



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

JACK EWING, Administrative Code Editor
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CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rule Making 2022

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 14, 2022	November 2, 2022
10	Wednesday, October 26, 2022	November 16, 2022
11	Wednesday, November 9, 2022	November 30, 2022

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 11, 2022, at 9 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 21, 2022, Iowa Administrative Bulletin.

AGING, DEPARTMENT ON[17]

Special dietary needs—physician assistants, 7.18(3) Notice **ARC 6591C** 10/5/22

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Marketing, ch 52 Filed **ARC 6552C** 10/5/22

Advertisement of the price of liquid petroleum products for retail use—decals, octane rating, ethanol percentage by volume, 85.48 Notice **ARC 6581C** 10/5/22

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]“umbrella”

Application of generally accepted accounting principles (GAAP), 2.12(2), 9.1(3), 15.2(2), 17.4(1), 18.1, 18.3(1), 18.4(1), 18.5(1) Filed **ARC 6553C** 10/5/22

EDUCATION DEPARTMENT[281]

English learners—terminology, amendments to chs 19, 23, 41, 60, 67, 68, 77, 79, 98, 120 Notice **ARC 6584C** 10/5/22

Operational function sharing; supplementary weighting, 97.7 Notice **ARC 6585C** 10/5/22

HUMAN SERVICES DEPARTMENT[441]

Facility assessments—five-year review of rules, 36.2, 36.6(2)“c,” 36.7, 36.11(5)“b” Filed **ARC 6556C** 10/5/22

Application for assistance—definitions, forms, cross-references, 50.1 to 50.5 Notice **ARC 6590C** 10/5/22

Eligibility—five-year review of rules, 51.3, 51.6, 51.9(1) Notice **ARC 6586C** 10/5/22

Payment—assistance standards, 52.1 Notice **ARC 6587C** 10/5/22

Rent reimbursement program, ch 62 Filed **ARC 6557C** 10/5/22

Food assistance program—five-year review of rules, amendments to ch 65 Filed **ARC 6558C** 10/5/22

Emergency food assistance program—five-year review of rules, amendments to ch 66 Filed **ARC 6559C** 10/5/22

Providers of medical and remedial care—service documentation, 79.3(2) Filed **Emergency After Notice** **ARC 6563C** 10/5/22

Intermediate care facilities for persons with an intellectual disability—five-year review of rules, 82.1 to 82.3, 82.5, 82.7, 82.8, 82.13(1), 82.14, 82.15(1), 82.17(2) Notice **ARC 6589C** 10/5/22

Early and periodic screening, diagnosis, and treatment—five-year review of rules, amendments to ch 84 Notice **ARC 6588C** 10/5/22

Debts due from transfers of assets—five-year review of rules, amendments to ch 89 Filed **ARC 6560C** 10/5/22

Medicare drug subsidy—five-year review of rules, 91.1, 91.2(2)“a,” 91.3(2)“a,” 91.6(2), 91.7 Filed **ARC 6561C** 10/5/22

Child care centers—staff requirements, combining age groups, 109.8, 109.11(2) Filed **Emergency After Notice** **ARC 6564C** 10/5/22

Child care assistance eligibility—disability of a parent in a two-parent household, 170.2(2)“b” Filed **Emergency After Notice** **ARC 6565C** 10/5/22

INSPECTIONS AND APPEALS DEPARTMENT[481]

Food and consumer safety; food establishment and food processing plant inspections, amendments to chs 30, 31 Filed **ARC 6568C** 10/5/22

Home food processing establishments, ch 34 Filed **ARC 6569C** 10/5/22

Health care employment agencies, ch 55 Notice **ARC 6571C** 10/5/22

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Travel insurance, amendments to ch 10 Filed **ARC 6548C** 10/5/22

Five-year review of rules, 35.21, 35.40, 40.12(4), 55.20(7), 58.3(2), 58.16(3), 71.14(9), 101.1, 101.8(12), 101.9, 102.3 Filed **ARC 6547C** 10/5/22

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Wild turkey hunting—permitted weapons, 98.2(1)“a,” 98.12(1), 99.8(1) Notice **ARC 6578C** 10/5/22

Deer hunting by residents—antlerless-deer-only seasons, deer depredation licenses, 106.1(6), 106.2(5), 106.4(5), 106.6(4), 106.7(5), 106.11(4) Notice **ARC 6579C** 10/5/22

