liabilities collected by or owed to the State of Iowa. Chapter 24 provides requirements of the Department for sanctioning a professional or other license and the procedure for challenging. Chapter 25 contains the procedure for a debtor to challenge a wage or bank levy issued by the Department. Chapter 27 is a

newly created chapter that contains rules on the subpoena of utility companies and the Director's power to release the names of debtors. The rules in this newly created chapter were previously located in other chapters but were moved to Chapter 27 for more intuitive organization.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rulemaking does not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
These rules help the public understand their obligations, their rights, and common procedures utilized in the collection of debt. Therefore, any person or entity that owes debt to the State of Iowa will benefit from the rules.

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 known economic or other quantitative impact of these chapters. However, the guidance offered by these chapters likely encourages compliance with required procedures.
 - Qualitative description of impact:
The qualitative impact of these chapters is to provide guidance to debtors on the mechanisms used by the State of Iowa to collect debt.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no costs to the State beyond what is already required to administer the relevant statutes.
 - Anticipated effect on state revenues:
Because these rules implement the mechanisms through which the State of Iowa collects debt, providing guidance to debtors in these rules will likely encourage compliance.

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

The costs of inaction would be failing to update the rules to remove unnecessary and obsolete language or language that is duplicative of statute. The benefit of the rulemaking is providing guidance to the public about the Department's debt collection practices and procedures and the actions required of debtors.

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

The proposed rulemaking is not costly or intrusive.

6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
The Department considered the possibility of not having rules on these topics but determined that providing guidance on debt collection practices and required procedures was necessary.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The rules that will be repromulgated have been determined to be necessary to provide guidance on the collection of debt by the Department. The rules provide clarity to the public about the Department's practices. There is no less restrictive alternative to achieve the benefit of additional certainty.

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 through these chapters. There is no difference in how these rules treat small businesses as opposed to other entities.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 20 and adopt the following **new** chapter in lieu thereof:

CHAPTER 20
FILING AND EXTENSION OF TAX LIENS
AND CHARGING OFF UNCOLLECTIBLE TAX ACCOUNTS

701—20.1(422,423) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

“*Assessment issued*” means the same as defined in Iowa Code section 422.26(10).

“*Charge off*” means moving an unpaid account to inactive status. “Charge off” does not mean the account is deleted from the department’s records or that the account is not due and owed. Charge off does not prevent the department from recovering all or part of the account through actions including but not limited to bankruptcy, probate, or setoff or through voluntary payment.

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

“*Director*” means the director of the department or the director’s authorized representative.

“*Lien*” means the legal right or interest against personal or real property provided by Iowa Code section 422.26 or other Iowa Code sections making reference to Iowa Code section 422.26.

“*Recorder*” means the county recorder of any county in the state of Iowa.

“*Taxes*” means all taxes or charges administered by the department and any tax or charge to which Iowa Code section 422.26 applies.

701—20.2(422,423) Place of filing.

20.2(1) A notice of lien may be filed in the office of the recorder in any county.

20.2(2) The director may charge off any account before the lien has lapsed if the taxpayer meets one or more of the following criteria:

a. The taxpayer is deceased, and there are no assets in the estate or there are no assets available for the payment of taxes under Iowa Code section 633.425.

b. The taxpayer is a corporation that has dissolved or ceased to exist with no assets remaining.

c. The taxpayer is retired because of age or total disability (as described in rule 701—104.12(425)) with income and assets such that it would cause the taxpayer undue financial hardship if the department enforced collection of past due taxes. The director may require other evidence to determine when collection of tax would be a hardship on a taxpayer.

d. The taxpayer has unpaid tax amounting to less than \$50.

- e. The taxpayer cannot be found, after diligent inquiry, and has no property upon which the lien can attach.
- f. The taxpayer is insolvent with no property, real or personal, upon which the lien can attach. These rules are intended to implement Iowa Code section 422.26.

ITEM 2. Rescind 701—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
FEDERAL OFFSET FOR IOWA INCOME TAX OBLIGATIONS

701—21.1(421,26USC6402) Definitions. The following definitions are applicable to the federal offset program:

“*Assessment*” means the determination of a past due tax obligation and includes self-assessments. An assessment includes the Iowa income tax, interest, penalties, fees or other charges associated with the past due legally enforceable Iowa income tax obligation.

“*Department,*” “*state of Iowa,*” “*Iowa*” or “*the state*” means the Iowa department of revenue.

“*Director*” means the director of the Iowa department of revenue or the director’s authorized representative.

“*Overpayment*” means a federal tax refund due and owing to a person or persons.

“*Past due legally enforceable Iowa income tax obligation*” means a debt defined in 26 U.S.C. 6402(e)(5).

“*Resident of Iowa*” means any person with a federal overpayment for the year in which Iowa seeks offset and such person has an Iowa address listed on that person’s federal return for the tax period of overpayment.

“*Secretary*” means the Secretary of the Treasury for the federal government.

“*State income tax obligation*” or “*Iowa income tax obligation*” is intended to cover all Iowa income taxes. This term includes all local income taxes administered by the Iowa department of revenue or determined to be a “state income tax” under Iowa law. Such taxes may include but are not limited to individual income tax, income surtax, fiduciary income tax, withholding tax, or corporate income tax, and penalties, interest, fines, judgments, or court costs relating to such tax obligations.

“*Tax refund offset*” means withholding or reducing, in whole or in part, a federal tax refund payment by an amount necessary to satisfy a past due legally enforceable state income tax obligation owed by the payee (taxpayer) of the tax refund payment. This chapter only involves the offset of tax refund payments under 26 U.S.C. 6402(e); it does not cover the offset of federal payments other than tax refund payments for the collection of past due legally enforceable state income tax obligations.

“*Tax refund payment*” means the amount to be refunded to a taxpayer by the federal government after the Internal Revenue Service (IRS) has applied the taxpayer’s overpayment to the taxpayer’s past due tax liabilities in accordance with 26 U.S.C. 6402(a) and 26 CFR 301.6402-3(a)(6).

701—21.2(421,26USC6402) Prerequisites for requesting a federal offset. The following requirements must be met before the state can request an offset of a federal overpayment against an Iowa income tax obligation:

21.2(1) The state must have made written demand on the taxpayer to obtain payment of the state income tax obligation for which the request for offset is being submitted.

21.2(2) Pre-offset notice. At least 60 days prior to requesting the offset of a taxpayer’s federal overpayment for an Iowa income tax obligation, the state of Iowa must provide notice by certified mail, return receipt requested, to the person owing the Iowa income tax liability. This notice must include information as required by 26 U.S.C. 6402 and 31 CFR 285.8.

21.2(3) The state must consider any evidence presented by the person owing the obligation and determine whether the amount or amounts are past due and legally enforceable.

21.2(4) Additional pre-offset notices. The department must provide a taxpayer with an additional pre-offset notice if the amount of the obligation to be subject to offset is increased due to a new

assessment. However, a new pre-offset notice is not required if there is an increase in the amount to be offset due to accrued interest, penalties or other charges associated with an Iowa income tax obligation in which notice has previously been given.

21.2(5) Before offset of the federal refund can be requested by the state of Iowa, the person's Iowa income tax liability must be at least \$25, unless otherwise provided based on the discretion of the department and the Secretary. If an individual owes more than one Iowa income tax obligation, the minimum amount will be applied to the aggregate amounts of such obligations owed to Iowa.

21.2(6) Only residents of Iowa are subject to offsets under these rules.

701—21.3(421,26USC6402) Submission of evidence. A taxpayer may challenge the offset by submitting evidence that all or part of the debt is not past due or not legally enforceable. The challenge must be postmarked or received within 60 days of the date of the pre-offset notice in the manner described in the pre-offset notice.

701—21.4(421,26USC6402) Procedure after submission of evidence. Following timely receipt of evidence by the department from the taxpayer, the department will notify the taxpayer whether the evidence submitted is sufficient to terminate the intended offset. If the department determines that the evidence is sufficient, the procedure to initiate the federal offset shall be terminated for that obligation and the taxpayer's record of Iowa income tax obligation for that particular obligation shall be adjusted accordingly. However, if the department determines that the evidence is insufficient to show that the amount or amounts at issue are not, in whole or in part, a past due and legally enforceable income tax obligation, the department must notify the taxpayer of the decision.

The challenge of an offset under these rules is subject to judicial review under Iowa Code section 17A.19 as other agency action.

In cases in which a taxpayer claims immunity from state taxation due to being an enrolled member of an Indian tribe who lives on that member's reservation and derives all of that member's income from that reservation, the taxpayer may refer to 31 CFR 285.8(c)(3)(ii) for additional information.

These rules are intended to implement Iowa Code chapter 421 and 26 U.S.C. 6402(e) et seq.

ITEM 3. Rescind 701—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
COLLECTION OF DEBTS OWED THE STATE
OF IOWA OR A STATE AGENCY

701—22.1(421) Definitions. For purposes of this chapter, the following definitions shall govern:

“Centralized collections unit” means the unit within the department charged with collecting debt for the department and other entities pursuant to Iowa Code section 421.17(27) or any other Iowa statute.

“Debtor” means any person having a delinquent account, charge, fee, loan, or other indebtedness due the state of Iowa or any state agency.

“Department” means the Iowa department of revenue.

“Director” means the director of revenue or the director's authorized representative.

“Liability” or *“debt”* means any liquidated sum due and owing to the state of Iowa or any state agency that has accrued through contract, subrogation, tort, operation of law, or any legal theory regardless of whether there is an outstanding judgment for that sum.

“Person” or *“entity”* means individual, corporation, business trust, estate, trust, partnership or association, limited liability company, or any other legal entity, but does not include a state agency.

“State agency” or *“agency”* includes but is not limited to entities listed in Iowa Code section 421.17(27)“a.”

701—22.2(421) Participation guidelines. The department may collect on behalf of a public agency at the department's sole discretion. The department may require that a public agency enter into an

agreement for collection with the department prior to collecting for the public agency. Agreements will be signed by the director or another staff member of the department designated by the director.

701—22.3(421) Duties of the agency. A public agency seeking the use of the centralized collections unit shall have the following duties regarding the department and debtors.

22.3(1) Notification to the department. The public agency must provide a list of debtors to the department of revenue. This list must be in a format and type prescribed by the department and include information relevant to the identification of the debtor and the source and amount of the debt. The public agency shall terminate all collection activities once notification is given to the department.

22.3(2) Change in status of debt. A public agency that has provided liability information to the department of revenue must notify the department immediately of any change in the status of a debt. This notification shall be made no later than ten calendar days from the occurrence of the change. Change in status may come from payment of the debt or liability, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

These rules are intended to implement Iowa Code sections 421.17, 422.20, and 422.72.

ITEM 4. Rescind 701—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23
DEBT COLLECTION AND SELLING OF PROPERTY
TO COLLECT DELINQUENT DEBTS

701—23.1(421,422,626,642) Definitions.

“Delinquent debtor” means an individual, corporation, limited liability company, business trust, estate, trust, partnership, or any other legal entity that owes a delinquent liability, or unpaid taxes to the state or a liability that is collectible by the state.

“Department” means the Iowa department of revenue.

“Director” means the director of revenue or the director’s authorized representative.

“Property” means any property, including but not limited to real property, tangible property, and intangible property. “Property” includes but is not limited to a homestead.

“State” means the state of Iowa.

This rule is intended to implement Iowa Code sections 421.17 and 422.26 and chapters 626 and 642.

701—23.2(421,422,626,642) Sale of property. Property may be seized and sold to satisfy unpaid taxes, delinquent liabilities owed to the state, and liabilities collected by the state. A homestead may be sold to satisfy delinquent taxes collected under Iowa Code section 422.26 and any other similar section. However, a homestead may not be sold for collection of any other liability owed to or collected by the state other than taxes unless specifically authorized by statute.

This rule is intended to implement Iowa Code sections 421.17 and 422.26 and chapters 626 and 642.

ITEM 5. Rescind 701—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
LICENSE SANCTIONS FOR COLLECTION OF DEBTS OWED THE STATE OF IOWA OR
A STATE AGENCY

701—24.1(272D) Definitions. For purposes of this chapter, the following terms shall have the same definitions as Iowa Code section 272D.1:

1. Certificate of noncompliance.
2. Liability.
3. License.
4. Licensee.

5. Licensing authority.
6. Obligor.
7. Person.
8. Unit.
9. Withdrawal of a certificate of noncompliance.

701—24.2(272D) Notice to person of potential sanction of license. Before issuing a certificate of noncompliance, the unit must send a notice to a person in accordance with Iowa Code section 272D.3.

701—24.3(272D) Challenges. A person may challenge the unit's issuance of a certificate of noncompliance by requesting a conference. Upon receiving a timely written request for a conference, the unit shall grant the person a stay of the issuance of a certificate of noncompliance. The stay shall remain in effect pending the decision of the unit under Iowa Code section 272D.6(1).

24.3(1) Conference. The person may request a conference with the unit to challenge the unit's issuance of a certificate of noncompliance following the mailing of the notice of potential license sanction or at any time after a licensing authority serves notice of suspension, revocation, denial of issuance, or nonrenewal of a license. The request for a conference shall be made in writing to the unit. If the conference is requested pursuant to and after the unit's mailing of a notice of potential license sanction under rule 701—24.2(272D), the request must be received by the unit within 20 days following the mailing or service of that notice.

24.3(2) Notification. The unit shall notify the person of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than ten days following the unit's issuance of the notice of the conference. If the person fails to appear at the conference, the unit shall issue a certificate of noncompliance.

24.3(3) Location. The conference will be conducted by telephone unless otherwise indicated in the written notification by the department.

701—24.4(272D) Issuance of certificate of noncompliance.

24.4(1) If the person fails to appear at the conference, the unit shall issue a certificate of noncompliance. If the person does not timely request a conference or pay the amount of liability owed within 20 days of the date the notice was postmarked, the unit shall issue a certificate of noncompliance.

24.4(2) However, the unit will not issue a certificate of noncompliance if:

- a. The unit finds a mistake in the identity of the person;
- b. The unit finds a mistake in determining the amount of the liability;
- c. The unit determines the amount of the liability is less than \$1,000;
- d. The obligor pays the amount due or enters into an acceptable payment plan;
- e. The obligor is in bankruptcy; or
- f. The unit finds additional time is required for the person to comply.

701—24.5(272D) Written agreements. The obligor and the unit may enter into a written agreement for payment of the liability owed pursuant to Iowa Code section 272D.5.

701—24.6(272D) Decision of the unit.

24.6(1) If the unit mails a notice to a person and the person requests a conference, the unit shall issue a written decision if any of the conditions in Iowa Code section 272D.6(1) exist.

24.6(2) Mailing of decision. The unit shall send a copy of the written decision as described in Iowa Code section 272D.6(2).

701—24.7(272D) Certificate of noncompliance to licensing authority.

24.7(1) The unit shall issue a certificate of noncompliance to any appropriate licensing authority as required by Iowa Code section 272D.7.

24.7(2) The suspension, revocation, or denial shall be effective no sooner than 30 days following the date of notice to the person.

701—24.8(272D) Requirements of the licensing authority. Licensing authorities shall observe the requirements and procedures of Iowa Code section 272D.8.

701—24.9(272D) District court hearing. A person may file an application for review of the decision by the unit or following issuance of notice by the licensing authority with the district court as described in Iowa Code section 272D.9. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or further review pursuant to Iowa Code chapter 17A, and any resulting court hearing shall be an original hearing before the district court.

These rules are intended to implement Iowa Code sections 272D.2, 272D.5, and 272D.9.

ITEM 6. Rescind 701—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
CHALLENGES TO ADMINISTRATIVE LEVIES

701—25.1(421) Challenges to administrative levies. A challenge to an administrative levy can only be made by an obligor or an account holder of interest. A challenge to an administrative levy will be reviewed by the centralized collections unit of the department. This review is not subject to the provisions of Iowa Code chapter 17A. An account holder of interest means a person named on the account.

701—25.2(421) Form and time of challenge. The obligor or an account holder of interest must submit a written challenge to an administrative levy within ten days of the date of the notice. Challenges must be submitted to the department in the manner described on the notice furnished by the department to the obligor or account holder of interest.

701—25.3(421) Issues that may be raised. The issues raised by the challenging party, which are limited to a mistake of fact, may include but are not limited to:

1. The challenging party has the same name as the obligor but is not the obligor.
2. The challenging party does not have an interest in the account that is being seized.
3. The amount listed in the notice to the obligor is greater than the amount actually owed.

These rules are intended to implement Iowa Code sections 421.17 and 421.17A.

ITEM 7. Adopt the following **new** 701—Chapter 27:

CHAPTER 27
SUBPOENA OF RECORDS FROM UTILITY COMPANIES
AND PUBLICATION OF NAMES OF DEBTORS

701—27.1(421) Subpoena of records from public or private utility company. The director may subpoena records of a public or private utility company to the extent permitted by Iowa Code section 421.17(32).

27.1(1) Definitions.

“*Reasonable efforts*,” for purposes of Iowa Code section 421.17(32), will be considered complete when the department has attempted to reach the individual using the individual’s last-known address as determined pursuant to subrule 7.33(2).

“*Utility*” means the same as “public or private utility company” as defined in Iowa Code section 421.17(32)“f.”

27.1(2) Procedure for issuing a subpoena; data transfer.

a. The department shall submit the subpoena to the utility’s designated recipient on or before the date a secure data file is submitted for processing. The subpoena will include the director’s authority to make the request, the name of the file submitted for processing, the information to be provided for each individual, the expected response date, and the department’s contact information. The subpoena must be

signed by the director. The data file provided to the utility by the department will include social security numbers, names, and last-known addresses in the mutually agreed-upon format.

b. Within 30 days of receiving the department's data file, the utility will process and return the data file to the department.

27.1(3) Confidentiality. The utility must keep confidential all records received from the department. After the department has received the requested information from the utility, the utility must delete the data files the utility received in a secure manner. The department must keep confidential all records received from the utility in compliance with all applicable state and federal laws regarding individual privacy and the privacy rights of public and private utility companies.

This rule is intended to implement Iowa Code sections 421.17(32), 422.20, and 422.72.

701—27.2(421) List for publication.

27.2(1) The director may compile and make available for publication a list of names, with last-known addresses and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in Iowa Code section 421.17(27) and 421.17(34). The director may determine when to compile the list.

27.2(2) Names selected for release for publication shall be based on the records of the centralized collections unit. The director will not include the names of persons who owe less than \$100 or the threshold amounts determined by the director. The threshold amounts may vary by the debt types being collected by the centralized collections unit. The director may withhold names from publication if, in the director's opinion, publication would not assist in the collection of the debt.

27.2(3) The director will not release for publication names of persons who have entered into a payment agreement with the centralized collections unit to pay the outstanding debt and are current in liquidating the debt based on the payment agreement. Upon entering a payment agreement with the centralized collections unit, the name of the party will be removed from publication within 60 days if the person is current in paying on the payment plan. This rule does not prevent the department from disclosing information under a provision of law other than Iowa Code section 421.17(27) "i."

701—27.3(421) Release of information. The director may release the information, as the director deems necessary, as follows:

1. The director may issue an announcement describing the manner in which a copy of the list of names for publication may be obtained. The director will make the list available in an electronic medium of the director's choice.

2. The director may release to credit reporting agencies the names selected for release for publication upon request. The names are to be released in the same electronic medium as the names are released for publication.

These rules are intended to implement Iowa Code section 421.17.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 200
“Definitions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68 and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.1, 423.2, 423.3,
423.6 and 423.45

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 200, which consists solely of rule 701—200.1(423) and provides definitions that apply across other sales tax rules chapters. These terms are used throughout other Iowa Administrative Code chapters but are not defined in statute. The Department proposes revisions to the rule to remove portions of the rule that the Department determined are unnecessary and duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rulemaking does not create costs for any classes of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from the proposed rulemaking because it provides a clear understanding about what each term means when used in other administrative rules.
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 associated with this rule beyond what is contained in statute. If the public does not understand what a term means in another administrative rule, there is a risk of missing important information about the taxability or the exemption from taxation of something members of the public buy or sell.

- Qualitative description of impact:

The qualitative benefit of this rulemaking beyond what is already provided in statute is the value of having clear definitions for terms used in other rules that are not already defined in statute to reduce confusion about the meaning, scope, and applicability of terms in other rules.

3. Costs to the State:

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

There are no costs to the State beyond what is already required to administer the relevant statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues; however, clarification of these terms makes it more likely that the correct amount of tax will be remitted.

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

The costs of inaction would be failing to update this rule to remove unnecessary and duplicative statutory language. The benefit is providing taxpayers with definitions so they can better understand the context and scope of other administrative rules. The Department considered the costs and benefits of not providing definitions for commonly used terms and concluded providing definitions for terms not otherwise defined in statute provides essential assistance to taxpayers.

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

The proposed rulemaking is not costly or intrusive.

6. Alternative methods considered by the agency:

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

The Department considered the option of not providing definitions of these terms but determined the definitions provide useful guidance to taxpayers.

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

Proceeding without this rulemaking would harm taxpayers by limiting their understanding of the meaning, scope, and applicability of other administrative rules.

Small Business Impact

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

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

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

The rulemaking does not have a substantial impact on small business. The rule provides definitions for terms used throughout other administrative rules, and the definitions are the same for individuals and businesses of different sizes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 200 and adopt the following new chapter in lieu thereof:

TITLE III
SALES, USE, AND EXCISE TAX

CHAPTER 200
DEFINITIONS

701—200.1(423) Definitions. The definitions set out in this chapter are applicable wherever the terms they define appear in this title unless the context indicates otherwise.

“Agricultural production” is limited to what would ordinarily be considered a farming operation undertaken for profit. The term “agricultural production” refers to the raising of crops or livestock for market on an acreage. Included within the meaning of the phrase “agricultural production” is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation, and operations growing and raising hybrid seed corn or other seed for sale to nurseries, ranches, orchards, and dairies. “Agricultural production” includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere for sale in the ordinary course of business. “Agricultural production” also includes any kind of aquaculture, silviculture, commercial greenhouses, and raising catfish. Beekeeping and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus) continue to be excluded from the term “agricultural production.” The above list of exclusions and inclusions within the term “agricultural production” is not exhaustive. “Agricultural products” includes flowering, ornamental, or vegetable plants and those products of aquaculture and silviculture.

“Aquaculture” means the cultivation of aquatic animals and plants, including fish, shellfish, and seaweed, in natural or controlled marine or freshwater environments.

“Chemical” means a substance that is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

“Domesticated fowl” means any domesticated bird raised as a source of food, either eggs or meat. “Domesticated fowl” includes, but is not limited to, chickens, ducks, turkeys, pigeons, ostriches, rheas, and emus that are raised for meat rather than for racing or as pets. Excluded from the meaning of “domesticated fowl” are nondomesticated birds, such as pheasants, raised for meat or any other purpose.

“Livestock” means domestic animals that are raised on a farm as a source of food or clothing. “Livestock” includes cattle, sheep, hogs, goats, chickens, ducks, turkeys, ostriches, rheas, emus, bison, and farm deer. “Farm deer” means the same as defined in Iowa Code section 170.1 and commonly includes animals belonging to the Cervidae family, such as fallow deer, red deer or elk and sika. However, “farm deer” does not include unmarked free-ranging elk. Fish and any other animals that are products of aquaculture are considered to be “livestock” as well.

Excluded from the term “livestock” are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term “livestock” are mink, bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded from “livestock” is any animal raised for racing.

“Plants” means fungi such as mushrooms and crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term “plants” are flowers, shrubs, and fruit trees. Excluded from the meaning of the term “plants” are products of silviculture, such as trees raised for Christmas trees and any trees raised to be harvested for wood.

“Reagent” means a substance used for various purposes (i.e., in detecting, examining, or measuring other substances; in preparing materials; in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance

into another by means of the reaction that it causes. To be a reagent for purpose of the exemption, a substance must be primarily used as a reagent.

“Silviculture” means the establishment, growth, care, and cultivation of trees. *“Silvicultural activities”* includes logging. *“Silvicultural products”* includes trees raised and offered for sale for Christmas trees and any trees raised to be harvested for wood.

“Solvent” means a substance in which another substance can be dissolved and that is primarily used for that purpose.

“Sorbent” means a solid material, often in a powder or granular form, that acts to retain another substance, usually on the sorbent’s surface, thereby removing the other substance from the gas or liquid phase. The sorbent and the second material bond together at the molecular or atomic scale via physiochemical interactions. A substance is not a sorbent based on an ability to absorb heat or thermal energy.

“Tax” means the tax upon retail sales or use of tangible personal property, specified digital products, or taxable services.

This rule is intended to implement Iowa Code chapter 423.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 203
“Elements Included in and Excluded from a Taxable Sale and Sales Price”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.1, 423.2, 423.3, and 423.24

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 203. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statutes to help the public understand elements included in and excluded from a taxable sale. These rules reduce uncertainty about what constitutes sales price.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public, including retailers and purchasers, will benefit from clarification about what elements are included in and excluded from a taxable sale.

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 associated with the proposed rules beyond what is contained in statute.
 - Qualitative description of impact:

These proposed rules reduce uncertainty about what elements are included in and excluded from a taxable sale. Failing to adopt them would lead to confusion, questions to the Department, and potential errors in calculating sales price.

3. Costs to the State:

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

There are no costs to the agency of implementing the rules beyond those that would otherwise be required to administer the statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, the rules clarify elements included in and excluded from a taxable sale, making it more likely that the correct amount of tax will be remitted.

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

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the proposed rules is reducing confusion about when a taxable sale occurs.

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

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on what constitutes a taxable sale. The Department considered the option of not having rules explaining the elements of a taxable sale but determined that the rules provide useful clarification to the public.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing rules on this topic but determined that it provides useful guidance to the public beyond what is provided by the statutes.

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

Proceeding without these rules would lead to confusion about whether certain elements are included in or excluded from a taxable sale.

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 does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 203 and adopt the following new chapter in lieu thereof:

CHAPTER 203
ELEMENTS INCLUDED IN AND EXCLUDED
FROM A TAXABLE SALE AND SALES PRICE

701—203.1(423) Tax not to be included in price. When a retailer prices an article for retail sale and displays or advertises the same to the public with that price marked, the price so marked or advertised shall include only the sales price of such article unless it is stated on the price tag that the price includes tax.

EXAMPLE: The advertised or marked price is \$1. When a sale is made, the purchaser must pay tax in addition to the \$1 sales price or agree to pay \$1.07, which represents the purchase price plus state sales tax of 6 percent plus local option sales tax of 1 percent, which, when added, becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

“This dress—\$10 plus tax” or “This dress—\$10.70 including tax.”

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public that the price “includes tax,” the retailer will be allowed to determine sales price by dividing the total of such retailer’s price which includes tax by the applicable percentage. For example, a retailer in a jurisdiction that has the state sales tax rate of 6 percent plus a 1 percent local option tax would use a factor of 107 percent.

However, where an invoice is given to the purchaser as a part of the sale, either the invoice must show the tax separately from the retailer’s price or it must be stated on each invoice that tax is included in the retailer’s price. If the invoice states “tax included,” the seller may determine sales price by the applicable percent method described above. It shall be the responsibility of the retailer that uses or has used the applicable percent method for reporting to provide proof that the retailer has complied with the method of advertising or displaying the retailer’s price, as described above.

This rule is intended to implement Iowa Code sections 423.14 and 423.24.

701—203.2(423) Finance charge. Interest or other types of additional charges that result from selling on credit or under installment contracts are not subject to sales tax when such charges are separately stated and when such charges are in addition to an established cash sales price. However, if finance charges are not separately stated and a sale is made for a lump sum amount, the tax is due on the total retailer’s price.

When interest and other types of additional charges are added as a condition of a sale in order to obtain title rather than as a charge to obtain credit where title to goods has previously passed, such charges will be subject to tax even though they may be separately stated. More information is contained in rule 701—213.3(423), relating to conditional sales contracts.

This rule is intended to implement Iowa Code section 423.1(51).

701—203.3(423) Retailers’ discounts, trade discounts, rebates and coupons.

203.3(1) Retailers’ discounts. A retailer’s discount reduces the retailer’s price of a property or service with the remainder being the actual sales price of the goods charged in the account. The purchaser entitled to the discount will never owe the retailer’s price as a debt, the debt being the sales price after the agreed discount has been deducted. The word “discount” means “to buy at a reduction.”

Any discount a retailer allows that reduces a retailer’s price to a sales price is a proper deduction when collecting and reporting tax. This is not the case when the retailer offers a discount to a purchaser but bills and collects tax on the retailer’s price rather than on the sales price. The customer must receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude the discount from the sales price when collecting and reporting tax.

Certain retailers bill their customers on a gross and net basis, with the difference considered to be a discount for payment purposes. When a customer does not resolve the bill within the net payment period, tax shall apply on the gross charge shown on the billing, the gross charge having become the taxable sales price by virtue of the customer's failure to take the action, which allows the discount to be taken.

203.3(2) Rebates. A “rebate” is a return of part of an amount paid for a product. Manufacturers' rebates are not discounts and cannot be used to reduce the sales price received from a sale or to reduce the purchase price of a product. This subrule applies even though the rebate is used by the retailer to reduce the retailer's price to a sales price or is used by the purchaser as a down payment. The rebate is considered a transaction between the manufacturer and the purchaser.

203.3(3) Coupons. Coupons issued by the producer of a product are not discounts and cannot be used as an abatement from the retailer's price of the product. Coupons issued by the retailer that actually reduce the price of the product to the purchaser are treated as a discount as provided in subrule 203.3(1).

EXAMPLE 1: Customer C acquires a 30¢ off coupon issued by the manufacturer of A-B Bandages for A-B Bandages. The coupon can be redeemed at a store that sells the product. Customer C goes to Store D and purchases a box of A-B Bandages, which shows a price of \$1.50. C pays \$1.20 plus the 30¢ coupon. Store D is reimbursed the 30¢ for the coupon by the manufacturer. Tax is due on the \$1.50 because Store D's total sales price is \$1.50. The coupon is not used as a discount in this situation.

EXAMPLE 2: Restaurant E offers a two-for-the-price-of-one coupon for its super hamburger. Each hamburger normally sells for \$2. The coupon can only be redeemed at Restaurant E's retail store. Customer F acquires the coupon and redeems it at Restaurant E's store. The purchase price for Customer F was \$2 for both hamburgers. The tax is due on the \$2 because this amount is the sales price for Restaurant E, even though the value of the two hamburgers would normally be \$4. In this situation, the sales price for the two hamburgers is \$2.

203.3(4) Trade discounts. A “trade discount” is a discount from a seller's list price that is offered to a class or category of customer, e.g., retailers or wholesalers. Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of a manufacturer's, distributor's, or wholesaler's product (e.g., cigarettes) or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product are not to be included in any taxable sales price. This subrule does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers; more information is contained in subrule 203.3(3).

This rule is intended to implement Iowa Code section 423.1(51).

701—203.4(423) Excise tax included in and excluded from sales price.

203.4(1) An excise tax that is not an Iowa sales or use tax may be excluded from the sales price or purchase price of the sale or use of property or taxable services only if all of the following conditions exist:

a. The excise tax is imposed upon the identical sales price on which the Iowa sales tax is imposed or upon the purchase price that measures the amount of taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity that precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is also responsible for payment of the Iowa sales tax. The purchaser must be obligated to pay the excise tax either directly to the government in question or to another person (e.g., the retailer) who acts as a collector of the tax. *Gurley v. Rhoden*, 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) contains a description of the circumstances under which the legal, as opposed to the economic, burden of an excise tax falls upon the purchaser.

c. The name of the excise tax is specifically stated, and the amount of the excise tax is separately set out on the invoice, bill of sale, or another document that embodies a record of the sale.

EXAMPLE 1: The federal government imposes an excise tax upon the act of manufacturing certain tangible personal property within the United States. The amount of the tax is measured as a percentage

of the price for the first sale of the property, which is usually to a wholesaler. However, one particular manufacturer sells its manufactured goods at retail in Iowa. Even if this tax meets the requirements for exclusion of paragraphs 203.4(1) “b” and “c” above, it is not excludable because it does not meet the requirements of paragraph 203.4(1) “a.” The tax is not imposed upon the act of selling but upon the prior act of manufacturing. The tax is merely measured by the amount of the proceeds of the sale.

EXAMPLE 2: The federal government imposes an excise tax of 4 percent on a retailer’s sales price from sales of tangible personal property. The law allows the retailer to separately identify and bill a customer for the tax. However, if a retailer fails to pay the tax, the government cannot collect it from a purchaser, and if the government assesses tax against the retailer and secures a judgment requiring the retailer to pay the tax, the retailer that has failed to collect the tax from a purchaser on the initial sale has no right of reimbursement from the purchaser. This tax is not excludable from Iowa excise tax. Its economic burden falls upon the purchaser. However, since neither the government nor the retailer has any legal right to demand payment of the tax from a purchaser, the legal incidence of the tax is not upon the purchaser and the tax would not meet the requirements of paragraph 203.4(1) “b” above.

203.4(2) The following federal excise taxes are to be included in the sales price upon which Iowa sales tax is to be paid for purposes of collecting Iowa sales tax:

a. The federal gallonage taxes imposed by 26 U.S.C. Sections 5001, 5041, and 5051 on distilled spirits, wines, and beer.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, cigarette papers and tubes, smokeless tobacco, and pipe tobacco.

c. The federal tax imposed under 26 U.S.C. Section 4081 on gasoline.

203.4(3) The following excise taxes are excluded from the amount of the sales price:

a. The federal tax imposed by 26 U.S.C. Section 4251(a) on the communication services of local telephone service, toll telephone service, and teletypewriter exchange service.

b. The federal tax imposed by 26 U.S.C. Section 4051 upon the first retail sale of automobile and truck chassis and bodies, truck trailer and semitrailer chassis and bodies and tractors of the kind chiefly used for highway transportation in combination with trailers or semitrailers.

This rule is intended to implement Iowa Code section 423.1(51).

701—203.5(423) Trade-ins.

203.5(1) Trade-ins.

a. When tangible personal property is traded toward the purchase price of other tangible personal property, the sales price shall be only that portion of the purchase price that is payable in money to the retailer if the conditions in paragraph 203.5(1) “b” are met.

b. The tangible personal property is traded to a retailer, the property traded is the type normally sold in the regular course of the retailer’s business and either subparagraph 203.5(1) “b”(1) or 203.5(1) “b”(2) is true.

(1) The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail; or

(2) The tangible personal property traded to a retailer is intended to be used by the retailer or another in the remanufacturing of a like item.

EXAMPLE 1: Customer A owns a car valued at \$5,000. Customer A trades a used car to XY Car Dealer for a used car valued at \$12,000. XY Car Dealer normally sells used cars. Use tax would be due on the \$7,000 in money that Customer A paid to XY Car Dealer, as both conditions in paragraph 203.5(1) “b” and subparagraph 203.5(1) “b”(1) have been met.

EXAMPLE 2: John Doe has a pickup truck with a value of \$2,000. John wants a boat, so he offers to trade his \$2,000 pickup to ABC Boat Dealer for the purchase of a boat valued at \$5,000. ABC Boat Dealer is a new and used boat dealer. ABC Boat Dealer agrees to accept the \$2,000 pickup and \$3,000 cash in trade for the boat. In this example, the tax would be computed on \$5,000. The trade-in provision would not apply because the condition in paragraph 203.5(1) “b” has not been met. The property traded is not the type of property normally sold by ABC Boat Dealer in the regular course of the boat dealer’s business.

EXAMPLE 3: ABC Corporation trades 500 bushels of corn and \$500 cash to the local cooperative elevator for the purchase of various hand tools. In its regular course of business, the local cooperative elevator sells grain for processing into bread. The trade-in provision in this example would not apply because the condition in subparagraph 203.5(1)“b”(1) has not been met. When ultimately sold by the cooperative elevator, the grain traded toward the purchase price of the hand tools is sold for processing and not at retail.

EXAMPLE 4: Hometown Appliance store is in the business of selling stoves, refrigerators, and other various appliances in Iowa. Hometown Appliance has a refrigerator valued at \$650. Customer A wishes to trade a used refrigerator toward the purchase price of the new refrigerator. Hometown Appliance agrees to accept Customer A’s used refrigerator at a value of \$150 toward the purchase price of the new refrigerator. Customer A pays Hometown Appliance \$500 in cash. The trade-in provision applies as both conditions in paragraph 203.5(1)“b” and subparagraph 203.5(1)“b”(1) have been met, and tax would be due on the \$500.

Several months later, Hometown Appliance sells the used refrigerator it received from Customer A to the local school district, which is exempt from sales tax on its purchase. The trade-in provision on the original transaction is still applicable because both conditions in paragraph 203.5(1)“b” and subparagraph 203.5(1)“b”(1) were met. The sale is “at retail,” even if the sales price is exempt from tax.

EXAMPLE 5: ABC Auto Supply is in the business of selling various types of automobile and farm implement supplies. The normal selling price for a car generator is \$80. ABC Auto Supply allows a \$20 trade-in credit to any customer who wishes to trade in an unworkable generator. At the time ABC Auto Supply accepts the unusable generator, it knows that the generator will not be sold at retail; however, ABC Auto Supply also knows that the generator will be sold to XYZ Company, which is in the business of rebuilding generators by using existing parts plus new parts. In this example, the trade-in provision would apply since conditions in paragraph 203.5(1)“b” and subparagraph 203.5(1)“b”(2) have been met.

203.5(2) All the provisions of subrule 203.5(1) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded among persons who are not retailers of vehicles subject to registration, the conditions set forth in subrule 203.5(1) need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the value of the vehicle subject to registration traded.

This rule applies only when a vehicle is traded for tangible personal property, regardless of whether the transaction is between a retailer and a nonretailer or between two nonretailers. The vehicle traded in must be owned by the person(s) trading in the vehicle. It is presumed that the name or names indicated on the title of the vehicle dictate ownership of the vehicle as set forth in Iowa Code chapter 321.

EXAMPLE 1: John Doe has an automobile with a value of \$2,000. John and his neighbor Bill Jones, who has an automobile valued at \$3,500, decide to trade automobiles. John pays Bill \$1,500 cash. Vehicles subject to registration are subject to use tax, which is payable to the county treasurer at the time of registration. In this example, John would owe use tax on \$1,500 since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

EXAMPLE 2: Joe has a Ford automobile with a value of \$5,000. Joe and his friend Jim, who has a Chevrolet automobile also valued at \$5,000, decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile, with no money changing hands. In this example, there is no tax due on either automobile because there is no exchange of money.

203.5(3) Trade for services or specified digital products. The trade-in provisions referenced in Iowa Code section 423.1(51) and found in Iowa Code section 423.3(59) do not apply to taxable enumerated services or specified digital products. When taxable enumerated services or specified digital products are traded, the sales price would be determined based on the value of the service or specified digital products or other consideration.

EXAMPLE: A and B agree that A will purchase a car that B now owns. The two parties agree on a purchase price of \$9,000. In return for transfer of title from B, A agrees to pay B \$7,000 in cash

and to paint B's house with paint provided by B. A and B agree that the value of B's house painting services is \$2,000. House painting is a taxable enumerated service; rule 701—219.13(423) contains more information about this service. Since the trade-in provisions are not applicable to the value of taxable enumerated services, the purchase price of the car is \$9,000 and not \$7,000.

203.5(4) Three-way trade-in transactions. In a three-way trade-in transaction, the agreement provides that a lessee sells to a third-party dealer a vehicle (or other tangible personal property) that the lessee owns. The lessor then purchases another vehicle from the third-party dealer at a reduced price and leases the vehicle to the lessee. The difference between the reduced sale price and retail price of the vehicle is not allowed as a trade-in on the vehicle for use tax purposes.

EXAMPLE: Customer A enters into a three-way agreement with Lessor B. Under the terms of the contract, Customer A sells a 2005 Ford Taurus owned by A to Used Car Dealer C. The retail price for the Ford Taurus is \$30,000. Used Car Dealer C then sells the Ford Taurus to Lessor B for the reduced price of \$25,000. Lessor B then leases the Ford Taurus to Customer A for a period of 12 months. The \$5,000 difference between the reduced sale price and the retail price of the vehicle is not allowed as a trade-in on the sale of the vehicle for use tax purposes.