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Behavior analysts, assistant behavior analysts—fees, 5.3(3) Filed **ARC 6549C**..... 10/5/22**PUBLIC HEALTH DEPARTMENT[641]**Center for congenital and inherited disorders, 4.1(1), 4.2, 4.3, 4.11 to 4.14 Filed **ARC 6554C**..... 10/5/22Water treatment systems, rescind ch 14 Filed **ARC 6555C** 10/5/22**REVENUE DEPARTMENT[701]**Public records and fair information practices; general administration; tax return extension in disaster areas, adopt ch 5; amend chs 6, 10 Filed **ARC 6583C** 10/5/22Tax-related due dates that fall on Saturdays, Sundays, or holidays, amendments to chs 7, 39, 48, 52, 58, 70, 78, 87, 89 Filed **ARC 6551C** 10/5/22Appeals, taxpayer representation, and other administrative procedures, 7.6, 7.9(6) Filed **ARC 6582C**..... 10/5/22Personal service and paperless delivery—notices, correspondence, other communication, 7.33, 8.6 Filed **ARC 6550C**..... 10/5/22Income tax returns—whole dollars, 8.5(2)"a" Filed **ARC 6567C** 10/5/22Failure to file penalty, 10.9 Filed **ARC 6566C** 10/5/22Services subject to sales tax, rescind ch 26; amend chs 203, 213 to 216, 219, 220, 225; adopt chs 211, 218 Notice **ARC 6577C** 10/5/22Corporate income tax rate adjustments, 51.10 Filed **ARC 6570C** 10/5/22**TRANSPORTATION DEPARTMENT[761]**Primary highway access control, adopt ch 112; amend ch 150 Filed **ARC 6562C**..... 10/5/22Quotation process for governmental entities for public improvement for vertical infrastructure, amendments to ch 180 Notice **ARC 6576C** 10/5/22Railroads—definitions, submission of reports, processing agreements, adoption by reference of federal regulations, amendments to chs 800, 810, 821 Notice **ARC 6574C**..... 10/5/22Highway-railroad grade crossings, amendments to chs 811, 812, 820 Notice **ARC 6575C** 10/5/22School transportation services provided by regional transit systems—contact information, adoption by reference of federal regulations, definition of "automobile," driver physical fitness, 911.1(2), 911.2, 911.5(1), 911.6(7) Notice **ARC 6572C** 10/5/22Federal transit assistance—state management plan, 922.1(2) Notice **ARC 6573C**..... 10/5/22**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**Veterans license fee fund, 17.1 to 17.3 Notice **ARC 6580C** 10/5/22

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.

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2415 Highway 218
Osage, Iowa 50461

Senator Julian Garrett
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Indianola, Iowa 50125

Senator Jesse Green
2344 360th Street
Harcourt, Iowa 50544

Senator Robert Hogg
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Cedar Rapids, Iowa 52406

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Sioux Rapids, Iowa 50585

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3012 East 31st Court
Des Moines, Iowa 50317

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2202 Ogden Avenue
Rockwell City, Iowa 50579

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Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone: 515.281.5211

NATURAL RESOURCE COMMISSION[571]

Wild turkey hunting—permitted weapons, 98.2(1)“a,” 98.12(1), 99.8(1)
IAB 10/5/22 **ARC 6578C**

Via video/conference call
Contact Chris Ensminger
Email: chris.ensminger@dnr.iowa.gov

October 25, 2022
12 noon to 1 p.m.

Deer hunting by residents—antlerless-deer-only seasons, deer depredation licenses, 106.1(6), 106.2(5), 106.4(5), 106.6(4), 106.7(5), 106.11(4)
IAB 10/5/22 **ARC 6579C**

Via video/conference call
Contact Chris Ensminger
Email: chris.ensminger@dnr.iowa.gov

October 25, 2022
12 noon to 1 p.m.

PHARMACY BOARD[657]

Iowa prescription monitoring program—definition of “opioid antagonist,” advisory council, 37.2, 37.4
IAB 9/21/22 **ARC 6533C**

Health Professions Board Room
400 S.W. 8th St., Suite H
Des Moines, Iowa

October 12, 2022
10 a.m.

RACING AND GAMING COMMISSION[491]

Alternative simulcast operators; waiver summary reports; conduct accountability; occupational licenses; vendor licenses; advance deposit wagering; physician assistants, amendments to chs 1, 5, 6, 8
IAB 9/21/22 **ARC 6542C**

Commission Office, Suite 100
1300 Des Moines St.
Des Moines, Iowa

October 11, 2022
9 a.m.