This rule is intended to implement Iowa Code sections 423.1(51) and 423.3(59).

701—203.6(423) Installation charges when tangible personal property is sold at retail. When the sale of tangible personal property includes a charge for installation of the personal property sold, the current rate of tax shall be measured on the entire sales price from the sale. The installation charges would not be taxable if the installation service is not an enumerated service, and where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice.

If the installation services are enumerated services, the installation charges would not be taxable if (1) the services are exempt from tax (e.g., the services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure) or the services are rendered in connection with the installation of new industrial machinery or equipment, and (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice. If no written contract exists, the installation charges must be separately itemized on the invoice to be exempt from tax. More information is contained in rule 701—219.13(423).

This rule is intended to implement Iowa Code section 423.1(51).

701—203.7(423) Service charge and gratuity. When the purchase of any food, beverage or meal automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term “service charge” means either a fixed percentage of the total price of or a charge for food, a beverage or a meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor a charge arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, a beverage or a meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, a beverage or a meal, it shall be considered a tip and not subject to tax.

This rule is intended to implement Iowa Code sections 423.1(51) and 423.2(1).

701—203.8(423) Payment from a third party. The sales price from the sales of tangible personal property, services, or enumerated services includes consideration received by the seller from third parties. The following conditions shall apply:

203.8(1) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

203.8(2) The seller has an obligation to pass the price reduction or discount through to the purchaser;

203.8(3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

203.8(4) One of the following criteria is met:

a. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

b. The purchaser self-identifies to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group); or

c. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

This rule is intended to implement Iowa Code chapter 423.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 204
“Rules Necessary to Implement the Streamlined Sales and Use Tax Agreement”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 423, subchapter IV

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 204. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete or unnecessary or that duplicate statutory language. Iowa has been a member of the Streamlined Sales Tax Governing Board and a party to the Streamlined Sales and Use Tax Agreement (SSUTA) since October 1, 2005. The goal of the SSUTA is to maintain uniformity of definitions of certain sales and use tax-related terms, state and local tax bases, sourcing rules, and administration, among other features. In order to maintain compliance with the SSUTA, Iowa statutes, rules, and policies must comply with each provision of the SSUTA. Iowa Code section 423, subchapter VI, is the Uniform Sales and Use Tax Administration Act, which outlines Iowa’s intent to enter into the SSUTA to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for sellers. Chapter 204 contains rules interpreting the Uniform Sales and Use Tax Administration Act and additional rules necessary to maintain compliance with the SSUTA and help the public understand tax policies that Iowa has adopted as part of implementing the SSUTA.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:

The public, including retailers and purchasers, will benefit from the rules because they provide clarification on a variety of topics, such as the simplification of filing returns, whether a seller is entitled to the allocation of bad debts, how to return overcollection of sales tax, and what tax rate applies when

a service is furnished over an extended period of time. The rules also explain the taxability matrix and define relevant terms.

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 associated with the rules beyond what is contained in statute. If sellers did not understand their rights or obligations, there would be a risk of overcollecting or undercollecting sales tax. The Iowa Department of Revenue Tax Research Bureau has estimated the fiscal impact of Iowa's participation in the SSUTA based on an analysis of Iowa sales tax returns filed by streamlined sales tax certified service providers. For purposes of this estimate, it is assumed that the fiscal impact of participation equates to 100 percent of revenues reported on such returns. (Although it is likely that many sellers who participate in the streamlined sales tax program would be required to remit Iowa sales tax in lieu of the program and would do so, it is not possible to estimate the extent to which this is the case.) Based on the foregoing information and assumptions, participation in the agreement yielded Iowa sales tax revenues of \$49.6 million in FY 2023. Iowa sales tax revenues associated with streamlined sales tax have increased steadily since FY 2020, when they were \$14.8 million.

- Qualitative description of impact:

Without these rules, Iowa would no longer be in compliance with the SSUTA and would not benefit from membership. Not having these rules would also lead to confusion from sellers about their rights and responsibilities and lead to an increased number of questions to the Department.

3. Costs to the State:

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

There are no costs to the agency of implementing the rules beyond those that would otherwise be required to administer the statutes and the SSUTA.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the rules is reducing confusion about the applicability of the described statutes and the requirements of the SSUTA.

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

The proposed rulemaking is not costly or intrusive. The purpose of these rules is to provide definitions and clarification of provisions of the SSUTA. The Department considered the option of not having rules explaining the provisions of the SSUTA but determined that the rules provide useful clarification to the public, including sellers that participate in the SSUTA.

6. Alternative methods considered by the agency:

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

Because these rules are necessary to maintain compliance with the SSUTA, the Department did not consider proceeding without rules. The Department did think carefully about the language and eliminated language where it was unnecessary or outdated.

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

Iowa must have these rules in order to maintain compliance with the SSUTA, so there is no alternative available. Additionally, failing to have these rules at all would lead to confusion about sellers' responsibilities under the SSUTA.

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?

Rule 701—204.3(423) benefits small businesses by limiting the Department’s ability to require additional remittances from sellers that have collected less than \$30,000 in the prior year. The other rules do not have a substantial impact on small business. The rules do not impose any requirements on businesses, other than requirements imposed by the underlying statutes and the SSUTA.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 204 and adopt the following **new** chapter in lieu thereof:

CHAPTER 204
RULES NECESSARY TO IMPLEMENT THE STREAMLINED SALES
AND USE TAX AGREEMENT

701—204.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used. Any database maintained by the department that displays tax rates and tax jurisdictional boundaries based on either a five-digit or nine-digit zip code system shall, if an area encompassing one zip code has two or more rates of tax, provide to retailers a means of identifying and applying the lowest rate within the area for use in computing tax due. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the lowest rate for the five-digit zip code area.

This rule is intended to implement Iowa Code section 423.55.

701—204.2(423) Permissible categories of exemptions.

204.2(1) Definitions.

“*Entity-based exemption*” means an exemption based on who purchases the product or who sells the product.

“*Product-based exemption*” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“*Use-based exemption*” means an exemption based on the purchaser’s use of the product.

204.2(2) Product-based exemptions. Iowa will enact a product-based exemption without restriction only if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, Iowa will exempt all items included within the definition but will not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

204.2(3) Entity-based and use-based exemptions. Iowa will enact an entity-based or a use-based exemption without restriction only if the agreement has no definition for the product whose use or

purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, Iowa will enact an entity-based or a use-based exemption that applies to that product only if the exemption utilizes the agreement's definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, Iowa has the power to enact an entity-based or a use-based exemption for the product without restriction.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.3(423) Requirement of uniformity in the filing of returns and remittance of funds. Any model 1, 2, or 3 seller may submit its sales or use tax returns in a simplified format that does not include more data fields than permitted by the governing board. The department will require only one remittance for each return except as otherwise allowed by the agreement. If any additional remittance is required, it will only be required from sellers that have collected more than \$30,000 in sales and use taxes in Iowa during the preceding calendar year. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.4(423) Allocation of bad debts. If a seller is entitled under Iowa Code section 423.21 to deduct bad debts owed to the seller and those bad debts consist of any sales price or purchase price upon which tax has been paid to the state of Iowa as well as a state or states other than Iowa, then allocation of the bad debt is allowed. The seller must support an allocation of the bad debts between Iowa and the other state or states through the proper accounting of its books and records.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.5(423) Purchaser refund procedures. Iowa law allows a purchaser to seek a return of overcollected sales or use taxes from the seller who collected them. More information is contained in Iowa Code section 423.45(2). In connection with any purchaser's request of a seller that the seller return sales or use tax alleged to have been overcollected, the seller to whom the request is directed shall be rebuttably presumed to have a reasonable business practice if, in the collection of such sales or use tax, the seller uses either a provider or a system, including a proprietary system, which is certified by this state and has remitted all taxes collected by the use of that provider system to the department, less any deductions, credits, or collection allowances.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.6(423) Relief from liability for reliance on taxability matrix. Iowa provides and maintains a taxability matrix in a database that is in a downloadable format approved by the governing board. All sellers and certified service providers are relieved from liability to Iowa and any jurisdiction imposing a local option tax under Iowa Code chapter 423B or 423E for having charged and collected the incorrect amount of sales or use tax resulting from the seller's or certified service provider's reliance on erroneous data provided by that taxability matrix.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished. Certain taxable services are usually furnished over an extended period of time (e.g., utilities, janitorial, and ministorage services), and the user of such a service is billed at regular intervals (e.g., monthly or quarterly). The beginning date when a rate change is imposed on the sales price of this type of service differs, depending upon whether a rate increase or rate decrease is involved. If the rate of taxation has been increased, the beginning date of the rate change shall be the first day of the first billing period occurring on or after the effective date of the rate increase. If the rate of taxation has been decreased, the new rate shall apply to bills rendered on or after the effective date of the rate decrease.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 205
“Sourcing of Taxable Services, Tangible Personal Property, and Specified Digital Products”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68 and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2, 423.15 and 423B.5

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 205. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, are unnecessary, or duplicate statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the sourcing of taxable services, tangible personal property, and specified digital products. These rules provide clarification about where a sale takes place in order to determine when and where Iowa sales or use tax applies.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
Retailers and purchasers will benefit from clarification about how to source taxable services, tangible personal property, and specified digital products.
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 associated with the proposed rules beyond what is contained in the statute.
 - Qualitative description of impact:

The proposed rules reduce uncertainty about how to source taxable services, tangible personal property, and specified digital products. Failing to adopt the rules would lead to confusion, questions to the Department, and potential errors.

3. Costs to the State:

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

There are no costs to the agency of implementing the proposed rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, the proposed rules provide clarification about how to source taxable services, tangible personal property, and specified digital products, making it more likely that the correct amount of tax will be remitted.

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

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the proposed rules is reducing confusion about how to source taxable services, tangible personal property, and specified digital products.

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

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide clarification on how to source taxable services, tangible personal property, and specified digital products. The Department considered the option of not having rules explaining how to source taxable services, tangible personal property, and specified digital products but determined that the rules provide useful clarification to the public.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing rules on this topic but determined that the proposed chapter provides useful guidance to the public beyond what is provided in statute.

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

Proceeding without these rules would lead to confusion about how to source taxable services, tangible personal property, and specified digital products.

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 does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 205 and adopt the following new chapter in lieu thereof:

CHAPTER 205
SOURCING OF TAXABLE SERVICES, TANGIBLE PERSONAL PROPERTY, AND SPECIFIED
DIGITAL PRODUCTS

701—205.1(423) Definitions. For purposes of this chapter, the following terms shall have the same definition as Iowa Code section 423.1:

“*Agreement*” means the same as defined in Iowa Code section 423.1.

“*Department*” means the same as defined in Iowa Code section 423.1.

“*First use of a service*” means the same as defined in Iowa Code section 423.1.

“*First use of a service performed on tangible personal property*” means receiving, with the ability to use, whether or not actually used, the tangible personal property on which the taxable service was performed.

“*Governing board*” means the same as defined in Iowa Code section 423.1.

“*Receive*” or “*receipt*,” with regard to sales of services, means making “first use of services” pursuant to this chapter. For purposes of receipt of services performed on tangible personal property under rule 701—205.3(423), the location (or locations) where the purchaser (or the purchaser’s donee) regains possession or can potentially make first use of the tangible personal property on which the seller performed the service is the location (or locations) of the receipt of the service. The location where the seller performs the service is not determinative of the location where the purchaser receives the service. The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser; this is treated as though the retailer delivered to the purchaser the tangible personal property on which the service was performed. When a shipping company delivers tangible personal property on which the service was performed, the service is deemed “received” where the shipping company delivers the tangible personal property to the purchaser. For the purposes of sales of personal care services, the location (or locations) where the service is performed on the purchaser (or the purchaser’s donee) is the location where the purchaser receives the service.

“*Retailer*” means the same as defined in Iowa Code section 423.1.

“*Seller*” means the same as defined in Iowa Code section 423.1.

701—205.2(423) General sourcing rules for taxable services. Except as otherwise provided in the agreement, retailers providing taxable services in Iowa shall source the sales of those services using the destination sourcing requirements described in Iowa Code section 423.15. In determining whether to apply the provisions of Iowa Code section 423.15 to the sale of a taxable service, it is necessary to determine the location where the result of the service is received, is first used, or could potentially be first used by the purchaser or the purchaser’s donee. The provisions of these rules do not affect the obligation of a purchaser or lessee to remit additional tax, if any, to another taxing jurisdiction based on the use of the service at another location.

205.2(1) Determining the result of a service. Determining the location where the result of a service is received by a purchaser requires a fact-based inquiry on a case-by-case basis.

EXAMPLE 1: Company Z is a photography business located in Mason City, Iowa. Company Z enters into an agreement with Customer Y, a resident of the state of Illinois, to take a photoshoot in Okoboji, Iowa. Company Z charges Customer Y \$2,000 for the photoshoot itself and \$1,000 for printed photos once they are finalized. Customer Y pays Company Z \$3,000 in advance for the photoshoot and photographs. The photoshoot takes place as planned in Okoboji, and three weeks later Company Z sends Customer Y a package containing the photographs to Customer Y’s Illinois address.

The photoshoot is the result of Company Z's service, which occurs in Okoboji, Iowa—the location where the performance of the photoshoot begins. Company Z must therefore charge Iowa sales tax and any applicable local option tax on the \$2,000 charge for the photoshoot. The \$1,000 charge for the photographs is a sale of tangible personal property and is sourced to Illinois—the location where the photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the \$1,000 but may be responsible for collecting and remitting Illinois tax.

EXAMPLE 2: Same facts as in Example 1, except that Company Z charges Customer Y a one-time, flat \$3,000 charge without any itemization or breakdown of the cost. This \$3,000 charge represents the sale of tangible personal property and is sourced to Illinois—the location where the photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the \$3,000 but may be responsible for collecting and remitting Illinois tax.

205.2(2) *Subsequent use in Iowa.* If an Iowa purchaser is determined to owe sales tax in another state based on first use, Iowa use tax may still apply. If, subsequent to the first use in another state, the product or result of a service is used in Iowa, Iowa use tax applies. (More information can be found in Iowa Code section 423.5.)

205.2(3) *Measurement of use tax due.* If tax has been imposed on the sales price of services performed on tangible personal property in another state at a rate that is less than the Iowa use tax rate, the purchaser will have to pay Iowa use tax at a rate measured by the difference between the Iowa use tax rate and the tax rate imposed in the state where the service was first used. (More information can be found in Iowa Code section 423.22.) There is no local option use tax.

EXAMPLE: An Iowa resident first uses the results of services performed on tangible personal property in another state and pays that state's 5 percent sales tax to that state. The Iowa resident returns to Iowa to use the tangible personal property on which the service was performed. Iowa's use tax rate on the services performed on the tangible personal property is 6 percent. The resident must remit to the department 1 percent use tax; no local option use tax is due. If, on the other hand, the other state's sales tax rate is equal to or greater than Iowa's use tax rate, the Iowa resident does not have to remit use tax to the department on the services performed on tangible personal property.

701—205.3(423) First use of services performed on tangible personal property.

205.3(1) *First use of services performed on tangible personal property defined.* A service performed on tangible personal property is a service that changes some aspect of the property, such as its appearance or function. Services with respect to tangible personal property, but not necessarily performed on tangible personal property, such as inspection and appraisal, are not addressed in this rule. Except as otherwise provided in the agreement or the rules adopted by the governing board, a service performed on tangible personal property is first used at, and sourced to, the location where the customer receives, regains possession of, or can potentially make first use of, whether or not actually used, the tangible personal property on which the seller performed the service. In general, this is the location where the tangible personal property is returned to the purchaser or the purchaser's donee.

205.3(2) *Sourcing of taxable services performed on tangible personal property as applied to local option sales and services tax.* A local option sales and services tax shall be imposed on the same basis as the state sales and services tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and services tax sourcing rules shall be the same as the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rules 701—205.1(423) and 701—205.2(423) and subrule 205.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

205.3(3) *Specific examples of taxable enumerated services.* Specific examples of services performed on tangible personal property taxable in Iowa under Iowa Code section 423.2 include, but are not limited to:

- a. Alteration and garment repair;

- b. Vehicle repair and vehicle wash and wax;
- c. Boat repair;
- d. Carpentry;
- e. Roof, shingle, and glass repair;
- f. Dry cleaning, pressing, dyeing, and laundering;
- g. Electrical and electronic repair and installation;
- h. Farm implement repair of all kinds;
- i. Furniture, rug, carpet, and upholstery repair and cleaning;
- j. Gun and camera repair;
- k. Household appliance, television, and radio repair;
- l. Jewelry and watch repair;
- m. Machine repair of all kinds, including office and business machine repair;
- n. Motor repair;
- o. Motorcycle, scooter, and bicycle repair;
- p. Pet grooming;
- q. Wood preparation;
- r. Sewing and stitching;
- s. Shoe repair and shoeshine; and
- t. Taxidermy services.

205.3(4) *Examples of sourcing rules for motor and machine repair.* The following examples are intended to clarify when motor and machine repair services are deemed “received.”

EXAMPLE 1: Ms. Brown of Muscatine, Iowa, takes her lawnmower to a repair shop in Moline, Illinois, to have its engine repaired. When the lawnmower is repaired, she picks it up at the Illinois repair shop and returns to Muscatine. The repair service is received at the repair shop location in Illinois since Ms. Brown has the potential first use of the repaired item at that location. The repair transaction is sourced to Illinois. Ms. Brown’s subsequent use of the repair services performed on the lawnmower obliges her to remit use tax to the department to the extent Iowa’s use tax rate exceeds Illinois’s tax rate on lawnmower repair services. That is, Ms. Brown must remit Iowa use tax at a rate measured by the difference between Iowa’s use tax rate and the tax rate imposed in Illinois on lawnmower repair services. If Illinois does not tax motor and machine repair, Ms. Brown must remit use tax to the Department at a rate equal to Iowa’s entire use tax rate.

EXAMPLE 2: Same facts as in subrule 205.3(4), Example 1, except that the Illinois repair shop delivers the repaired lawnmower to the owner’s residence in Iowa. In this case, the potential first use is at Ms. Brown’s residence. Thus, Ms. Brown receives the repair service at, and the repair service is sourced to, her residence in Iowa; Iowa sales tax is due.

EXAMPLE 3: Mr. Cho, a homeowner in Iowa, contacts an appliance repair service provider located in Missouri to have a clothes dryer repaired. The repair service provider dispatches a technician to Mr. Cho’s home in Iowa to make the needed repairs. Mr. Cho received the repair service in Iowa because the potential first use of the repaired clothes dryer was in Iowa. This transaction is sourced to Iowa. Iowa sales tax is due.

EXAMPLE 4: A manufacturer in Iowa uses gauges in its production process to ensure that its product meets specifications. Periodically, the manufacturer ships the gauges to a test laboratory in Minnesota to verify that they are producing proper measurements. The test laboratory tests the gauges and adjusts the calibration on the gauges. The test laboratory ships the gauges back to the manufacturer’s location in Iowa. The manufacturer regained possession and had potential first use of the gauges in Iowa so the transaction is sourced to the location of the manufacturer in Iowa. Iowa sales tax is due.

EXAMPLE 5: Same facts as in subrule 205.3(4), Example 4, except that the manufacturer picks up the calibrated gauges from the test laboratory in Minnesota. The potential first use of the calibrated gauges (the result of the test laboratory services) is in Minnesota, and the transaction is sourced to the test laboratory’s location in Minnesota. The manufacturer must remit use tax to the department to the extent Iowa’s use tax rate exceeds Minnesota’s tax rate on test laboratory services. That is, the manufacturer is obliged to pay Iowa use tax at a rate measured by the difference between Iowa’s use tax rate and the tax

rate imposed in Minnesota on test laboratory services. If Minnesota does not tax test laboratory services, the manufacturer must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 6: Same facts as in subrule 205.3(4), Example 4, except that the manufacturer hires a shipping company, such as a common or contract carrier, to pick up the tested and recalibrated gauges from the test laboratory and deliver them to the manufacturer's location in Iowa. Since the terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to the manufacturer's location in Iowa where the manufacturer regains possession and has potential first use of the gauges. Iowa sales tax is due.

205.3(5) *Examples of sourcing rules for the painting of tangible personal property.* The following examples are intended to clarify when the service of painting of tangible personal property is deemed "received."

EXAMPLE 1: A law office in Iowa has antique bookcases it wishes to have painted. The bookcases are picked up by a painter and taken to and painted in the painter's shop in Illinois. The painter then delivers the painted bookcases to the law office. The transaction is sourced to the location of the law office in Iowa. Iowa sales tax is due. If, instead, the law office sends one of its employees to the painter's shop in Illinois to pick up the painted bookcases, the transaction is sourced to the painter's location in Illinois where possession or potential first use occurs. The law office must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on painting services. If Illinois does not tax painting services, the law office must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 2: A business in Davenport, Iowa, hires a painter from Rock Island, Illinois, to paint several file cabinets. The painter does the painting on site at the purchaser's office location. Because the file cabinets remain at the same location and the purchaser's potential first use of the cabinets is in Iowa, the transaction is sourced to the purchaser's office location in Davenport. Iowa sales tax is due.

205.3(6) *Example of sourcing rules for dry cleaning services.* The following example is intended to clarify when dry cleaning services are deemed "received."

EXAMPLE: Mr. Riley, a Council Bluffs, Iowa, resident, takes laundry to an Omaha, Nebraska, dry cleaner's store. After his clothing is dry-cleaned, Mr. Riley returns to the dry cleaner in Omaha to pick up the clothing. The dry cleaner returns the clothes to Mr. Riley at the dry cleaner's store. Mr. Riley regains possession of his dry-cleaned clothes at the store in Omaha, so the transaction is sourced to Nebraska. Mr. Riley must remit use tax to the department to the extent Iowa's use tax rate exceeds Nebraska's tax rate on dry-cleaning services. If Nebraska does not tax dry-cleaning services, then Mr. Riley must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(7) *Example of sourcing rules for vehicle wash and wax services.* The following example is intended to clarify when vehicle wash and wax services are deemed "received."

EXAMPLE: Mr. Moyle lives in Sioux City, Iowa, but he drives his vehicle to a car wash in Dakota Dunes, South Dakota, for a vehicle wash and wax service. The car wash operator washes and waxes the vehicle in Dakota Dunes. When the car wash operator completes the vehicle wash and wax service, Mr. Moyle pays the car wash operator and drives back to Sioux City, Iowa. Since the owner regains possession of the car at the car wash, the transaction is sourced to South Dakota. Mr. Moyle must remit use tax to the department to the extent that Iowa's use tax rate exceeds South Dakota's tax rate on vehicle wash and wax services. If South Dakota does not tax vehicle wash and wax services, then Mr. Moyle must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(8) *Examples of sourcing rules for animal grooming services.* The following examples are intended to clarify when animal grooming services are deemed "received."

EXAMPLE 1: Ms. Decker of Lake Mills, Iowa, hires a mobile pet washing and grooming service based in Albert Lea, Minnesota, to come to her home and bathe and groom her dog Sascha. The grooming service is performed on Sascha at Ms. Decker's home in Lake Mills. Therefore, the pet washing service transaction is sourced to Ms. Decker's home in Iowa. Iowa sales tax is due.

EXAMPLE 2: Mr. Marx, who resides in Bettendorf, Iowa, takes his cat Fluffy to a Milan, Illinois, grooming shop. The cat groomer cuts and washes Fluffy's fur. Once Fluffy is groomed, Mr. Marx returns to the grooming shop, pays for the service, and drives Fluffy home to Bettendorf. Since Mr. Marx picks up Fluffy at the shop in Illinois, the first use of the grooming services is in Illinois and the transaction

is sourced to Illinois. Mr. Marx must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on animal grooming services. If Illinois does not tax animal grooming services, then Mr. Marx must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(9) *Example of local option sales and service tax sourcing rules for camera repair services.* The following example is intended to clarify when camera repair services are deemed "received."

EXAMPLE: Mr. Pagano, a photographer in Promise City, Iowa, contacts Bob's Camera Shop, which is located in Appanoose County, Iowa, to arrange for one of his cameras to be repaired. Promise City has imposed local option sales and service tax. Bob's Camera Shop dispatches a repairperson to Mr. Pagano's studio in Promise City to repair the camera. Mr. Pagano receives the repair service in Promise City since he can potentially make first use of his repaired camera at that location. The repair service is sourced to Promise City even though the camera shop is located in Appanoose County. Local option sales and service tax imposed by Promise City and Iowa sales tax are due on the sales price of the camera repair service.

205.3(10) *Examples of local option sales and service tax sourcing rules for bicycle repair services.* The following examples are intended to clarify when bicycle repair services are deemed "received."

EXAMPLE 1: Mr. Edwards, a resident of Slater, Iowa, contacts Bike-o-rama Repair Shop in Ankeny, Iowa, to arrange for his bicycle to be repaired. Slater has imposed local option sales and service tax; Ankeny has not. Mr. Edwards delivers his bicycle to Bike-o-rama and leaves it there to be repaired. Because he is a preferred customer, Bike-o-rama has one of its employees deliver Mr. Edwards' bicycle to his home in Slater when the bicycle repair service is completed. Mr. Edwards' potential first use of his bicycle is in Slater; therefore, the transaction is sourced to Slater. Local option sales and service tax imposed by Slater is due even though Bike-o-rama is located in Ankeny. Iowa sales tax is also due.

EXAMPLE 2: Same facts as in subrule 205.3(10), Example 1, but Mr. Edwards picks up his repaired bicycle at Bike-o-rama in Ankeny. Because Mr. Edwards regains possession and can make potential first use of the repaired bicycle in Ankeny, the repair transaction is sourced to Ankeny and Bike-o-rama must collect state sales tax and any local option sales tax imposed by Ankeny.

EXAMPLE 3: Same facts as in subrule 205.3(10), Example 1, but Bike-o-rama is located in Willow Glen, California, and Bike-o-rama ships Mr. Edwards' bike to his home in Slater, Iowa. Since the terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to Slater. Slater's local option sales and service tax is due even though Bike-o-rama is located in Willow Glen, California. Iowa sales tax is also due.

701—205.4(423) Sourcing rules for personal care services.

205.4(1) *Definition.* "Personal care services" means services that are performed on the physical human body. Examples of personal care services governed by this rule include, but are not limited to:

- a. Barber and beauty services;
- b. Massage, excluding services provided by massage therapists licensed under Iowa Code chapter 152C;
- c. Reflexology;
- d. Reducing salons; and
- e. Tanning beds and salons.

205.4(2) *Sourcing of personal care services.* Except as otherwise provided in the agreement or the rules adopted by the governing board, a purchaser receives a personal care service within the meaning of subrule 205.4(1) at the location where the services are performed, which is the same location where the services are received by the purchaser (or the purchaser's donee). The services will be received by the purchaser (or the purchaser's donee) either at the seller's location, pursuant to Iowa Code section 423.15(1)"a," or at the purchaser's (or the purchaser's donee) location, pursuant to Iowa Code section 423.15(1)"b."

205.4(3) *Examples of sourcing of personal care services.* The following examples are intended to clarify sourcing rules for personal care services.

EXAMPLE 1: Mr. Fernandez, a resident of Illinois, goes to a barber shop to have his hair cut. The barber is located within Iowa. The barber is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Mr. Fernandez makes first use of the services in Iowa where his hair is cut. The sale is sourced to Iowa. Iowa sales tax is due.

EXAMPLE 2: Ms. Jackson, a resident of Council Bluffs, Iowa, goes to a tanning salon in Omaha, Nebraska, and pays for use of a tanning bed. The tanning salon is providing personal care services, and the sale of these services must be sourced to the location of the tanning salon since this is where the services are received (place of first use). Since the tanning salon is located in Nebraska, the sale is sourced to Nebraska. If Nebraska taxes tanning salon services and that rate is lower than Iowa's use tax rate, Ms. Jackson is obliged to pay Iowa use tax to the department at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed on tanning salon services in Nebraska. If Nebraska does not tax tanning salon services, then Ms. Jackson must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 3: Ms. Zastrow, a resident of Iowa, contacts a massage therapist (who is not licensed under Iowa Code chapter 152C) located in Nebraska for a therapeutic massage. Ms. Zastrow requests that the therapist perform the massage at Ms. Zastrow's residence in Iowa. The therapist travels to Ms. Zastrow's residence and performs the massage. The therapist is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Ms. Zastrow makes first use of the services in Iowa where the massage is performed. The sale is sourced to Iowa. Iowa sales tax is due.

701—205.5(423) Sourcing of tickets or admissions to places of amusement, fairs, and athletic events. Sales of tickets or admissions to places of amusement, fairs, and athletic events are sourced in the same manner as services, using the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rule 701—205.2(423). Generally, the sale of a service is sourced to the location where the purchaser makes first use of the service. In the case of an event that the purchaser attends at a physical location, first use would occur at the location of the event.

EXAMPLE: X makes retail sales of tickets to music concerts in Iowa. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48) and therefore is required to collect Iowa sales tax and local option sales tax on retail sales of these tickets. More information can be found in Iowa Code section 423.2(3). Y is a resident of Marshalltown, Iowa. Y purchases two tickets to attend a concert in Ames, Iowa. The sale is sourced to Ames, the location of the event. The result is the same regardless of how or where Y's tickets are delivered. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Ames, Iowa.

205.5(1) *Sales of admissions to virtual events.* First use of a ticket of admission to a virtual event occurs at the location where the attendee first participates in or accesses the event, if known to the seller. If this location is unknown, the sale is sourced pursuant to Iowa Code section 423.15(1).

EXAMPLE: X is hosting a virtual video game tournament. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48). Y purchases admission to participate in the virtual video game tournament from a residence in Council Bluffs, Iowa. Y's access to the tournament begins immediately upon purchase, and Y's location is known to X. Therefore, X must source the admission to Council Bluffs, Iowa. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Council Bluffs, Iowa.

205.5(2) *Sales of admissions that can be used at multiple locations.* Admissions that may be used at multiple locations should be sourced to the location where the admission is purchased if the purchaser picks it up in person and it can be used at that location. If the service cannot be used at that location or the sale is made online, the sale should be sourced using the provisions of Iowa Code section 423.15 and these rules that apply when the location of first use is unknown.

EXAMPLE 1: X is a movie theater located in West Des Moines, Iowa. X sells movie passes that can be used at its location and other locations across Iowa. Y purchases a movie pass at X's location in West Des Moines. Y's purchase is sourced to West Des Moines. X must collect Iowa sales tax and any local option sales tax that applies to sales sourced to West Des Moines, Iowa.

EXAMPLE 2: X is a health club with locations across Iowa. X has a website where memberships can be purchased. Memberships can be used at any of X's locations. Y purchases a membership through X's website. Y is required to provide an address when the membership purchase information is filled out. Y provides an address in Clive, Iowa. Therefore, the sale is sourced to Clive. More information can be found in Iowa Code section 423.15(1) "c." X must therefore collect Iowa sales tax and any local option sales tax imposed in the city of Clive.

701—205.6(423) Sourcing rules for tangible personal property and specified digital products. All sales of tangible personal property and specified digital products by sellers obligated to collect sales and use tax, except those enumerated in Iowa Code section 423.16, shall be sourced using the destination sourcing requirements described in Iowa Code section 423.15. Products received by a purchaser at a seller's business location shall be sourced to that business location. When the retailer has the address to which the retailer or a shipping company will deliver a product to the purchaser, Iowa Code section 423.15(1) "b" applies and the sale is sourced to the delivery address. The sale of a product delivered to a shipping company is not sourced to the location of the shipping company. The terms of a sale as F.O.B. (origin) are irrelevant for purposes of sourcing a sale. More information can be found in Iowa Code section 423.1(43) "b."

205.6(1) General examples of sourcing of tangible personal property. The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to sales, but not leases or rentals, of tangible personal property.

EXAMPLE 1: Item received at retail store of the seller. X purchases a product at a retail store in Waterloo, Iowa. X takes the product home from the retail store that day. The sale is sourced to the retail store in Waterloo, Iowa, because that is the business location where X receives the product. More information can be found in Iowa Code section 423.15(1) "a." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waterloo.

EXAMPLE 2: Item received at warehouse of the seller. X purchases a product at a retail store in Waterloo, Iowa, but X has to pick up the product at a warehouse in Cedar Falls, Iowa. The sale is sourced to the warehouse in Cedar Falls because that is the business location where X receives the product. More information can be found in Iowa Code section 423.15(1) "a." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Cedar Falls.

EXAMPLE 3: Item received at alternate location. X purchases a product at a retail store in Waterloo, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The retail store's delivery truck delivers the product to X's home in Waverly, Iowa. The sale is sourced to X's home in Waverly, Iowa, because that is the location where X receives the product and the location is known to the seller. More information can be found in Iowa Code section 423.15(1) "b." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waverly. The outcome in this example is the same regardless of whether the retail store delivered the product with its own truck or by common carrier.

EXAMPLE 4: Sale by Iowa seller, product received by buyer in Iowa, but product delivered from outside of Iowa. X lives in Maxwell, Iowa. X purchases a product online from an Iowa seller with a retail location in Des Moines, Iowa. While purchasing the product, X provides the retail store with X's home address as the location where X would like to have the product delivered. The seller sends the product to X via a common carrier from its shipping facility in Lincoln, Nebraska, and X receives the product at X's home in Maxwell. The sale is sourced to Maxwell because the product is received at that location and that location is known to the seller. More information can be found in Iowa Code section 423.15(1) "b." The outcome in this example is the same regardless of the fact that the product was delivered by a third party and regardless of the fact that the product was delivered from out of state.

More information can be found in Iowa Code section 423.15(1) “b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 5: Sale by remote seller, product delivered into Iowa. X lives in Maxwell, Iowa. X purchases a product online from a remote seller (a seller who has no physical presence in Iowa) located in Kansas City, Missouri, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the product, X inputs X’s home address as the delivery address. The product is shipped via common carrier. The sale is sourced to Maxwell, Iowa, because the product is received at that location and that location is known to the seller. More information can be found in Iowa Code section 423.15(1) “b.” It is irrelevant that the product was delivered by a third-party common carrier. More information can be found in Iowa Code section 423.15(1) “b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 6: Location of receipt by a purchaser’s donee. X lives in Omaha, Nebraska. X purchases a birthday gift for Y, who lives in Davenport, Iowa. X purchases the gift from a remote seller (a seller who has no physical presence in Iowa) located in Chicago, Illinois, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the gift, X inputs Y’s Davenport, Iowa, address as the delivery address. The sale is sourced to Davenport, Iowa. Y is the purchaser’s donee. The gift is received by Y in Davenport, Iowa, and that location is known to the seller. More information can be found in Iowa Code section 423.15(1) “b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Davenport.

EXAMPLE 7: Location of receipt unknown to the seller, but purchaser’s address available from seller’s business records. X purchases a product at a retail store in Waterloo, Iowa. X provides a billing address located in Fort Dodge, Iowa, with X’s payment information. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide the retailer a shipping address. Even though the retailer does not know the delivery address, the retailer’s business records indicate that the purchaser’s address is in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. More information can be found in Iowa Code section 423.15(1) “c.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 8: Location of receipt unknown to the seller, but purchaser’s address only indicated on a payment instrument used in the transaction. X purchases a product at a retail store in Waterloo, Iowa. X pays with a check that lists a Fort Dodge, Iowa, address for X. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address to the retail store. Even though the retail store does not have a shipping address or other address for X on file, the check lists an address for the purchaser in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. More information can be found in Iowa Code section 423.15(1) “d.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 9: Location from which the item was shipped, if location of receipt is unknown to the seller and the seller has no other record or indication of buyer’s address. X orders a product at a retail store in Adel, Iowa. X pays in cash and indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address or a billing address, and the retail store does not have an address on file for X. Because X paid in cash, X’s address is not indicated on a payment instrument. The retail store may source the sale to its location in Adel, Iowa. More information can be found in Iowa Code section 423.15(1) “e.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Adel.

205.6(2) *General examples of sourcing of specified digital products.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to specified digital products.

EXAMPLE 1: Specified digital product purchased at seller’s business location. Y owns and operates a restaurant in Sioux City, Iowa. Y provides guests access to an on-site electronic device on which guests may purchase access to video games to play while they wait to receive their food. Guests’ access to the games ends once they pay their bill, and the charge for the access is included on the final bill. All sales of video games from Y’s on-site electronic devices are sourced to Sioux City, the location at which guests receive access to the video games. More information can be found in Iowa Code section 423.15(1) “a.” Y must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux City.

EXAMPLE 2: Location of receipt by purchaser known to seller. X purchases and receives a specified digital product on X's smart phone through an online application marketplace. The marketplace knows X is in Ames, Iowa, when X purchases and downloads the specified digital product. The sale is sourced to Ames because the product is received at that location (more information can be found in Iowa Code section 423.1(43)) and that location is known to the seller. More information can be found in Iowa Code section 423.15(1) "b." If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

EXAMPLE 3: Location of receipt by purchaser unknown, but purchaser's address is available from seller's business records. X purchases a specified digital product from C's website. Prior to purchasing the specified digital product, X creates a user account through C's website and lists X's home address in Jefferson, Iowa. When X purchases the specified digital product, C does not know where X received the specified digital product. Even though C does not know where the specified digital product is received by X, C's business records that are maintained in the ordinary course of business indicate that X's address is in Jefferson, Iowa. More information can be found in Iowa Code section 423.15(1) "c." If C meets the thresholds described in Iowa Code section 423.14A(3), C must collect state sales tax and any local option sales tax imposed in the city of Jefferson.

EXAMPLE 4: Location of receipt by purchaser unknown, but purchaser's address only indicated on a payment instrument used in the transaction. X downloads a mobile video game application on X's phone through an online application marketplace. X pays for the video game with X's credit card. The marketplace saves the Ames, Iowa, home address associated with X's credit card. However, the marketplace does not know X's location when X downloads and purchases the video game. The marketplace may rely on the Ames address associated with X's payment information to source the sale. More information can be found in Iowa Code section 423.15(1) "d." If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

205.6(3) *Examples of sourcing of leases and rentals of tangible personal property other than transportation equipment or products described in Iowa Code section 423.16.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(2) as applied to leases or rentals of tangible personal property, other than transportation equipment as defined in Iowa Code section 423.15(3). This rule does not cover products described in Iowa Code section 423.16.

EXAMPLE 1A: Lease that requires recurring periodic payments. X resides in Indianola, Iowa. X enters into a rental agreement with Y, a furniture rental company located in Des Moines, Iowa, for the rental of a couch. The agreement specifies that X will pay to Y a \$50 down payment and \$20 each month thereafter until the rental is terminated.

In exchange for possession of the couch, X makes the required \$50 down payment to Y at Y's office in Des Moines, Iowa. X receives the couch at Y's office in Des Moines, and X takes the couch to X's home in Indianola, Iowa. While purchasing the couch, X provides Y with X's Indianola address, which Y keeps on file. For the remainder of the rental period, X's primary address remains the same.

The first periodic payment—the down payment—is sourced the same as sales under Iowa Code section 423.15(1). More information can be found in Iowa Code section 423.15(2) "a." In this case, the down payment was made and the product was received at the seller's business location. Iowa Code section 423.15(1) "a" governs the sourcing of the down payment. More information can be found in subrule 205.5(1). Therefore, in this case, the down payment is sourced to Des Moines. Y must collect state sales tax and any local option sales tax imposed in the city of Des Moines on the down payment.

Because X's home address is on file with Y for the remainder of the rental period, X's address is the "primary property location" of the couch during those periods. More information can be found in Iowa Code section 423.15(2) "a." Therefore, the subsequent monthly payments are sourced to X's Indianola address that is contained in the records maintained by Y in the ordinary course of business. More information can be found in Iowa Code section 423.15(2) "a." Y must collect state sales tax and any local option sales tax imposed in the city of Indianola on the monthly payments.

EXAMPLE 1B: Assume the same facts as Example 1A. In this example, however, X provides the \$50 down payment, gives Y X's home address in Indianola, Iowa, and arranges to have Y deliver the couch to X's home in Indianola, Iowa. The \$50 down payment constitutes the "first periodic payment" and is therefore sourced to Indianola in accordance with Iowa Code section 423.15(1) "b." More information can be found in Iowa Code section 423.15(2) "a." Because Y knows the location where the product will be received by the purchaser, Y must collect Iowa sales and any local option sales tax applicable in the city of Indianola on the down payment. More information can be found in subrule 205.6(1). The result is the same regardless of whether Y or a third-party shipping agent delivers the product and regardless of whether the product is shipped from outside of Iowa. More information can be found in subrule 205.6(1), Examples 3 and 4.

All other facts and results from Example 1A remain the same.

EXAMPLE 1C: Same facts as in Example 1A. In this example, however, partway through the rental period, X moves to Clinton, Iowa, for the remainder of the rental period. X informs Y of the change in address and that X is bringing the couch to Clinton as part of the move. Y updates Y's business records to reflect X's new address and the location of the couch.

Every payment that occurs after X informed Y of X's new address is sourced to Clinton, Iowa, because the "primary property location" as indicated by an address for the property provided by the lessee was updated to Clinton, Iowa. More information can be found in Iowa Code section 423.15(2) "a."

EXAMPLE 1D: Same facts as Example 1A. X makes the first several monthly payments while residing in Indianola. However, partway through the rental period, X moves to Ames and brings the couch. X does not update Y about the new address and location of the couch. Y does not receive any record from X indicating X's new address.

Even though the couch is actually located in Ames, the "primary property location" indicated by an address for the property provided by X that is available to Y from records maintained in the ordinary course of business is the Indianola address. More information can be found in Iowa Code section 423.15(2) "a." Therefore, Y is correct in sourcing each lease payment to Indianola.

EXAMPLE 2: Rental that does not require recurring periodic payments. B rents a woodchipper from C for a week in exchange for a single, up-front payment. C delivers the woodchipper to B at a location in Sioux Center, Iowa. The rental payment is sourced to Sioux Center, Iowa, because that is the location where B receives the woodchipper and the location is known to C, the seller. More information can be found in Iowa Code section 423.15(1) "b." C must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux Center. A rental that does not require recurring period payment is sourced the same as retail sales under Iowa Code section 423.15(1) and subrule 205.6(1). More information can be found in Iowa Code section 423.15(2) "b."

205.6(4) *Sales of items from vending machines.* Sales from vending machines are sourced to the location of the individual vending machine at which the purchaser receives the item.

205.6(5) *Sales of items by an itinerant merchant, peddler, or salesperson having a route.* When an itinerant merchant, peddler, or mobile salesperson meets with a customer and solicits an order or completes a contract for sale and the customer receives the item at that location, the sale is sourced to that location pursuant to Iowa Code section 423.15(1) "b," regardless of whether the location is the customer's home, a business establishment, or elsewhere. This rule applies to all other sales by itinerant merchants, peddlers, and mobile salespersons in the same manner as they apply to any other seller.

205.6(6) *Items purchased for resale but withdrawn from inventory.* If a person purchases items for resale or processing but withdraws and uses any of those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of the items withdrawn and used are sourced to the county in which they are withdrawn regardless of where the items were purchased for resale.

EXAMPLE: X owns and operates a home and furniture store located in Black Hawk County, Iowa. In Johnson County, Iowa, X purchases five rocking chairs. X provides the Johnson County retailer with sales tax exemption certificates stating that the rocking chairs are purchased for resale; the retailer accepts the certificates and does not charge Iowa sales tax on the sale of the rocking chairs. After returning to Black Hawk County, X decides to use one rocking chair in X's home instead of selling it. Because the

rocking chair was withdrawn from inventory in Black Hawk County, sales tax and the applicable local option tax in Black Hawk County are due.

205.6(7) *Items withdrawn from inventory by a manufacturer.* Where a manufacturer manufactures tangible personal property and uses the property it manufactures for any purpose except for resale or processing, such use by the manufacturer is subject to sales tax and sourced to the county in which the manufacturer first used the property. Taxable use includes using such property as building materials, supplies, or equipment in the performance of a construction contract. Tax is computed upon the cost to fabricate the property. More information can be found in rule 701—219.6(423).

EXAMPLE: X manufactures steel beams in Madison County, Iowa. X withdraws a beam from inventory to use on a construction project at its facility. X's withdrawal of the beam for use in the construction project is sourced to Madison County, Iowa, and sales tax and the applicable local option tax are due.

These rules are intended to implement Iowa Code sections 423.2, 423.15, and 423B.5.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 206
“Bundled Transactions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code section 423.2

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 206. This chapter was recently updated, and the Department has determined that it does not contain language that is obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of bundled transactions. The rules reduce uncertainty about how tax applies when items are sold together.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public, including retailers and purchasers, will benefit from clarification about the taxability of bundled transactions.

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 of the proposed rules.
 - Qualitative description of impact:
These rules reduce uncertainty about the taxability of bundled transactions. Failing to adopt them would lead to confusion, questions to the Department, and potential errors in calculating taxation of bundled transactions.

3. Costs to the State:

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

There are no costs to the agency of implementing the rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, the rules clarify the taxability of bundled transactions, making it more likely that the correct amount of tax will be remitted.

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

There are no costs of the rules themselves. The cost of inaction would be confusion about the taxability of bundled transactions.

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

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on the taxability of bundled transactions. The Department considered the option of not having rules explaining the taxability of bundled transactions but determined that the rules provide useful clarification to the public.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing rules on this topic but determined that it provides useful guidance to the public beyond what is provided by statute.

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

Proceeding without these rules would lead to confusion about how to tax bundled transactions.

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 rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 206 and adopt the following new chapter in lieu thereof:

CHAPTER 206
BUNDLED TRANSACTIONS

701—206.1(423) Taxability of bundled transactions. The sales price of a bundled transaction is subject to tax if any product included in the bundled transaction would be taxable if sold separately. For purposes of this rule, products include tangible personal property, services, and specified digital products and exclude real property and services to real property.

701—206.2(423) Bundled transaction. A “bundled transaction” is the retail sale of two or more products where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price.

206.2(1) Distinct and identifiable product. “Distinct and identifiable product” does not include any of the following:

a. Packaging or other materials that accompany the retail sale of the products and are incidental or immaterial to the retail sales of the products. Packaging or other materials include but are not limited to containers, boxes, sacks, bags, bottles, envelopes, wrapping, labels, tags, twine, garment hangers, and instruction guides.

EXAMPLE 1: Seller Z provides paper and plastic bags for purchasers to use to carry away their purchased items. The bags are incidental or immaterial to the retail sales of the products and are not distinct and identifiable products. Seller Z’s retail sale of purchased items in the provided bags does not constitute a bundled transaction.

EXAMPLE 2: Seller X sells brownies and offers purchasers the option of adding a premium box for an increased price. The sales price of the brownies is the same whether they are sold on their own or with a standard box, but the total sales price increases if the purchasers select a premium box. The premium box is distinct and identifiable from the food product because it requires separate shopping preferences and product selection by the purchaser and is not standard with every order of food product. The retail sale of the brownies and the premium box may constitute a bundled transaction if the other requirements pursuant to Iowa Code section 423.2(8) are satisfied.

EXAMPLE 3: Seller A offers purchasers the option to buy reusable, long-lasting grocery bags to use to carry away purchased grocery items. If the reusable grocery bags are purchased with other items and separately itemized, they are taxable and the sale does not constitute a bundled transaction.

b. A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction. Examples include a free car wash with the purchase of gasoline or free dinnerware with the purchase of groceries.

c. Items specified in the definition of “sales price” in Iowa Code section 423.1.

206.2(2) One nonitemized price. “One nonitemized price” does not include the following:

a. A price that is separately identified by product on a binding sales document, or other sales-related documentation, that is made available to the customer in paper or electronic form, including but not limited to an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card or a price list.

b. A price for which the sales price varies or is negotiable based on the purchaser’s selection of the products included in the transaction even if the seller only provides one price on its invoice to the purchaser.

EXAMPLE 1: Seller A sells a bakery item as part of a meal which consists of taxable prepared food. The purchaser selects items from a list of options of prepared food to be included in the meal. The individual items of the meal are not itemized on the receipt and the meal is always the same price, notwithstanding the items selected by the purchaser. The meal is sold for one nonitemized price, and the sales price of the meal is subject to tax as a bundled transaction.

EXAMPLE 2: Seller B enters into a contract with buyer D to provide various information technology services. Buyer D selects the information technology services it wants from seller B. Through negotiation, buyer D and seller B agree on a price based on the services selected and seller B bills buyer D one price for all of the services, some of which are taxable and some of which are not taxable. Although the invoice from seller B to buyer D only contains one price for all of the services, since the price was based on the products selected by buyer D, the price is not one nonitemized price and the sale does not constitute a bundled transaction.

701—206.3(423) Transactions not taxable as bundled transactions. Generally, the entire sales price from a bundled transaction is subject to sales tax. However, the transactions described in this rule are not taxable as bundled transactions.

206.3(1) Sales involving mixed tangible personal property and services. The retail sale of tangible personal property or specified digital product and a service, if the tangible personal property or specified digital product is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service.

EXAMPLE: Seller A charges customer B for computer programming services where customer B is also given a backup disk and instruction manual. The true object of the transaction is the provision of the programming services. Seller A is selling nontaxable services and is not making a sale of a bundled transaction. Iowa sales tax is not due on the programmer's charge for services; sales tax is due on seller A's purchases of tangible personal property used to fulfill the service.

206.3(2) Sales involving services. The retail sale of services, if one of the services is essential to the use or receipt of a second service, and provided exclusively in connection with the second service, and if the true object of the transaction is the second service. If the transaction is not a bundled transaction as a result of this exclusion, then the true object of the transaction will be the retail sale of the second service and should be taxed accordingly.

206.3(3) True object test. The true object of a transaction is the main product that is the subject of the transaction. Determining the true object of a transaction is a fact-based inquiry and shall be made on a case-by-case basis. Factors that may be considered in determining the true object of a transaction include but are not limited to the nature of the seller's business and purchaser's reason for making the purchase.

206.3(4) Sales involving de minimis taxable products. A transaction that includes taxable and nontaxable products and the seller's purchase price or sales price of the taxable products is de minimis. "De minimis" means the seller's purchase price or sales price of the taxable products is 10 percent or less of the total purchase price or sales price of the bundled products. A seller shall use either the seller's purchase price or seller's sales price of the products to determine whether the taxable products are de minimis. A seller may not use a combination of the seller's purchase price and seller's sales price of the products to determine whether the taxable products are de minimis.

EXAMPLE 1: Seller H sells a coupon book that includes a packet of stickers for one nonitemized price of \$75. The packet of stickers is not provided free of charge. Seller H purchased the stickers, a taxable product, for \$2 per packet, which does not exceed 10 percent of the total purchase price of the coupon book and stickers. Seller H's sale of the coupon book and stickers is not a bundled transaction, and the sales price of \$75 is not subject to tax.

EXAMPLE 2: Technology Company F (company F) sells access to a day-long live webinar about the latest trends occurring in the technology industry for one nonitemized price of \$200. The webinar, which does not allow people viewing the presentation to submit questions, is not subject to Iowa sales tax. The customer also receives a smartwatch that is included in the payment of the webinar but is not provided free of charge. Company F's sales price of the smartwatch is \$50, which exceeds 10 percent of the total sales price of the fee. The watch is subject to sales tax by the customer. Because company F's purchase price of the watch is not de minimis, the \$200 transaction is a bundled transaction and is subject to tax.

206.3(5) Sales involving taxable and exempt food or medical products. The retail sale of exempt tangible personal property and taxable tangible personal property where all of the following apply:

a. The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or medical supplies; and

b. The seller's purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

EXAMPLE: Seller F offers its customers a package containing two prepared hot dogs and five frozen hot dogs. The sales price for the two prepared hot dogs is \$5, and the sales price of the five frozen hot dogs is \$10. The package is sold for one nonitemized price of \$15. The sales price of the package is not taxable because the sales price of the taxable items (the two prepared hot dogs) is 50 percent or less of the total sales price of the package.

These rules are intended to implement Iowa Code section 423.2(8).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 225
“Resale and Processing Exemptions Primarily of Benefit to Retailers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.1(24), 423.1(39), 423.1(46), 423.1(54), 423.1(55), 423.2(1), 423.3(2), 423.3(50), 423.3(98), 423.3(104), and 423.15(2)

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 225. This chapter provides the Department’s interpretation of the underlying statutes and how those statutes apply to retailers who qualify for a resale or other sales or use tax exemptions on certain purchases in order to aid retailers’ understanding of the underlying statutes and reduce uncertainty about the application of certain exemptions to retailers’ purchases. The Department proposes adding to the rules to add clarification and removing portions that the Department has determined are unnecessary, obsolete, or duplicative of statutory language. The Department also renumbered some rules due to those changes and for organizational reasons. A citation in subrule 225.5(5) to rule 701—221.5(423) refers to a rule that will be adopted in a future rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rules do not create costs for any class of persons beyond what is imposed by the underlying statutes.

- Classes of persons that will benefit from the proposed rulemaking:

The public, especially retailers, will benefit from this proposed rulemaking because it provides guidance about the scope and applicability of specific exemptions on certain purchases.

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 associated with the proposed rulemaking beyond what is contained in statute.

- Qualitative description of impact:

The proposed rulemaking reduces uncertainty about the applicability of certain exemptions related to resale and processing. Failure to adopt the rules would lead to confusion, questions to the Department, and potential collection of tax for an exempt purchase.

3. Costs to the State:

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

There are no costs to the Department to implement the proposed rulemaking beyond what would otherwise be required to administer the statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the rules provide clarification about certain exempt sales, making it less likely that tax will be collected on what is an exempt sale.

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

The cost of inaction would be failing to update the chapter to provide clarification and to remove unnecessary, obsolete, and duplicative statutory language. The benefit of the proposed rulemaking is to provide additional certainty and reduce confusion about the applicability of exemptions to certain purchases by retailers.

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

The proposed rulemaking is not costly or intrusive, and its purpose is to provide guidance on the applicability of specific exemptions on certain purchases made by retailers. The Department considered the option of not adopting rules. However, the Department determined the rules provide helpful guidance and useful clarification to retailers and the public.

6. Alternative methods considered by the agency:

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

The Department considered the option of not adopting rules. However, the Department determined the rules provide helpful guidance and useful clarification to retailers and the public beyond what is provided by the underlying statutes.

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

The Department determined that proceeding without rules would lead to confusion about whether certain purchases by retailers are exempt from sales or use tax.

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 does not have a substantial impact on small business because it does not make any distinctions based on the size of a business. The rules do not impose any requirements on businesses, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 225 and adopt the following **new** chapter in lieu thereof:

CHAPTER 225
RESALE AND PROCESSING EXEMPTIONS PRIMARILY
OF BENEFIT TO RETAILERS

701—225.1(423) Paper or plastic plates, cups, and dishes; paper napkins; wooden or plastic spoons and forks; and straws. When paper or plastic cups, plates, and dishes, paper napkins, and wooden or plastic spoons, forks, and other utensils are sold with food or other items to a buyer, and the buyer uses or consumes the utensils, sales of those utensils to retailers are considered sales for resale. The sales price from the sale of such items by retailers to consumers or users is subject to tax.

When these articles are transferred in connection with a service or sold for free distribution by retailers apart from a retail sale, the transaction is deemed to be a retail sale to the retailer and therefore is taxable.

Sales of reusable placemats to retailers that sell meals are also subject to tax.

EXAMPLE 1: A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer provides these items free of charge, apart from the retail sale of food at the retailer's restaurant. Sale of these items to the retailer is a retail sale and is subject to tax.

EXAMPLE 2: A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer sells these items with tangible personal property to the retailer's customers. The sale of these items to the retailer is considered a sale for resale and is not subject to Iowa sales tax at the time of purchase.

This rule is intended to implement Iowa Code section 423.3(2).

701—225.2(423) Services used in the repair or reconditioning of certain tangible personal property. Services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type that is normally sold in the regular course of the retailer's business and that is held for sale by the retailer.

EXAMPLE 1: A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B tax-free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

EXAMPLE 2: B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

EXAMPLE 3: C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

EXAMPLE 4: XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling televisions subject to sales tax. However, in this instance, XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not

collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 423.1(55) and 423.3(50).

701—225.3(423) Tangible personal property purchased by a person engaged in the performance of a service.

225.3(1) In general.

a. Tangible personal property purchased by a person engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Tangible personal property that is not sold in the manner set forth in paragraph 225.3(1) “*a*” above is not purchased for resale and thus is subject to tax at the time of purchase by a person engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service, and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE 1: An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor’s clients regarding their accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity that is capable of a fixed or definite price value. However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a “resale” of the item.

EXAMPLE 2: An automobile repair shop purchases solvents that are used in cleaning automobile parts and thus in performing its automobile repair service. Tax is due at the time the automobile repair shop purchases the solvents because the solvents are not sold to the customer and because, in this case, the items are not transferred to a customer in a form or quantity that is capable of a fixed or definite price value. Thus, the solvents are deemed consumed by the purchaser engaged in the performance of the service.

EXAMPLE 3: A retailer purchases television picture tubes tax-free and makes a separate charge for the picture tube to the customer. Since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value, the retailer may purchase the picture tube exempt from tax for subsequent resale.

EXAMPLE 4: A beauty shop purchases shampoo and other items to be used in the performance of its service. Tax is due at the time the beauty shop purchases such items from its supplier because the customers of the beauty shop are not separately billed for the items and because the items are not transferred to the customer in a form or quantity capable of a fixed or definite price value. The items are consumed by the beauty shop.

EXAMPLE 5: A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas, and tax is due at the time of purchase. The items purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the items.

EXAMPLE 6: An accounting firm purchases plastic binders that are used to cover the reports issued to its customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, because there is no sale to the customer.

EXAMPLE 7: A meat locker purchases materials, such as wrapping paper and tape, that it uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because they are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE 8: A jeweler purchases materials, such as main springs and crystals, to be used in the performance of a service. These items are purchased by the jeweler for resale when they are transferred

to the customer in a form or quantity capable of a fixed or definite price value, and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE 9: A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers that are suitable to indicate a lawn care service's purchase of the fertilizer, herbicides, and pesticides for resale to those customers: "Chemicals...31 Gal....\$60"; "Fertilizer...50 lbs....\$100"; and "Materials applied to lawn...4 bushel...\$40." The following are examples of information placed upon an invoice that would not indicate a purchase for resale to the customers invoiced: "Fifty percent of the charge for this service is for materials placed on a lawn," or "Lawn chemicals...\$30" or "Fifty pounds of fertilizer was applied to this lawn."

225.3(2) *Purchases made by automobile body shops or garages with body shops.* Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

a. The property purchased for resale is actually transferred to the body shop's customer by becoming an ingredient or component part of the repair work. More information is contained in Iowa Code section 423.3(2).

b. The property purchased for resale is itemized as a separate item on the invoice to the body shop's customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two conditions is not met, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items that will be resold (detailed list below) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. Failure of the vendor to accept a valid resale certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax permit or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" that such shops consume in rendering repair services. Some of the materials are transferred to the recipients of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

- Abrasives
- Battery water
- Body filler or putty
- Body lead
- Bolts, nuts and washers
- Brake fluid
- Buffing pads
- Chamois
- Cleaning compounds
- Degreasing compounds
- Floor dry
- Hydraulic jack oil
- Lubricants
- Masking tape
- Paint
- Polishes
- Rags
- Rivets and cotter pins

Sanding discs
Sandpaper
Scuff pads
Sealer and primer
Sheet metal
Solder
Solvents
Spark plug sand
Striping tape
Thinner
Upholstery tacks
Waxes
White sidewall cleaner

The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts:

Accessories
Batteries
Brackets
Bulbs
Bumpers
Cab corners
Chassis parts
Door guards
Door handles
Doors
Engine parts
Fenders
Floor mats
Grilles
Headlamps
Hoods
Hubcaps
Radiators
Rocker panels
Shock absorbers
Side molding
Spark plugs
Tires
Trim
Trunk lids
Wheels
Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies that are generally not transferred to the body shop's customer during the course of the repair and, therefore, could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer. Therefore, the body shop must pay tax to the vendor at the time of purchase:

Air compressors and parts
Body frame straightening equipment
Brooms and mops

Buffers
Chisels
Drill bits
Drop cords
Equipment parts
Fire extinguisher fluids
Floor jacks
Hand soap
Hand tools
Office supplies
Paint brushes
Paint sprayers
Sanders
Signs
Spreaders for putty
Washing equipment and parts
Welding equipment and parts

Because of the nature of the body shop business and the formulas devised by the insurance industry to reimburse a body shop for cost of “materials,” it is possible for a body shop, in the body shop’s invoices to customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shop, and some of such individual materials are not even transferred by the body shop to the body shop’s customers. Therefore, the body shop is generally the “consumer” of “materials” and does not purchase those materials for resale. Thus, the body shop should pay tax to retailers on all materials purchased and consumed by the body shop. If materials are purchased from non-Iowa retailers that do not collect Iowa tax from the body shop, such a body shop should remit consumer use tax to the department of revenue on such materials.

A body shop must collect sales tax on the taxable service of repairing motor vehicles. More information is contained in rule 701—218.2(423). However, due to the nature of the insurance formulas, it is possible for the body shop to itemize that portion of the body shop’s billing that would be for repair services and that portion relating to consumed “materials.” It is also possible for the body shop to itemize that portion of the body shop’s charges for parts that the body shop purchases for resale to the body shop’s customers. A body shop does not and cannot resell the tools and supplies previously listed in this rule; the body shop’s purchases of such items are taxable.

Therefore, as long as a body shop separately itemizes on the body shop’s invoices to the body shop’s customers the amounts for labor, parts, and “materials,” the body shop should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, and polishes. In the body shop’s invoice to the customer, the labor is separately listed at \$600, the part (fender) is separately listed at \$600, and the category of “materials” is separately listed for a lump sum of \$200, for a total billing of \$1,400. The Iowa sales tax computed by the body shop should be on \$1,200, which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for the taxable “sales price,” as defined in Iowa Code section 423.1(51), which is taxable under Iowa Code section 423.2.

In this example, if the “materials” were not separately listed on the invoice, but had been included in either or both of the labor or parts charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at the time of purchase.

This rule is intended to implement Iowa Code sections 423.1(39) and 423.3(2).

701—225.4(423) Maintenance or repair of fabric or clothing. Sales of chemicals, solvents, sorbents, or reagents directly used and consumed in the maintenance or repair of fabric or clothing are exempt from tax. This rule’s exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is “directly used” in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances that do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing, but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethylene (also known as “perch”) or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the “perch” or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with “perch” or petroleum solvents is exempt from tax. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry’s purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry’s purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and “sizing” by dry cleaners is not exempt from tax.

This rule is intended to implement Iowa Code section 423.3(51).

701—225.5(423) The sales price from the leasing of all tangible personal property subject to tax.

225.5(1) Leases. The rental of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because “leases” and “rentals” of tangible personal property are taxable retail “sales” of that property. The rental of tangible personal property is not a taxable enumerated service. The resale exemption in favor of sales for resale of tangible personal property is applicable to sales and leases of tangible personal property for subsequent rental or lease.

EXAMPLE A: ABC buys blowers, hand tools, ladders, plumbers’ snakes, sanders, and tillers for subsequent short-term rental to various customers. ABC’s purchases of these items of equipment are purchases for resale and are exempt from tax.

EXAMPLE B: In addition to its purchases of equipment for subsequent rental, ABC leases from retailers, long-term, items of heavier equipment, such as backhoes, forklifts, manlifts, tractors, and trenchers, again for subsequent leasing to various customers. Since the leasing of tangible personal property is now a purchase of that property, ABC’s leasing for later sublease is a purchase of tangible personal property and is exempt from tax at the time of purchase as the purchase of tangible personal property for subsequent resale.

225.5(2) Distinguishing leases and rentals of tangible personal property from the furnishing of nontaxable services. In order to determine whether a particular fee is charged for the rental of tangible personal property or for the furnishing of a nontaxable service, the department looks at the substance, rather than the form, of the transaction. When the possession and use of tangible personal property by the recipient is merely incidental as compared to the nontaxable service performed, all of the sales price is derived from the furnishing of such nontaxable service and, unless a separate fee or charge is made for the possession and use of tangible personal property, no sales price is derived from the rental of tangible personal property. When the nontaxable service is merely incidental to the possession and use of the tangible personal property by the recipient, all of the sales price is derived from the furnishing of tangible personal property rental and, unless a separate fee or charge is made for the nontaxable service, no sales price is derived from the nontaxable service. When a tangible personal property rental agreement contains separate fee schedules for rent and for nontaxable service, only the sales price derived from the tangible personal property rental is subject to tax. This rule is not to be so construed as to be at variance with Iowa Code sections 423.2(6) “bf” and 423.2(8) concerning transportation services and bundled service contracts, respectively.

225.5(3) *Rental of real property distinguished from rental of tangible personal property.* If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided that allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the sales price is for the rental of real property and is not subject to tax, unless taxable room rental is involved.

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the sales price from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

225.5(4) *Rental of tangible personal property and rental of fixtures.* The rental of tangible personal property that shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property that is connected to real property in a way that it cannot be removed without damage to itself or to the real property is a fixture. The rental of a mobile home or manufactured housing, not sufficiently attached to realty to constitute a fixture, is room rental rather than tangible personal property rental and subject to tax on that basis.

225.5(5) *Rental of tangible personal property embodying intangible personal property rights—transactions taxable and exempt.* Under the law, the sales price from rental of tangible personal property includes royalties and copyright and license fees. The rental of all property that is a tangible medium of expression for the intangible rights of royalties and copyright and license fees is subject to tax. Therefore, the sales price from the rental of films, videodiscs, videocassettes, and computer software that are the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible personal property is subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. More information is contained in rule 701—221.5(423) for an exemption from the requirements of this subrule for rental of films, videotapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees that broadcast the contents of these media for public viewing or listening.

225.5(6) *Deposits and additional fees.* Taxability of a deposit required by an owner of rental property as a condition of the rental depends upon the type of deposit required. A deposit subject to forfeiture for the lessee's failure to comply with the rental agreement is not subject to tax. This type of deposit is separate from the rental payments and therefore is not taxable as part of the rental. Such deposits may include those for reservation, late return of the rental property or damage to the rental property. Deposits not subject to forfeiture which represent part of the rental receipts are considered part of the taxable rental and are subject to tax. Such deposits may include a deposit of the first rental payment that is applied to the rental receipts.

When tangible personal property is rented for a flat fee per month, per year, or for other designated periods, plus an additional fee based on quantity and capacity of production or use, the entire charge is taxable.

225.5(7) *Leasing of tangible personal property moving in interstate commerce.*

a. In the case of a lease or rental that requires recurring periodic payments, the first periodic payment is taxed to Iowa if the property was delivered to the lessee in Iowa. Periodic payments made subsequent to the first payment may be taxed only by the state in which the property is primarily located for the period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

b. Where a nonresident lessor leases tangible personal property to a resident or nonresident lessee and the lessee uses the property in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments if Iowa is the primary location of the property, provided the lessor is a

retailer maintaining a place of business in this state as defined in Iowa Code section 423.1(48). Whether the lease agreement is executed in Iowa or not is irrelevant.

c. Where a lessee rents equipment sourced to Iowa and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee rents tangible personal property, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to Iowa Code section 423.14, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside Iowa and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa, uses it in Iowa, and Iowa becomes the primary location of the property, Iowa use tax applies to subsequent rental payments.

e. If sales or use tax has already been paid to another state on the sales price of tangible personal property prior to the use of that property in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given.

This rule is intended to implement Iowa Code sections 423.1(24), 423.1(43), 423.1(46), 423.1(54), 423.2(1), and 423.15(2).

701—225.6(423) Certain inputs used in taxable vehicle wash and wax services. The sales price from the sale of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax that is subject to Iowa Code section 423.2(6) is exempt from tax.

225.6(1) Definitions. For the purposes of this rule, terms mean the same as defined in Iowa Code section 423.1 and 701—Chapter 200. Additionally, the following definitions apply:

“Secondary vehicle wash and wax facility” means a vehicle wash and wax facility whose primary purpose is to sell tangible personal property or services other than vehicle wash and wax services, but which also provides vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). Examples of “secondary vehicle wash and wax facilities” include but are not limited to vehicle dealerships, convenience stores, service stations, and wholesale and retail fuel marketing locations that provide taxable vehicle wash and wax services in addition to their primary business purpose. A facility that provides vehicle wash and wax services that also sells tangible personal property or other services is presumed to be a “secondary vehicle wash and wax facility” unless it can prove otherwise.

“Stand-alone vehicle wash and wax facility” means a vehicle wash and wax facility whose primary purpose is to provide vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). A vehicle wash and wax facility is considered a “stand-alone vehicle wash and wax facility” although it sells a de minimis amount of products and services related to vehicle wash and wax services. Nonexclusive examples of products and services related to vehicle wash and wax services include coin-operated vacuum stations and air fresheners and vehicle wipes that are sold out of vending machines.

“Vehicle” means the same as defined in Iowa Code section 321.1.

“Vehicle wash and wax facility” means any retailer that provides vehicle wash and wax services.

“Vehicle wash and wax services” or *“vehicle wash and wax”* means washing and waxing services performed inside or outside of the vehicle or both whether the services are performed by hand, machine, or coin-operated devices.

“Water” means water directly consumed or used in providing the taxable vehicle wash and wax service. “Water” does not include, for example, charges or fees for storm water, sanitary sewer, or solid waste services since these are not fees for water directly used or consumed in providing the taxable vehicle wash and wax service.

225.6(2) Purchases made by a stand-alone vehicle wash and wax facility. Purchases of water, electricity, chemicals, solvents, sorbents, or reagents by a stand-alone vehicle wash and wax facility are

presumed to be 100 percent exempt from sales tax. The stand-alone vehicle wash and wax facility is not required to provide the retailers of such items with an exemption certificate.

225.6(3) Purchases made by a secondary vehicle wash and wax facility.

a. Sales price of electricity and water. The exemption for the sales price of electricity and water purchased by secondary vehicle wash and wax facilities applies only to the sales price from the sale of electricity and water directly consumed or used in providing vehicle wash and wax services, as distinguished from electricity and water used and consumed for other purposes not related to vehicle wash and wax services (e.g., electricity to operate office equipment or lighting; water used for cleaning the inside of a gas station or for irrigation).

(1) Separately metered electricity and water. Ideally, a secondary vehicle wash and wax facility will have separate meters to measure its nonexempt electricity and water usage and its exempt electricity and water used for providing taxable vehicle wash and wax services. A secondary vehicle wash and wax facility that separately meters its exempt and nonexempt electricity and water usage and does not use the exempt electricity and water for any other purpose than providing a taxable vehicle wash and wax service does not have to file an exemption certificate with the retailers. The retailer should not charge tax on the charges associated with the meters that measure electricity and water used solely for providing the taxable vehicle wash and wax services.

However, if water or electricity that is measured by the meter that separately measures the vehicle wash and wax facility is used for both taxable vehicle wash and wax services and nonexempt purposes (e.g., consumed in performance of its business operations), the secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this rule, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water retailer.

The exemption certificate shall indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentage of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service facility's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentage of exempt electricity or water usage may forego the exemption. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

(2) Exempt and nonexempt usage measured by the same meter. When electricity and water are purchased for vehicle wash and wax services as well as for taxable uses, and the use of the electricity or water is recorded on a single meter, a secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this subparagraph, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water retailer.

The exemption certificate must indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentages of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service provider's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentages of exempt electricity and water usage may either forego the exemption or install a separate meter. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility

must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

Exemption statutes are strictly construed against the taxpayer in favor of taxation. The secondary vehicle wash and wax facility has the burden of proof regarding the exempt percentages and is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the electricity or water retailer in writing of the percentage of exempt usage, if required.

b. Sales price of chemicals, solvents, sorbents, or reagents. The sales price of chemicals, solvents, sorbents, or reagents sold to a secondary vehicle wash and wax facility to be used in providing a taxable vehicle wash and wax service is presumed to be 100 percent exempt from sales tax if the secondary vehicle wash and wax facility's primary business does not consume or sell the same chemicals, solvents, sorbents, or reagents that are used in providing taxable vehicle wash and wax services. If the secondary vehicle wash and wax facility's primary business does not use or sell the same products used in providing the taxable vehicle wash and wax service, the facility does not have to provide the retailer with an exemption certificate. However, if the secondary vehicle wash and wax facility may consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services, the secondary vehicle wash and wax facility shall either:

(1) Purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax to the department at the time such items are consumed in the operation of the primary business. The secondary vehicle wash and wax facility shall provide to the retailer an exemption certificate that indicates that not all items will be used in providing a taxable vehicle wash and wax service and the tax on such items will be remitted at a later date; or

(2) Pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the facility's returns.

EXAMPLE A: An automobile dealership offers a taxable drive-through vehicle wash and wax service in addition to its primary business purpose of selling vehicles. The automobile dealership is a "secondary vehicle wash and wax facility" because the taxable vehicle wash and wax service is offered secondarily to its primary purpose of selling and servicing vehicles. In addition to providing vehicle wash and wax services to the general public (a taxable vehicle wash and wax service), the automobile dealership uses its vehicle wash and wax facility to wash and wax its inventory. Using the vehicle wash and wax facility to wash or wax inventory is not a taxable vehicle wash and wax service because the vehicle wash and wax service is not sold to customers; the service is "consumed" in performance of the automobile dealership's business operations.

The automobile dealership has electricity and water meters that each separately measure the electricity and water used and consumed in using the vehicle wash and wax facility. Although the automobile dealership separately meters electricity and water, the separate meters do not measure only taxable vehicle wash and wax services. Therefore, to claim the exemption, the automobile dealership shall provide the electricity and water retailers with an exemption certificate that states the percentages of water and electricity used in providing taxable vehicle wash and wax services. The electricity and water retailers shall separately state and bill for the taxable and exempt amounts.

The automobile dealership also uses some of the chemicals, solvents, sorbents, or reagents while washing and waxing its inventory, so the automobile dealership may either (1) purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax at the time such items are consumed in the operation of the primary business, or (2) pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the dealership's returns.

The exemption is available for the quantity of items used in providing the taxable vehicle wash and wax services even though the automobile dealership does not separately itemize on its receipts the

amounts of electricity, water, chemicals, solvents, sorbents, or reagents used in providing the taxable vehicle wash and wax services.

EXAMPLE B: A gas station that also sells vehicle wash and wax services does not separately meter the electricity or water used and consumed in providing the taxable vehicle wash and wax services. With the exception of providing vehicle wash and wax services, the gas station does not provide any other additional services. The gas station wants to claim the exemption. To obtain the exemption for electricity or water under this rule, the gas station shall calculate, and has the burden of proving, the amount of exempt electricity or water it uses in providing taxable vehicle wash and wax services. The gas station shall furnish to the electricity or water retailer an exemption certificate that indicates what percentage of the electricity or water is exempt.

Additionally, because the gas station only sells gasoline and taxable vehicle wash and wax services, it is unlikely that the gas station will consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services. Therefore, the sales price of the chemicals, solvents, sorbents, or reagents that the gas station purchased for use in providing taxable vehicle wash and wax services is 100 percent exempt from sales tax. The gas station does not have to provide the retailers of the chemicals, solvents, sorbents, or reagents with an exemption certificate.

EXAMPLE C: Same facts as Example B, except the gas station does not believe it is feasible to accurately determine the amount of electricity or water usage that can be attributed to the vehicle wash and wax facility. The gas station also does not believe it is economically beneficial to install separate meters to measure the usage of electricity or water for the sole purpose of claiming the exemption. Therefore, the gas station does not claim the exemption and pays sales tax on the full sales price of water or electricity.

This rule is intended to implement Iowa Code section 423.3(98).

701—225.7(423) Exemption for certain purchases by commercial enterprises.

225.7(1) Exemption. The sales price from the sale of specified digital products and of prewritten computer software sold, and of enumerated services described in Iowa Code section 423.2(1) “a”(5) or 423.2(6) “bq,” “br,” “bs,” and “bu” furnished to a commercial enterprise for use exclusively by a commercial enterprise is exempt from tax.

225.7(2) Commercial enterprise as purchaser. A purchaser seeking this exemption must be a commercial enterprise as defined in Iowa Code section 423.3(104) “b”(1). For purposes of Iowa Code section 423.3(104) “b”(1). For purposes of Iowa Code section 423.3(104) “b”(1), the following definitions apply:

a. Insurance company. “Insurance company” means the same as defined in Iowa Code section 423.3(47) “d.” Excluded from the definition of “insurance company” is the following nonexhaustive list of entities: benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B.

b. Occupation. “Occupation” means the principal business of an individual, such as the business of farming.

c. Profession. “Profession” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation.

225.7(3) Exclusive use by a commercial enterprise. A commercial enterprise must be the exclusive user of the product. Use in the ordinary course of a commercial enterprise’s business constitutes exclusive use by a commercial enterprise. Uses by all other users, including entities other than commercial enterprises, do not constitute uses by a commercial enterprise.

a. Examples of exclusive uses. The following are examples of exclusive uses by a commercial enterprise in the normal course of business:

- (1) Word processing software loaded onto employees’ work computers.
- (2) Software that displays a menu on a tablet used by customers at a restaurant.
- (3) Information services used by temporary employees of a commercial enterprise in the ordinary course of business.

b. Examples of disqualifying nonexclusive uses. The following are examples of uses that are not exclusive uses by a commercial enterprise or uses in the ordinary course of business:

- (1) Software shared by a commercial enterprise with an entity that is not a commercial enterprise.
- (2) Video games that customers may purchase on a tablet that is provided at a restaurant for customers to use while waiting for service.

225.7(4) Noncommercial purposes. “Noncommercial purposes” means purposes that are outside of carrying out the business purpose of a commercial enterprise or purposes outside of the ordinary course of business of a commercial enterprise. The following are examples of uses for noncommercial purposes:

- a.* Personal and recreational use.
- b.* Holding a product for future use for a noncommercial purpose.

225.7(5) De minimis. “De minimis” means an amount of use of a product for noncommercial purposes that, when considering the product’s value and the frequency with which the use for noncommercial purposes occurs during the product’s total use time, is so small as to make accounting for that use unreasonable or impractical. Whether a use is de minimis is a fact-based determination that shall be made on a case-by-case basis.

This rule is intended to implement Iowa Code section 423.3(104).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 270
“Local Option Sales and Services Tax”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68 and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 99F.10(6) and 423B.5

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 270. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete or unnecessary or duplicate statutory language. The proposed chapter describes the Department’s interpretation of the underlying statute to help the public understand local option taxes. These rules reduce uncertainty about when tax applies.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification about local option taxes.

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 of the proposed rules.
 - Qualitative description of impact:
These proposed rules reduce uncertainty about local option taxes. Failing to adopt them would lead to confusion, questions to the Department, and potential errors in calculations.

3. Costs to the State:

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

There are no costs to the agency of implementing the proposed rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, the proposed rules clarify the applicability of local option taxes and procedures related to imposing a local option tax, making it more likely that the correct amount of tax will be collected.

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

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statute. The benefit of the proposed rules is reducing confusion about the applicability of local option taxes.

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

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on the applicability of local option taxes and procedures related to imposing a local option tax. The Department considered the option of not having rules explaining local option taxes but determined that the rules provide useful clarification to the public and guidance to jurisdictions imposing local option taxes about their obligations.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing rules on this topic but determined that the proposed chapter provides useful guidance to the public beyond what is provided in statute.

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

Proceeding without these rules would lead to confusion about local option taxes.

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 does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 270 and adopt the following **new** chapter in lieu thereof:

CHAPTER 270
LOCAL OPTION SALES AND SERVICES TAX

701—270.1(423B) Definitions.

270.1(1) *Incorporation of definitions.* To the extent it is consistent with Iowa Code chapter 423B and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code section 423.1 and chapter 423B and rule 701—200.1(423).

270.1(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

“*City*” means the same as defined in Iowa Code section 362.2(4).

“*Local option tax*” or “*local option taxes*” means the taxes imposed by Iowa Code chapter 423B.

“*Most recent certified federal census*” means the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the Bureau of the Census. If a subsequent certified census occurs that modifies the “most recent certified federal census” for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

“*Unincorporated area of the county*” means all areas of a county that are outside the corporate limits of all cities that are located within the geographical area of the county.