REVENUE DEPARTMENT[701]

Mandatory electronic filing of tax returns for certain taxpayers, 8.7
IAB 9/21/22 **ARC 6539C**

Via video/conference call
Contact Benjamin Clough
Email: ben.clough@iowa.gov

October 12, 2022
1 to 2 p.m.
(If requested)

Services subject to sales tax, rescind ch 26; amend chs 203, 213 to 216, 219, 220, 225; adopt chs 211, 218
IAB 10/5/22 **ARC 6577C**

Room 1 NW
Hoover State Office Bldg.
Des Moines, Iowa

October 25, 2022
11 a.m. to 12 noon

Withholding, 38.1(8), 46.1(1)“c,” 46.3, 46.5
IAB 9/21/22 **ARC 6538C**

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

October 11, 2022
12:30 to 1:30 p.m.
(If requested)

Rent reimbursement program—transition period, 73.35
IAB 9/21/22 **ARC 6537C**

Via video/conference call
Contact Nick Behlke
Email: nick.behlke@iowa.gov

October 11, 2022
1 to 2 p.m.
(If requested)

TRANSPORTATION DEPARTMENT[761]

<p>Quotation process for governmental entities for public improvement for vertical infrastructure, amendments to ch 180 IAB 10/5/22 ARC 6576C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>October 28, 2022 9 a.m. (If requested)</p>
<p>Commercial driver licensing—third-party testing, 607.30, 607.31 IAB 9/21/22 ARC 6519C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>October 13, 2022 10 a.m. (If requested)</p>
<p>Railroads—definitions, submission of reports, processing agreements, adoption by reference of federal regulations, amendments to chs 800, 810, 821 IAB 10/5/22 ARC 6574C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>October 27, 2022 9 a.m. (If requested)</p>
<p>Highway-railroad grade crossings, amendments to chs 811, 812, 820 IAB 10/5/22 ARC 6575C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>October 27, 2022 10:30 a.m. (If requested)</p>
<p>School transportation services provided by regional transit systems—contact information, adoption by reference of federal regulations, definition of “automobile,” driver physical fitness, 911.1(2), 911.2, 911.5(1), 911.6(7) IAB 10/5/22 ARC 6572C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>October 27, 2022 1 p.m. (If requested)</p>
<p>Federal transit assistance—state management plan, 922.1(2) IAB 10/5/22 ARC 6573C</p>	<p>Via conference call Contact Tracy George Email: tracy.george@iowadot.us</p>	<p>October 27, 2022 2:30 p.m. (If requested)</p>

The following list will be updated as changes occur.

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

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

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

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ARC 6591C

AGING, DEPARTMENT ON[17]

Notice of Intended Action

**Proposing rule making related to physician assistants
and providing an opportunity for public comment**

The Department on Aging hereby proposes to amend Chapter 7, “Area Agency on Aging Service Delivery,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 803.

Purpose and Summary

2022 Iowa Acts, House File 803, makes changes to allow physician assistants to perform duties that are within their scope of practice but that statute or rule only allowed physicians or other specified medical professionals to perform. Division II of the legislation directs the Department to amend subrule 7.18(3) to reference both physicians and physician assistants. This proposed rule making brings the Department’s rules into compliance with the changes to the Iowa Code.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Dax Oberreuter
Iowa Department on Aging
Jessie Parker Building
510 East 12th Street, Suite 2
Des Moines, Iowa 50319
Email: dax.oberreuter@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

AGING, DEPARTMENT ON[17](cont'd)

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrule 7.18(3) as follows:

7.18(3) A written physician's or physician assistant's order for each older individual requesting a therapeutic diet shall be obtained prior to the older individual's receipt of the meal and kept on file where the meal is prepared and served. The order shall be interpreted by a licensed dietitian and the individual's physician or physician assistant.

ARC 6581C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

**Proposing rule making related to gasoline and blended fuels
and providing an opportunity for public comment**

The Agriculture and Land Stewardship Department hereby proposes to amend Chapter 85, "Weights and Measures," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 214A.2 and 214A.16 as amended by 2022 Iowa Acts, House File 2581.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 214A.2 and 214A.16 as amended by 2022 Iowa Acts, House File 2581.