This rule is intended to implement Iowa Code section 423B.7.

701—270.2(423B) Imposition of local option taxes and notification to the department. This rule describes notification and other requirements as related to the department. More information on election forms and instructions can be found in 721—Chapter 21.

270.2(1) *Notice to the department.* Within ten days of the election at which a majority of those voting on the question of imposition, repeal, or change in the rate of tax vote in favor, the county auditor must give notice of the election results to the director by sending a copy of the abstract of votes and a copy of the sample ballot from the election.

270.2(2) *Avoiding a lapse in tax due to expiration of a former local option tax.* A jurisdiction that has a local option tax that is set to expire may vote to impose another local option tax. However, due to the required imposition dates previously set forth, there may be a lapse in the tax because of an expiration of the former local option tax and the required imposition dates for imposition of a local option tax. A local option jurisdiction may avoid a lapse in local option tax. To avoid a lapse in the tax, a jurisdiction may place on the ballot that the new local option tax will continue without repeal of the prior tax. If the required vote is in favor of imposition of the local option tax, the continued local option tax can be imposed so there is no lapse in the tax.

This rule is intended to implement Iowa Code section 423B.6.

701—270.3(423B) Administration.

270.3(1) *Generally.* The department is charged with the administration of the tax, once imposed, and must administer the tax as nearly as possible in conjunction with the administration of the state sales tax.

270.3(2) *Incorporation of 701—Chapter 11.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to retailers required to collect local option taxes in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.

701—270.4(423B) Filing returns; payment of tax; penalty and interest.

270.4(1) *Incorporation of 701—Chapter 202.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 202 apply to retailers required to collect local option tax in the same manner as those requirements apply to all sellers and retailers making sales subject to state sales tax.

270.4(2) *Local tax collections not included to determine filing frequency.* Local option tax collections are included in computation of the total tax to determine frequency of filing under Iowa Code section 423.31.

This rule is intended to implement Iowa Code section 423B.6.

701—270.5(423B) *Permits.* Except as otherwise stated in this chapter, the requirements of 701—Chapter 201 apply to retailers required to collect local option tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.

701—270.6(423B) *Sales subject to local option sales and services tax.* All sales subject to sales tax under Iowa Code chapter 423 are subject to local option sales and services tax. There is no local option use tax.

270.6(1) *Sourcing.* The general sourcing rules described in Iowa Code section 423.15 and 701—Chapter 205 are used to determine whether a sale is subject to local option taxes and, if so, in what jurisdiction. A local sales and services tax is not applicable to transactions sourced to a place of business, as defined in Iowa Code section 423.1, of a retailer if such place of business is located in part within a city or unincorporated area of the county where the tax is not imposed.

270.6(2) *Sellers responsible for collecting local option sales and services tax.* Sales sourced to Iowa and made by sellers subject to Iowa Code section 423.1(48) or 423.14A are subject to local option sales and services tax.

This rule is intended to implement Iowa Code section 423B.5(1).

701—270.7(423B,423E) *Sales not subject to local option tax, including transactions subject to Iowa use tax.* The local option sales and services tax is imposed upon the same basis as the Iowa state sales and services tax, with the following exceptions:

1. Local option tax is not imposed on the sales price from the sale of tangible personal property and services that are excluded from local option tax as described in Iowa Code section 423B.5(1).

2. A local taxing jurisdiction is prohibited from taxing the sales price from a pay television service consisting of a direct-to-home satellite service to the extent precluded by Section 602 of the Telecommunications Act of 1996. A “local taxing jurisdiction” is any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state.

3. Sales subject to Iowa use tax. Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and services tax, local option tax is not imposed on any transactions subject to Iowa use tax, including the one-time registration fee applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions that are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

This rule is intended to implement Iowa Code section 423B.5.

701—270.8(423B) *Local option sales and services tax payments to local governments.*

270.8(1) *County-imposed local sales and services tax; division of funds from accounts.* Division of the amount from each county’s account to be distributed is done with these steps.

a. The total amount in the county’s account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

b. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most

recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax-imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census that is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census that is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction that is used to compute the participating jurisdiction's share of the revenue from the county's account that is based on county population. Example 3 of this rule contains a demonstration of how an interim census can affect a population distribution formula.

c. The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985, as obtained by using data from county tax rate reports and city tax rate reports compiled by the department of management. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately, then totaled. The property tax amount for each sales tax-imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

d. For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in paragraph 270.8(1) "c" is added to the amount found in paragraph 270.8(1) "b." This amount is then to be remitted to the appropriate local government.

In order to illustrate the division of local option sales and services tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLE 1: If a local option sales tax is approved for all of Pottawattamie County, the distribution of \$100,000 in countywide receipts would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	\$ 75,000.00
Property Taxes Levied	25,000.00
Total	<u>\$100,000.00</u>

Step 2:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,650	1.91%	\$ 1,432.50
Carson	716	0.83%	622.50
Carter Lake	3,438	3.98%	2,985.00
Council Bluffs	56,449	65.30%	48,975.00
Crescent	547	0.63%	472.50
Hancock	254	0.29%	217.50
Macedonia	279	0.32%	240.00
McClelland	177	0.20%	150.00
Minden	419	0.49%	367.50
Neola	839	0.97%	727.50
Oakland	1,552	1.80%	1,350.00
Treynor	981	1.13%	847.50
Underwood	448	0.52%	390.00
Walnut	897	1.04%	780.00
Unincorporated	<u>17,796</u>	<u>20.59%</u>	<u>15,442.50</u>
Total	<u>86,442</u>	<u>100.00%</u>	<u>\$75,000.00</u>

NOTE: The portion of the city of Shelby in Pottawattamie County is excluded.
Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Avoca	\$ 454,556	0.82%	\$ 205.00
Carson	202,882	0.37%	92.50
Carter Lake	946,026	1.71%	427.50
Council Bluffs	30,290,732	54.81%	13,702.50
Crescent	7,732	0.01%	2.50
Hancock	56,705	0.10%	25.00
Macedonia	64,504	0.12%	30.00
McClelland	24,300	0.04%	10.00
Minden	155,112	0.28%	70.00
Neola	206,560	0.38%	95.00
Oakland	319,153	0.58%	145.00
Treynor	346,849	0.63%	157.50
Underwood	139,571	0.25%	62.50
Walnut	264,145	0.48%	120.00
Unincorporated	<u>21,782,457</u>	<u>39.42%</u>	<u>9,855.00</u>
Total	<u>\$55,262,284</u>	<u>100.00%</u>	<u>\$25,000.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total Distribution
	By Population	By Taxes	
Avoca	\$ 1,432.50	\$ 205.00	\$ 1,637.50
Carson	622.50	92.50	715.00
Carter Lake	2,985.00	427.50	3,412.50
Council Bluffs	48,975.00	13,702.50	62,677.50
Crescent	472.50	2.50	475.00
Hancock	217.50	25.00	242.50
Macedonia	240.00	30.00	270.00
McClelland	150.00	10.00	160.00
Minden	367.50	70.00	437.50
Neola	727.50	95.00	822.50
Oakland	1,350.00	145.00	1,495.00
Treynor	847.50	157.50	1,005.00
Underwood	390.00	62.50	452.50
Walnut	780.00	120.00	900.00
Unincorporated	<u>15,442.50</u>	<u>9,855.00</u>	<u>25,297.50</u>
Total	<u>\$75,000.00</u>	<u>\$25,000.00</u>	<u>\$100,000.00</u>

EXAMPLE 2: If a local option sales tax is approved for Avoca, Oakland and Treynor in Pottawattamie County and \$10,000 is to be distributed, the distribution would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	\$ 7,500.00
Property Taxes Levied	<u>2,500.00</u>
Total	<u>\$10,000.00</u>

Step 2:

Jurisdiction	Certified Population		Receipts to be Distributed
	Number	Percentage	
Avoca	1,650	39.45%	\$2,958.75
Oakland	1,552	37.10%	2,782.50
Treynor	<u>981</u>	<u>23.45%</u>	<u>1,758.75</u>
Total	<u>4,183</u>	<u>100.00%</u>	<u>\$7,500.00</u>

Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be Distributed
	Amount	Percentage	
Avoca	\$ 454,556	40.56%	\$1,014.00
Oakland	319,153	28.48%	712.00
Treynor	<u>346,849</u>	<u>30.96%</u>	<u>774.50</u>
Total	<u>\$1,120,558</u>	<u>100.00%</u>	<u>\$2,500.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total Distribution
	By Population	By Taxes	
Avoca	\$2,958.75	\$1,014.00	\$ 3,972.75
Oakland	2,782.50	712.00	3,494.50
Treynor	<u>1,758.75</u>	<u>774.00</u>	<u>2,532.75</u>
Total	<u>\$7,500.00</u>	<u>\$2,500.00</u>	<u>\$10,000.00</u>

EXAMPLE 3: For the purposes of understanding this example, assume that the numbers for “certified population” from Step 2 of Example 2 immediately above are derived from the 1990 decennial census. Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The cities’ percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1,752}{1,752 + 1,493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1,493}{1,493 + 1,752 + 981} = 35.32\%$$

Amounts in Step 2 are then revised as follows:

Jurisdiction	Certified Population		Receipts to be Distributed
	Number	Percentage	
Avoca	1,752	41.46%	\$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	<u>981</u>	<u>23.21%</u>	<u>1,740.75</u>
Total	<u>4,226</u>	<u>100.00%</u>	<u>\$7,500.00</u>

The “amount to be distributed by population” found in Step 4 of Example 2 would then be recomputed based on the new figures.

270.8(2) City-imposed local option sales and services tax. More information on the distribution of city-imposed local sales and services tax can be found in Iowa Code section 423B.7(1).

This rule is intended to implement Iowa Code section 423B.7.

701—270.9(423B) Allocation procedure when sourcing of local option sales tax remitted to the department is unknown. If the director is unable to determine from which county local option sales tax was collected, that local option sales tax shall be allocated among the various counties in which local option sales and services tax is imposed according to the following procedure:

1. The calculations performed under this procedure shall be performed at least quarterly, but in no event less often than the treasurer of the state is obligated to distribute shares of each county’s account in the local sales and services tax fund.

2. The total amount of receipts for which the director is unable to determine a county of collection that have accumulated since the last allocation of these receipts shall be added together to form one lump sum.

3. The amount of population (according to the most recent certified federal census) within the areas of each individual county in which a local option sales and services tax is imposed shall be determined.

4. The amount of population so determined in numbered paragraph “3” above for each county shall be added to the amount for every other county in Iowa in which the local option sales and services tax is imposed, until the figure for the amount of population of all areas of Iowa in which the local option sales and services tax is imposed is determined.

5. The sum determined to exist in numbered paragraph “2” above shall be multiplied by a fraction, the numerator of which is the population of any one county determined in numbered paragraph “3” above and the denominator of which is the number calculated by the method described in numbered paragraph “4.” The procedure described herein in numbered paragraph “5” shall be used until the amount of tax due to every county imposing local option sales and services tax is calculated. After calculations are complete, the treasurer of the state must distribute shares of each county’s account in the local sales and services tax fund. Characterization of the term “most recent certified federal census” can be found in rule 701—270.1(423B), and methods of rounding off percentages and monetary sums can be found in rule 701—270.8(423B).

This rule is intended to implement Iowa Code section 423B.7(1).

701—270.10(423B) Application of payments. Since a combined state sales and local option return is utilized by the department, all payments received will be applied to satisfy state sales tax and local option sales and services tax, which include tax, penalty and interest. Application of payments received with the tax return and any subsequent payments received will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2) “d.” The ratio for applying all payments received with the return and all subsequent payments for the given tax period will be based upon the calculated total of state sales and local option sales and services tax due for the given tax period in relation to combined total payment of sales and local option sales and services tax actually received for that tax period.

This rule is intended to implement Iowa Code section 423B.7.

701—270.11(423B) Computation of local option tax due from mixed sales on excursion boats. Particular difficulties exist in calculating the amount of local option sales tax due for sales occurring on an excursion gambling boat sailing into and out of jurisdictions imposing the local option sales tax. Ordinarily, whether local option sales tax is payable to a particular jurisdiction is based on destination sourcing. More information can be found in Iowa Code section 423.15 and 701—Chapter 205. However, it can be quite difficult to determine if a moving excursion gambling boat is at any one point in time within or outside of a jurisdiction imposing the local option tax. Thus, it is difficult to determine if a delivery of property or provision of a service on the boat has occurred inside or outside of a local option tax jurisdiction. Because of this, the department will accept the use of any formula that rationally apportions the progress of an excursion gambling boat among jurisdictions that impose a local option tax and those that do not.

Below are four examples setting out two possible formulas for apportionment. Examples 1 and 3 utilize a “distance” formula for apportionment. Examples 2 and 4 utilize a “time” formula for apportionment. In Examples 1 and 2, state sales tax is included in the sales price of the taxable items. In Examples 3 and 4, state sales tax is added to taxable gross receipts. In all examples, local option sales tax is included in the sales price; also, for every example, it is assumed that the local option sales tax rate is 1 percent in every jurisdiction where it is imposed.

EXAMPLE 1: The excursion gambling boat “Auric” is based in Clinton. Assume that during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. State sales tax and local option tax must be included in the amounts charged for these vending machine and nongambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters that are part of a local option sales tax jurisdiction and 25 of those miles that are not. The amount of state sales tax due and the amount of local option sales tax (LOST) due using a “distance” apportionment formula are determined as follows:

$$1. \quad (25 \div 50) \times 0.01 = 0.005$$

(miles in LOST jurisdiction \div total miles) \times LOST rate = effective LOST rate

$$2. \quad 1 + 0.06 + 0.005 = 1.065$$

1 + state sales tax rate + effective LOST rate = (1 + effective total tax rate)

$$3. \quad \$10,000.00 \div 1.065 = \$9,389.67$$

Gross receipts \div (1 + effective total tax rate) = total sales

4. $\$9,389.67 \times 0.06 = \563.38
 Total sales \times state tax rate = state tax amount
 5. $\$9,389.67 \times 0.005 = \46.95
 Total sales \times effective LOST rate = LOST amount
 6. $\$563.38 + \$46.95 = \$610.33$
 State tax amount + LOST amount = total tax amount

EXAMPLE 2: The excursion gambling boat “Blue Diamond” is based in Davenport. Assume that, as in Example 1, during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond’s operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example 1, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. The calculation is performed as follows:

1. $(2 \div 3) \times 0.01 = 0.00666$
 (hours in LOST jurisdiction \div total hours) \times LOST rate = effective LOST rate
 2. $1 + 0.06 + 0.00666 = 1.06666$
 $1 + \text{state sales tax rate} + \text{effective LOST rate} = (1 + \text{effective total tax rate})$
 3. $\$10,000.00 \div 1.06666 = \$9,375.06$
 Gross receipts \div (1 + effective total tax rate) = total sales
 4. $\$9,375.06 \times 0.06 = \562.50
 Total sales \times state tax rate = state tax amount
 5. $\$9,375.06 \times 0.00666 = \62.44
 Total sales \times effective LOST rate = LOST amount
 6. $\$562.50 + \$62.44 = \$624.94$
 State tax due + LOST due = total tax amount

EXAMPLE 3: The excursion gambling boat “Golconda” is based in Dubuque. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles, the Golconda is passing through waters that are part of a local option sales tax jurisdiction. Assume that on one particular cruise, \$100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the \$100,000 amount but not state sales tax. Thus, the total amount collected is \$106,000; \$100,000 in gross receipts, \$6,000 in state sales tax. Local option tax is calculated as follows:

1. $(25 \div 50) \times 0.01 = 0.005$
 (miles in LOST jurisdiction \div total miles) \times LOST rate = effective LOST rate
 2. $1 + 0.005 = 1.005$
 $1 + \text{effective LOST rate}$
 3. $\$100,000.00 \div 1.005 = \$99,502.49$
 Gross receipts including LOST \div (1+ effective LOST rate) = total sales
 4. $\$99,502.49 \times 0.06 = \$5,970.15$
 Total sales \times state tax rate = state tax amount
 5. $\$100,000.00 - 99,502.49 = \497.51
 Gross receipts including LOST – total sales = LOST amount
 6. $\$5,970.15 + \$497.51 = \$6,467.66$
 State tax due + LOST due = total tax amount
 7. $\$99,502.49 + \$497.51 + \$5,970.15 = \$105,970.15$
 Total sales + LOST amount + state tax amount = total amount collected by vendor

EXAMPLE 4: The excursion gambling boat “Black Jack” is based in Davenport. Assume that during a particular cruise there is \$150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is \$159,000; \$9,000 in state sales tax and \$150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local

option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example 2, the Black Jack's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example, tax is computed as follows:

$$1. \quad (2 \div 3) \times 0.01 = 0.00666 \text{ effective LOST rate}$$

(hours in LOST jurisdiction \div total hours) \times LOST rate = effective LOST rate

$$2. \quad 1 + 0.00666 = 1.00666$$

1 + effective LOST rate

$$3. \quad \$150,000.00 \div 1.00666 = \$149,007.61$$

Gross receipts including LOST but not state tax \div (1 + effective LOST rate) = total sales

$$4. \quad \$149,007.61 \times 0.06 = \$8,940.46$$

Total sales \times state tax rate = state tax amount

$$5. \quad \$150,000.00 - 149,007.61 = \$992.39$$

Gross receipts including LOST but not state tax – total sales = LOST amount

$$6. \quad \$8,940.46 + \$992.39 = \$9,932.85$$

State tax amount + LOST amount = total tax amount

$$7. \quad \$149,007.61 + \$992.39 + \$8,940.46 = \$158,940.46$$

Total sales + LOST amount + state tax amount = total amount collected by vendor

Upon beginning operation, a licensee may choose to employ either the "distance" method of apportionment set out in Examples 1 and 3 or the "time" method set out in 2 and 4 above without informing the department in advance of filing a sales tax return of the licensee's choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and 423B.5.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 274
“Local Option Sales Tax Urban Renewal Projects”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14 and 423B.7
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2A, 423B.1, 423B.7
and 423B.10

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 274. The chapter provides the Department’s rules for administering the Local Option Sales Tax (LOST) Urban Renewal Projects. The rules provide explanations to local governments and the public about the process for the calculation, collection, and distribution of funds used for the projects as well as the information required of local governments to assist the Department in this process. The Department proposes revisions to the rules to remove portions that the Department has determined are unnecessary, obsolete, or duplicative of statutory language. The Department also renumbered some rules due to the other edits and for organizational reasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not create costs for any classes of persons beyond what is imposed by statute.

- Classes of persons that will benefit from the proposed rulemaking:

Taxpayers and local governments will benefit from the guidance about the requirements related to urban renewal projects in addition to the calculations and distributions made related to the funding of those projects. The rulemaking also provides clarification about the information needed by local governments to ensure the process of calculating and distributing the funding is accurate and efficient.

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 of the proposed rulemaking beyond what is provided for in statute. If local governments do not understand the calculation process, they may not provide the needed information and affect the accuracy of the calculations.

- Qualitative description of impact:

The proposed rulemaking reduces uncertainty about what elements make up the calculation process for the funding of urban renewal projects. The failure to adopt them would lead to confusion and potential errors in calculations, which could affect the amount of funding distributed to those projects.

3. Costs to the State:

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

There are no costs to the Department beyond what is otherwise required in statute to administer the program.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

The cost of not proposing this rulemaking would be failing to follow statute and would risk confusion and inaccurate results. Further, the cost of inaction would be failing to amend the rules to remove unnecessary, obsolete, or duplicative statutory language, which could lead to confusion.

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

The proposed rulemaking is not costly or intrusive beyond what would be required to administer the statute. The benefit of the rulemaking is to provide explanations to local governments and the public about the process for the calculation, collection, and distribution of funds used for urban renewal projects, including providing the Department with needed information. Without these rules, there is risk of miscalculations, which could result in obtaining an inaccurate amount of funding for projects.

6. Alternative methods considered by the agency:

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

Because the rules are required under statute, the Department did not consider proceeding without rules. The Department did think carefully about the language in the rules and eliminated language that was unnecessary, outdated, or duplicative of statutory language.

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

The Department must have rules on these processes, so no other alternatives are available. Without these rules, there is a risk of confusion by the public and local governments about the processes related to the funding of urban renewal projects.

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 does not have a substantial impact on small business. There are no special distinctions made based on a business’s size. This rulemaking does not impose any requirements on businesses other than what is imposed by the underlying statute.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 274 and adopt the following **new** chapter in lieu thereof:

CHAPTER 274
LOCAL OPTION SALES TAX URBAN RENEWAL PROJECTS

701—274.1(423B) Purpose and definitions. This chapter sets forth the department of revenue’s rules on administration of the calculation, collection, and distribution of funds to be deposited for use to fund urban renewal projects as described in Iowa Code chapter 423B. For purposes of this chapter, “local sales and service tax” means the local tax imposed by a jurisdiction pursuant to an election authorized by Iowa Code section 423B.1 and described in Iowa Code section 423B.5. All other terms have the same meaning as defined in Iowa Code sections 423B.1 and 423B.10.

701—274.2(423B) Establishing sales and revenue growth. For purposes of establishing the sales amount in the base year and the revenue growth in subsequent fiscal years, the department will calculate sales as described in Iowa Code section 423B.10(3).

701—274.3(423B) Requirements for cities adopting an ordinance.

274.3(1) Within at least 90 days following the adoption of an ordinance, an eligible city must notify the director of the department of revenue of its intent to pursue funding for an urban renewal project based upon the increase in local sales and services tax revenue. The notification must include the following information:

- a. A copy of the resolution of the board of supervisors from each county in the urban renewal area from which local sales and services tax revenues are to be collected approving the collection and use of local sales and services tax;
- b. A copy of the urban renewal plan and the resolution adopting the city’s urban renewal plan;
- c. A copy of the adopted ordinance, including:
 - (1) The current and original, if applicable, purpose or purposes for which the local option sales and services tax was enacted; and
 - (2) The amount and proportion of revenue that will be redistributed from each current revenue purpose to fund urban renewal within the urban renewal area;
- d. The legal description of the urban renewal area covered by the ordinance;
- e. A map showing the geographic boundaries of the urban renewal area; and
- f. A geographic information system boundary file, if available, showing the geographic boundaries of the urban renewal area.

274.3(2) Each urban renewal area must have its own separate ordinance, and the department shall be notified separately for each urban renewal area. Notification shall be mailed or otherwise submitted to: Director, Iowa Department of Revenue, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319.

274.3(3) Each urban renewal area must have its own separate resolution of the board of supervisors from each county from which local option sales and services tax revenues will be collected and used for urban renewal projects located within the urban renewal area.

701—274.4(423B) Identification of retail establishments. The eligible city shall assist the department of revenue in identifying retail establishments in the urban renewal area that are collecting the local sales and services tax. The department of revenue will identify sales tax permit holders within the urban renewal area using the geographic information system boundary file, if available, provided to the department. If no boundary file is provided, the department will rely upon the map submitted by the eligible city. If any of the urban renewal area boundaries submitted are street centerlines, the information provided to the department shall indicate whether only retail establishments within the bounded area should be considered part of the urban renewal area, or if in addition to the retail establishments within the bounded area, retail establishments immediately adjacent to the bounded area should also be included.

701—274.5(423B) Calculation of base year taxable sales amount. The calculation of the base year taxable sales amount is as follows:

274.5(1) The base year taxable sales and services amount will be the total taxable sales and services subject to the local sales and services tax that are made by retail establishments within the urban renewal area during the base year.

274.5(2) Taxable sales of tangible personal property and services that are subject to the local sales and services tax that are made by retail establishments or service providers located within the urban renewal area include only those sales that are sourced to the county in which the urban renewal area is located.

274.5(3) Those sales made by retail establishments or service providers located within the urban renewal area that are sourced outside of the county are not subject to the local sales and services tax. For sourcing rules, more information can be found in Iowa Code section 423.15 and 701—Chapter 205.

701—274.6(423B) Determination of tax growth increment amount. The local sales and services tax growth increment amount for the urban renewal area will be computed for each fiscal year following the base year. The annual local option sales and services tax growth increment amount is equal to the current year taxable sales and services subject to the local sales and services tax that are made by retail establishments located in the urban renewal area minus the corresponding base year taxable sales and services amount for the urban renewal area multiplied by the current local sales and services tax rate applicable to the jurisdiction.

701—274.7(423B) Distribution of tax base and growth increment amounts. The revenues from the local sales and services tax growth amount for urban renewal areas in jurisdictions that have enacted ordinances pursuant to Iowa Code section 423B.10 shall be determined annually and shall be distributed to the city within 120 days following the end of the fiscal year in which they are collected.

These rules are intended to implement Iowa Code sections 423.2A, 423B.1, 423B.7, and 423B.10.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 276
“Facilitating Business Rapid Response to State-Declared Disasters”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 29C.24
State or federal law(s) implemented by the rulemaking: Iowa Code section 29C.24

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 276, which provides the Department’s rules for administering Iowa Code section 29C.24. Iowa Code section 29C.24 helps facilitate the rapid response of businesses and workers to a disaster by providing that out-of-state businesses and employees that perform disaster and emergency-related work on critical infrastructure during a disaster response period due to a state-declared disaster are not subject to income, corporate income, use, equipment, or property tax or tax filing, permit, or return requirements. The Department proposes revisions to the rules to remove portions of the chapter that the Department determined are unnecessary and duplicate statutory language. In its Red Tape Review Report, the Department recommended amending the statute to make rulemaking on this topic permissive rather than mandatory because there is little need for additional information in rules.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rulemaking does not create costs for any classes of persons.
 - Classes of persons that will benefit from the proposed rulemaking:

The public, including out-of-state businesses and employees, may benefit from some of the guidance in the rules; however, the Department primarily proposes repromulgation of the chapter because the statute requires rules on this topic. Otherwise, the Department may not have chosen to repromulgate any rules on this subject because the statute covers it adequately.

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 associated with the proposed rulemaking beyond what is provided for in statute.

- Qualitative description of impact:

Without these rules, the Department would be out of compliance with Iowa Code section 29C.24.

3. Costs to the State:

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

There are no costs to the Department to implement these rules beyond what would otherwise be required to administer Iowa Code section 29C.24.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

The cost of inaction would be the failure to comply with the statute's mandate that the Department adopt rules to administer Iowa Code section 29C.24.

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

The proposed rulemaking is not intrusive or costly. The purpose is to provide information about the scope of tax-related responsibilities related to state-declared disasters.

6. Alternative methods considered by the agency:

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

Because these rules are required under Iowa Code section 29C.24, the Department did not consider proceeding without rules. However, the Department did think carefully about the language of the rules and eliminated language where it was unnecessary or duplicative of the statute.

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

Iowa Code section 29C.24, as currently written, requires the Department to adopt rules to administer the Iowa Code section, so the Department made an effort to adopt rules to help provide guidance to the public in order to help them understand tax-related requirements and responsibilities for businesses during and after state-declared disasters. However, Iowa Code section 29C.24 provides sufficient information, and the Department recommends amending Iowa Code section 29C.24(7) to allow for the adoption of rules to be permissive rather than mandatory.

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 proposed rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions of small businesses and do not impose any special requirements for businesses based upon their size.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 276 and adopt the following **new** chapter in lieu thereof:

CHAPTER 276

FACILITATING BUSINESS RAPID RESPONSE TO STATE-DECLARED DISASTERS

701—276.1(29C) Purpose. The Iowa department of revenue, the Iowa department of homeland security and emergency management and the secretary of state are authorized and tasked by the legislature to jointly administer and oversee mutual aid among the political subdivisions of Iowa, other states and the federal government and to ensure the state government and its departments and agencies facilitate the rapid response of businesses and workers in the state and other states to a disaster.

701—276.2(29C) Definitions. For purposes of this chapter, the definitions from Iowa Code section 29C.24 are adopted by reference.

701—276.3(29C) Disaster or emergency-related work.

276.3(1) *Out-of-state business.* An out-of-state business conducting operations within the state solely for the purpose of performing disaster or emergency-related work during a disaster response period does not establish a level of presence that would subject the out-of-state business to any of the requirements and responsibilities listed in Iowa Code section 29C.24(3) “a.”

276.3(2) *Out-of-state employee.* The performance of disaster or emergency-related work during a disaster response period by an out-of-state employee is not a basis to determine that the out-of-state employee has established residency or a level of presence in Iowa that would subject the out-of-state employee to any of the requirements or responsibilities listed in Iowa Code section 29C.24(3) “b.”

276.3(3) *After the disaster response period ends.* An out-of-state business or out-of-state employee remaining in Iowa after the disaster response period for which the disaster or emergency-related work was performed is responsible for all taxes, fees, registration, filing or other requirements the out-of-state business or out-of-state employee would have been subject to but for Iowa Code section 29C.24.

These rules are intended to implement Iowa Code section 29C.24.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 277
“Sales and Use Tax Refund for Biodiesel Production”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.4(9)
State or federal law(s) implemented by the rulemaking: 423.4(9)

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 277, which provides and describes the process for taxpayers to obtain a refund of sales or use tax paid by biodiesel producers. The Department proposes revisions to this chapter to remove portions of the rules that the Department determined were unnecessary and duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking may impose some costs on biodiesel producers by requiring them to submit a specific form to obtain the refund.

- Classes of persons that will benefit from the proposed rulemaking:

The public, including biodiesel producers, will benefit from the proposed rulemaking as the rules provide information on the form and manner in which qualified producers may apply for a refund of the sales or use tax paid. The rules provide guidance for biodiesel producers on how to apply for and understand what information to provide in order to obtain the refund.

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 associated with these proposed rules beyond what is provided in statute. There may be some quantitative impact on biodiesel producers to fill out the form to seek a refund. However, seeking a refund is voluntary. The rules prescribe forms for obtaining the refund. However,

these forms do not have an application fee or any other costs. The forms may have a positive quantitative impact on biodiesel producers by clearly explaining the information required to obtain the refund and reducing the likelihood of confusion or uncertainty when applying for the refund.

- Qualitative description of impact:

The qualitative benefit of this proposed rulemaking beyond what is already provided by the statute is the value of having rules that describe the refund process, applicability, and limitations to reduce confusion about the scope and applicability of the refund so that qualified taxpayers have access to the information in the rules.

3. Costs to the State:

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

There are no costs to the State beyond what is required to administer the relevant statute. This refund program is already ongoing; this proposed rulemaking does not provide any significant changes to this process, other than removing unnecessary and duplicative statutory language. The Department has tax administration expenses with administering any tax statute that provides for a refund, including return processing and enforcement program work.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond what is already contained in the statute. The rules clarify the scope and identify the process for biodiesel producers to obtain refunds, making it more likely the correct amount of tax is refunded.

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

The cost of inaction would be the failure to comply with the statute's mandate that the Department adopt rules to administer this tax refund. The benefit of this proposed rulemaking is to provide qualified taxpayers with information about the process, requirements, and limitations of obtaining the refund for biodiesel producers so taxpayers can efficiently apply for and obtain a refund.

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

The proposed rulemaking is not costly or intrusive. The Department has considered the information to provide in the rules and what could be provided on the forms used for this process. The Department concluded that utilizing the forms in conjunction with these rules will help guide taxpayers to provide information needed to process these refund requests in an efficient manner.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
Because the statute mandates rulemaking, the Department did not consider proceeding without rules.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without rules would put the Department out of compliance with the statute and harm biodiesel producers by not providing helpful information about the process for obtaining a refund.

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 proposed rulemaking does not have a substantial impact on small business. The rule describes a refund that qualified taxpayers may seek voluntarily and the form and manner in which to do so. The rules are the same for taxpayers of different sizes and do not make a distinction for smaller businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 277 and adopt the following **new** chapter in lieu thereof:

CHAPTER 277

SALES AND USE TAX REFUND FOR BIODIESEL PRODUCTION

701—277.1(423) Biodiesel production refund. A refund of sales or use tax is available for certain producers of biodiesel for calendar year 2012 to the ending year specified in Iowa Code section 423.4(9) “e.”

277.1(1) Qualifications for the refund. To be eligible for the refund, a biodiesel producer that produces biodiesel in Iowa must meet the criteria listed in Iowa Code section 423.4(9) “a.”

277.1(2) Calculation of the refund. The amount of refund is calculated as described in Iowa Code section 423.4(9) “b” and up to the number of gallons identified in Iowa Code section 423.4(9) “c.” No refund will be allowed for gallons produced at a facility on or after the date identified in Iowa Code section 423.4(9) “e.”

277.1(3) Claiming the refund. In order to claim a refund for each calendar quarter, a biodiesel producer must file Form IA 843, Refund Return, on which the biodiesel producer will include the number of biodiesel gallons produced during the quarter, the calculation of the biodiesel production refund, and the amount of biodiesel production refund claimed. The biodiesel producer must also timely file all sales and use tax returns due and timely pay all sales and use taxes owed on the biodiesel producer’s purchases, even when the amount of the biodiesel production refund due exceeds the amount of sales and use taxes owed for the quarter. The department will reduce the amount of the refund issued by the amount of any sales and use taxes owed by the biodiesel producer.

EXAMPLE: A biodiesel producer produced 5 million gallons during the first quarter of 2023. The producer also owes \$10,000 of Iowa use tax based on purchases made during the first quarter of 2023. In order to claim a refund, the producer must timely file an Iowa sales and use tax return and pay \$10,000 of use tax with the return and file Form IA 843, Refund Return, to request a refund of \$200,000 (5 million gallons multiplied by 4 cents per gallon) for the first quarter of 2023.

This rule is intended to implement Iowa Code section 423.4(9).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 278
“Refunds for Eligible Businesses Under Economic Development Authority Programs”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68 and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 15

Public Hearing

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

October 25, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/cox-brcn-tok?hs=122&authuser=0

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 Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to readopt Chapter 278, which consists solely of rule 701—278.1(15). This proposed rule interprets the underlying statutes and provides the scope and methods for obtaining a refund of sales and use tax paid for eligible businesses approved under programs by the Iowa Economic Development Authority. The Department proposes to revise the rule for clarification and to remove portions that the Department has determined are unnecessary and duplicative of statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking may impose some costs on eligible businesses by requiring them to submit specific forms and information in order to obtain the refund.

- Classes of persons that will benefit from the proposed rulemaking:

The public, including eligible businesses, will benefit from the proposed rulemaking because the proposed rule provides information on the applicability, scope, form, and manner in which eligible businesses may apply for a refund of sales or use tax paid. The proposed rule provides guidance for eligible businesses on how to apply and to help them understand what information to provide in order to obtain the refund.

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 associated with this proposed rule beyond what is provided in statute. There may be some quantitative impact on eligible businesses to fill out the forms to seek a refund. However, seeking a refund is voluntary. The rule prescribes the forms for obtaining the refund, but these forms do not have an application fee or any other costs. The forms may have a positive quantitative impact on eligible businesses by clearly explaining the information required to obtain the refund and reducing the likelihood of confusion or uncertainty when applying for the refund.

- Qualitative description of impact:

The qualitative benefits of this proposed rulemaking beyond what is already provided by the statute is the value of having a rule that describes the refund process, applicability, and limitations to reduce confusion about the scope and applicability of refunds and that is accessible to qualified businesses.

3. Costs to the State:

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

There are no costs to the State beyond what is required to administer the relevant statute since the proposed rule is a procedural rule required to implement the underlying statutes. The refund program is already ongoing, and this proposed rulemaking does not provide any significant changes to this process. Rather, this proposed rulemaking removes unnecessary and duplicative statutory language.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond what is already contained in statute. The proposed rule clarifies the applicability and process for eligible businesses to obtain refunds of sales and use tax paid, making it more likely that the correct amount of tax is refunded.

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

The cost of inaction would be failure to comply with the statute's requirement that the Department establish procedures as to the application process, which this proposed rule describes. The benefit of this proposed rulemaking is providing eligible businesses with information about the process, requirements, and limitations of obtaining the refund of sales and use tax paid so they can efficiently apply and obtain their refund.

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

The proposed rulemaking is not costly or intrusive. The Department has considered what information to provide in the rule and what could be provided on the forms used for the refund process and concluded that utilizing the forms in conjunction with this rule will help guide eligible businesses to provide the needed information to process the refund requests in an efficient and accurate manner.

6. Alternative methods considered by the agency:

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

The Department considered the option of not providing this rule but determined that the rule provides useful information to eligible businesses about the scope and process to obtain the refund of sales and use tax paid.

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

Proceeding without this rule could harm eligible businesses by limiting their understanding of the scope and process related to obtaining a refund.

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 does not have a substantial impact on small business because it does not differentiate based on the size of an eligible business.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 278 and adopt the following new chapter in lieu thereof:

CHAPTER 278
REFUNDS FOR ELIGIBLE BUSINESSES UNDER ECONOMIC DEVELOPMENT
AUTHORITY PROGRAMS

701—278.1(15) Sales and use tax refund for eligible businesses. For eligible businesses approved under the high quality jobs program or workforce housing tax incentives program by the economic development authority, a refund of sales and use tax is available.

278.1(1) Sales and use tax eligible for refund. Eligible businesses can receive a refund of the sales and use tax paid for those items listed in Iowa Code section 15.331A to the extent applicable for purposes of the particular program.

278.1(2) Sales and use tax ineligible for refund. The sales and use tax for which the eligible business cannot receive a refund consists of the following:

- a. Any local option sales tax paid is not eligible for the refund. The refund is limited to the state sales and use tax paid.
- b. Any sales and use tax attributable to intangible property, furniture, or furnishings is not eligible for the refund. “Furnishings” means any furniture, appliances, equipment, and accessories that are movable and with which a room or building is furnished for comfort, convenience, or aesthetic value. Examples include rugs, décor, and window coverings. “Furnishings” does not include installed flooring such as hardwood, carpet, ceramic, stone, laminate, or vinyl.

278.1(3) When to claim the refund. To receive a refund, the eligible business must file a claim for refund within the following period of time:

- a. *High quality jobs program.* The first date the eligible business may file a claim for refund is after the contract completion as defined in Iowa Code section 15.331A. The last date the eligible business may file a claim for refund is one year after the project completion date as defined in Iowa Code section 15.329.
- b. *Workforce housing tax incentives program.* The first date the eligible business may file a claim for refund is after the agreement completion date as defined in Iowa Code section 15.355. The last date the eligible business may file a claim for refund is one year after the agreement completion date as defined in Iowa Code section 15.355.

278.1(4) How to claim the refund.

- a. *Gas, electric, water, or sewer utility services.* To request a refund of the sales and use tax paid for gas, electric, water, or sewer utility services used during construction, the eligible business must file Form IA 843, Refund Return, with the department of revenue. The claim shall include the tax credit

certificate number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

b. Contractor or subcontractor. To request a refund of the sales and use tax paid on tangible personal property, or on services rendered to, furnished to, or performed for a contractor or subcontractor relating to the construction or equipping of a facility, the eligible business must file the Construction Contract Claim for Refund form, along with the Iowa Contractor's Statement, with the department of revenue. The Construction Contract Claim for Refund form shall include the tax credit certificate number given by the Iowa economic development authority. It is not necessary to attach invoices to the Construction Contract Claim for Refund form, but the department of revenue reserves the right to request invoices when reviewing the refund claim.

c. Racks, shelving, and conveyor equipment. To request a refund of the sales and use tax attributable to racks, shelving, and conveyor equipment, the eligible business must file Form IA 843, Refund Return, with the department of revenue. The claim shall include the tax credit certificate number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

This rule is intended to implement Iowa Code chapter 15.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 17
“Assessments”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 474.5, 476.2 and 476.10
State or federal law(s) implemented by the rulemaking: Iowa Code sections 476.10 and 476.95B
and chapter 477C

Public Hearing

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

October 31, 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 (IUB) 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

Proposed Chapter 17 describes the procedures used by the IUB to assess expenses incurred by the agency on utilities and other parties pursuant to the requirements contained in Iowa Code sections 476.10 and 476.95B and chapter 477C. Proposed Chapter 17 provides needed and useful information to stakeholders and the public in general regarding the IUB’s assessment process and assessment objection procedures.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The Iowa Code, including chapters 476, 477C, 478, 479, and 479A, permits, and in some cases requires, the IUB to assess utilities, other persons participating in IUB proceedings, and other entities. While the assessments will be paid by utilities, persons participating in IUB proceedings, and other specified entities, the agency believes those costs are more directly attributed to the statutory assessment provisions, as opposed to proposed Chapter 17.

- Classes of persons that will benefit from the proposed rulemaking:

Persons who may receive an IUB-issued assessment, including utilities, persons participating in IUB proceedings, and the general public, will benefit from the information contained in proposed Chapter 17.

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:

These proposed rules are intended to assist the public, including those utilities, entities, and persons who may receive an IUB-issued assessment, by describing and detailing the different types of assessments, how such assessments are calculated, and the assessment objection and refund procedures. While utilities and other entities and persons who are assessed are required to pay the costs of the assessment, the IUB believes those costs are more directly attributed to the statutory assessment provisions, as opposed to proposed Chapter 17. With respect to the assessment objection and refund procedures contained in proposed Chapter 17, the agency sought to create processes that will minimize the time and expense to persons who wish to object to an assessment or who seek a refund.

- Qualitative description of impact:

Proposed Chapter 17 provides information to entities who receive an assessment, and the public at large, regarding the IUB's assessment methodology and objection and refund procedures. This chapter ensures that the public, including rate-payers, understands the types of IUB assessments and how such assessments are calculated. Additionally, for those entities and persons who are assessed, proposed Chapter 17 also provides information regarding the IUB's assessment objection and refund procedures.

3. Costs to the State:

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

Because proposed Chapter 17 merely provides the framework for IUB assessments and assessment objections and refunds, the proposed rules are not viewed as directly causing costs to the agency; rather, the agency costs associated with IUB assessments are more directly caused by the nature of the assessments, which are authorized or required by different statutory provisions.

- Anticipated effect on state revenues:

In order to carry out the duties imposed upon the IUB by law, Iowa Code section 476.10(1)"a" permits the IUB to assess its incurred costs and the Office of Consumer Advocate's (OCA's) certified costs to the person bringing a proceeding before the IUB, to persons participating in matters before the IUB, and to persons subject to inspection by the IUB. Additionally, Iowa Code section 476.10(1)"b" permits the IUB to assess its and the OCA's remaining expenses to different types of utilities and to other persons providing services over which the IUB has jurisdiction. Additionally, Iowa Code section 476.95B and other statutory provisions (e.g., Iowa Code chapters 479 and 479A) require the IUB to make certain other assessments. These assessments necessarily have an effect on state revenues; however, the agency believes the underlying statutes (as opposed to proposed Chapter 17) are the more direct cause of the assessments, and pursuant to Iowa Code section 476.10, those funds are required to be used for IUB and OCA expenses.

Further, Iowa Code section 477C.7 requires the IUB to impose assessments on wireless carriers and wireline local exchange carriers and to use the collected funds to plan, establish, administer, and promote the dual party relay service and the telecommunications equipment distribution program set forth in Iowa Code chapter 477C.

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

Because the Legislature statutorily created the assessment process as the mechanism to cover IUB and OCA expenses, the agency does not believe that proposed Chapter 17 directly causes those assessment costs. Further, because proposed Chapter 17 provides useful and necessary information for the public regarding the types of IUB assessments, the assessment calculation methodology, and the objection and refund procedures, the agency believes that the benefits of publishing said information in Chapter 17 far outweigh whatever benefits may exist through rescission of the chapter.

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

Because proposed Chapter 17 is intended to simply convey information to entities and persons who have received an IUB assessment, and to the public in general, the IUB believes that the publication of

the information regarding the types of IUB assessments, the assessment calculation methodology, and the objection and refund procedures in Chapter 17 is beneficial and that there is a need for the chapter.

6. Alternative methods considered by the agency:

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

The IUB considered rescinding Chapter 17.

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

The IUB did not consider rescinding Chapter 17 to be appropriate because there is value associated with providing the public with information regarding the types of IUB assessments, the assessment calculation methodology, and the objection and refund procedures.

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 IUB does not believe that proposed Chapter 17 has an adverse impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17 ASSESSMENTS

199—17.1(475A,476,546) Purpose. The purpose of this chapter is to describe the method the board uses to assess expenses incurred by the board on utilities and other parties pursuant to Iowa Code sections 476.10 and 476.95B and chapter 477C.

199—17.2(475A,476) Definitions.

17.2(1) The following definitions apply to the rules in this chapter:

“*Direct assessment*” means the charge to a person bringing a proceeding or matter before the board or to persons participating in proceedings or matters before the board and includes expenses incurred by the board attributable to the board's duties related to such proceeding or matter.

“*Expenses of the board*” includes expenses of the entire agency.

“*Gross operating revenues from intrastate operations*” includes all revenues from Iowa intrastate utility operations during the last calendar year, except:

1. Uncollectible revenues,
2. Amounts included in the accounts for interdepartmental sales and rents, and
3. Gross receipts received by a cooperative corporation or association for wholesale transactions with members of the cooperative corporation or association, provided that the members are subject to

assessment by the board based upon the members' gross operating revenues, or provided that such member is an association whose members are subject to assessment by the board based upon the members' gross operating revenues.

"Individual" means a human being as distinguished from legal entities.

"Industry direct assessment" means the charge to the utilities in a specific industry for expenses associated with regulation of that specific industry that are not directly assessed. An industry direct assessment includes a direct assessment in a specific industry for which no person is directly assessed under rule 199—17.4(476). The industries assessed are as follows:

1. Electric utilities are assessed for expenses associated with electric service, including expenses associated with the board's participation in or consideration of regional and federal issues.
2. Natural gas utilities are assessed for expenses associated with natural gas service, including expenses associated with the board's participation in or consideration of regional and federal issues.
3. Water utilities are assessed for expenses associated with water service, including expenses associated with the board's participation in or consideration of regional and federal issues.
4. Sanitary sewer utilities are assessed for expenses associated with sanitary sewer services.
5. Storm water drainage utilities are assessed for expenses associated with storm water drainage services.
6. Telecommunications companies, including all companies providing local exchange service and interexchange service in Iowa whether by landline or voice over Internet protocol, are assessed for expenses associated with telecommunications service, including expenses associated with the board's participation in or consideration of regional and federal issues.

"Overhead expenses" means all operating costs of the board not directly attributable to a proceeding or matter, or a specific industry, that are included in direct and industry direct assessments.

"Person" includes individuals and legal entities as defined in Iowa Code section 4.1(20), except the definition does not include the consumer advocate.

"Remainder assessment" means the charge to all persons providing service over which the board has jurisdiction for the total expenses incurred during each fiscal year in the performance of the board's duties under law after deducting the direct assessments, industry direct assessments, and other revenues.

17.2(2) Industry direct assessments and remainder assessments for gas and electric utilities exempted from rate regulation by the board and for providers of telecommunications service that register with the board pursuant to Iowa Code section 476.95A that are exempted from rate regulation under Iowa Code chapter 476 are computed at one-half of the rate used in computing industry direct assessments and remainder assessments for other persons.

199—17.3(476) Expenses to be included in direct assessments. Direct assessments include the following expenses:

17.3(1) Salaries of board employees and related costs borne by the state.

17.3(2) Travel expenses incurred in an investigation or in rendering services by the board or by others employed by the board. Travel expenses include costs of transportation, lodging, meals and other normal expenses attributable to traveling.

17.3(3) Costs of consultants, contractors, facilities, and equipment if directly related to a proceeding or matter.

17.3(4) Overhead expenses of the board.

199—17.4(476) Direct assessments under Iowa Code section 476.10.

17.4(1) The following persons will not be directly assessed for participating in a board proceeding or matter unless the board issues an order finding that the person may be directly assessed for that participation:

a. An individual who files a complaint against a public utility, so long as the individual's participation in the proceeding is in good faith.

b. An individual who files a protest or inquiry or intervenes in a proceeding involving a rate change by a public utility, so long as the individual's participation in the proceeding is in good faith.

- c. Any person filing written or oral comments in a rulemaking proceeding.
- d. An intervenor in a board proceeding. However, the board may decide to directly assess a person who intervenes if the board determines that the person's intervention or participation is not in good faith, the board determines the intervention significantly expands the scope of the proceeding without contribution to the public interest, or the board determines there are unusual circumstances warranting assessment.

17.4(2) In deciding whether to directly assess a person and, if so, the amount to be directly assessed, the board may consider the factors contained in Iowa Code section 476.10 and other factors deemed appropriate by the board in that particular case.

199—17.5(476) Reporting of operating revenues. On or before April 1 of each year, every public utility shall file with the board a report that includes the utility's gross operating revenues from Iowa intrastate operations during the preceding calendar year. Such revenues are to be reported on the accrual basis or the cash basis consistent with the report filed with the board.

199—17.6(475A,476) Compilation and billing of assessment.

17.6(1) The board determines its own expenses to be billed and adds the certified expenses incurred by the consumer advocate. The board does not review the expenses certified to it by the consumer advocate.

17.6(2) Unless otherwise ordered by the board, bills must be paid within 30 days of receipt unless an objection is filed in writing pursuant to Iowa Code section 476.10. In the event an objection is filed under rule 199—17.9(475A,476), the portion of the bill not contested is to be paid within 30 days of receipt.

17.6(3) A person participating in a board proceeding or matter may file a request in that proceeding or matter for the board to determine how the expenses of that proceeding or matter will be assessed.

199—17.7(476) Assessments under Iowa Code section 476.95B. In making assessments under Iowa Code section 476.95B, the board will allocate costs and expenses to all parties and participants, but such allocation will not necessarily be an equal allocation. The allocation will be made on a case-by-case basis and may be based on Iowa revenues, grouping of parties and participants on the basis of similarity of positions, and other factors deemed appropriate by the board in that particular case. The allocation will be included in the board's final order in the docket, unless otherwise ordered by the board.

199—17.8(477C) Assessments of expenses for dual party relay service program and equipment distribution program.

17.8(1) Iowa Code section 477C.7 governs the payment of assessments by wireless carriers and wireline local exchange carriers to fund the dual party relay service program and equipment distribution program. Those carriers pay assessments in the amount of three cents per month for each telecommunications service phone number. "Telecommunications service phone number" means a revenue-producing telephone number.

17.8(2) Wireless carriers and wireline local exchange carriers are to file the number of telecommunications service phone numbers with the board. The number of telecommunications service phone numbers may be filed as confidential and may be withheld from public inspection pursuant to the procedures in 199—Chapter 1.

17.8(3) The board may audit the payment of Iowa Code section 477C.7 assessments for any purpose the board deems necessary, including, but not limited to, examining whether wireless carriers and wireline local exchange carriers providing telecommunications services in Iowa are paying assessments in appropriate amounts.

199—17.9(475A,476) Objection procedures.

17.9(1) A person subject to an assessment shall either pay the amount assessed or file an objection to the assessment as set forth in this rule within 30 days of the date the board provides notice of the amount due to the person.

17.9(2) A properly filed objection is in writing; sets forth the specific grounds upon which the person claims the assessment is excessive, unreasonable, erroneous, unlawful, or invalid; and identifies whether the person objects to the assessment of expenses certified by the board, to the assessment of expenses certified by the consumer advocate, or both. If the person wishes to orally present argument to the board, the request for oral argument should be included in the objection. Absent a request for oral argument, the board will consider the objection based solely on the submission of written evidence and argument. The person may include with the objection such evidence or information the person believes relevant to support the person's claim.

17.9(3) The consumer advocate or the board may informally resolve an objection. In the event an objection is informally resolved, the fact that a resolution has occurred will be filed in the docket.

17.9(4) If the objection concerns the assessment of expenses certified by the consumer advocate, within 30 days from the date of the objection, the consumer advocate may file responsive argument, evidence, and other information with the board. In the event the person filing an objection has not requested oral argument, the consumer advocate may request oral argument.

17.9(5) If oral argument is requested or if the objecting person or the consumer advocate requests additional opportunity to submit written argument and evidence, the board will issue a scheduling order. At the time and place for oral argument, the objecting person and the consumer advocate, if applicable, will be afforded the opportunity to present argument to the board.

17.9(6) Following the final submission of written material or oral argument, the board will issue an order in accordance with its findings. In the event the board affirms the assessment, in whole or in part, the person shall pay the amount identified in the board's order within 30 days from the date of the order unless otherwise ordered by the board.

17.9(7) The objection procedures set forth in this rule do not apply to challenges to a direct assessment made in a final board order, including those issued under subrule 17.6(3). The judicial review procedures in Iowa Code chapter 17 and the rehearing provisions in Iowa Code section 476.12 are the exclusive methods for challenging a direct assessment determination made in a final board order.

17.9(8) Board expenses incurred in an objection proceeding will be included in industry direct assessments.

199—17.10(476,477C) Refunds. If a person makes a payment in excess of the assessed amount, the board may issue a refund to the person for the excess amount or credit the excess amount toward the person's next assessment. For overpayments of less than \$50, absent exigent circumstances, the board will not issue a refund and will hold the excess amount as a credit toward the person's next assessment through the fiscal year in which the overpayment occurred. If a credit remains at the end of the fiscal year in which the overpayment occurred, the board will issue a refund for any excess amount remaining.

These rules are intended to implement Iowa Code chapters 17A, 475A, 476, 478, 479, 479A, 479B, and 546.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 23
“Annual Report”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 476.2, 476.9, 476.10, 476.22, 476.31 and 546.7

State or federal law(s) implemented by the rulemaking: Iowa Code sections 476.2, 476.9, 476.10, 476.22, 476.31 and 546.7

Public Hearing

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

October 26, 2023
1 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 (IUB) 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 23 is to inform the public and public utilities of IUB requirements related to the filing of annual reports.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Chapter 23 imposes no costs on the public; however, administrative costs may be incurred by public utilities to comply with the rules when filing the annual report or responding to questions.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowans benefit from the chapter because a public utility’s information will be updated annually, and each Iowa utility benefits because the chapter identifies what information must be filed as part of its annual report.

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 IUB does not believe Chapter 23 will cause additional costs, economic or otherwise. Public utilities may incur costs associated with administrative functions for filing annual reports and answering IUB inquiries. Other costs may be incurred that are associated with having a full- or part-time employee to complete the job function.
 - Qualitative description of impact:

Chapter 23 has some level of qualitative impact because it ensures the IUB has updated information regarding public utilities that provide service within the state of Iowa. This will help the IUB function more efficiently and allow it to help answer public concerns in a more expedited manner.

3. Costs to the State:

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

There are no additional costs to the IUB and no costs to any other agency.

- Anticipated effect on state revenues:

The IUB does not anticipate that the chapter will have 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 23 imposes no costs on the public and no additional costs on the agency (or any other agency) and because the public benefits from the IUB receiving the updated information and utilities benefit from the chapter identifying what information must be filed annually, the benefits of providing the information outweigh the costs.

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

Because Chapter 23 imposes no costs or requirements to the public, the agency does not believe there is a less costly or intrusive method. The information required of public utilities is information previously required. Further, there are no direct costs to the public utility for providing the information to the IUB.

6. Alternative methods considered by the agency:

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

The IUB considered rescinding the chapter.

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

Rescission of the chapter is inappropriate because it is paramount that the IUB has accurate information regarding public utilities that provide service within the state of Iowa.

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 IUB does not believe Chapter 23 has an adverse impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23
ANNUAL REPORT

199—23.1(476) General information.

23.1(1) Every public utility is to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the board and to comply with all directions of the board relating to such books, accounts, papers, and records.

23.1(2) Each public utility subject to Iowa Code chapter 476 is to file an annual report with this board on or before April 1 of each year covering operations during the immediately preceding calendar year. This information will be used for a number of purposes, including to apportion the costs of the utilities division pursuant to Iowa Code section 476.10 and to determine whether rate-regulated utilities' earnings are excessive pursuant to Iowa Code section 476.32.

23.1(3) The forms that are to be completed by each utility will be made publicly available on the board's website or by other means readily accessible. The board may direct the utilities to file the completed forms through a portal on the board's website or the board's electronic filing system.

199—23.2(476) Annual report requirements.

23.2(1) Forms. The following annual report forms shall be filed by the following utilities:

a. Investor-owned, rate-regulated electric utilities file Form IE-1 with a copy of that utility's Federal Energy Regulatory Commission (FERC) Annual Report Form No. 1 or 1A as applicable.

b. Investor-owned, non-rate-regulated electric utilities file Form EC-1.

c. Investor-owned gas utilities file Form IG-1 with a copy of that utility's FERC Annual Report Form No. 2 or 2A as applicable.

d. Regulated water utilities file Form WA-1.

e. Cooperative electric utilities file Form EC-1.

f. Municipally owned electric utilities file Form ME-1.

g. Municipally owned gas utilities file Form MG-1.

h. Providers of telecommunications service file Form TC-1.

i. Competitive natural gas providers and aggregators file Form CNGP-1.

j. Generation and transmission cooperatives file Form EC-1N.

k. Storm water drainage and sanitary sewage utilities file Form SW-1.

23.2(2) Additional requirements for rate-regulated utilities. A rate-regulated utility is to include information concerning its Iowa operations in its report as requested on the forms and file as part of its annual report the following:

a. A list (by title, author and date) of any financial, statistical, technical or operational reviews or reports that a company may prepare for distribution to stockholders, bondholders, utility organizations or associations or other interested parties.

b. A list (by form number and title) of all financial, statistical, technical and operational review-related documents filed with an agency of the federal government.

These rules are intended to implement Iowa Code sections 476.2, 476.9, 476.10, 476.22, 476.31, and 546.7.

ARC 7100C

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

Proposing rulemaking related to uniform policies, future ready Iowa skilled workforce grant program, and workforce grant and incentive program and providing an opportunity for public comment

The College Student Aid Commission hereby proposes to amend Chapter 10, “Uniform Policies”; to rescind Chapter 16, “Future Ready Iowa Skilled Workforce Grant Program,” Iowa Administrative Code, and adopt a new chapter with the same title; and to adopt a new Chapter 34, “Workforce Grant and Incentive Program.”

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 261.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 560.

Purpose and Summary

The proposed rulemaking rescinds and replaces rule 283—10.2(261) to leverage Chapter 10 for definitions and policies that are consistent among state financial aid programs in order to streamline and reduce redundancies in accord with Executive Order 10. As additional chapters are rescinded and promulgated anew in the future under Executive Order 10, the consistent definitions and policies will be cited from Chapter 10 rather than duplicated in each chapter. A Regulatory Analysis, including the proposed amendments to Chapter 10, was published on July 12, 2023. A public hearing was held on August 2, 2023. No public comments on the Regulatory Analysis were received at the public hearing or in writing.

Additionally, the proposed rulemaking rescinds and adopts a new Chapter 16 for the Future Ready Iowa Skilled Workforce Grant Program. Statutory amendments to the program were enacted in 2023 Iowa Acts, Senate File 560, division VIII. Given the extent of the amendments, the existing chapter is proposed to be rescinded and a new chapter promulgated in lieu thereof under Executive Order 10 to ensure that outdated and obsolete provisions are eliminated. A Regulatory Analysis, including the proposed text of Chapter 16, was published on July 26, 2023. A public hearing was held on August 16, 2023. No public comments on the Regulatory Analysis were received at the public hearing or in writing.

Lastly, the rulemaking proposes a new Chapter 34 to implement the Workforce Grant and Incentive Program, which was enacted in 2023 Iowa Acts, Senate File 560, division VI. A Regulatory Analysis, including the proposed Chapter 34, was published on July 12, 2023. A public hearing was held on August 2, 2023. No public comments on the Regulatory Analysis were received at the public hearing or in writing.

The Administrative Rules Coordinator provided preclearance for the publication of this Notice of Intended Action on September 8, 2023.

Citations in the rules to Iowa Code sections 261.132, 256.230 and 84A.1B are to those sections as enacted by 2023 Iowa Acts, Senate File 560.

The proposed rulemaking includes two standards that are adopted by reference, each of which aligns to standards in Title IV of the federal Higher Education Act of 1965. The first standard is the cost of attendance, which generally includes tuition and fees, books, supplies, transportation and miscellaneous personal expenses, and an allowance for food and housing costs. The second reference is to the process in which a student who is in default on a student loan regains eligibility for financial aid, which generally includes making six consecutive on-time payments, repaying the defaulted loan in full, or consolidating the defaulted loan with other student loans in good standing.

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

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, pursuant to 283—Chapter 7.

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 Commission no later than 4:30 p.m. on October 24, 2023. Comments should be directed to:

Julie Ntem

Department of Education, Bureau of Iowa College Aid

475 S.W. Fifth Street, Suite D

Des Moines, Iowa 50309-4608

Phone: 515.725.3414

Email: julie.ntem@iowa.gov or administrative rules website at rules.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 25, 2023
4 to 4:30 p.m.

Commission Boardroom
475 S.W. Fifth Street, Suite D
Des Moines, Iowa

October 26, 2023
4 to 4:30 p.m.

Commission Boardroom
475 S.W. Fifth Street, Suite D
Des Moines, Iowa

Persons who wish to make oral comments at a 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 a 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. Rescind rule 283—10.2(261) and adopt the following **new** rule in lieu thereof:

283—10.2(261) Definitions.

“*Financial metric*” is the means by which the commission ranks the relative financial need of an applicant for financial assistance. The calculated financial metric shall be evaluated annually on the

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

basis of a confidential statement of family finances filed on a form designated by the commission. The commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form developed by the U.S. Department of Education, which is used to determine the financial metric. Relative need will be ranked based on the applicant's financial metric provided by the U.S. Department of Education. The FAFSA must be received by the processing agent by the date specified by the commission. A negative financial metric is the equivalent of zero.

"Financial need" is the difference between the applicant's cost of attendance, as defined in Title IV of the federal Higher Education Act of 1965, as of July 1, 2023, and the applicant's financial metric and other available financial assistance at the eligible institution.

"Full-time" means enrollment in at least 12 semester credit hours, or the equivalent, that are part of a program of study. Credits that a student receives through "life experience credit" and "credit by examination" are not eligible for funding. Only coursework required for the student's eligible program of study can be used to determine enrollment status for state award calculations.

"Iowa resident" means a person who:

1. If attending an Iowa regent university, Iowa private college or university, or Iowa barber or cosmetology college, meets the criteria used by the state board of regents to determine residency for tuition purposes as described in rule 681—1.4(262) and, if the person qualifies for residency only as described in 681—paragraph 1.4(2) "b," meets the following additional criteria:

- Is a veteran or qualifying military person domiciled in the state of Iowa who is not dependent upon a parent for financial support;
- Is a dependent veteran or qualifying military person whose parent is domiciled in the state of Iowa; or
- Is the spouse, domestic partner, or dependent child of a veteran or qualifying military person who is domiciled in the state of Iowa; or

2. If attending an Iowa community college, meets the criteria defined by the Iowa department of education to determine residency for community college tuition purposes as defined in 281—subrule 21.2(11) and, if the person qualifies for residency only as described in 281—subparagraph 21.2(11) "b"(5), meets the following additional criteria:

- Is a veteran of uniformed service or a national guard member domiciled in the state of Iowa who is not dependent upon a parent for financial support;
- Is a dependent veteran of uniformed service or a national guard member whose parent is domiciled in the state of Iowa; or
- Is the spouse, domestic partner, or dependent child of a veteran of uniformed service or a national guard member who is domiciled in the state of Iowa.

"Part-time" means enrollment which includes 3 to 11 semester credit hours, or the equivalent, that are part of a program of study. Credits that a student receives through "life experience credit" and "credit by examination" are not eligible for funding. Only coursework required for the student's eligible program of study can be used to determine enrollment status for state award calculations.

"Program of study" means a course of study that is eligible for federal student aid programs and leads to an undergraduate diploma, certificate, or degree.

"Satisfactory academic progress" is determined by the eligible institution, the standards of which meet the criteria for participation in federal student aid programs and are published on the eligible institution's website.

ITEM 2. Adopt the following **new** rule 283—10.3(261):

283—10.3(261) Policies.

10.3(1) Restrictions. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the program. The student regains eligibility under this rule by providing documentation to the institution that the student has regained eligibility under Title IV of the Higher Education Act of 1965, as of July 1, 2023.

10.3(2) Reserved.

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

ITEM 3. Rescind 283—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
FUTURE READY IOWA SKILLED WORKFORCE GRANT PROGRAM

283—16.1(261) Basis for aid. Assistance available under the future ready Iowa skilled workforce grant program is for Iowa residents who are aged 25 or older and are enrolled in approved programs aligned with high-demand jobs.

283—16.2(261) Definitions. As used in this chapter:

“*Approved program*” means an eligible program of study as defined in 283—Chapter 10 that is approved through the process described in 283—16.6(261).

“*Continuous enrollment*” means an eligible student is enrolled on a full-time or part-time basis in successive fall and spring semesters, or the equivalent, after receiving the award. Enrollment in the summer semester is not required to meet this condition.

“*Eligible institution*” meets the criteria in Iowa Code section 261.132 and the provisions of 283—16.7(261).

“*Full-time*” means the same as defined in 283—10.2(261).

“*Iowa resident*” means the same as defined in 283—10.2(261).

“*Part-time*” means enrollment in at least 6 but less than 12 hours per semester, or the equivalent. An eligible student may enroll in fewer than six semester hours, or the equivalent, in the semester that the credential will be completed if part-time enrollment is not required to complete the program of study.

“*Satisfactory academic progress*” means the same as defined in 283—10.2(261).

“*Semester*” means the fall, spring, or summer term of enrollment at an eligible institution, if the eligible institution is on a semester system, or the equivalent, if the institution is on a system other than a semester system.

283—16.3(261) Eligible applicant. An eligible applicant is an Iowa resident who is enrolled full-time or part-time in an approved program at an eligible institution and who meets the following provisions:

1. Annually completes the applications the college student aid commission (commission) deems necessary on or before the date established by the commission and attends orientation, registers for classes with an academic advisor, and participates in career advising sessions.

2. Meets satisfactory academic progress standards, does not meet a condition in 283—subrule 10.3(1), and upon receipt of the grant, maintains continuous full-time or part-time enrollment during successive fall and spring semesters.

3. Is aged 25 or older as of July 1 prior to the year of enrollment.

283—16.4(261) Awarding of funds.

16.4(1) Selection criteria. All eligible applicants will be considered for an award.

16.4(2) Extent of award and maximum award. Eligible applicants may receive no more than the equivalent of four full-time awards. The maximum award will be established annually by the commission but will not be less than \$1,000 for a full-time student over the course of the fall and spring semesters.

16.4(3) Priority for awards. In the event that funds available are insufficient to provide maximum awards to all eligible applicants, awards are prioritized in the following order:

- a. Eligible applicants who received the grant in the prior state fiscal year, by application date.
- b. Eligible applicants who did not receive the grant in the prior state fiscal year, by application date.

16.4(4) Awarding process.

a. The commission will provide notice of the eligibility criteria and maximum award to participating eligible institutions annually to authorize awarding.

b. The commission will designate eligible applicants for awards and provide eligible institutions with rosters of designated eligible applicants.

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

c. Eligible institutions will notify recipients of the awards, clearly indicating the award amount and the state program from which funding is being provided and stating that the award is contingent on the availability of state funds.

d. Eligible institutions will apply awards directly to student accounts to cover items included in the cost of attendance, as defined in Title IV of the federal Higher Education Act of 1965, as of July 1, 2023.

e. Eligible institutions will provide information about eligible applicants to the commission in a format specified by the commission. Eligible institutions will make necessary changes to awards due to a change in enrollment, program of study, and financial situation, and promptly report those changes to the commission.

f. Eligible institutions will complete necessary verification and coordinate other aid to ensure compliance with student eligibility requirements and allowable award amounts. Eligible institutions will report changes in student eligibility to the commission.

g. The commission will periodically investigate and review compliance of eligible institutions participating in this program with the criteria established in Iowa Code section 261.132 and this rule.

283—16.5(261) Exceptions. If an eligible applicant discontinues enrollment at the eligible institution due to military deployment, a temporary medical incapacity, in relation to a declaration of a national or state emergency, or other exceptional circumstances approved by the commission, the eligible applicant may apply for a waiver. If the waiver is approved, the eligible applicant is not required to maintain continuous enrollment during the period covered by the waiver.

283—16.6(261) Determination of programs of study aligned with high-demand jobs.

16.6(1) High-demand jobs. The commission will utilize the department of workforce development's most recent list of statewide high-demand jobs pursuant to Iowa Code section 84A.1B(14) and align those jobs to eligible programs of study.

16.6(2) Eligible programs of study. The eligible institution will offer a baccalaureate degree that is aligned with a high-demand job. The classification of instructional program code and the standard occupation code will be used to align eligible programs of study to high-demand jobs.

16.6(3) Designation. Eligible institutions will designate the eligible programs of study offered in the corresponding academic year.

16.6(4) Approved program. Before an eligible program of study is considered an approved program of study, the department of workforce development and the commission will jointly certify that the program of study is aligned with a high-demand job pursuant to Iowa Code section 84A.1B(14).

16.6(5) Grandfather clause. If the state workforce development board removes a high-demand job from a list created pursuant to Iowa Code section 84A.1B(14), an eligible applicant who received an award in a program of study aligned with that high-demand job will continue to receive the award as long as the eligible applicant continues to meet all other eligibility criteria.

283—16.7(261) Institution eligibility requirements.

16.7(1) Application process. An institution requesting to participate in the program may apply to the commission using the commission's designated application. An applicant institution will provide the commission with documentation establishing the applicant institution's eligibility as an eligible institution that offers eligible programs of study. Applicant institutions will submit the application and documentation establishing the applicant institution's eligibility before October 1 of the year prior to the beginning of the academic year for which the applicant institution is applying for participation.

16.7(2) Public information. A list of all eligible programs of study, as well as the necessary courses and the suggested course sequence, will be available in a prominent location on the eligible institution's website.

These rules are intended to implement Iowa Code section 261.132.

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

ITEM 4. Adopt the following **new** 283—Chapter 34:

CHAPTER 34
WORKFORCE GRANT AND INCENTIVE PROGRAM

283—34.1(261) Basis of aid. Assistance available under the Iowa workforce grant and incentive program is based on the financial need of Iowa residents enrolled in eligible programs of study at universities under the Iowa board of regents.

283—34.2(261) Definitions.

“*Academic year*” is defined as the fall, spring and summer semesters, in that sequence, within a state fiscal year.

“*Eligible institution*” means the same as defined in Iowa Code section 256.230.

“*Eligible program*” means an undergraduate program of study as defined in 283—Chapter 10 that meets the provisions of Iowa Code section 256.230.

“*Financial metric*” means the same as defined in 283—Chapter 10.

“*Financial need*” means the same as defined in 283—Chapter 10.

“*Full-time*” means the same as defined in 283—Chapter 10.

“*High-demand job*” means the same as described in Iowa Code section 84A.1B(17).

“*Iowa resident*” means the same as defined in 283—Chapter 10.

“*Part-time*” means the same as defined in 283—Chapter 10.

“*Satisfactory academic progress*” means the same as defined in 283—Chapter 10.

283—34.3(261) Eligible workforce grant applicant. An eligible applicant is an Iowa resident who is enrolled full-time or part-time as an undergraduate student in an eligible program at an eligible institution and who meets the following provisions:

1. Annually completes the applications the commission deems necessary on or before the date established by the commission.
2. Establishes financial need, has an eligible financial metric, meets satisfactory academic progress standards, and does not meet a condition in 283—subrule 10.3(1).

283—34.4(261) Awarding of workforce grant funds.

34.4(1) Selection criteria. All eligible applicants will be considered for an award.

34.4(2) Extent of award and maximum award. Eligible applicants may receive no more than four full-time or eight part-time semesters of awards, or the equivalent.

a. The maximum award for full-time students will not exceed the student’s financial need and will not exceed \$2,000 per full-time semester.

b. A part-time student will receive a prorated award, as established by the commission, based on the number of credit hours for which the student is enrolled.

c. Awards will be provided during the fall and spring semesters of enrollment. Awards during the summer semester of enrollment may be provided if funding allows.

34.4(3) Priority for awards. In the event that funds available are insufficient to provide an award to all eligible applicants, awards will be prioritized as follows:

a. Eligible applicants who received a workforce grant in the prior academic year.

b. Eligible applicants with the lowest financial metrics.

c. Eligible applicants who are closest to the completion of their eligible program.

34.4(4) Awarding process.

a. The commission will provide notice of the eligibility criteria and maximum award to participating eligible institutions annually to authorize awarding.

b. Eligible institutions will notify recipients of the awards, clearly indicating the award amount and the state program from which funding is being provided and stating that the award is contingent on the availability of state funds.

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

c. Eligible institutions will apply awards directly to student accounts to cover items included in the cost of attendance, as defined in Title IV of the federal Higher Education Act of 1965, as of July 1, 2023.

d. Eligible institutions will provide information about eligible applicants to the commission in a format specified by the commission. Eligible institutions will make necessary changes to awards due to a change in enrollment, program of study, and financial situation and promptly report those changes to the commission.

e. Eligible institutions will complete necessary verification and coordinate other aid to ensure compliance with student eligibility requirements and allowable award amounts. Eligible institutions will report changes in student eligibility to the commission.

f. The commission will periodically investigate and review compliance of eligible institutions participating in this state program with the criteria established in Iowa Code section 256.230 and this rule.

283—34.5(261) Eligible incentive payment applicant. Individuals who received a workforce grant and completed the eligible program within the same academic year may apply for the incentive payment if they meet the criteria of Iowa Code section 256.230 and are employed in Iowa.

283—34.6(261) Awarding of incentive payments.

34.6(1) Selection criteria. All eligible incentive payment applicants will be considered for an award.

34.6(2) Extent of award and maximum award. Eligible incentive payment applicants may apply for no more than one incentive payment of up to \$2,000.

34.6(3) Awarding process.

a. The commission will provide notice of the availability of the incentive payment application to eligible incentive payment applicants following completion of the eligible program. Eligible incentive payment applicants will apply for the incentive and begin full-time employment in a high-demand job in Iowa within six months of completing the eligible program.

b. Following the application deadline, the commission will designate eligible applicants for awards and begin tracking their employment.

c. After the applicant has completed 12 consecutive months of full-time employment, commission staff will verify with the Iowa employer that the applicant was employed full-time in a job position that is aligned with a high-demand job.

d. Following verification with the employer, the commission will make payment to the eligible incentive payment applicant.

These rules are intended to implement 2023 Iowa Acts, Senate File 560.

ARC 7082C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to organization and operation
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 1, “Organization and Operation,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.3, 256.1 and 256.7.

State or Federal Law Implemented

EDUCATION DEPARTMENT[281](cont'd)

This rulemaking implements, in whole or in part, Iowa Code chapter 256.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified several instances where the current Chapter 1 duplicates statutory language, in addition to containing a dated organizational structure. This duplicative text has been removed from the proposed 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023
9 to 9:30 a.m.

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

October 24, 2023
5 to 5:30 p.m.

Second Floor, Jim Hester Board Room
Davenport Schools, Achievement Service Center
1702 North Main Street
Davenport, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

EDUCATION DEPARTMENT[281](cont'd)

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 281—Chapter 1 and adopt the following **new** chapter in lieu thereof:

TITLE I
GENERAL INFORMATION—
DEPARTMENT OPERATIONS

CHAPTER 1
ORGANIZATION AND OPERATION

281—1.1(17A,256) State board of education. The state board of education, authorized by Iowa Code chapter 256, is the governing and policy-forming body for the department of education.

1.1(1) Membership. The state board's membership is governed by Iowa Code sections 256.3 and 256.4.

1.1(2) Meetings. The board's meetings are governed by Iowa Code section 256.6. The majority of the board's meetings are held in the State Board Room, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319. By notice of the regularly published meeting agenda, the board may hold meetings in other areas of the state. The board may hold special meetings as provided in Iowa Code section 256.6.

1.1(3) Compensation. All voting members will receive compensation and reimbursement as provided in Iowa Code section 256.5. A student member will receive compensation pursuant to Iowa Code section 256.5A(6). If a student member's parent or guardian provides supervision pursuant to subrule 1.2(4), the parent or guardian will receive necessary expenses but not a per diem.

281—1.2(17A,256) Student member of the state board of education. The governor will appoint a public high school student to serve as a nonvoting member of the state board of education pursuant to Iowa Code section 256.5A.

1.2(1) Term. The nonvoting student member will serve a term from May 1 to April 30. The student member may serve a second year as the nonvoting student member without having to reapply for the position if the student has another year of high school eligibility remaining before graduation. A vacancy in the membership of the nonvoting student member will not be filled until the expiration of the term.

1.2(2) Qualifications. At the time of making application, a qualified nonvoting student member is to meet all of the following criteria:

a. The student is a full-time, regularly enrolled tenth or eleventh grade student in an Iowa school district.

b. The student has been regularly enrolled as a full-time student in the district of present enrollment for at least two consecutive semesters or the equivalent thereof.

c. The student has a minimum cumulative grade point average in high school of 3.0 on a 4.0 scale (3.75 on a 5.0 scale).

d. The student demonstrates participation in extracurricular and community activities, as well as an interest in serving on the state board.

e. The student has the consent of the student's parent or guardian, as well as the approval of the student's district.

1.2(3) Application process. The application process for the nonvoting student member is as follows:

a. The department will, on behalf of the state board, prepare and disseminate application forms to all school districts in Iowa. In addition to the application itself, the student will submit all of the following:

(1) A consent form signed by the student's parent or guardian.

(2) An approval of the application signed by the superintendent of the student's district of enrollment or the superintendent's designee.

EDUCATION DEPARTMENT[281](cont'd)

(3) A letter of recommendation from a high school teacher from whom the student received instruction.

(4) A letter of recommendation from a person in the community familiar with the student's community activities.

b. The number of applicants in a year from any one district is limited as follows:

(1) If district enrollment for grades 10 through 12 is less than 400 students, there may be no more than one applicant from the district.

(2) If district enrollment for grades 10 through 12 is between 400 and 1,199 students, there may be no more than two applicants from the district.

(3) If district enrollment for grades 10 through 12 is 1,200 students or more, there may be no more than three applicants from the district.

c. All applications are to be submitted on or before February 1 of the year in which the term is to begin. Applications may be hand-delivered or postmarked on or before February 1 to the Iowa department of education.

d. All applications will be initially screened by a committee to be appointed by the director of the department. The initial screening committee will select not more than 20 semifinalists. If fewer than a total of 20 applications are received, the initial screening process may be omitted at the discretion of the director of the department.

e. The applications of the semifinalists will be reviewed by a committee appointed by the president of the state board. The committee will submit a list of two to five finalists to the governor, who will appoint the student member from the list submitted.

1.2(4) *Participation of student member in official board activities.*

a. Upon appointment to the board, the student member is to, at a minimum, fulfill the following qualifications to remain eligible to serve:

(1) Maintain enrollment as a full-time student in an Iowa public school district (if the student moves or transfers from the district of application, the student will obtain the approval of the superintendent or the superintendent's designee in the student's new district of enrollment).

(2) Maintain a minimum cumulative grade point average in high school of 3.0 on a 4.0 scale or 3.75 on a 5.0 scale.

(3) Attend regularly scheduled board meetings as required of voting board members. As a nonvoting member, the student will not participate in any closed session of the board.

b. The student member's absences from school to participate in official state board activities will be excused absences. The student member's participation in board activities outside the regularly scheduled meetings of the state board will be approved by the president of the board and the student's superintendent or the superintendent's designee.

c. If the student member is a minor, the student's parent or guardian will accompany the student while the student is participating in official state board activities at a location other than the student's resident community, unless the parent or guardian submits to the state board a signed release indicating that the parent or guardian has determined that such supervision is unnecessary.

d. The nonvoting student member is not considered for purposes of constituting the board's necessary quorum.

281—1.3(17A,256) Director of the department of education. The director is appointed pursuant to Iowa Code section 256.8 and performs such duties as assigned by the Iowa Code or the Iowa Administrative Code, including Iowa Code section 256.9.

281—1.4(17A,256) Department of education. The department of education is established by Iowa Code section 256.1 to perform the functions and duties set forth in that section, in other Iowa Code provisions, and in the Iowa Administrative Code. The department is organized into such divisions as established by statute or the director. The mailing address for the state board of education, the director,

EDUCATION DEPARTMENT[281](cont'd)

and all divisions of the department is Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146.

These rules are intended to implement Iowa Code section 17A.3.