Purpose and Summary

This proposed rule making implements changes made in 2022 Iowa Acts, House File 2581, during the 2022 Legislative Session. The proposed changes incorporate the following:

- Remove the requirement that fuel retailers place state-approved stickers on their pumps for ethanol and biodiesel fuels.
- Increase the minimum octane level for premium grade gasoline from 90 to 91 to match industry standards.
- Update the ethanol percentage by volume required for ethanol blended gasoline to qualify as E-85 to match industry standards.

Fiscal Impact

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

Jobs Impact

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515.518.7609
Email: colin.tadlock@iowaagriculture.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve subrule **85.48(10)**.

ITEM 2. Rescind and reserve subrule **85.48(12)**.

ITEM 3. Amend subrule 85.48(14) as follows:

85.48(14) Octane rating of fuel offered for sale shall be posted on the pump in a conspicuous place. The octane rating shall be posted for registered fuels. No octane rating shall be posted on the pump for ethanol blended gasoline classified as higher than E-15. The minimum octane rating for gasoline offered for sale by a retail dealer is 87 for regular grade gasoline and ~~90~~ 91 for premium grade gasoline.

ITEM 4. Amend subrule 85.48(16) as follows:

85.48(16) Ethanol blended gasoline shall be designated E-xx where “xx” is the volume ~~percent~~ percentage of ethanol in the ethanol gasoline. Ethanol blended gasoline formulated with a percentage of ethanol between ~~70 and 85~~ 68 and 83 percent by volume shall be designated as E-85. Biodiesel fuel shall be designated as B-xx where “xx” is more than 20 percent renewable fuel by volume.

ARC 6584C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rule making related to English learners
and providing an opportunity for public comment**

The State Board of Education hereby proposes to amend Chapter 19, “Charter Schools,” Chapter 23, “Adult Education and Literacy Programs,” Chapter 41, “Special Education,” Chapter 60, “Programs for Students of Limited English Proficiency,” Chapter 67, “Educational Support Programs for Parents of At-Risk Children Aged Birth Through Five Years,” Chapter 68, “Iowa Public Charter and Innovation Zone Schools,” Chapter 77, “Standards for Teacher Intern Preparation Programs,” Chapter 79, “Standards for Practitioner and Administrator Preparation Programs,” Chapter 98, “Financial Management of Categorical Funding,” and Chapter 120, “Early Access Integrated System of Early Intervention Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, Senate File 2128.

Purpose and Summary

This proposed rule making eliminates outdated references to students as “limited English proficient” in favor of the more current term “English learner.” This rule making, for consistency and simplicity, also replaces “English language learner” with “English learner.”

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the 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 rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Thomas Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

EDUCATION DEPARTMENT[281](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **19.7(1)“f”** as follows:

l. Plans for identifying and serving students with disabilities, students who are ~~limited English proficient~~ English learners, students who are academically failing or below grade level, and gifted students, including but not limited to compliance with applicable laws and regulations.

ITEM 2. Amend paragraph **19.8(1)“f”** as follows:

l. Plans for identifying and serving students with disabilities, students who are ~~limited English proficient~~ English learners, students who are academically failing or below grade level, and gifted students, including but not limited to compliance with applicable laws and regulations.

ITEM 3. Amend paragraph **19.10(1)“c”** as follows:

c. Achievement gaps in both proficiency and growth on statewide outcome assessments between specified populations or groups of students, including groups based on gender, race, poverty, special education status, ~~limited English proficiency~~ English learner status, and gifted status.

ITEM 4. Amend subparagraph **23.3(2)“a”(2)** as follows:

(2) Programs for adults of ~~limited English proficiency~~ who are English learners;

ITEM 5. Amend rule 281—41.27(256B,34CFR300) as follows:

281—41.27(256B,34CFR300) Limited English proficient. “Limited English proficient” has the meaning given the term “English learner” in Section 8101 of the ESEA.

ITEM 6. Amend **281—Chapter 60**, title, as follows:

~~PROGRAMS FOR STUDENTS OF LIMITED ENGLISH PROFICIENCY WHO ARE ENGLISH LEARNERS~~

ITEM 7. Amend rule 281—60.1(280) as follows:

281—60.1(280) Scope. These rules apply to the identification of students and provision of programs for ~~limited English proficient~~ students who are English learners and to the application procedures for securing fiscal support.

ITEM 8. Adopt the following **new** definition of “English learner” in rule **281—60.2(280)**:

“*English learner*” means a student whose language background is in a language other than English, and the student’s proficiency in English is such that the probability of the student’s academic success in an English-only classroom is below that of an academically successful peer with an English language background. Each English learner shall be identified as either an intensive student or an intermediate student.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 9. Rescind the definition of “Limited English proficient” in rule **281—60.2(280)**.

ITEM 10. Amend rule **281—60.2(280)**, definitions of “Intensive student” and “Intermediate student,” as follows:

“*Intensive student*” means ~~a limited English proficient student~~ an English learner who, even with support, is not proficient under the state’s English language proficiency standards, as measured by the state-adopted assessment of English language proficiency.

“*Intermediate student*” means ~~a limited English proficient student~~ an English learner who, either with or without support, approaches being proficient under the state’s English language proficiency standards, as measured by the state-adopted assessment of English language proficiency.

ITEM 11. Amend subrule 60.3(3) as follows:

60.3(3) ~~Limited English proficient student~~ learner placement. Placement of students identified as ~~limited English proficient learners~~ shall be in accordance with the following:

a. No change.

b. ~~Limited English proficient learner~~ program placement.

(1) Students enrolled in a program for ~~limited English proficient students~~ learners shall receive language instruction with other ~~limited English proficient students~~ learners with similar language needs.

(2) to (5) No change.

ITEM 12. Amend subrule 60.3(4) as follows:

60.3(4) *Medium of instruction*. Instruction in all secular subjects taught in both public and nonpublic schools shall be in the English language, except when the use of a world language is deemed appropriate because the student is ~~limited English proficient~~ an English learner. When the student is ~~limited English proficient~~ an English learner, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in English as a second language or transitional bilingual instruction until the student is fully English proficient or demonstrates a functional ability to speak, read, write, and understand the English language.

ITEM 13. Amend subrule 60.3(5) as follows:

60.3(5) *Research-based educational and instructional models*. Districts shall utilize research-based educational and instructional models as defined in rule 281—60.2(280) with ~~limited English proficient students~~ English learners so that such students may acquire English proficiency and meet high academic standards.

ITEM 14. Amend rule 281—60.4(280) as follows:

281—60.4(280) Department responsibility. The department of education shall provide technical assistance to school districts, including advising and assisting schools in planning, implementation, and evaluation of programs for ~~limited English proficient students~~ English learners.

~~60.4(1) to 60.4(3)~~ Rescinded IAB 2/2/94, effective 3/9/94.

ITEM 15. Amend subrule 60.6(1) as follows:

60.6(1) *Weighting*. A weighting is included in the weighted enrollment of the school district of residence for a period not exceeding five years to provide funds for the excess costs of instruction of ~~limited English proficient students~~ English learners above the costs of instruction of pupils in a regular curriculum.

a. A student may be included for weighting if the student meets the definition of ~~a limited English proficient student~~ as either an intensive student or an intermediate student and the student is being provided instruction ~~related to limited English proficiency~~ pursuant to this chapter that is above the level of instruction provided to pupils in the regular curriculum.

b. and c. No change.

ITEM 16. Amend subrule 60.6(2) as follows:

60.6(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

EDUCATION DEPARTMENT[281](cont'd)

weighting to provide instruction to ~~limited English proficient students~~ 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 ~~limited English proficient~~ 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 ~~limited English proficient~~ English learner program (more commonly referred to as “English language learner program”) expenditures for the previous year, reduced by the ~~limited English proficient~~ English learner funding generated in the previous budget year based on the ~~limited English proficient~~ 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 ~~limited English proficient~~ 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 60.6(1), multiplied by the district cost per pupil in the current year.

c. No change.

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

ITEM 17. Amend subrule 60.6(3) as follows:

60.6(3) *Appropriate expenditures.* Appropriate expenditures for the ~~limited English proficiency~~ English learner program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. These expenditures are delineated in 281—Chapter 98.

ITEM 18. Amend subrule 60.6(5) as follows:

60.6(5) *Financial management.* ~~Limited English proficient~~ English learner funding is categorical funding and follows the general provisions in 281—Chapter 98.

ITEM 19. Amend subrule 60.6(6) as follows:

60.6(6) *Annual reporting.* Districts shall include and identify the detail of financial transactions related to ~~limited English proficient~~ English learner resources, expenditures, and ~~carryforward~~ carryforward balances on their certified annual report. School districts shall use the account coding appropriate to the ~~limited English proficient~~ English learner program as defined by Uniform Financing Accounting for Iowa School Districts and AEAs. Each district shall submit its certified annual report following the close of the fiscal year but no later than September 15.