ARC 7083C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to agency procedure for rulemaking and petitions for rulemaking and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 2, “Agency Procedure for Rule Making and Petitions for Rule Making,” and to adopt a new Chapter 2, “Agency Procedure for Rulemaking and Petitions for Rulemaking,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A and section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 256.

Purpose and Summary

As part of the Department of Education’s review of rules under Executive Order 10, the Department identified several instances where the current chapter duplicates statutory language. This text is removed in the proposed rulemaking.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023
9 to 9:30 a.m.

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

October 24, 2023
5 to 5:30 p.m.

Second Floor, Jim Hester Board Room
Davenport Schools, Achievement Service Center
1702 North Main Street
Davenport, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
AGENCY PROCEDURE FOR RULEMAKING
AND PETITIONS FOR RULEMAKING

281—2.1(17A) Incorporation by reference. The Iowa department of education (department) and the Iowa state board of education incorporate by this reference all such matters in Iowa Code chapter 17A that deal with rulemaking or petitions for rulemaking.

281—2.2(17A) Contact information.

2.2(1) General. Petitions for rulemaking and inquiries about department rules and the rulemaking process may be directed to Legal Consultant, Iowa Department of Education, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146.

2.2(2) Comments on proposed rules. Any public comment on a Notice of Intended Action or similar document may be directed to Legal Consultant, Iowa Department of Education, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146, or as directed in the Notice of Intended Action or similar document.

2.2(3) Petitions for rulemaking. A petition for rulemaking that substantially conforms to the following form will be considered by the department:

DEPARTMENT OF EDUCATION

Petition by (Name of Petitioner)
for the Adoption/Amendment/Repeal of
(Cite rule involved).



PETITION FOR
RULEMAKING

EDUCATION DEPARTMENT[281](cont'd)

281—2.3(17A) Electronic submissions. The department encourages electronic submissions of documents under this chapter, including documents bearing electronic signatures. More information is available in the administrative rules content on the department's website (educateiowa.gov).

These rules are intended to implement Iowa Code section 256.7(3) and chapter 17A.

ARC 7084C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to declaratory orders and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 3, "Declaratory Orders," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 17A.9.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined nearly the entirety of this chapter is duplicative of the Uniform Rules on Agency Procedure chapter on declaratory orders, which is therefore proposed to be incorporated by reference.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

EDUCATION DEPARTMENT[281](cont'd)

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 9 to 9:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Second Floor, Jim Hester Board Room Davenport Schools, Achievement Service Center 1702 North Main Street Davenport, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
DECLARATORY ORDERS

The Iowa department of education adopts, with the exceptions and amendments noted in rule 281—3.13(17A), the Uniform Rules on Agency Procedure relating to declaratory orders, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

281—3.13(17A) Additional information concerning declaratory orders. For purposes of the Uniform Rules on Agency Procedure relating to declaratory orders, the following amendments and exceptions apply:

1. In lieu of “(designate agency)” insert “Iowa department of education”.
2. In lieu of “(designate office)” insert “Grimes State Office Building, Second Floor, 400 East 14th Street, Des Moines, Iowa 50319-0146”.
3. In lieu of “_____ days (15 or less)” insert “15 days”.
4. In lieu of “_____ days” insert “15 days”.
5. In lieu of “(designate official by full title and address)” insert “General Counsel, Iowa Department of Education, Grimes State Office Building, Second Floor, 400 East 14th Street, Des Moines, Iowa 50319-0146”.
6. In lieu of “(specify office and address)” insert “General Counsel, Iowa Department of Education, Grimes State Office Building, Second Floor, 400 East 14th Street, Des Moines, Iowa 50319-0146”.
7. Method of service, time of filing, proof of mailing, the date of issuance of an order, or a refusal to issue an order are governed by 281—Chapter 6.

These rules are intended to implement Iowa Code section 17A.9.

ARC 7085C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to waivers from administrative rules
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 4, “Waivers from Administrative Rules,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 17A.9A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

As part of the Department of Education’s review of rules under Executive Order 10, the Department determined that a large portion of this chapter recites statutory text or is aspirational in nature. That text is proposed to be removed and the chapter simplified.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

EDUCATION DEPARTMENT[281](cont'd)

October 24, 2023
9 to 9:30 a.m.

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

October 24, 2023
5 to 5:30 p.m.

Second Floor, Jim Hester Board Room
Davenport Schools, Achievement Service Center
1702 North Main Street
Davenport, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
WAIVERS FROM ADMINISTRATIVE RULES

281—4.1(17A) Definitions. For purposes of this chapter:

“*Board*” means the state board of education.

“*Department*” means the department of education.

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

“*Person*” means an individual, school corporation, government or governmental subdivision or agency, nonpublic school, partnership or association, or any legal entity.

“*Waiver*” means the same as defined in Iowa Code section 17A.9A(5).

281—4.2(17A) General. The director may grant a waiver of any administrative rule, if the waiver is consistent with Iowa Code section 17A.9A.

281—4.3(17A) Criteria for waiver. In response to a petition filed pursuant to this chapter, the director may in the director's sole discretion issue an order waiving in whole or in part the obligations of a rule if the director finds, based on clear and convincing evidence, all of the factors listed in Iowa Code section 17A.9A(2) and that any waiver from the obligations of the rule in the specific case would not have a negative impact on the student achievement of any person affected by the waiver.

281—4.4(17A) Filing of petition. All petitions for waiver are submitted in writing to the Director, Department of Education, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, the petition is filed in the contested case proceeding, using the caption of the contested case.

281—4.5(17A) Content of petition. A petition for waiver includes the following information where applicable and known to the requester:

EDUCATION DEPARTMENT[281](cont'd)

1. The name, address, and telephone number of the person for whom a waiver is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under the criteria described in Iowa Code section 17A.9A(2). This statement includes 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 will justify a waiver.
5. A history of any prior contacts between the board, the department and the petitioner relating to the regulated activity, license, or grant affected by the proposed waiver, including a description of each affected item held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.
6. A detailed statement of the impact on student achievement for any person affected by the granting of a waiver.
7. Any information known to the requester regarding the board's or department's treatment of similar cases.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

281—4.6(17A) Additional information. Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department.

281—4.7(17A) Notice. The department will acknowledge receiving the petition 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 necessary by any provision of law. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may obligate the petitioner to serve the notice on all persons to whom notice is necessary by any provision of law and provide a written statement to the department attesting that notice has been provided.

281—4.8(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings apply in three situations: (1) to any petition for a waiver filed within a contested case, (2) when provided by rule or order, or (3) when required to do so by statute.

281—4.9(17A) Ruling. An order granting or denying a waiver will be in writing and will contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and the reasons upon which the action is based, and a description of the precise scope and operative period of any waiver issued.

4.9(1) General. The final decision on whether the circumstances justify the granting of a waiver is in the sole discretion of the director, based on the unique, individual circumstances set out in the petition.

4.9(2) Compliance with Iowa Code standards. The department applies the standards and burdens in Iowa Code section 17A.9A(3).

4.9(3) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the director will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

EDUCATION DEPARTMENT[281](cont'd)

4.9(4) *Time for ruling.* The director will grant or deny a petition for a waiver as soon as practicable but, in any event, within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director will grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the director to grant or deny a petition within the time period is deemed a denial of that petition by the director. However, the director remains responsible for issuing an order denying a waiver.

4.9(5) *Service of order.* Within seven days of its issuance, any order issued under this chapter is transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

281—4.10(17A) Public availability. The department will comply with the public availability and filing procedures of Iowa Code section 17A.9A(4).

281—4.11(17A) After issuance of a waiver.

4.11(1) *Cancellation.* A waiver issued pursuant to this chapter may be withdrawn, canceled or modified if, after appropriate notice and hearing, the director issues an order finding any of the following:

- a.* The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- 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.* The subject of the waiver order has failed to comply with all conditions contained in the order.

4.11(2) *Violations.* A violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

4.11(3) *Defense.* After the director issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

4.11(4) *Judicial review.* Judicial review of the director's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

281—4.12(17A) Exception. This chapter does not apply to 281—Chapters 36 and 37 or to specific waiver provisions adopted in other chapters.

These rules are intended to implement Iowa Code section 17A.9A.

ARC 7088C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to appeal procedures
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 6, "Appeal Procedures," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 290.

EDUCATION DEPARTMENT[281](cont'd)

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined several of the rules recite statutory text, recite text from the Uniform Rules on Agency Procedure on contested cases (which could be incorporated by reference), or are obsolete. The proposed rulemaking removes that language and simplifies 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023
9 to 9:30 a.m.

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

October 24, 2023
5 to 5:30 p.m.

Jim Hester Board Room, Second Floor
Davenport Schools, Achievement Service Center
1702 North Main Street
Davenport, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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

EDUCATION DEPARTMENT[281](cont'd)

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
APPEAL PROCEDURES

281—6.1(290) Scope of chapter. This chapter applies to all hearing requests seeking appellate review by the state board of education, the director of education, or the department of education.

281—6.2(256,290,17A) Definitions. The definitions contained in rule X.2 of the Uniform Rules on Agency Procedure for contested cases, effective on July 1, 1999, which are published on the general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf, are incorporated by reference. The following additional definitions apply to this chapter:

"Appellant" refers to a party bringing an appeal to the state board of education, the director of education, or the department of education.

"Appellee" refers to the party in a matter against whom an appeal is taken or the party whose interest is adverse to the reversal of a prior decision now on appeal to the state board of education, the director of education, or the department of education.

"Board" means the state board of education.

"Department" means the department of education.

"Designated office" means the Iowa Department of Education, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319, or as ordered by the presiding officer.

"Director" refers to the director of education.

"Presiding officer" means the director of the department of education or the designated administrative law judge.

281—6.3(290,17A) Incorporation by reference. The following rules from the Uniform Rules on Agency Procedure for contested cases, effective on July 1, 1999, are incorporated by reference:

1. X.7(17A) Waiver of procedures.
2. X.9(17A) Disqualification.
3. X.10(17A) Consolidation—severance.
4. X.12(17A) Service and filing of pleadings and other papers.
5. X.13(17A) Discovery.
6. X.14(17A) Subpoenas, with the following addition: Witnesses and serving officers may be allowed the same compensation as is paid for like attendance or service in district court. The witness's fees and mileage are considered costs of any appeal filed under Iowa Code chapter 290, and costs are assigned to the nonprevailing party. The witness's fees and expenses for hearings brought under other statutes and rules are the responsibility of the party requesting or subpoenaing the witness.
7. X.15(17A) Motions.
8. X.16(17A) Prehearing conference.
9. X.17(17A) Continuances.
10. X.19(17A) Intervention.
11. X.20(17A) Hearing procedures.
12. X.21(17A) Evidence.
13. X.22(17A) Default, with the following correction: The reference to Iowa Rule of Civil Procedure 236 is corrected to Rule 1.977.
14. X.23(17A) Ex parte communication.
15. X.24(17A) Recording costs.
16. X.28(17A) Applications for rehearing.

EDUCATION DEPARTMENT[281](cont'd)

17. X.29(17A) Stays of agency actions.
18. X.30(17A) No factual dispute contested cases.
19. X.31(17A) Emergency adjudicative proceedings.

281—6.4(290,17A) Manner of appeal.

6.4(1) An appeal under this chapter is started by filing an affidavit, unless an affidavit is not obligated by the statute establishing the right of appeal. The affidavit is to set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner and be signed by the appellant. The affidavit is to be delivered to the office of the director by United States Postal Service, facsimile (fax), electronic mail, or personal service. The affidavit is considered filed with the agency on the date of the United States Postal Service postmark, the date of arrival of the facsimile, the date of arrival of the electronic mail message, or the date personal service is made. Time will be computed as provided in Iowa Code section 4.1(34).

6.4(2) The director or designee, within five days after the filing of such affidavit, will notify the proper officer in writing of the taking of an appeal. The officer, within ten days, will file with the board a complete certified transcript of the record and proceedings related to the decision appealed. A certified copy of the minutes of the meeting of the governmental body making the decision appealed will satisfy this rule.

6.4(3) The director or designee will send written notice by certified mail, return receipt requested, at least ten days prior to the hearing, unless the ten-day period is waived by all parties, to all persons known to be interested. Such notice includes the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. A copy of the appeal hearing rules will be included with the notice.

The notice of hearing will contain the following information: identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known; reference to the procedural rules governing conduct of the contested case proceeding; reference to the procedural rules governing informal settlement; and identification of the presiding officer, if known (if not known, a description of who will serve as presiding officer (e.g., director of the department or administrative law judge from the department of inspections, appeals, and licensing)).

6.4(4) An amendment to the affidavit of appeal may be made by the appellant up to ten working days prior to the hearing. With the agreement of all parties, an amendment may be made until the hearing is closed to the receipt of evidence.

281—6.5(17A) Record. The record of a contested case or appeal is described in Iowa Code section 17A.12(6).

281—6.6(290,17A) Decision and appeal.

6.6(1) The presiding officer, after due consideration of the record and the arguments presented, will make a decision on the appeal. The proposed decision will be mailed to the parties or their representatives by regular mail. The parties may elect to receive the proposed decision by other means, such as electronic mail or electronic filing.

6.6(2) The decision may only be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and in the best interest of education.

6.6(3) A proposed decision of the presiding officer, if there is no appeal under subrule 6.6(4), is placed on the consent agenda of the next regular board meeting for summary adoption, unless the decision is within the province of the director to make.

6.6(4) Any adversely affected party may appeal a proposed decision to the state board within 20 days after issuance of the proposed decision by filing a notice of appeal with the office of the director. The notice of appeal will be signed by the appealing party or a representative of that party, contain a certificate of service (or other evidence of service), and specify:

EDUCATION DEPARTMENT[281](cont'd)

- a. The names and addresses of the parties initiating the appeal;
- b. The proposed decision to be appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision;
- d. The relief sought; and
- e. The grounds for relief.

6.6(5) Unless otherwise ordered, within 15 days of a party's filing of the notice of appeal, each appealing party may file exceptions and briefs. Within ten days after the filing of exceptions and briefs by the appealing party, any party may file a responsive brief. Briefs shall cite any applicable legal authority, specify relevant portions of the record in the proceeding below, and be limited to a maximum length of 25 pages. An opportunity for oral arguments may be given with the consent of the board. To be granted oral argument, a party must file a request to present oral arguments with the party's briefs. With or without oral argument, the appeal of the proposed decision will be placed on the next regular board agenda.

6.6(6) The board may affirm, modify, or vacate the decision or may direct a rehearing before the director or the director's designee.

6.6(7) Copies of the final decision will be sent to the parties or their representatives by regular mail within five days after state board action, if mandated, on the proposed decision.

6.6(8) No individual who participates in the making of any decision may have advocated in connection with the hearing, the specific controversy underlying the case, or other pending factually related matters. Nor may any individual who participates in the making of any proposed decision be subject to the authority, direction, or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing, or a pending related matter involving the same parties.

281—6.7(256,17A) Specific programs.

6.7(1) General rule. If a specific federal program's statutes or regulations impose criteria for appeals to the state board of education, the director of education, or the department of education, those specific criteria govern and are incorporated by reference.

6.7(2) Specific programs. The following is a nonexhaustive list to which this rule applies:

- a. Appeals under the Child and Adult Care Food Program (CACFP) are governed by the criteria contained in 7 CFR Section 226.6 as of May 1, 2023.
- b. Due process complaints under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. 1411 et seq., and Iowa Code chapter 256B are governed by 281—Chapter 41.
- c. Due process complaints under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 et seq., are governed by 281—Chapter 120.

These rules are intended to implement Iowa Code sections 256.7(6) and 256.9(17) and chapters 17A and 290.

ARC 7089C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to criteria for grants
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 7, "Criteria for Grants," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

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

EDUCATION DEPARTMENT[281](cont'd)

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 256.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified unnecessary and duplicative restrictive language, which this proposed rulemaking rescinds.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023
9 to 9:30 a.m.

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

October 24, 2023
5 to 5:30 p.m.

Second Floor, Jim Hester Board Room
Davenport Schools, Achievement Service Center
1702 North Main Street
Davenport, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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

EDUCATION DEPARTMENT[281](cont'd)

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 281—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
CRITERIA FOR GRANTS

281—7.1(256,17A) General. To ensure equal access and objective evaluation of applicants for competitive program grant funds made available by the Iowa department of education (department), grant application materials are to contain, at minimum, specific content. The department develops competitive program grant application packets in accordance with these rules unless in conflict with appropriation language, the Iowa Code, the Iowa Administrative Code, federal regulations, or interagency agreements between the department and other state agencies.

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

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

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

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

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

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

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

EDUCATION DEPARTMENT[281](cont'd)

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

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

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

7.5(1) Appeals are to be:

- a. In writing,
- b. Received within ten working days of the date of the notice of decision, and
- c. Based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members.

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

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

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

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

ARC 7090C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to statewide voluntary preschool program
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 16, "Statewide Voluntary Preschool Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256C.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 256C.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified several rules in Chapter 16 that recite statutory text, are obsolete, or are aspirational in nature. They are proposed to be removed in this rulemaking.

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.

EDUCATION DEPARTMENT[281](cont'd)

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 9:30 to 10 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Room 1070 Des Moines Roosevelt High School 4419 Center Street Des Moines, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
 STATEWIDE VOLUNTARY PRESCHOOL PROGRAM

281—16.1(256C) Definitions.

“*Applicant*” means a school district applying to become an approved local program. Only public school districts in Iowa may apply for state funds under this chapter.

“*Approved local program*” means the same as defined in Iowa Code section 256C.1.

EDUCATION DEPARTMENT[281](cont'd)

“*Assessment*” means a systematic ongoing procedure for obtaining information from observations, interviews, portfolios, and tests that can be used to make judgments about the strengths and needs of individual children and plan appropriate instruction.

“*Comprehensive services*” means the provision of quality, developmentally appropriate early learning experiences consistent with age-relevant abilities or milestones; extended day child care services; developmental screenings, including health, hearing, and vision screenings; transportation; and family education and support services.

“*Curriculum*” means a research-based or evidence-based written framework that is comprehensive, addresses the needs of the whole child, and provides a guide for decision making about content, instructional methods, and assessment.

“*Department*” means the same as defined in Iowa Code section 256C.1.

“*Developmentally appropriate*” means practices that are based upon knowledge of how children develop and learn and that are responsive to the individual child’s learning strengths, interests, and needs.

“*Director*” means the same as defined in Iowa Code section 256C.1.

“*Eligible child*” means the same as defined in Iowa Code section 256C.3(1).

“*Family education and support*” means any developmentally appropriate activity or information, provided either formally or informally to parents, that supports the success of children and their families to reach desired results.

“*Paraeducator*” means a certified educational assistant as defined in Iowa Code section 272.1(7) and licensed under 282—Chapter 24.

“*Prekindergarten program*” means an education program offered by a school district or by an accredited nonpublic school as defined in 281—Chapter 12.

“*Preschool budget enrollment*” means the same as defined in Iowa Code section 256C.5.

“*Preschool foundation aid*” means the same as defined in Iowa Code section 256C.5.

“*Preschool program*” means the statewide voluntary preschool program for four-year-old children created in Iowa Code chapter 256C.

“*Program standards*” means the expectations for the characteristics or quality of early childhood settings, centers, and schools approved by the department. Approved program standards include National Association for the Education of Young Children (NAEYC) Program Standards and Accreditation Criteria, Head Start Program Performance Standards, the Iowa Quality Preschool Program Standards (QPPS) and Criteria, or other approved program standards as determined by the department.

“*School district*” means the same as defined in Iowa Code section 257.2.

“*Staff member*” means an individual who implements preschool activities under the direct supervision of a teacher. Staff members include paraeducators, teacher aides and teacher associates. All staff members are to meet the program standards defined herein.

“*Teacher*” means an individual who holds a valid practitioner’s license issued by the board of educational examiners under Iowa Code chapter 272 and holds an endorsement from the board of educational examiners that includes prekindergarten or kindergarten. There is no obligation that the teacher be an employee of the applicant district; the teacher may be employed by a private provider or other public agency with which the district has entered into an agreement or contract under Iowa Code chapter 28E.

281—16.2(256C) Preschool program standards. Approved program standards include Head Start Program Performance Standards, Iowa Quality Preschool Program Standards and Criteria, or the NAEYC Program Standards and Accreditation Criteria. All approved local preschool programs adopt preschool program standards and meet the following criteria:

16.2(1) Personnel. A minimum of one teacher is present with eligible children during the voluntary preschool program instructional time.

16.2(2) Ratio of staff to children. At least one teacher is present in a classroom during the instructional time described in subrule 16.2(4). A minimum of one staff member and one teacher are present when 11 to 20 children are present. Staff members and teachers have reasonable line-of-sight supervision of all children.

EDUCATION DEPARTMENT[281](cont'd)

16.2(3) *Maximum class size.* There are no more than 20 children per classroom.

16.2(4) *Instructional time.* Eligible children receive instructional time as established by Iowa Code section 256C.3(3) “f” that meets the needs of the child and is directly related to the program’s curriculum, such time to be exclusive of recess.

16.2(5) *Child learning standards.* The preschool program demonstrates how the curriculum, assessment, staff development, and instructional strategies are aligned to the Iowa Early Learning Standards. The teacher provides instruction on the skills and knowledge included in the Iowa Early Learning Standards.

16.2(6) *Curriculum.* The preschool program adopts a research-based or evidence-based curriculum.

16.2(7) *Assessment.* The preschool program adopts a research-based or evidence-based assessment to provide information on children’s learning and development.

16.2(8) *Staff development.* The school district complies with Iowa Code section 256C.3(4) “d.” The district makes available to any teacher of a statewide voluntary preschool program who is not employed by the district staff development that the district offers to the district’s personnel to maintain the skills appropriate to the teacher’s role. The school district ensures that staff members for the program are provided appropriate staff development in early childhood education.

16.2(9) *Space.* The preschool program provides adequate and appropriate space and facilities in accordance with program standards.

16.2(10) *Materials.* The preschool program provides instructional materials and supplies consistent with the program standards and Iowa Early Learning Standards.

16.2(11) *Meals.* The preschool program provides adequate and appropriate meals or snacks in accordance with program standards.

16.2(12) *Parent involvement.* The preschool program involves families through at least one home visit by the licensed teacher of the child, one family night, and at least two family-teacher conferences per year. Family involvement may include volunteering in the classroom, orientation to the preschool program, parent education, general communications, or other activities.

16.2(13) *Integration of other preschool programs.* The preschool program complies with Iowa Code section 256C.3(3) “d.”

16.2(14) *Comprehensive services.* The preschool program may collaborate with other agencies for the provision of the following:

- a. Quality, developmentally appropriate early learning experiences;
- b. Extended day child care;
- c. Transportation;
- d. Developmental screening, including health, hearing, and vision screening;
- e. Referral to other agencies providing health insurance, health care, immunizations, nutrition services, and mental health and oral health services; and
- f. Family education and support.

281—16.3(256C) Collaboration.

16.3(1) *Teachers.* The teacher complies with Iowa Code section 256C.3(2) “b.”

16.3(2) *Programs.* The program complies with Iowa Code section 256C.3(3) “e.” In doing so, the program makes available resources, including those described in subrule 16.2(14), necessary to meet the needs of the child. Preschool programs collaborate to ensure that children receiving care from other approved child care arrangements can participate in the voluntary preschool program with minimal disruptions to the child.

16.3(3) *Districts.* The school district complies with Iowa Code section 256C.3(4) “a” and “b.”

281—16.4(256C) Applications for funding. All applications are submitted in a manner directed by the department; address the standards found in rules 281—16.2(256C), 281—16.3(256C), and 281—16.9(256C); and contain a plan describing how they will fully meet the program standards within one year of the funding award. Points are awarded based on the applicant’s provision of the following information:

EDUCATION DEPARTMENT[281](cont'd)

1. Preschool program summary;
2. Research documentation;
3. Identification and documentation of local population;
4. Needs assessment of local programs providing services;
5. Evidence of collaboration with local agencies to provide comprehensive services; and
6. Letters of community support.

281—16.5(256C) Application process.**16.5(1) Request for applications.**

a. The department announces the commencement of the application period through public notice on the department's website and the department's relevant regular electronic publications.

b. Applications for preschool program funding are available on the department's website and otherwise distributed by the department upon request.

c. All applications are to be submitted to the department in accordance with instructions accompanying the applications.

16.5(2) Application process.

a. Applications that do not contain the specified information or that are not received by the specified date will not be considered.

b. The department has the final discretion to award funds.

16.5(3) Notification of applicants. The department notifies all applicants within 45 days following the due date for receipt of applications whether their requests are funded. The department is to provide to each successful applicant a contract to be signed by an official with authority to bind the applicant and to be returned to the department prior to the distribution of any funds under this program.

281—16.6(256C) Removal of approval.

16.6(1) Removal by agreement. The contract may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The applicant does not incur new obligations for the terminated portion after the effective date and will cancel as many outstanding obligations as possible.

16.6(2) Department removal for cause.

a. The department may remove approval in whole or in part at any time before the date of completion whenever it is determined by the department that the applicant has failed to comply substantially with the conditions of the contract. The applicant will be notified in writing by the department of the reasons for the removal of approval and the effective date. The applicant does not incur new obligations for the portion for which approval is removed after the effective date of removal and will cancel as many outstanding obligations as possible.

b. The department may remove approval in whole or in part by June 30 of the current fiscal year in the event that the applicant has not attained the program standards.

16.6(3) Responsibility of applicant after removal of approval. Within 45 days of the removal of approval, the applicant will supply the department with a financial statement detailing all costs incurred up to the effective date of the removal. If the applicant expends moneys for other than specified budget items approved by the department, the applicant will return moneys for unapproved expenditures.

281—16.7(256C) Appeal of application denial, termination, or removal of approval. Any applicant may appeal to the director of the department the denial of a properly submitted preschool program funding application or the unilateral termination or removal of an approval. The jurisdictional criteria and procedures found in 281—Chapter 7 apply to any appeal of denial.

281—16.8(256C) Finance.

16.8(1) General. The department implements Iowa Code sections 256C.4 and 256C.5.

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16.8(2) *Aid payments.* Preschool foundation aid is paid as part of the state aid payments made to school districts in accordance with Iowa Code section 257.16, except that it is not necessary that an eligible child be a resident of the district in which the child is enrolled voluntarily in the approved local program.

16.8(3) *Separate accounting.* All state funding received under this program is accounted for by the applicant district separately from other state aid payments.

16.8(4) *Restriction on supplanting.* State funding received under this program is used to supplement, not supplant, other public funding received by the applicant district as the result of the participation of any eligible children in other state or federal funded preschool programs. This restriction is applicable only for costs related to instructional time as described in subrule 16.2(4).

16.8(5) *Transportation.* Children participating in preschool in an approved local program under Iowa Code chapter 256C may be provided transportation services. However, transportation services provided to such children are not eligible for reimbursement under this chapter.

16.8(6) *Open enrollment not applicable.* Iowa's open enrollment statute (Iowa Code section 282.18) is not applicable for the parent or guardian of an eligible child who desires to access an approved program in a school district not of the child's residence. Approved programs are open to all eligible Iowa children, regardless of a child's district of residence. Accordingly, it is neither necessary for a parent or guardian to file an open enrollment application, nor will open enrollment applications for approved preschool programs be allowed. Participation in an approved program in a school district not of the child's residence does not create an entitlement to continuous open enrollment under Iowa Code section 282.18.

281—16.9(256C) *Accountability.* An approved local program meets the minimum program specifications in this chapter. The department encourages approved local programs to exceed the minimum standards as programs work toward ongoing improvement. The department monitors each local program's compliance with this rule.

16.9(1) *Annual reports.* Each approved local program provides, on forms provided by the department, an annual report to the department regarding program specifications. Failure to submit an annual report by the date specified therein results in suspension of financial payments to the applicant until such time as the report is received by the department.

16.9(2) *Performance measures.* The approved local program collects data on all of the following:

- a. The number of eligible children participating in the preschool program.
- b. The number of eligible children participating in a program that meets the criteria of NAEYC, Head Start, or QPPS Standards and Criteria.

c. The curriculum.

d. The assessment as defined in rule 281—16.1(256C).

e. The number of teachers.

f. The kindergarten literacy assessment as defined in Iowa Code section 279.60.

16.9(3) *Noncompliance with program specifications.* If the department determines that a participating district does not meet one or more of the accountability specifications provided in rule 281—16.2(256C), the department informs the school district of appropriate actions to be taken by the school district. The school district submits an action plan that is approved by the department and contains reasonable timelines for coming into compliance. The department will facilitate technical assistance when requested. If the department determines that the school district is not taking the necessary actions in a timely manner, the director removes approval and terminates the school district's contract as provided in subrule 16.6(2). Until such time as the school district's contract is terminated, the school district may continue to participate in the statewide voluntary preschool program.

16.9(4) *Monitoring.* The department develops a monitoring system based on the annual reporting and performance measures described in this rule to be implemented no later than one year after funding is first provided under this chapter. The monitoring system ensures that programs meet the provisions herein requiring a properly licensed teacher and adoption of program standards and is designed to follow the academic progress of children who voluntarily participate in the statewide preschool program as

EDUCATION DEPARTMENT[281](cont'd)

the children progress through elementary and secondary grade levels. If feasible, it is the intent of the department to include postsecondary monitoring of such children.

These rules are intended to implement Iowa Code chapter 256C.

ARC 7091C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to school fees and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 18, “School Fees,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7(20).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.7(20).

Purpose and Summary

As part of the Department of Education’s review of rules under Executive Order 10, the Department identified several rules that recite statutory text or are aspirational in nature. They are proposed to be removed in this rulemaking.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa. The rulemaking maintains the core status quo responsibilities for schools.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

EDUCATION DEPARTMENT[281](cont'd)

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 9:30 to 10 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Room 1070 Des Moines Roosevelt High School 4419 Center Street Des Moines, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 18 and adopt the following **new** chapter in lieu thereof:

CHAPTER 18
SCHOOL FEES

281—18.1(256) Overview. No Iowa student enrolled in a public school may be excluded from participation in or denied the benefits of course offerings and related activities due to the student's or the student's parent's or guardian's financial inability to pay a fee associated with the class, program, or activity.

281—18.2(256) Fee policy. The board of directors (board) of a public school district (district) shall adopt a policy regarding the charging and collecting of fees for course offerings and related activities and for transportation provided to resident students who are not entitled to transportation under Iowa Code section 285.1, apply its policy to any fees charged, and develop procedures to implement its policy.

281—18.3(256) Eligibility for waiver, partial waiver or temporary waiver of student fees. The policy mandated by rule 281—18.2(256) is to include provisions for granting a waiver, partial waiver, or temporary waiver of student fees upon application by the student.

18.3(1) Waivers. At minimum, the policy is to include the following provisions relating to eligibility for the waivers:

a. Waiver. A student is granted a waiver of all fees covered by this chapter if the student or the student's family meets the financial eligibility criteria for free meals offered under the child nutrition program, or for the family investment program (FIP), or for transportation assistance under open enrollment provided under 281—Chapter 17, or if the student is in foster care under Iowa Code chapter 232.

b. Partial waiver. A student is granted either a waiver of all student fees or a partial waiver of student fees if the student or the student's family meets the financial eligibility criteria for reduced price meals offered under the child nutrition program, based on a sliding scale related to an ability to pay.

EDUCATION DEPARTMENT[281](cont'd)

c. Temporary waiver. At the discretion of the district, a student may be granted a temporary waiver of a fee or fees in the event of a temporary financial difficulty in the student's immediate family. A temporary waiver may be applied for and granted at any time during a school year. The maximum length of a temporary waiver is one year.

d. Fees waived not collectable. When an application for any fee waiver is granted, the fee or fees waived under the application are not collectable.

e. Distribution of policy and applications. At the time of registration or enrollment, the district distributes procedures on charging fees, a written notice of fees charged to each student, the waiver and reduction policy and procedures including income guidelines, and the application for waiver. For students or families whose primary language is other than English, the district provides a copy of the materials in the student's native language or arranges for translation of the materials within a reasonable time.

f. Annual application. The request for a fee waiver is made on application forms provided by the department of education. An application can be received at any time but may only be renewed at the beginning of the school year.

18.3(2) Applications. The procedures are to include a description of the confidential application process for the waiver and provide that a written decision be issued to the applicant within a reasonable time. If the application is denied, the decision will include the reason for the denial.

18.3(3) Review and appeals. The procedures are to include a provision for a confidential review of any denial by a person or persons designated by the board upon request and the manner in which an appeal may be taken. If the decision on review is again to deny the application, the decision maker will notify the applicant in writing that the applicant may appeal the denial to the director of the department of education by filing a notarized statement within 30 days of the applicant's receipt of the district's final decision.

281—18.4(256) Fees covered. Fines assessed for damage or loss to school property are not fees and need not be waived. Nothing in this chapter authorizes the charging of a fee for which there is no authority in law.

These rules are intended to implement Iowa Code section 256.7(20).

ARC 7092C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to charter schools
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 19, "Charter Schools," and adopt a new chapter with the same title, and to rescind Chapter 68, "Iowa Public Charter and Innovation Zone Schools," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 256E and 256F.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 256E and 256F.

Purpose and Summary

As part of the Department's review of rules under Executive Order 10, the Department determined that several of the rules in both Chapters 19 and 68 recite statutory text, are obsolete, or are aspirational

EDUCATION DEPARTMENT[281](cont'd)

in nature. Because Chapter 68 will only apply to two legacy charter schools and none in the future, the Department proposes consolidating these two chapters into one for monitoring purposes.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023
9:30 to 10 a.m.

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

October 24, 2023
5 to 5:30 p.m.

Room 1070
Des Moines Roosevelt High School
4419 Center Street
Des Moines, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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:

EDUCATION DEPARTMENT[281](cont'd)

ITEM 1. Rescind 281—Chapter 19 and adopt the following **new** chapter in lieu thereof:

CHAPTER 19
CHARTER SCHOOLS

281—19.1(256E) General. All charter schools in Iowa are a part of the state’s program of public education. Charter schools established on or after July 1, 2021, are subject to Iowa Code chapter 256E and Division I of this chapter. Charter schools established prior to July 1, 2021, continue to operate under and are subject to the provisions of Iowa Code chapter 256F and Division II of this chapter. The department monitors the effectiveness of charter schools and implements the applicable provisions of this chapter.

DIVISION I
CHARTER SCHOOLS ESTABLISHED ON OR AFTER JULY 1, 2021

281—19.2(256E) Establishment of charter schools. A charter school may be established by either of the following methods: a school board-state board model, pursuant to Iowa Code section 256E.4, or a founding group-state board model, pursuant to Iowa Code section 256E.5. The state board of education is the only authorizer of charter schools under this division.

281—19.3(256E) Purpose of a charter school. A charter school established under this division must intend to accomplish one or more of the purposes set forth in Iowa Code section 256E.1(3).

281—19.4(256E) Definitions. The definitions set forth in Iowa Code section 256E.2 apply to this division. In addition, “parent” includes a child’s biological or adoptive parent, as well as anyone authorized by state or federal law or court order, judgment, or decree to make educational decisions for the child.

281—19.5(256E) General application provisions. The following general application provisions apply to both the school board-state board and founding group-state board charter establishment models.

19.5(1) Instructions. The instructions for completing an application includes or otherwise informs applicants of the content listed in Iowa Code sections 256E.4(3) and 256E.5(3).

19.5(2) Review. In reviewing and evaluating charter school applications, the state board employs procedures, practices, and criteria consistent with nationally recognized principles and standards for reviewing charter school applications. Each application review includes:

- a. A thorough evaluation of the written application.
- b. An in-person interview with the founding group.
- c. An opportunity in a public forum for local residents to learn about and provide input on each application.

19.5(3) State board actions following review. Following review of a charter school application and completion of the process under subrule 19.5(2), the state board does all of the following:

- a. Approves a charter school application only if the founding group has demonstrated competence in each element of the approval criteria and if the founding group is likely to open and operate a successful charter school.
- b. Makes application decisions on documented evidence collected through the application review process.
- c. Adheres to the policies and criteria that are transparent, are based on merit, and avoid conflicts of interest or any appearance thereof.

19.5(4) Application approval. The state board approves a charter school application if the application satisfies this division.

- a. The state board will approve or deny a charter school application no later than 75 calendar days after the application is received.

EDUCATION DEPARTMENT[281](cont'd)

b. If the state board denies an application, the state board will provide notice of denial to the founding group in writing within 30 days after the state board's action, specifying the exact reasons for denial and provide documentation supporting those reasons.

c. An approval decision may include, if appropriate, reasonable conditions that the founding group meet before a charter school contract may be executed pursuant to Iowa Code section 256E.6.

d. An approved charter application does not serve as a charter school contract.

e. A decision of the state board relating to an application under this rule is not appealable.

f. An unsuccessful applicant under this rule may subsequently reapply to the state board.

19.5(5) *Application deadlines and timelines.* For school years on or after the school year beginning on July 1, 2023, applications submitted to the state board on or before November 1 of the preceding school year will be considered for approval for the establishment of the charter school for the next school year.

281—19.6(256E) School board-state board model. Iowa Code section 256E.4 governs charter schools founded under this model.

19.6(1) *School board-state board model application.* An application submitted under this rule includes all of the items related to the proposed charter school that are set forth in Iowa Code section 256E.4(4).

19.6(2) *Conversion of existing attendance center.* If the founding group proposes to establish a charter school by converting an existing attendance center of the school district, Iowa Code section 256E.4(5) governs such proposal.

281—19.7(256E) Founding group-state board model. Iowa Code section 256E.5 governs charter schools founded under this model. An application submitted under this rule includes all of the items related to the proposed charter school that are set forth in Iowa Code section 256E.5(4).

281—19.8(256E) Charter school contract. Iowa Code section 256E.6 governs contracts with approved charter schools. A contract may be amended by the founding group and the state board after the founding group complies with subrule 19.5(2) with reference to the proposed amendment.

281—19.9(256E) Performance framework. The performance provisions within each charter school's contract are governed by Iowa Code section 256E.9. This framework includes the items in Iowa Code section 256E.9(1), including student academic growth and proficiency in English language arts on statewide outcome assessments, student academic growth and proficiency in mathematics on statewide outcome assessments, and conditions for learning data (as mandated by Iowa's state plan under the Every Student Succeeds Act).

281—19.10(256E) General operating powers and duties. In order to fulfill the charter school's public purpose, a charter school established under this division is organized as a nonprofit education organization. It has the powers, duties, and exemptions specified in Iowa Code section 256E.7. For purposes of "applicable federal, state, and local health and safety requirements," that term includes mandatory reporting of child abuse under Iowa Code section 232.69, investigation of abuse by school employees under 281—Chapter 102, and seclusion and restraint under 281—Chapter 103.

281—19.11(256E) Funding.

19.11(1) *General.* Charter school funding is governed by Iowa Code section 256E.8.

19.11(2) *Enrollment estimates.* If necessary, and pursuant to paragraph 19.11(2) "a," funding amounts determined under this rule for the first school year of a new charter school are to be based on enrollment estimates for the charter school included in the charter school contract. The process set out in paragraph 19.11(2) "b" is to be used for determining estimated enrollments for charter school funding purposes in school years after the first year of a charter school. Amounts paid using estimated enrollments are to be reconciled during subsequent payments based on actual enrollment of the charter school during each school year pursuant to paragraph 19.11(2) "c."

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a. Enrollment estimates for the first school year are to be based on the number of enrolled students reported to the department through the student information system by August 5 of the school year.

b. Enrollment estimates for school years following the first school year are to be based on the number of enrolled students reported to the department through the student information system by August 5 of the school year.

c. Estimated payments will be reconciled, at minimum, based on actual enrollment information reported by the charter school pursuant to Iowa Code sections 256.9(44) and 257.6.

19.11(3) *Federal funds.* If a charter school is eligible for federal funds, those federal funds will be calculated and distributed based on relevant federal statute and regulation.

19.11(4) *Notification to districts of residence.* For purposes of this rule, each charter school notifies the district of residence of each child in a time and manner that allow the district of residence to include the child in the district's certified enrollment and any other relevant enrollment data.

281—19.12(256E) Oversight—corrective action—contract renewal—revocation.

19.12(1) *General.* The state board's monitoring, oversight, remedial actions, and enforcement actions (up to and including revocation) are governed by Iowa Code section 256E.10.

19.12(2) *Renewal guidance.* The state board's renewal application guidance will, at a minimum, include the criteria that will be used when assessing charter school contract renewal decisions and provide an opportunity for the charter school to:

a. Present additional evidence beyond the data contained in the performance report.

b. Describe improvements undertaken or planned for the charter school.

c. Describe the charter school's plans, including any proposed modifications, for the next charter school contract term.

19.12(3) *Revocation or nonrenewal.*

a. A charter school contract may be revoked at any time or not renewed if the state board determines that the charter school did any of the following:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures under the charter school contract or this division.

(2) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter school contract.

(3) Failed to meet generally accepted standards of fiscal management.

(4) Violated a provision of law from which the charter school was not exempted.

b. A decision to revoke or to not renew a charter school contract may only be by resolution of the state board and is to clearly state the reasons for the revocation or nonrenewal.

19.12(4) *Contract revocation and nonrenewal standards and procedures.* The state board will develop charter school contract revocation and nonrenewal standards and procedures that do all of the following:

a. Provide the charter school with a timely notice of the possibility of revocation or nonrenewal and of the reasons therefor.

b. Allow the charter school a reasonable period of time in which to prepare a response to any notice received.

c. Provide the charter school an opportunity to submit documents and give testimony challenging the decision to revoke the charter school contract or the decision to not renew the contract.

d. Allow the charter school the opportunity to hire legal representation and to call witnesses.

e. Permit the audio or video recording of such proceedings described in paragraphs 19.12(4) "c" and "d."

f. Require a final decision to be conveyed in writing to the charter school.

281—19.13(256E) Procedures for charter school closure—student enrollment. Charter school closures are governed by Iowa Code section 256E.11. Prior to any charter school closure decision, the state board develops a charter school closure protocol to ensure timely notice to parents and guardians, provide for the orderly transition of students and student records to new schools, and provide proper

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disposition of school funds, property, and assets in accordance with this division. The protocol specifies necessary actions and timelines and identifies responsible parties for each such action.

281—19.14(256E) Reports.

19.14(1) Annual report. Each charter school prepares and files an annual report with the department, on or before October 1 and including data from the prior school year, pursuant to Iowa Code section 256E.12(1) that includes:

- a. The charter school's mission statement, including a vision statement and goals, as well as data measuring goal attainment.
- b. Student demographics, disaggregated by grade level and protected characteristics.
- c. Attendance statistics and dropout rate (average daily attendance, dropout rate, student mobility).
- d. Graduation data, including four-year and five-year graduation rates, credit accrual, and number of students on track for graduation.
- e. Student achievement, including annual academic growth and proficiency, including Iowa statewide assessment of student progress (ISASP) data, other assessment data, and aggregate assessment test scores.
- f. Financial performance, including projections of financial stability.
- g. The number and qualifications of teachers and administrators.
- h. Sustainability data, including enrollment trends, staff satisfaction, and parent and student satisfaction.

19.14(2) Annual financial report. Each charter school submits a Certified Annual Report consistent with 281—Chapter 99. The annual financial report is due to the department by September 15.

19.14(3) Report to general assembly. The state board will prepare and file a report with the general assembly annually by December 1 as required by Iowa Code 256E.12(2).

281—19.15(256E) Operation of existing charter schools. Charter schools established pursuant to Iowa Code chapter 256F continue to operate pursuant to that chapter and are not subject to the requirements of this division or Iowa Code chapter 256E.

These rules are intended to implement Iowa Code chapter 256E.

DIVISION II
CHARTER SCHOOLS ESTABLISHED BEFORE JULY 1, 2021

281—19.16(256F) Definitions. The definitions in Iowa Code section 256F.2 apply to this division. In addition, “advisory council” means a council appointed by the school board of a charter school. With respect to a charter school, no more than one member of the council may be a member of the school board; a district's school improvement advisory committee may also serve as its advisory council. All advisory councils are subject to the provisions of Iowa Code chapters 21 and 22.

“Family unit” means a household in which resides one or more students enrolled at the existing public school that is the subject of a charter school application.

281—19.17(256F) Operating requirements. Charter schools are governed by Iowa Code sections 256F.4(2) through (8), 256F.6, and 256F.7.

281—19.18(256F) Ongoing review by the department. The department periodically reviews each charter school to ensure continuing compliance with the charter school's contract. The department may schedule mandatory meetings with the administrators of all charter schools at the department's sole discretion. Iowa Code section 256F.10 governs necessary reports under this division.

281—19.19(256F) Renewal of charter. The school board that established the charter school, in the absence of revoking the charter pursuant to rule 281—19.20(256F), takes affirmative action to renew a charter school contract after the initial four-year contract for a charter school and at the end of each renewal period. The school board shall hold a public hearing on the issue of renewal and submit to

EDUCATION DEPARTMENT[281](cont'd)

the department a copy of the minutes of the public hearing showing that a majority of the school board members voted in favor of renewal of the charter. Any action to renew a charter specifies the number of years, which may only be four years or less, for which the charter was renewed by the school board.

A school board will submit a new application to the department if the board modifies any of the terms of the original charter.

281—19.20(256F) Revocation or nonrenewal of charter. Iowa Code sections 256F.8 and 256F.9 govern revocation or nonrenewal of a charter under this division.

281—19.21(256F) Transition—operation of existing charter schools. Charter schools established pursuant to this division and Iowa Code chapter 256F prior to July 1, 2021, may continue to operate pursuant to those terms and are not subject to Iowa Code chapter 256E or Division I of this chapter. No new charter or innovation zone school may be created under this division.

These rules are intended to implement Iowa Code chapter 256F.

ITEM 2. Rescind and reserve **281—Chapter 68.**

ARC 7087C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to educating homeless children and youth and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 33, “Educating Homeless Children and Youth,” Iowa Administrative Code, and to adopt a new Chapter 33 with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431).

Purpose and Summary

As part of the Department of Education’s review of rules under Executive Order 10, the Department identified several instances where the rules duplicate language from the Iowa Code or the United States Code, including the definition of “homeless child or youth” and the responsibilities of the local homeless coordinator. In this proposed rulemaking, that language is removed and the rules are simplified.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

EDUCATION DEPARTMENT[281](cont'd)

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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 10 to 10:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Room 1070 Des Moines Roosevelt High School 4419 Center Street Des Moines, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33
 EDUCATING HOMELESS CHILDREN AND YOUTH

281—33.1(256) Definitions.

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

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

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

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

EDUCATION DEPARTMENT[281](cont'd)

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

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

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

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

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

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

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

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

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

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

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

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

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

33.3(3) Upon the enrollment of a homeless child or youth, a school district will accept copies of records, or other evidence of placement provided by the homeless child, youth, or the parent or guardian of the homeless child or youth, for purposes of immediate placement and delivery of education and

EDUCATION DEPARTMENT[281](cont'd)

support services. Thereafter, the receiving school will request copies of the official records from the sending school. The receiving school shall not dismiss or deny further education to the homeless child or youth solely on the basis that the prior school records are unavailable.

281—33.4(256) Immunization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The district in which the homeless child or youth is actually residing, or

EDUCATION DEPARTMENT[281](cont'd)

b. The district of origin.

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

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

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

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

281—33.8(256) Dispute resolution.

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

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

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

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

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

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

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

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

33.9(1) *General.* A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of "homeless child or youth" in these rules shall not be denied access to a free, appropriate public education solely on the basis of transportation. The

EDUCATION DEPARTMENT[281](cont'd)

necessity for and feasibility of transportation are to be considered, however, in deciding which of two districts would be in the best interests of the homeless child or youth. The dispute resolution procedures in rule 281—33.8(256) apply to disputes arising over transportation issues.

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

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

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

281—33.10(256) School services.

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

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

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

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

ARC 7093C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to veterans' education and training
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 51, "Approval of On-the-Job Training Establishments Under the Montgomery G.I. Bill," to adopt a new Chapter 51, "Veterans' Education and Training," and to rescind Chapter 52, "Approval of Educational Institutions for the Education and Training of Eligible Veterans Under the Montgomery G.I. Bill," Iowa Administrative Code.

Legal Authority for Rulemaking

EDUCATION DEPARTMENT[281](cont'd)

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 38 CFR Part 21.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined that all of the rules in Chapters 51 and 52 restate federal regulatory requirements. Some rules, such as approval of high schools, are obsolete. Those duplicative and obsolete rules are proposed to be removed, and the two chapters are proposed to be consolidated.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 10 to 10:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Room 1070 Des Moines Roosevelt High School 4419 Center Street Des Moines, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

EDUCATION DEPARTMENT[281](cont'd)

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 281—Chapter 51 and adopt the following **new** chapter in lieu thereof:

TITLE X
VETERANS' TRAINING

CHAPTER 51
VETERANS' EDUCATION AND TRAINING

281—51.1(256) Apprenticeships and on-the-job training programs for veterans. For approval of apprenticeships and on-the-job training programs, the following provisions of the Code of Federal Regulations, as of October 4, 2023, are incorporated by reference: 38 CFR Sections 21.4001 through 21.4009, 21.4150 through 21.4155, 21.4200 through 21.4206, 21.4209 through 21.4216, 21.4234, 21.4261, and 21.4262.

281—51.2(256) Educational institutions. For approval of educational institutions, the following provisions of the Code of Federal Regulations, as of October 4, 2023, are incorporated by reference: 38 CFR Sections 21.4001 through 21.4009, 21.4150 through 21.4155, 21.4200 through 21.4206, 21.4209 through 21.4216, 21.4232 through 21.4236, 21.4250 through 21.4259, and 21.4263 through 21.4268.

These rules are intended to implement 38 CFR Part 21.

ITEM 2. Rescind and reserve **281—Chapter 52.**

ARC 7094C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to school breakfast and lunch program
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 58, "School Breakfast and Lunch Program; Nutritional Content Standards for Other Foods and Beverages," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 283A.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined there are several portions of the current chapter that restate federal regulatory language. The nutritional content standards chart (current rule 281—58.11(256)) is obsolete based on changes in federal law. The Department proposes removing that language.

EDUCATION DEPARTMENT[281](cont'd)

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 10 to 10:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Room 1070 Des Moines Roosevelt High School 4419 Center Street Des Moines, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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:

EDUCATION DEPARTMENT[281](cont'd)

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

TITLE XII
PROGRAMS ADMINISTRATION

CHAPTER 58

SCHOOL BREAKFAST AND LUNCH PROGRAM; NUTRITIONAL
CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

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

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

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

ARC 7081C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to gifted and talented programs
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 59, “Gifted and Talented Programs,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 257.42(4).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 257.42 through 257.49.

Purpose and Summary

As part of the Department of Education’s review of rules under Executive Order 10, the Department proposes eliminating several instances where statutory text was reproduced verbatim, reducing a large number of restrictive terms, and resequencing and consolidating certain subrules to improve readability. The Department proposes removing certain language from the staff qualifications subrule (the reference to what a program teacher-coordinator is entitled to do) because that matter is within the jurisdiction of the Board of Educational Examiners.

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

EDUCATION DEPARTMENT[281](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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 9:30 to 10 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Room 1070 Des Moines Roosevelt High School 4419 Center Street Des Moines, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 59 and adopt the following **new** chapter in lieu thereof:

CHAPTER 59
GIFTED AND TALENTED PROGRAMS

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

EDUCATION DEPARTMENT[281](cont'd)

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

“*Department*” means the department of education.

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

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

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

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

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

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

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

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

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

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

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

59.4(2) *Development of curriculum and instructional strategies.* The program of instruction will consist of content and teaching strategies that reflect the accelerative pace, intellectual processes and creative abilities that characterize gifted and talented students. A linkage among the selection of students, the anticipated student outcomes and the special instructional programs will be evident. Learning activities will provide for the development of skills that are beyond the scope of the regular classroom, introduce advanced concepts and contents, and offer students a greater latitude of inquiry than would be possible without the specialized instructional program. Specialized instructional activities are those not ordinarily found in the regular school program and may include the following:

- a. A special curriculum supplementing the regular curriculum, using a high level of cognitive and affective concepts and processes.
- b. Flexible instructional arrangements, such as special classes, seminars, resource rooms, independent study, student internships, mentorships, research field trips, and research centers.

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

59.4(4) *Personalized education plan.* Best practice dictates that the services provided for each student placed in a gifted and talented program be contained in a written, personalized gifted and

EDUCATION DEPARTMENT[281](cont'd)

talented plan. Personalized education plans should be in writing and reviewed at periodic intervals in accordance with the changing needs of the student. The following items are suggested for inclusion in a student's personalized education plan, but this is neither a mandatory nor an exhaustive list:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EDUCATION DEPARTMENT[281](cont'd)

teacher or a coordinator of programs for gifted and talented students from the prekindergarten level through grade 12.

59.4(10) Fiscal and accountability principles.

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

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

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

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

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

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

a. Assisting local school district personnel in the interpretation of available student data.

b. Assistance in the development of the identification plan.

c. Providing for psychological testing in individual cases when available data contains significant inconsistencies or in other circumstances when additional data may be necessary for determining the appropriateness of the student placement.

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

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

ARC 7086C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to programs for students who are English learners
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 60, "Programs for Students Who Are English Learners," Iowa Administrative Code, and to adopt a new Chapter 60 with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 280.4.

State or Federal Law Implemented

EDUCATION DEPARTMENT[281](cont'd)

This rulemaking implements, in whole or in part, Iowa Code section 280.4.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department proposes an overall reduced regulatory footprint by eliminating obsolete language, eliminating unnecessarily restrictive language, updating other language, and providing clearer guidance for nonpublic schools that serve English learners.

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

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 9:30 to 10 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Room 1070 Des Moines Roosevelt High School 4419 Center Street Des Moines, Iowa

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

EDUCATION DEPARTMENT[281](cont'd)

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 60 and adopt the following **new** chapter in lieu thereof:

CHAPTER 60
PROGRAMS FOR STUDENTS WHO ARE ENGLISH LEARNERS

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

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

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

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

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

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

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

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

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

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

281—60.2(280) School district responsibilities.

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

EDUCATION DEPARTMENT[281](cont'd)

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

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

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

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

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

b. English learner program placement.

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

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

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

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

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

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

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

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

281—60.4(280) Nonpublic school participation.

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

60.4(2) Public school services. English as a second language and transitional bilingual programs offered by a public school district are available to students attending an accredited nonpublic school

EDUCATION DEPARTMENT[281](cont'd)

located within the district. The district obtains funding for such students in accordance with rule 281—60.5(280).

281—60.5(280) Funding.

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

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

a. A school district of residence may apply to the SBRC by the date specified in rule 289—6.3(257) for supplemental aid or a modified supplemental amount for an unusual need for funding beyond the amount generated from weighting for students identified as English learners who are provided instruction beyond the regular instruction. The eligible supplemental aid or modified supplemental amount will be calculated as the total actual English learner program expenditures for the previous year, reduced by the English learner funding generated in the previous budget year based on the English learner count on the certified enrollment in the previous year, and reduced by any other grants, carryover, or other resources provided to the district for this program.

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

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

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

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

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

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

ARC 7095C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to programs for at-risk early elementary students and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 65, "Programs for At-Risk Early Elementary Students," Iowa Administrative Code, and to adopt a new chapter with the same title.

EDUCATION DEPARTMENT[281](cont'd)

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 279.51.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 279.51.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined that the current midyear report does not add value and the current rules contain unnecessarily restrictive language. The Department proposes removing that language.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 10 to 10:30 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Room 1070 Des Moines Roosevelt High School 4419 Center Street Des Moines, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

EDUCATION DEPARTMENT[281](cont'd)

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 281—Chapter 65 and adopt the following **new** chapter in lieu thereof:

CHAPTER 65
PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

281—65.1(279) Definitions.

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

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

“Department” means the department of education.

“Early elementary grades” means kindergarten through grade three.

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

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

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

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

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

281—65.6(279) Evaluation. The awardee will cooperate with the department and provide requested information to determine how well the outcomes in rule 281—65.4(279) are being met. Statewide leadership teams will review final reports and provide useful feedback about buildings to awardees.

EDUCATION DEPARTMENT[281](cont'd)

This feedback will include information about innovative components to building programs. Buildings demonstrating innovation will be given preference the following grant cycle.

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

281—65.8(279) Termination.

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

65.8(2) Termination for cause.

a. The award may be terminated, in whole or in part, at any time before the date of completion, whenever the department determines that the awardee has failed to comply substantially with the conditions of the award. The awardee will be notified in writing by the department of the reasons for the termination and the effective date. The awardee shall cancel as many outstanding obligations as possible and not incur new obligations for the terminated portion after the effective date of termination.

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

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

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

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

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

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

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

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

These rules are intended to implement Iowa Code section 279.51.

ARC 7096C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to standards for school administration manager (SAM) programs and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 82, “Standards for School Administration Manager Programs,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 256.7(5) and 256.7(30)“b.”

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.7(30)“b.”

Purpose and Summary

As part of the Department’s review of rules under Executive Order 10, the Department proposes eliminating several instances where statutory text was reproduced verbatim, eliminating obsolete language, and providing flexibility on how SAM preparation programs may meet program approval standards.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

EDUCATION DEPARTMENT[281](cont'd)

October 24, 2023
10:30 to 11 a.m.

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

October 24, 2023
5:30 to 6 p.m.

Jim Hester Board Room, Second Floor
Davenport Schools, Achievement Service Center
1702 North Main Street
Davenport, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 82 and adopt the following **new** chapter in lieu thereof:

CHAPTER 82 STANDARDS FOR SCHOOL ADMINISTRATION MANAGER PROGRAMS

281—82.1(272) Definitions.

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

“*Department*” means the department of education.

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

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

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

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

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

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

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

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

EDUCATION DEPARTMENT[281](cont'd)

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

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

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

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

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

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

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

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

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

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

281—82.6(272) Assessment system and organization evaluation standard. An organization's assessment system monitors individual candidate performance and uses the performance data in concert with other information to evaluate and improve the organization and its program. The actual annual evaluation of each SAM is performed by the administrator or the administrator's designee, and the evaluation is conducted in accordance with the standards set forth in rule 281—82.7(272). The organization will annually report data to the department, as determined by the department. The department will periodically conduct a survey of schools or facilities that employ authorized SAMs to ensure that the schools' and facilities' needs are adequately met by the programs and the approval process herein.

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

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

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

- a. Background information on SAMs.
- b. Understanding of the instructional and management descriptors.
- c. Introduction and practice using approved time-tracking software.
- d. First responders and delegation responsibilities.
- e. Job responsibilities and variations.
- f. Daily meeting protocols.
- g. Training of office staff on communication with others.

EDUCATION DEPARTMENT[281](cont'd)

- h.* Use of reflective questions.
- i.* Understanding of conflict resolution skills.
- j.* Action planning for building implementation and timelines.
- k.* SAM/administrator rubric process.

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

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

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

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

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

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

281—82.9(272) Approval of program changes and flexibility of programs. Upon application by an organization, the director may approve minor additions to or changes within the organization's approved SAM program. When an organization proposes a revision that exceeds the primary scope of the organization's program, the revision becomes operative only after approval by the state board. Districts may have a variety of programs and job descriptions that meet the standards of a SAM system but must receive permission to make changes to those programs in the manner prescribed. The department will seek maximum flexibility in systems allowed to meet the goals of this program. Essential components of any approved SAM program include readiness, data collection of administrator time, ongoing training of the program administrator, use of time-tracking software and ongoing coaching for participants in the program.

These rules are intended to implement Iowa Code section 256.7(30) "b."

ARC 7097C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to financial incentives for national board certification and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 84, "Financial Incentives for National Board Certification," 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 section 256.44.

EDUCATION DEPARTMENT[281](cont'd)

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.44.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined that the current subrule 84.3(4) is obsolete because the issue is adequately addressed through the application process, and that the current chapter contains unnecessarily repetitive and restrictive language. The Department proposes removing this language.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023
10:30 to 11 a.m.

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

October 24, 2023
5:30 to 6 p.m.

Second Floor, Jim Hester Board Room
Davenport Schools, Achievement Service Center
1702 North Main Street
Davenport, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

EDUCATION DEPARTMENT[281](cont'd)

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 281—Chapter 84 and adopt the following **new** chapter in lieu thereof:

CHAPTER 84
FINANCIAL INCENTIVES FOR NATIONAL BOARD CERTIFICATION

281—84.1(256) Definitions. For the purpose of these rules, the following definitions apply:

“A person who receives a salary as a classroom teacher” means a teacher employed by a school district in Iowa who receives any salary compensation from the school district for providing classroom instruction to students in the district.

“Department” means the Iowa department of education.

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

“Employed by a school district in Iowa” means a teacher employed in a nonadministrative position in an Iowa school district pursuant to a contract issued by a board of directors of a school district under Iowa Code section 279.13 and any full-time permanent substitute teacher who is employed under individual contracts not included under Iowa Code section 279.13 but who is receiving retirement and health benefits as part of the substitute teacher's contract.

“National Board Certification” or *“NBC”* is a nationwide certification program administered by the National Board for Professional Teaching Standards.

“National Board for Professional Teaching Standards” or *“NBPTS”* is a private nonprofit organization whose goal is to develop professional standards for early childhood, elementary and secondary school teaching. NBPTS administers the NBC program.

“School district” means a public school district under Iowa Code chapter 274.

“Teacher” means an Iowa-licensed teacher as defined in Iowa Code section 272.1.

281—84.2(256) Registration fee reimbursement program. The department will administer a registration fee reimbursement program in each year for which the legislature appropriates funds.

84.2(1) Eligibility. Teachers seeking reimbursement under this rule will apply to the department within one year of registration with NBPTS and meet all of the following qualifications:

- a. The individual has all qualifications required by NBPTS for application for certification.
- b. The individual is a teacher employed by a school district in Iowa and receives a salary as a classroom teacher.
- c. The individual completes the department's application process, which includes verifying NBC registration.
- d. The individual has not received reimbursement from this program at any previous time.

84.2(2) Reimbursement. Teachers determined eligible will receive reimbursement in the following manner:

a. *Initial registration fee reimbursement.* Each eligible teacher will receive an initial reimbursement of one-half of the reimbursement fee charged by NBPTS or, if necessary, a prorated amount upon submission to the department of the NBC registration confirmation form provided to each teacher by NBPTS.

b. *Final registration fee reimbursement.* The final registration fee reimbursement of one-half of the reimbursement fee charged by NBPTS will be awarded when the eligible teacher notifies the department of the teacher's certification achievement and submits verification of certification. If an eligible teacher fails to receive certification, the teacher can receive the remaining reimbursement if the teacher achieves certification within three years of the initial NBC score notification.

EDUCATION DEPARTMENT[281](cont'd)

c. Amount of reimbursement. If funds are appropriated by the legislature, each eligible teacher who applies under this rule will receive the registration fee reimbursement. If in any fiscal year the number of eligible teachers who apply for the reimbursement exceeds the funds available, the department will prorate the amount of the registration fee reimbursement among all eligible teachers.

281—84.3(256) NBC annual award. If funds are appropriated by the legislature, each eligible NBC teacher will qualify for an NBC annual award. If in any fiscal year the funds appropriated are insufficient to pay the maximum amount of the annual awards to each eligible teacher or the number of teachers eligible to receive annual awards exceeds 1,100 individuals, the department will prorate funds among all eligible teachers. An eligible teacher who receives NBC certification after May 1, 2000, will receive an annual award of up to \$2,500 per year or a prorated amount for a maximum period of ten years. An otherwise-eligible teacher who possesses a teaching contract that is less than full-time will receive an award prorated to reflect the type of contract (half-time, quarter-time, etc.).

84.3(1) Eligibility. In addition to having registered with NBPTS and achieving certification within NBPTS-established timelines and policies, individuals eligible for the NBC annual award will meet all of the following qualifications:

- a.* The individual is a teacher who has attained NBC certification.
- b.* The individual is employed by a school district in Iowa and receives a salary as a classroom teacher.
- c.* The individual completes the department's annual application process, in a manner prescribed by the department.
- d.* The individual has received no more than ten annual awards, including the annual award currently sought.
- e.* The individual is applying for the award within one year of being eligible for the award.

84.3(2) Application. To receive an award under this rule, an NBC teacher will submit an application verifying eligibility for an NBC award to the department by May 1. The department will issue NBC awards to eligible NBC teachers no later than June 1.

281—84.4(256) Appeal of denial of a registration fee reimbursement award or an NBC annual award. Any applicant may appeal the denial of a registration fee reimbursement award or an NBC annual award to the director of the department. Appeals will be in writing, signed, and notarized; will contain a short and plain statement of the reasons for appeal; will be based on a contention that the process was conducted outside statutory authority or violated state or federal law, regulation or rule; and will be received within ten working days of the date of the notice of denial. The hearing and appeal procedures found in 281—Chapter 6 that govern the director's decisions will apply to proceedings under this rule. The director's decision is due within a reasonable time, not to exceed 30 days from the date of the hearing.

These rules are intended to implement Iowa Code section 256.44.

ARC 7098C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to equal employment opportunity and affirmative action and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 95, "Equal Employment Opportunity and Affirmative Action in Educational Agencies," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 19B.11.

EDUCATION DEPARTMENT[281](cont'd)

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 19B.11.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified rules that recite statutory text, contain unnecessary restrictive terms, are obsolete, or are aspirational in nature. One of the subrules raises constitutional concerns, as noted below. The Department proposes removing this language.

Current paragraph 95.5(9)"h," which provides, in part, that race or ethnic origin may be considered when "selecting applicants for interview, employment and promotion," raises constitutional concerns and concerns under Title VI. For that reason, this provision will not be readopted. If an employer wishes to consider race or national origin when making employment decisions, the employer is advised to consult with counsel.

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023
10:30 to 11 a.m.

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

October 24, 2023
5:30 to 6 p.m.

Second Floor, Jim Hester Board Room
Davenport Schools, Achievement Service Center
1702 North Main Street
Davenport, Iowa

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

EDUCATION DEPARTMENT[281](cont'd)

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 95 and adopt the following **new** chapter in lieu thereof:

CHAPTER 95
EQUAL EMPLOYMENT OPPORTUNITY
AND AFFIRMATIVE ACTION IN EDUCATIONAL AGENCIES

281—95.1(19B) Definitions. The following definitions will be applied to the rules in this chapter:

“Affirmative action” means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

“Agency” means a local school district, an area education agency or a community college.

“Availability” means the extent to which members of a racial/ethnic group, women, men or persons with disabilities are present within the relevant labor market.

“Department” means the Iowa department of education.

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

“Equal employment opportunity” means equal access to employment, training and advancement, or employment benefits regardless of race, creed, color, religion, sex, age, national origin and disability.

“Metropolitan statistical area” means a large population nucleus (over 50,000 persons) and nearby communities which have a high degree of economic and social integration with that nucleus. Each area consists of one or more entire counties.

“Person with a disability” means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment, as defined in Iowa Code section 216.2.

“Racial/ethnic minority person” means any person who is African American, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native.

“Relevant labor market” means the geographic area in which an agency can reasonably be expected to recruit for a particular job category.

“Underrepresentation” means having fewer members of a racial/ethnic group, women, men or persons with disabilities in a particular job category than would be reasonably expected based on their availability in the relevant labor market.

“Work force” means an agency's full-time and part-time employees.

281—95.2(19B) Equal employment opportunity standards. An agency's employment policies and practices shall provide equal employment opportunity to all persons. No person may be denied equal access to agency employment opportunities because of race, creed, color, religion, national origin, gender, age or disability.

281—95.3(19B) Duties of boards of directors. Each agency's board of directors will adopt policy statements and develop plans for implementation of equal employment opportunity standards and affirmative action programs, which contain the following elements.

EDUCATION DEPARTMENT[281](cont'd)

1. A policy statement outlining the board of directors' commitment to the principles of equal employment opportunity and affirmative action, which contain procedures for employees and applicants for employment to redress complaints of discrimination.
2. A written equal employment opportunity and affirmative action plan, to be evaluated and updated on a biennial basis.
3. Assignment of responsibility to an employee for coordinating the development and ongoing implementation of the plans. This employee may be the same employee who has been assigned to coordinate the agency's efforts to comply with federal laws requiring nondiscrimination in educational programs and employment.
4. Systematic input from diverse racial/ethnic groups, women, men and persons with disabilities into the development and implementation of the plans, which may include using existing advisory committees or public hearing procedures.
5. Periodic training for all staff who hire or supervise personnel on the principles of equal employment opportunity and the implementation of its affirmative action plan.
6. Maintenance of necessary records to document its affirmative action progress. An agency will report employment data to the department by racial/ethnic category, gender and disability.

281—95.4(19B) Plan components. In addition to the board policy statement, each agency's equal employment opportunity and affirmative action plan will include, at a minimum, the following components:

95.4(1) General.

- a. The name, job title, address and phone number of the employee responsible for coordinating the development and implementation of the equal employment opportunity and affirmative action plans.
- b. An administrative statement on how the agency's equal employment opportunity and affirmative action policies and plans are to be implemented, including the internal system for auditing and reporting progress, to be signed and dated by the chief executive officer of the agency.
- c. A work force analysis showing the numerical and percentage breakdown of the agency's full-time and part-time employees within each major job category (consistent with the E.E.O. 5 and E.E.O. 6 occupational categories reported to the United States Equal Employment Opportunity Commission) by racial/ethnic group, gender, and disability. For the purpose of confidentiality, disability data may be based on total agency figures, rather than those of major job categories.
- d. A quantitative analysis comparing work force analysis figures with the availability of qualified or qualifiable members of racial/ethnic groups, women, men and persons with disabilities within the relevant labor market.
- e. When underrepresentation is identified in one or more major job category, the agency will conduct a qualitative analysis to be included in the agency's affirmative action plan. The qualitative analysis is a review of employment policies and practices to determine if and where those policies and practices tend to exclude, disadvantage, restrict or result in adverse impact on the basis of racial/ethnic origin, gender, or disability. The analysis may include, but is not limited to the review of:
 - (1) Recruitment practices and policies;
 - (2) A demographic study of the applicant pool and flow;
 - (3) The rate and composition of turnover in major job categories;
 - (4) Trends in enrollment that will affect the size of the work force;
 - (5) Application and application screening policies and practices;
 - (6) Interview, selection, and placement policies and practices;
 - (7) Transfer and promotion policies and practices;
 - (8) Discipline, demotion, termination, and reduction in force policies and practices;
 - (9) Employee assistance, training selection, and mentoring policies and practices;
 - (10) The impact of any collective bargaining agreement on equal employment opportunity and the affirmative action process;

EDUCATION DEPARTMENT[281](cont'd)

(11) Law, policies or practices external to the agency that may hinder success in equal employment opportunity and affirmative action.

95.4(2) Quantitative goals. The agency will develop numerical goals and timetables for reduction of underrepresentation in each major job category where it has been identified. These goals are not rigid and inflexible quotas, but reasonable aspirations toward correcting imbalance in the agency's work force. A goal shall not cause any group of applicants to be excluded from the hiring process. When setting numerical goals, agencies will take into consideration the following:

- a. The numbers and percentages from the work force analysis conducted pursuant to subrule 95.4(1);
- b. The number of short- and long-term projected vacancies in the job category, considering turnover, layoffs, lateral transfers, new job openings, and retirements;
- c. The availability of qualified or qualifiable persons from underrepresented racial/ethnic, gender and disability categories within the relevant labor market;
- d. The makeup of the student population served by racial/ethnic origin, gender and disability;
- e. The makeup of the population served by racial/ethnic origin, gender and disability;
- f. The makeup of the population of the metropolitan statistical area, when applicable, by racial/ethnic origin, gender, and disability.

95.4(3) Qualitative goals. The agency will develop qualitative goals, activities and timetables which specify the appropriate actions and time frames in which problem areas identified during the qualitative analysis are targeted and remedied. In setting qualitative goals and planning actions, the agency may consider, but need not be limited to, the following:

- a. Broadening or targeting recruitment efforts;
- b. Evaluating and validating criteria and instruments used in selecting applicants for interviews, employment, and promotion;
- c. Providing equal employment opportunity, affirmative action, and intergroup relations training for employees of the agency;
- d. Developing a system of accountability for implementing the agency's plan;
- e. Developing and implementing an employee assistance and mentoring program;
- f. Establishing a work climate that is sensitive to diverse racial/ethnic groups, both women and men and persons with disabilities;
- g. Negotiating the revision of collective bargaining agreements to facilitate equal employment opportunity and affirmative action.

95.4(4) Absence of minority base. Agencies with no minority students enrolled or no minority employees shall develop goals and timetables for recruiting and hiring persons of minority racial/ethnic origin when those persons are available within the relevant labor market.

95.4(5) Consolidation. An agency may consolidate racial/ethnic minorities and job categories into broader groupings in conducting analyses under this chapter when its size or number of employees makes more specific categories impractical.

281—95.5(19B) Dissemination. Each agency will adopt an internal and external system for disseminating its equal employment opportunity and affirmative action policies and plans.

95.5(1) Plan distribution. An agency will annually distribute its policies and plans to agency employees involved in the hiring or management of personnel, and the agency will make the policies and plans available to other agency employees, the public and the director of education upon request.

95.5(2) Policy statement distribution. An agency will distribute its policy statement to all applicants for employment, and the agency will distribute the policy statement annually to employees, students, parents, and recruitment sources.

281—95.6(19B) Reports. Each agency will submit an annual progress report on equal employment opportunity and affirmative action to its local board of directors. Each agency will submit its annual

EDUCATION DEPARTMENT[281](cont'd)

progress report under this chapter to the department by December 31 of each year. The report is a part of the basic educational data collection system administered by the department.

These rules are intended to implement Iowa Code section 19B.11.

ARC 7099C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to business procedures and deadlines and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 99, “Business Procedures and Deadlines,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7 and chapters 24, 257, 285, and 291.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 24, 256, 257, 285, and 291.

Purpose and Summary

As part of the Department of Education’s review of rules under Executive Order 10, the Department proposes replacing restrictive words as unnecessary in this chapter’s context. The Department also proposes adding dates certain to external sources that are incorporated by reference (e.g., generally accepted accounting principles (GAAP)).

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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed 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 24, 2023. 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

EDUCATION DEPARTMENT[281](cont'd)

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 10:30 to 11 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5:30 to 6 p.m.	Second Floor, Jim Hester Board Room Davenport Schools, Achievement Service Center 1702 North Main Street Davenport, Iowa

Persons who wish to make oral comments at a 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 a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 281—Chapter 99 and adopt the following **new** chapter in lieu thereof:

CHAPTER 99
BUSINESS PROCEDURES AND DEADLINES

281—99.1(257) Definitions.

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

“*Basis of accounting*” means the accrual/modified accrual accounting basis under generally accepted accounting principles (GAAP) as defined by the governmental accounting standards board (GASB) as of October 4, 2023.

“*Basis of budgeting*” means the accrual/modified accrual budgeting basis under GAAP as defined by the GASB as of October 4, 2023.

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

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

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

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

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

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

EDUCATION DEPARTMENT[281](cont'd)

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

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

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

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

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

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

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

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

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

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

EDUCATION DEPARTMENT[281](cont'd)

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

281—99.4(24,256,257,291) Budgets, accounting, and reporting. The school district or AEA will budget on the GAAP basis of budgeting. School districts and AEAs will use the chart of accounts defined in the Uniform Financial Accounting Manual for Iowa LEAs and AEAs (UFA manual). The school district or AEA will maintain its financial records and prepare financial reports, including the Certified Annual Report, in the manner and by the procedures set by the departments of education and management in the UFA manual and GAAP. School districts and AEAs will use the chart of accounts defined in the UFA manual. The UFA manual is based on the Financial Accounting for Local and State School Systems published by the United States Department of Education, as of October 4, 2023. If GAAP permits a choice of reporting methods for transactions, or if GAAP conflicts with the UFA manual, the department of education staff will determine a uniform method of reporting to be used by all school districts and AEAs.

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

ARC 7075C**WORKFORCE DEVELOPMENT BOARD AND WORKFORCE
DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]****Adopted and Filed Emergency After Notice****Rulemaking related to Iowa office of apprenticeship**

The Workforce Development Board and Workforce Development Center Administration Division hereby adopts new Chapter 29, “Iowa Office of Apprenticeship,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in 2023 Iowa Acts, Senate File 318.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 84D as enacted by 2023 Iowa Acts, Senate File 318.

Purpose and Summary

This new chapter establishes rules and procedures for implementation and administration of the new Iowa Office of Apprenticeship pursuant to 2023 Iowa Acts, Senate File 318.

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 7052C**.

29 CFR 29.13 requires the State of Iowa to have a state law and plan that conforms with 29 CFR Parts 29 and 30 in order for the Iowa Office of Apprenticeship to be approved as a state apprenticeship agency (SAA). Iowa Workforce Development (IWD) has been working closely with the U.S. Department of Labor (USDOL) to ensure the State has the appropriate state code and administrative rules in place for the SAA to meet the 29 CFR 29.13 requirement. The adopted rules establish an SAA in conformity with 29 CFR Part 29. The adopted rules, Iowa Code chapter 84D, and the state plan will be submitted to USDOL for final approval before Iowa will be able to implement 2023 Iowa Acts, Senate File 318, and become an SAA state.

During the Administrative Rules Review Committee (ARRC) meeting held August 15, 2023, there was discussion regarding the definition of “supervision” in the proposed rules as it relates to the definition provided in Senate File 318. To address this concern, IWD has removed the definitions found in proposed rule 877—29.2(90GA,SF318). This also negates the need to discuss any other public comments related to the definition of “supervision.”

IWD also received public comments regarding the transition process for programs already registered with USDOL. As IWD has previously stated, pursuant to the definition of “apprenticeship program” in Iowa Code section 84D.2(4) as enacted by 2023 Iowa Acts, Senate File 318, registered apprenticeship programs currently registered with USDOL will not be required to reregister once the Iowa Office of Apprenticeship is approved as an SAA. All programs will be transitioned from the USDOL Office of Apprenticeship to the Iowa Office of Apprenticeship. The Iowa Office of Apprenticeship may provide registered apprenticeship programs with the option to continue to receive technical assistance from USDOL.

The opening of the SAA will require approval of the state plan by USDOL, which will be submitted after the publication of this rulemaking.

One other change from the Notice was made to remove the term “definitions” from rule 877—29.1(90GA,SF318).

Reason for Waiver of Normal Effective Date

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Department finds that the normal effective date of this rulemaking, 35 days after publication, should be waived and the rulemaking made effective on September 8, 2023, because 2023 Iowa Acts, Senate File 318, was effective upon enactment and authorizes this emergency rulemaking.

Adoption of Rulemaking

This rulemaking was adopted by the Workforce Development Board and Workforce Development Center Administration Division on September 8, 2023.

Fiscal Impact

2023 Iowa Acts, Senate File 318, was signed into law on May 10, 2023, establishing new Iowa Code chapter 84D. There is no immediate fiscal impact of creation and implementation of these rules; however, the Iowa Office of Apprenticeship will have costs associated with it over the next five years in terms of personnel and implementation costs. No estimate is available at this time because IWD continues to coordinate with the existing Office of Apprenticeship and USDOL to determine scope of responsibility and timing of transition of the program. IWD does not anticipate any additional fiscal impact in the current fiscal year and anticipates that there will be a request for a general appropriation in future legislative sessions as IWD is better able to determine the amount of staff and resources necessary to fully implement this program.

Jobs Impact

This chapter is authorized by 2023 Iowa Acts, Senate File 318, which establishes the Iowa Office of Apprenticeship in Iowa Code chapter 84D. The chapter is required to supplement Senate File 318 and bring the state law establishing an SAA into conformity with USDOL requirements pursuant to 29 CFR 29.13. The chapter, in conjunction with Senate File 318, creates career pathways for all Iowans, including adults and minorities. The chapter, in conjunction with Senate File 318, will have a positive impact on private sector jobs and employment opportunities in Iowa by increasing training pathways into a wide variety of industries and occupations. Iowa led the country in creating registered apprenticeship programs in 2022, and the SAA program, implemented through these rules, will make it easier for employers and high schools to provide this valuable training pathway to more Iowans.