ITEM 20. Amend rule 281—67.5(279) as follows:

281—67.5(279) *Secondary eligibility.* The available funds shall be directed to serve parents of at-risk children aged birth through five years when children qualify in one or more of the secondary eligibility categories as follows:

1. to 4. No change.
5. Children residing in a household where one or more of the parents or guardian:
 - Has not completed high school;
 - Has been identified as a substance abuser;
 - Has been identified as chronically mentally ill;
 - Is incarcerated;
 - Is illiterate;
 - Is a child abuser or spouse abuser; or

EDUCATION DEPARTMENT[281](cont'd)

- ~~Has limited English proficiency~~ Is an English learner.
6. No change.

ITEM 21. Amend subparagraph **68.4(2)“d”(2)** as follows:

(2) The educational program and curriculum utilizing different and innovative instructional methodologies that reflect sensitivity to gender, racial, ethnic and socioeconomic backgrounds. Services to be offered to all prospective students, including students with disabilities pursuant to the requirements of 281—Chapter 41, English Language Learners (ELL) learners, and other students considered “at risk,” must also reflect the same sensitivities.

ITEM 22. Amend rule 281—68.11(256F,83GA,SF2033) as follows:

281—68.11(256F,83GA,SF2033) Application process. An innovation zone consortium shall submit an application to establish an innovation zone school to the state board no later than December 15 immediately preceding the school year for which the innovation zone school desires to start operations. The application shall demonstrate the support, as of approximately the date of submission of the application, of at least 50 percent of the teachers employed at the proposed innovation zone school and at least 50 percent of the affected family units. The application shall set forth the manner in which the innovation zone school will comply with federal and state laws regarding instruction to students who are English language learners and regarding the National School Lunch Act and Child Nutrition Act.

ITEM 23. Amend paragraph **77.10(7)“d”** as follows:

d. ~~English language learners~~; and

ITEM 24. Amend paragraph **79.15(2)“e”** as follows:

e. English language learners.

ITEM 25. Amend subrule 79.15(3) as follows:

79.15(3) Each teacher candidate demonstrates competency in literacy, to include reading theory, knowledge, strategies, and approaches; and integrating literacy instruction into content areas. The teacher candidate demonstrates competency in making appropriate accommodations for students who struggle with literacy. Demonstrated competency shall address the needs of all students, including but not limited to, students with disabilities; students who are at risk of academic failure; students who have been identified as gifted and talented or ~~limited English proficient~~ English learners; and students with dyslexia, whether or not such students have been identified as children requiring special education under Iowa Code chapter 256B. Literacy instruction shall include evidence-based best practices, determined by research, including that identified by the Iowa reading research center.

ITEM 26. Amend paragraph **79.17(6)“e”** as follows:

e. English language learners.

ITEM 27. Amend paragraph **79.21(2)“e”** as follows:

e. English language learners.

ITEM 28. Amend rule 281—98.16(257,280) as follows:

281—98.16(257,280) Limited English proficiency (LEP) English learner weighting. ~~Limited English proficiency~~ English learner weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of providing funding for the excess costs of instruction of ~~limited English proficiency students~~ English learners above the costs of instruction of pupils in a regular curriculum. In addition, the school budget review committee may grant a modified supplemental amount to continue funding of the excess costs beyond the five years of weighting. Funding for the ~~limited English proficiency~~ English learner weighting and the modified supplemental amount for ~~limited English proficiency~~ English learner programs are both categorical funding and may have different restrictions than the federal ~~limited English proficiency~~ English learner funding.

98.16(1) Appropriate uses of categorical funding. Appropriate uses of funding for the ~~limited English proficiency~~ English learner program are those that are direct costs of providing instruction which

EDUCATION DEPARTMENT[281](cont'd)

supplement, but do not supplant, the costs of the regular curriculum. These expenditures include, but are not limited to, salaries and benefits of teachers and paraeducators; instructional supplies, textbooks, and technology; classroom interpreters; support services to students served in ~~limited English proficiency~~ English learner programs above the services provided to pupils in regular programs; support services to instructional staff such as targeted professional development, curriculum development or academic student assessment; and support services provided to parents of ~~limited English proficiency students~~ English learners and community services specific to ~~limited English proficiency~~ English learners.