Iowa wants to foster and grow registered apprenticeship and work-based learning programs throughout the state. As a system, IWD wants to continue to foster the quality programs that have already been created in construction trades and other occupations to help grow registered apprenticeship programs in all industries. IWD has had federal grants that have assisted in growing registered apprenticeship programs in the following high-demand areas: health care, agriculture, advanced manufacturing, construction trades and education. With these rules, IWD and the Iowa Office of Apprenticeship will work with all industries to support the creation of high-quality registered apprenticeship and work-based learning opportunities for Iowans. In a registered apprenticeship, employers create a program that contains related training instruction and on-the-job learning. Cost can vary from in-house education programs to community college courses for related training, on-the-job wages and mentor wages. There is no other relevant analysis.

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 IWD for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

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ADMINISTRATION DIVISION[877](cont'd)

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

Effective Date

This rulemaking became effective on September 8, 2023.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** 877—Chapter 29:

CHAPTER 29
IOWA OFFICE OF APPRENTICESHIP

877—29.1(90GA,SF318) Purpose. The purpose of this chapter is to bring identified terms and language in 2023 Iowa Acts, Senate File 318, into conformity with federal requirements, necessary for the approval of the Iowa office of apprenticeship law by the United States Department of Labor Office of Apprenticeship in accordance with 29 CFR 29.13(a)(1).

877—29.2(90GA,SF318) Code of Federal Regulations reference. All references to the Code of Federal Regulations (CFR) in this chapter are as amended to September 8, 2023.

877—29.3(90GA,SF318) Duties of office. The Iowa office of apprenticeship shall establish time-based, competency-based and hybrid apprenticeship frameworks based on the regional and statewide collection of valuable credentials.

29.3(1) The Iowa office of apprenticeship shall establish the following standards and processes in conformance with 29 CFR Part 29:

- a. Program performance standards in conformance with 29 CFR 29.6.
- b. Process for deregistration of registered apprenticeship programs in conformance with 29 CFR 29.8.
- c. Process for the reinstatement of a registered apprenticeship program that was previously deregistered under 29 CFR 29.8 in conformance with 29 CFR 29.9.
- d. Appeal process for registered apprenticeship programs that have been deregistered in conformance with 29 CFR 29.10.

29.3(2) Neither the provisions of 2023 Iowa Acts, Senate File 318; federal law; or the apprenticeship agreement will invalidate any provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards.

29.3(3) Neither the provisions of 2023 Iowa Acts, Senate File 318; federal law; nor the apprenticeship agreement will invalidate any special provision for veterans, minority persons, or women in the standards, apprenticeship qualifications or operation of the program which is not prohibited by state or federal law.

29.3(4) The Iowa office of apprenticeship will establish a process for complaints in conformance with 29 CFR 29.12.

877—29.4(90GA,SF318) Requirements for sponsors and employers. Sponsors and employers are responsible for the following:

1. Ensuring the program conforms to 29 CFR Part 29 standards of apprenticeship.
2. Ensuring the program complies with 29 CFR Part 30 equal employment opportunity in apprenticeship.
3. Ensuring the program complies with the Iowa Office of Apprenticeship Standards and Regulations document approved by the United States Department of Labor.
4. Ensuring the program complies with 2023 Iowa Acts, Senate File 318.

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ADMINISTRATION DIVISION[877](cont'd)

877—29.5(90GA,SF318) Approval of apprenticeship program. All registered apprenticeship programs eligible for approval by the Iowa office of apprenticeship must comply with 29 CFR Parts 29 and 30; 2023 Iowa Acts, Senate File 318; the state plan approved by the United States Department of Labor Office of Apprenticeship; and the administrative rules.

These rules are intended to implement Iowa Code chapter 84D as enacted by 2023 Iowa Acts, Senate File 318.

[Filed Emergency After Notice 9/8/23, effective 9/8/23]

[Published 10/4/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/4/23.

ARC 7080C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rulemaking related to the setoff program**

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

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 421.65 as enacted by 2020 Iowa Acts, House File 2565; and 2020 Iowa Acts, House File 2641, division VI.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 421.65 as enacted by 2020 Iowa Acts, House File 2565; and 2020 Iowa Acts, House File 2641, division VI.

Purpose and Summary

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

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

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

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

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on August 9, 2023, as **ARC 7054C**. An Advisory Notice was also published in the August 23, 2023, Iowa Administrative Bulletin correcting erroneously published information regarding the telephone number and access code for participating in the public hearing.

A public hearing was held on August 29, 2023, at 9 a.m. in Room 430, Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa. Virtual and telephone options were also available. One public comment was received. Iowa Legal Aid provided comments both orally at the public hearing and via written comment through Litigation Director and General Counsel Alex Kornya.

Iowa Legal Aid comment summary:

1. The rule should affirmatively recognize the application of debtor’s exemptions to setoff under Iowa Code section 421.65.

REVENUE DEPARTMENT[701](cont'd)

2. The rule should sufficiently describe the content notices must contain that give debtors an adequate chance to raise exemptions.
3. The rule should explicitly provide that application of exemptions are within the scope of an offset challenge.
4. The rule should define “date of the notice” as the triggering date for challenges as the date the notice was actually received or, barring that, when it was sent.
5. The method by which IDR will contact a debtor who files a challenge should be reasonably calculated to reach the debtor under due process guidelines and in any event specifically described in the rule.
6. Review hearings should be set expediently but with enough time to get information from the creditor agency.
7. The medium of the review hearing should be specified in the rule—it is assumed that a choice between a telephone or video review would be feasible for IDR.
8. The rule should specify that the final IDR determination of a challenge must be in writing so that a district court would have something to review.
9. The rule should provide that a nonobligor co-payee can sever a joint right to payment during the entire period of time the nonobligor co-payee is eligible to claim that payment.
10. The rule should explicitly provide that the scope of inquiry about whether a debt is “qualifying” is within the scope of IDR to decide.
11. The system used to carry out offsets should be calibrated to avoid overcollection and issue quick refunds in case overcollection nevertheless takes place.
12. Feasibility language from the prior rule should be reintroduced.
13. Consider employing a system by which the debtor could check in advance to see if they have a debt that is subject to offset.

Since publication of the Notice, the title of new Chapter 26 was revised and is now “Setoff of Qualifying Debts Owed to Public Agencies.” Rule 701—26.3(421) was revised to refer to the “effective” date of the memorandum of understanding rather than the “execution” date of the memorandum of understanding. Subrule 26.8(3) was revised to allow IDR to determine that it should make a split payment to an obligor on behalf of a public agency if the requirement to make a split payment would cause the public agency significant hardship.

Adoption of Rulemaking

This rulemaking was adopted by IDR on September 13, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa. There is no cost to the State other than the costs that result from the statute and the need for the IDR to develop a system to operate the setoff program as a result of the statute. Development of the system is well underway. Iowa Code section 421.65 requires that public agencies pay a fee for the use of the setoff system. Details regarding the fee are set forth in these rules. The DAS currently charges a \$7 fee for each offset. As set forth in these rules, a fee of \$7 will be paid by participating public agencies to the IDR for each setoff when the IDR assumes the setoff program. These costs would accrue to participating public agencies. Based on information provided by the DAS, over the three most recent complete fiscal years, the average number of fee collections each year was approximately 109,000. This average is assumed to be typical for any year. At a cost of \$7 per setoff, the overall administrative costs to all participating public agencies combined are thus estimated to be \$763,000 each year. Because both the DAS and the IDR fees are \$7, it is expected that the administrative costs for the new program under the IDR will be substantially similar to the current program under the DAS.

Jobs Impact

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

REVENUE DEPARTMENT[701](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 November 13, 2023.

The following rulemaking action is adopted:

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

CHAPTER 26

SETOFF OF QUALIFYING DEBTS OWED TO PUBLIC AGENCIES

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

This rule is intended to implement Iowa Code section 421.65.

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

This rule is intended to implement Iowa Code section 421.65.

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

This rule is intended to implement Iowa Code section 421.65.

701—26.4(421) Certification to the department.

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

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

This rule is intended to implement Iowa Code section 421.65.

REVENUE DEPARTMENT[701](cont'd)

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

This rule is intended to implement Iowa Code section 421.65.

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

This rule is intended to implement Iowa Code section 421.65.

701—26.7(421) Challenges.

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

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

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

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

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

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

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

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

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

This rule is intended to implement Iowa Code section 421.65.

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

26.8(1) Requests for division of a public payment subject to setoff may be submitted to the department via the manner described on the challenge notice furnished to the obligor by the department pursuant to Iowa Code section 421.65(2)“e.” Requests for division shall be submitted within 15 days

REVENUE DEPARTMENT[701](cont'd)

of the date of the notice. Requests for division may be made only by an obligor or co-payee of the public payment.

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

26.8(3) The department shall notify a public agency of a successful request for division. At the direction of the department, the public agency shall divide a jointly or commonly owned right to payment and refund the applicable setoff amount in the manner determined by the department. The department may determine that it should refund the setoff amount to the obligor or co-payee on behalf of the public agency if the department determines, in its sole discretion, that the public agency is unable to make the payment or the requirement to make the payment would cause the public agency significant hardship. If the department determines that it should refund the setoff amount, the public agency must return the setoff funds to the department immediately after receiving notice from the department. The public agency must adhere to the department's determination and has no appeal opportunity. In the event of a successful request for division, the department shall retain the fee paid by the public agency for use of the setoff program.

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

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

This rule is intended to implement Iowa Code section 421.65.

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

This rule is intended to implement Iowa Code section 421.65.

701—26.10(421) Fees.

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

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

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

26.10(4) Examples.

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

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

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

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 4: Setoff fee is taken per distribution:

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

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

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

This rule is intended to implement Iowa Code section 421.65.

[Filed 9/15/23, effective 11/13/23]

[Published 10/4/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/4/23.

ARC 7079C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rulemaking related to special permits for operation and movement of vehicles and loads of excess size and weight

The Transportation Department hereby amends Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 307.12, 312.2(18), 321E.8(4), 321E.15 and 321E.24.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 312.2 and chapter 321E.

Purpose and Summary

This rulemaking amends Chapter 511 to conform the rules with 2022 Iowa Acts, House File 2518 and Senate File 2376, which were effective on January 1, 2023, and codified in Iowa Code chapters 312 and 321E.

These amendments:

- Add two new annual permit types that are now issued by the Department in accordance with the enacted legislation: the "annual all-systems overweight permit" and the "annual small crane permit." The rules provide that the two new permits may be transferred if the originally permitted vehicle has been damaged in an accident, junked or sold.
- Establish the fees, maximum axle weights, maximum gross weights, maximum dimensions, and distance requirements for the new permit types.
- Establish procedures for distribution of funds collected for the annual all-systems permit to counties that participate in the all-systems permit.
- Eliminate the requirement that overweight vehicles operating under a permit must display flashing amber lights. The Department determined it is not required by law nor is it necessary for these vehicles to display lights to preserve highway safety, and the requirement unnecessarily creates a burden to individuals operating under the new permit who, under other options for operating such vehicles (such as a Governor's proclamation of disaster emergency), do not need to display lights.

TRANSPORTATION DEPARTMENT[761](cont'd)

- Remove old Iowa Acts references, remove outdated language, and update missing terminology for annual permits throughout the chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 12, 2023, as **ARC 7046C**. No public comments were received.

One change from the Notice has been made in paragraph 511.17(1)“a” to remove an extraneous “or.”

Adoption of Rulemaking

This rulemaking was adopted by the Department on September 12, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa beyond any impact calculated by the Legislative Services Agency for the underlying legislation.

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 761—Chapter 11.

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 November 8, 2023.

The following rulemaking action is adopted:

ITEM 1. Amend rule **761—511.1(321E)**, definition of “Emergency interstate permit,” as follows:
“*Emergency interstate permit*” means a permit issued under Iowa Code section 321E.29B ~~as enacted by 2021 Iowa Acts, House File 382.~~

ITEM 2. Amend rule **761—511.1(321E)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code sections 321E.9, 321E.15, 321E.26, 321E.29, 321E.29B ~~as enacted by 2021 Iowa Acts, House File 382,~~ 321E.30 and 321E.34.

ITEM 3. Amend subrule 511.2(4), introductory paragraph, as follows:
511.2(4) Except as provided in rule ~~761—511.17(321,321E)~~ 761—511.10(321,321E) or 761—511.18(321,321E), permits may be issued only for the transporting of a single article which exceeds statutory size or weight limits or both, and which cannot reasonably be divided or reduced to statutory size and weight limits. However, permits may be issued for the transporting of property consisting of more than one article when:

ITEM 4. Amend subrule 511.3(2) as follows:
511.3(2) Movement shall be made only when roads are clear of ice and snow and visibility is at least one-quarter mile. Snow removal equipment operating under permit is exempt from this restriction while snow removal operations are conducted. EXCEPTION: Nothing in this subrule shall be construed

TRANSPORTATION DEPARTMENT[761](cont'd)

to mean that the movement of a compacted rubbish vehicle permitted under rule 761—511.11(321E) 761—511.12(321E) shall be subject to this restriction.

ITEM 5. Amend rule 761—511.4(321E) as follows:

761—511.4(321E) Permits. Permits issued shall be in writing or in electronic format and may be either single-trip, multitrip, annual oversize, annual oversize/overweight, annual raw forest products, annual small crane, compacted rubbish, emergency interstate, annual fluid milk products, ~~or annual~~ all-systems oversize, or annual all-systems overweight permits.

511.4(1) and 511.4(2) No change.

511.4(3) Validity.

a. Annual oversize, annual oversize/overweight, annual raw forest products, annual small crane, compacted rubbish, annual fluid milk products, ~~and annual~~ all-systems oversize, and annual all-systems overweight permits shall expire one year from the date of issuance.

b. and c. No change.

d. Emergency interstate permits issued under Iowa Code section 321E.29B ~~as enacted by 2021 Iowa Acts, House File 382~~, shall be effective for 30 calendar days. However, the permit shall not exceed the expiration of the applicable governor's proclamation of disaster emergency issued under Iowa Code section 29C.6 in conjunction with the presidential declaration allowing interstate travel under the Stafford Act or the expiration of the declaration of major disaster under the Stafford Act, whichever expires first.

511.4(4) No change.

This rule is intended to implement Iowa Code sections 321E.2, ~~and 321E.3, 321E.8 and section 321E.29B as enacted by 2021 Iowa Acts, House File 382.~~

ITEM 6. Amend rule 761—511.5(321,321E) as follows:

761—511.5(321,321E) Fees and charges.

511.5(1) Annual oversize permit. A fee of \$50 shall be charged for each annual oversize permit issued pursuant to Iowa Code section 321E.8, payable prior to the issuance of the permit. Carriers purchasing annual oversize permits in advance of use cannot return unused permits for refunds.

511.5(2) No change.

511.5(3) Annual raw forest products permit. A fee of \$175 shall be charged for each annual raw forest products permit issued pursuant to Iowa Code section 321E.26 for divisible loads of raw forest products, payable prior to the issuance of the permit.

511.5(4) No change.

511.5(5) All-systems Annual all-systems oversize permit. A fee of \$160 shall be charged for each annual all-systems oversize permit issued pursuant to Iowa Code section 321E.8(1), payable prior to the issuance of the permit.

511.5(6) Annual all-systems overweight permit. A fee of \$500 shall be charged for each annual all-systems overweight permit issued pursuant to Iowa Code section 321E.8(2), payable prior to the issuance of the permit. Transfer of current annual all-systems overweight permit to a replacement vehicle may be allowed when the original vehicle has been damaged in an accident, junked or sold.

~~511.5(6)~~ **511.5(7) Bridge-exempt permit.** A fee of \$25 shall be charged for each bridge-exempt permit issued pursuant to Iowa Code section 321E.7, payable prior to the issuance of the permit.

~~511.5(7)~~ **511.5(8) Multitrip permit.** A fee of \$200 shall be charged for each multitrip permit, payable prior to the issuance of the permit.

~~511.5(8)~~ **511.5(9) Raw milk permit.** A fee of \$25 shall be charged for each raw milk permit issued pursuant to Iowa Code section 321E.29A, payable prior to the issuance of the permit.

~~511.5(9)~~ **511.5(10) Single-trip permit.** A fee of \$35 shall be charged for each single-trip permit, payable prior to the issuance of the permit.

~~511.5(10)~~ **511.5(11) Special alternative energy multitrip permit.** A fee of \$600 shall be charged for each special alternative energy multitrip permit issued pursuant to Iowa Code section 321E.9B, payable prior to the issuance of the permit.

TRANSPORTATION DEPARTMENT[761](cont'd)

~~511.5(11)~~ **511.5(12)** *Compacted rubbish permit.* A fee of \$100 shall be charged for each compacted rubbish permit, payable prior to the issuance of the permit.

~~511.5(12)~~ **511.5(13)** *Annual fluid milk products permit.* A fee of \$400 shall be charged for each annual fluid milk products permit issued pursuant to Iowa Code section 321E.29B, payable prior to issuance of the permit.

511.5(14) *Annual small crane permit.* A fee of \$400 shall be charged for each annual small crane permit issued pursuant to Iowa Code section 321E.8(4), payable prior to issuance of the permit. Transfer of current annual small crane permit to a replacement vehicle may be allowed when the original vehicle has been damaged in an accident, junked or sold.

~~511.5(13)~~ **511.5(15)** *Duplicate permit.* A fee of \$2 shall be charged for each duplicate permit, payable prior to the issuance of the permit.

~~511.5(14)~~ **511.5(16)** *Registration fee.* A registration fee shall be charged for vehicles transporting buildings, except mobile homes and factory-built structures, on a single-trip basis. The vehicle shall be registered for the combined gross weight of the vehicle and load. The fee shall be 5 cents per ton exceeding the weight registered under Iowa Code section 321.122 per mile of travel and shall be payable prior to the issuance of the permit. Fees shall not be prorated for fractions of miles.

~~511.5(15)~~ **511.5(17)** *Fair and reasonable costs.* Permit-issuing authorities may charge any permit applicant:

a. and b. No change.

~~511.5(16)~~ **511.5(18)** *Methods of payment.* Fees and costs required under this chapter shall be paid in the form and manner prescribed by the department.

This rule is intended to implement Iowa Code sections 321.12, 321.122, 321E.8, 321E.14, 321E.29, 321E.29A and 321E.30.

ITEM 7. Amend rule 761—511.6(321E) as follows:

761—511.6(321E) Insurance and bonds.

511.6(1) Insurance.

a. Public liability insurance in the amounts of \$100,000 bodily injury each person, \$200,000 bodily injury each occurrence, and \$50,000 property damage with an expiration date to cover the tenure of the annual oversize, annual oversize/overweight, annual raw forest products, annual small crane, annual all-systems oversize, annual all-systems overweight, multitrip, emergency interstate, annual fluid milk products or single-trip permit shall be required. In lieu of filing with the permit-issuing authority, a copy of the current certificate of public liability insurance in these amounts shall be carried in the vehicle for which the permit has been issued. Proof of liability insurance may be either in writing or in electronic format.

b. No change.

511.6(2) No change.

This rule is intended to implement Iowa Code ~~section~~ sections 321E.8, 321E.13 and ~~section~~ 321E.29B as enacted by 2021 Iowa Acts, House File 382.

ITEM 8. Amend rule 761—511.7(321,321E) as follows:

761—511.7(321,321E) Annual oversize permits. Annual oversize permits are issued for indivisible vehicles or indivisible loads for travel when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The owner or operator shall select a route using the vertical clearance map and road construction and travel restrictions map provided by the department. Route, detour and road embargo information may be found online at www.511ia.org or the department's website for the embargo bridge maps. Annual oversize permits are issued for the following:

511.7(1) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

d. Weight. See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

e. No change.

511.7(2) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. Weight. See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

e. No change.

511.7(3) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. Weight. See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

e. No change.

~~**511.7(4)** Rescinded IAB 1/23/02, effective 2/27/02.~~

~~**511.7(5)**~~ **511.7(4)** Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

a. to c. No change.

d. Weight. See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

~~*e. Speed.* Rescinded IAB 2/7/01, effective 3/14/01.~~

~~*f. e. Roadway width.* At least 24 feet 0 inches.~~

~~*g. f. Limited movement.* Movement shall be solely for the purpose of delivery or transfer from the point of manufacture or assembly to another point of manufacture or assembly within the state or to a point outside the state and shall be on the most direct route necessary for the movement.~~

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.8, 321E.10 and 321E.29A.

ITEM 9. Amend rule 761—511.8(321,321E), introductory paragraph, as follows:

761—511.8(321,321E) Annual oversize/overweight permits. Annual oversize/overweight permits are issued for indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. Travel is not allowed on the interstate. However, a carrier moving under this annual oversize/overweight permit may operate under the same restrictions as an annual oversize permit under rule 761—511.7(321,321E) when the vehicle meets the dimensions required by that rule. Routing is subject to embargoed bridges and roads and posted speed limits. Annual oversize/overweight permits are issued for the following:

ITEM 10. Amend paragraph **511.8(1)“d”** as follows:

d. Weight. See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

ITEM 11. Amend rule 761—511.9(321,321E) as follows:

761—511.9(321,321E) All-systems Annual all-systems oversize permits. ~~All-systems Annual all-systems oversize~~ permits are issued by the motor vehicle division for indivisible vehicles or indivisible loads for travel on the primary road system and specified city streets and county roads when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. ~~The motor vehicle division department~~ will provide a list map of the authorized city streets and county roads. Permit holders shall consult with local officials when traveling on county roads or city streets for bridge embargo, vertical clearance, detour, and road construction information. These permits are issued for the following:

511.9(1) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

a. to c. No change.

d. Weight. See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

e. No change.

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511.9(2) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. to c. No change.
- d. *Weight.* See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).
- e. No change.

511.9(3) Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. to c. No change.
- d. *Weight.* See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).
- e. No change.

~~**511.9(4)** Rescinded IAB 1/23/02, effective 2/27/02.~~

~~**511.9(5)**~~ **511.9(4)** Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

- a. to c. No change.
- d. *Weight.* See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).
- e. ~~*Speed.* Rescinded IAB 2/7/01, effective 3/14/01.~~
- f. *Roadway width.* At least 24 feet 0 inches.
- g. *Limited movement.* Movement shall be solely for the purpose of delivery or transfer from the point of manufacture or assembly to another point of manufacture or assembly within the state or to a point outside the state and shall be on the most direct route necessary for the movement.

~~**511.9(6)** Rescinded IAB 2/10/21, effective 3/17/21.~~

~~**511.9(7)**~~ **511.9(5)** Necessary trip routes must be obtained from the appropriate city and county jurisdictions.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.8 and 321E.10.

ITEM 12. Renumber rules ~~761—511.10(321,321E)~~ to ~~761—511.21(321)~~ as ~~761—511.11(321,321E)~~ to ~~761—511.22(321)~~.

ITEM 13. Adopt the following new rule 761—511.10(321,321E):

761—511.10(321,321E) Annual all-systems overweight permits.

511.10(1) Issuance. Annual all-systems overweight permits are issued by the department for indivisible vehicles or indivisible or divisible loads for travel on the primary road system and specified city streets and county roads when the weight of the vehicle or load exceeds statutory limits but the dimensions are within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The department will provide a map of the authorized city streets and county roads. Permit holders shall consult with local officials when traveling on county roads or city streets for bridge embargo, vertical clearance, detour, and road construction information. These permits are issued for vehicles with divisible or indivisible loads provided the following are not exceeded:

- a. *Width.* Statutory: 8 feet 6 inches including appurtenances.
- b. *Length.* Statutory: 75 feet 0 inches overall.
- c. *Height.* Statutory: 13 feet 6 inches.
- d. *Weight.* See rule 761—511.17(321,321E).
- e. *Distance.* Movement is allowed for unlimited distance; routing through the motor vehicle division and city and county jurisdictions is not required.

511.10(2) Distribution of monthly credit. In accordance with Iowa Code section 312.2(18), the department shall allocate the monthly credit as follows:

- a. The department shall maintain a list of participating counties. The list shall be updated on a monthly basis as determined by the department after consultation with county officials through their representative organizations.
- b. The monthly credit shall be divided among the participating counties as determined by the department after consultation with county officials through their representative organizations.

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c. The funds from the monthly credit shall be distributed to each participating county based on the list of participating counties for the applicable month.

This rule is intended to implement Iowa Code sections 312.2, 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.8 and 321E.10.

ITEM 14. Amend renumbered subrule 511.11(2) as follows:

511.11(2) Multitrip permits may be issued for all movements allowed under the single-trip permit provisions of rule ~~761—511.12(321,321E)~~ 761—511.13(321,321E) provided the movement is within the size and weight limitations of subrule ~~511.10(4)~~ 511.11(1).

ITEM 15. Amend renumbered paragraph **511.13(1)“d”** as follows:

d. *Weight.* See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

ITEM 16. Amend renumbered paragraph **511.14(1)“d”** as follows:

d. *Weight.* See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

ITEM 17. Amend renumbered paragraph **511.15(1)“d”** as follows:

d. *Weight.* See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

ITEM 18. Amend renumbered rule **761—511.15(29C,321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 29C.6, 321.457, and 321.463 and ~~section 321E.29B as enacted by 2021 Iowa Acts, House File 382.~~

ITEM 19. Amend renumbered rule ~~761—511.16(321,321E)~~, introductory paragraph, as follows:

761—511.16(321,321E) Annual fluid milk products permits. Annual fluid milk products permits are issued for indivisible loads of fluid milk products for travel when the weight of the vehicle or load exceeds statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The owner or operator shall select a route using the vertical clearance map and road construction and travel restrictions map provided by the department. Route, detour, road embargo and bridge embargo for fluid milk products information may be found online at www.511ia.org and the department’s website.

ITEM 20. Amend renumbered paragraph **511.16(1)“d”** as follows:

d. *Weight.* See rule ~~761—511.16(321,321E)~~ 761—511.17(321,321E).

ITEM 21. Amend renumbered rule ~~761—511.17(321,321E)~~ as follows:

761—511.17(321,321E) Maximum axle weights and maximum gross weights for vehicles and loads moved under permit.

511.17(1) *Annual oversize, annual all-systems oversize, and annual all-systems overweight permits.*

a. For movement under an annual ~~or oversize or annual~~ all-systems oversize permit, the axle weight and combined gross weight shall not exceed the limits found in Iowa Code section 321.463(3).

b. For movement under an all-systems overweight permit, the axle weight shall not exceed the limits found in Iowa Code sections 321.463(3) and 321E.8. The combined gross weight shall not exceed the gross weight authorized under Iowa Code section 321E.8(2).

~~b. c.~~ See subrule ~~511.16(7)~~ 511.17(8) for exceptions for special mobile equipment.

511.17(2) *Annual oversize/overweight permits or annual raw forest products permits.*

a. No change.

b. See subrule ~~511.16(7)~~ 511.17(8) for exceptions for special mobile equipment.

511.17(3) *Multitrip permits.*

a. No change.

b. See subrule ~~511.16(7)~~ 511.17(8) for exceptions for special mobile equipment.

511.17(4) *Single-trip permits.*

a. to c. No change.

d. See subrule ~~511.16(7)~~ 511.17(8) for exceptions for special mobile equipment.

511.17(5) and **511.17(6)** No change.

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511.17(7) Annual small crane permit. For movement under an annual small crane permit, the gross weight on any axle shall not exceed 24,000 pounds with a maximum of 80,000 pounds total gross weight.

~~511.17(7)~~ **511.17(8) Special mobile equipment.** Special mobile equipment may have a gross weight of 36,000 pounds on any single axle equipped with minimum size 26.5-inch by 25-inch flotation pneumatic tires and a maximum gross weight of 20,000 pounds on any single axle equipped with minimum size 18-inch by 25-inch flotation pneumatic tires, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of 80,000 pounds for movement under an annual oversize or all-systems oversize permit and 126,000 pounds for movement under a single-trip, multitrip or annual oversize/overweight permit.

For tire sizes and weights allowed between the maximum and minimum indicated, the following formula shall apply: Axle weight = 20,000 pounds + (tire width - 18) × 1,882 pounds.

~~511.17(8)~~ **511.17(9) Permitted tandem axle weights.**

a. to c. No change.

This rule is intended to implement Iowa Code sections 321.463, 321E.7, 321E.8, 321E.9, 321E.9A, 321E.26, 321E.29B and 321E.32.

ITEM 22. Amend renumbered subrule 511.18(2) as follows:

511.18(2) At the discretion of the permit-issuing authority, the combined gross weight may exceed the statutory weight, but the axle weights shall be subject to rule 761—~~511.16(321,321E)~~ 761—511.17(321,321E).

ITEM 23. Amend renumbered subrule 511.20(3) as follows:

511.20(3) Requirements for escorts, flags, signs and lights. The following chart explains the minimum escort and warning devices required for vehicles operating under permit.

Minimum Warning Devices and Escort Requirements
For Vehicles Operating Under Permit

	Flags/Signs	Lights	Escorts	
			4-Lane	2-Lane
Length				
75'1" up to and including 85'	yes	not required	not required	not required
Over 85' up to and including 120'	yes	yes	not required	not required
Over 120'	yes	not required	rear	rear
Projections				
Front: over 25'	not required	yes	not required	not required
Rear: over 4' up to and including 10'	flags only	not required	not required	not required
Rear: over 10'	flags only	yes	not required	not required
Height				
Over 14'6" up to and including 20'	yes	not required	front with a height pole	front with a height pole
Weight				

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Over 80,000 lbs.	not required	<u>yes not required</u>	not required	not required
Width				
Over 8'6" up to 12'0"	yes	not required	not required	not required
Over 12'0" up to and including 14'6"	yes	not required	rear *	front *
Over 14'6" up to and including 16'6"	yes	not required	rear *	front
Over 16'6" up to and including 18'	yes	not required	rear	front

*In lieu of an escort, a carrier can display an amber light or strobe light on the power unit and on the rear extremity of the vehicle or load.

yes = required

Definitions:

Flags - Red or orange fluorescent flags at least 18" square must be mounted as follows: one flag at each front corner of the towing unit and one flag at each rear corner of the load. In addition, there must be a flag at any additional protrusion in the width of the load.

Signs - A sign reading "Oversize Load" must be used. The sign must be at least 18" high by 7' long with a minimum of 10" black letters, with a 1½" stroke, on a yellow background, and mounted on the front bumper and on the rear of the load. The rear sign for mobile homes and factory-built structures must be mounted at least 7' above the highway surface, measuring from the bottom of the sign.

Lights - A flashing or strobe amber light that is visible for at least 500 feet and provides 360° warning must be mounted on the towing unit and be visible from front and rear. More than one light may be necessary.

The permit-issuing authority may require additional escorts when deemed necessary. The signs or warning devices must be removed or covered when the vehicle is within legal dimensions.

ITEM 24. Amend renumbered rule **761—511.20(321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321E.8, 321E.14, 321E.24 and 321E.34.

ITEM 25. Amend renumbered rule **761—511.21(321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.492, 321E.16, ~~and 321E.20~~ and ~~section 321E.29B as enacted by 2021 Iowa Acts, House File 382.~~

ITEM 26. Amend renumbered paragraph **511.22(1)"c"** as follows:

c. The department shall exercise due regard for the safety of the traveling public and the protection of the highway surfaces and structures when establishing an economic export corridor. Factors to be considered include ability of the proposed economic export corridor to safely accommodate combinations of vehicles described in subrule ~~511.21(2)~~ 511.22(2), taking into account physical configurations and restrictions and traffic demands and capacity, as well as connection to markets that will benefit from the established economic export corridor.

ITEM 27. Amend renumbered paragraph **511.22(2)"a,"** introductory paragraph, as follows:

a. In addition to combinations of vehicles lawful for operation on roads or road segments not designated as an economic export corridor, the following combinations of vehicles may be operated on an economic export corridor designated under subrule ~~511.21(1)~~ 511.22(1) if the combinations of vehicles meet the requirements in paragraph ~~511.21(2)"b"~~ 511.22(2)"b":

[Filed 9/14/23, effective 11/8/23]

[Published 10/4/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/4/23.

ARC 7076C**VETERINARY MEDICINE BOARD[811]****Adopted and Filed****Rulemaking related to license by verification**

The Board of Veterinary Medicine hereby amends Chapter 6, “Application for Veterinary Licensure,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 272C.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2022 Iowa Acts, Senate File 2383.

Purpose and Summary

This rulemaking amends license by verification rules to comply with 2022 Iowa Acts, Senate File 2383, which removed residency and active duty requirements from the license by verification process for applicants seeking professional licensure who are licensed in another jurisdiction.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on May 31, 2023, as **ARC 7030C**. 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 31, 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 Board for a waiver of the discretionary provisions, if any, pursuant to 811—Chapter 14.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 November 8, 2023.

The following rulemaking action is adopted:

VETERINARY MEDICINE BOARD[811](cont'd)

ITEM 1. Amend subrule 6.6(1) as follows:

6.6(1) Eligibility. A person may seek licensure by verification if the person is licensed in at least one other jurisdiction, ~~and either:~~

- ~~a. The person establishes residency in the state of Iowa; or~~
- ~~b. The person is married to an active duty member of the military forces of the United States and is accompanying the member on an official permanent change of station in Iowa.~~

ITEM 2. Rescind paragraph **6.6(2)“d.”**

ITEM 3. Reletter paragraph **6.6(2)“e”** as **6.6(2)“d.”**

[Filed 9/14/23, effective 11/8/23]

[Published 10/4/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/4/23.

ARC 7077C

VETERINARY MEDICINE BOARD[811]

Adopted and Filed

Rulemaking related to license by verification

The Board of Veterinary Medicine hereby amends Chapter 8, “Auxiliary Personnel,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 272C.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2022 Iowa Acts, Senate File 2383.

Purpose and Summary

This rulemaking amends license by verification rules to comply with 2022 Iowa Acts, Senate File 2383, which removed residency and active duty requirements from the license by verification process for applicants seeking professional licensure who are licensed in another jurisdiction.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on May 31, 2023, as **ARC 7031C**. 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 31, 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

VETERINARY MEDICINE BOARD[811](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 811—Chapter 14.

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 November 8, 2023.

The following rulemaking action is adopted:

ITEM 1. Amend subrule 8.11(1) as follows:

8.11(1) Eligibility. A person may seek registration by verification if the person is registered or licensed in at least one other jurisdiction, ~~and either:~~

~~a.—The person establishes residency in the state of Iowa; or~~

~~b.—The person is married to an active duty member of the military forces of the United States and is accompanying the member on an official permanent change of station in Iowa.~~

ITEM 2. Rescind paragraph **8.11(2)“d.”**

ITEM 3. Reletter paragraphs **8.11(2)“e”** and **“f”** as **8.11(2)“d”** and **“e.”**

[Filed 9/14/23, effective 11/8/23]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/4/23.

ARC 7078C

VETERINARY MEDICINE BOARD[811]

Adopted and Filed

Rulemaking related to military service and veteran reciprocity

The Board of Veterinary Medicine hereby adopts new Chapter 15, “Military Service and Veteran Reciprocity,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in 2022 Iowa Acts, Senate File 2383, section 21.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 272C.4.

Purpose and Summary

This rulemaking adopts new Chapter 15, which provides a process under which the Board will provide credit toward licensure qualifications for military service and the procedures for issuing reciprocal or provisional licensure for veterans who are licensed in other jurisdictions. The rulemaking also implements 2022 Iowa Acts, Senate File 2383, section 21, by adding military spouses as individuals who can be licensed under special veteran reciprocity rules.

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Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on May 31, 2023, as **ARC 7029C**. 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 31, 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 Board for a waiver of the discretionary provisions, if any, pursuant to 811—Chapter 14.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees 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 November 8, 2023.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** 811—Chapter 15:

CHAPTER 15
MILITARY SERVICE AND VETERAN RECIPROCITY

811—15.1(272C) Definitions.

“*Board*” means the Iowa board of veterinary medicine.

“*License*” or “*licensure*” means any license, registration, certificate, or permit that may be granted by the Iowa board of veterinary medicine.

“*Military service*” means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

“*Military service applicant*” means an individual requesting credit toward licensure for military education, training, or service obtained or completed in military service.

“*Spouse*” means a spouse of an active duty member of the military forces of the United States.

“*Veteran*” means an individual who meets the definition of “veteran” in Iowa Code section 35.1(2).

811—15.2(272C) Military education, training, and service credit. A military service applicant may apply for credit for verified military education, training, or service toward any experience or educational requirement for licensure by submitting a military service application form to the board office.

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15.2(1) The application may be submitted with an application for licensure or examination, or prior to application for licensure or to take an examination. No fee is required with submission of an application for military service credit.

15.2(2) The applicant shall identify the experience or educational licensure requirement to which the credit would be applied if granted. Credit shall not be applied to an examination requirement.

15.2(3) The applicant shall provide documents, military transcripts, a certified affidavit, or forms that verify completion of the relevant military education, training, or service, which may include, when applicable, the applicant's Certificate of Release or Discharge from Active Duty (DD Form 214) or Verification of Military Experience and Training (VMET) (DD Form 2586).

15.2(4) Upon receipt of a completed military service application, the board shall promptly determine whether the verified military education, training, or service will satisfy all or any part of the identified experience or educational qualifications for licensure.

15.2(5) The board shall grant credit requested in the application in whole or in part if the board determines that the verified military education, training, or service satisfies all or part of the experience or educational qualifications for licensure.

15.2(6) The board shall inform the military service applicant in writing of the credit, if any, given toward an experience or educational qualification for licensure, or explain why no credit was granted. The applicant may request reconsideration upon submission of additional documentation or information.

15.2(7) A military service applicant who is aggrieved by the board's decision may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. The provisions of rules 811—10.13(17A,169,272C) through 811—10.38(17A) shall apply, except that no fees or costs shall be assessed against the military service applicant in connection with a contested case conducted pursuant to this subrule.

15.2(8) The board shall grant or deny the military service application prior to ruling on the application for licensure. The applicant shall not be required to submit any fees in connection with the licensure application unless the board grants the military service application. If the board does not grant the military service application, the applicant may withdraw the licensure application or request that the licensure application be placed in pending status for up to one year or as mutually agreed. The withdrawal of a licensure application shall not preclude subsequent applications supported by additional documentation or information.

811—15.3(272C) Veteran or spouse reciprocity.

15.3(1) A veteran or spouse with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran or spouse must pass any examinations required for licensure to be eligible for licensure through reciprocity and will be given credit for examinations previously passed when consistent with board laws and rules on examination requirements. A fully completed application for licensure submitted by a veteran or spouse under this subrule shall be given priority and shall be expedited.

15.3(2) Such an application shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including but not limited to completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2) or a spouse of an active duty member of the military forces of the United States.

15.3(3) Upon receipt of a fully completed licensure application, the board shall promptly determine if the scope of practice in the jurisdiction where the applicant is licensed is substantially equivalent to the scope of practice in Iowa. The board shall make this determination based on information supplied by the applicant and such additional information as the board may acquire from the applicable jurisdiction.

15.3(4) The board shall promptly grant a license to the applicant if the applicant is licensed in the same or similar profession in another jurisdiction whose scope of practice is substantially equivalent to

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the scope of practice in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example, the applicant's disciplinary or criminal background.

15.3(5) If the board determines that the scope of practice in the jurisdiction in which the applicant is licensed is not substantially equivalent to the scope of practice in Iowa, the board shall promptly inform the applicant of the additional education or training required for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or criminal background, the following shall apply:

a. If an applicant has not passed the required examination(s) for licensure, the applicant may not be issued a temporary license but may request that the licensure application be placed in pending status for up to one year or as mutually agreed to provide the applicant with the opportunity to satisfy the examination requirements.

b. If additional education or training is required, the applicant may request that the board issue a temporary license for a specified period of time during which the applicant will successfully complete the necessary education or training. The board shall issue a 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 temporary license is granted.

c. If a request for a 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 temporary license.

d. If a temporary license is issued, the application for full licensure shall be placed in pending status until the necessary education or training has been successfully completed or the temporary license expires, whichever occurs first. The board may extend a temporary license on a case-by-case basis for good cause.

15.3(6) An applicant who is aggrieved by the board's decision to deny an application for a reciprocal license or a temporary license or is aggrieved by the terms under which a temporary license will be granted may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. The provisions of rules 811—10.13(17A,169,272C) through 811—10.38(17A) shall apply, except that no fees or costs shall be assessed against the applicant in connection with a contested case conducted pursuant to this subrule.

These rules are intended to implement Iowa Code section 272C.12A.

[Filed 9/14/23, effective 11/8/23]

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