98.16(2) *Inappropriate uses of categorical funding.* Inappropriate uses of funding for the ~~limited English proficiency~~ English learner program include, but are not limited to, indirect costs, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the ~~limited English proficiency~~ English learner program beyond the scope of the regular classroom.

ITEM 29. Amend subrule 120.25(1), introductory paragraph, as follows:

120.25(1) *Limited English proficiency.* “Native language,” when used with respect to an individual who is limited English proficient or LEP (as that term is defined in Section 602(18) of the Act and in rule 281—41.27(256B,34CFR300)), means:

ARC 6585C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to operational function sharing supplementary weighting and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 97, “Supplementary Weighting,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 2080, and 2022 Iowa Acts, House File 2589.

Purpose and Summary

The 2022 General Assembly added two additional shared operational functions: “school resource officer” and “college and career transition counselor or coordinator.” The General Assembly also raised the amount of weighting generated for sharing a superintendent and added flexibility for sharing with political subdivisions and other school corporations. This proposed rule making implements those changes and also adds a definition of “work-based learning coordinator,” which was omitted from a prior rule making.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa.
From the Notes on Bills and Amendments for 2022 Iowa Acts, House File 2589:

EDUCATION DEPARTMENT[281](cont'd)

Based on FY 2023 data, a total of 296 school districts are currently under the maximum amount of additional weighting for a school district of 21 additional pupils per year. School districts have a capacity to add total weighting of 554 for a college and career transition counselor or coordinator. Information is not available to determine the number of school districts that will receive the additional maximum weighting of two for a college and career transition counselor or coordinator as provided in this Act. Each school district that receives the additional weighting for a college and career transition counselor or coordinator will result in additional weighting costing an estimated \$14,826. The weighting would be funded with \$13,456 from the State General Fund and \$1,370 from local property tax beginning with FY 2024 and ending with FY 2025.

From the final Fiscal Note for 2022 Iowa Acts, House File 2080:

House File 2080 is estimated to increase the operational function sharing supplementary weighting for superintendent management by a total of 91 pupils for 91 school districts at a total annual cost of \$660,000 beginning with FY 2024 and ending with FY 2025. The estimated increase will be funded with approximately \$595,000 from the State General Fund and \$65,000 from local property tax.

Information is not available to determine the number of school districts that will receive the additional maximum weightings of two for a special education director and two for a school resource officer provided in this Bill. Information is also not available on the number of school districts that are funding a shared special education director function or school resource officer function with currently available resources and not receiving any additional weighting. However, each school district that receives the additional weighting for a shared special education director or school resource officer will result in additional weighting costing an estimated \$14,826. The weighting would be funded with \$13,456 from the State General Fund and \$1,370 from local property tax beginning with FY 2024 and ending with FY 2025.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the 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 rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Thomas Mayes
Department of Education
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

EDUCATION DEPARTMENT[281](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 97.7(2), introductory paragraph, as follows:

97.7(2) Operational function area eligibility. “Operational function sharing” means sharing of managerial personnel in the discrete operational function areas of superintendent management, business management, human resources management, student transportation management, facility operation or maintenance management, curriculum director, master social worker, independent social worker, school counselor, special education director, work-based learning coordinator, ~~or~~ mental health professional if the mental health professional holds a statement of recognition issued by the board of educational examiners, school resource officer, or college and career transition counselor or coordinator. “Operational function sharing” does not mean sharing of clerical personnel or school principals. The operational function sharing arrangement does not need to be a newly implemented sharing arrangement in order to be eligible for supplementary weighting.

ITEM 2. Amend paragraph **97.7(2)“j”** as follows:

j. Work-based learning coordinator.

(1) and (2) No change.

(3) “Work-based learning coordinator” means an appropriately trained individual responsible for facilitating authentic, engaging work-based learning experiences for learners and educators in partnership with employers and others to enhance learning by connecting the content and skills that are necessary for future careers.

~~(3)~~ (4) Shared work-based learning coordinator services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

ITEM 3. Adopt the following **new** paragraphs **97.7(2)“l”** and **“m”**:

l. School resource officer.

(1) Shared personnel must perform the function of a school resource officer. An individual performing the function of a school resource officer must meet the definition in subparagraph 97.7(2)“l”(3).

(2) Deans of students, school business managers, school administration managers, school counselors, clerical personnel, paraprofessionals, private security guards, or custodians shall not be considered shared school resource officers for supplementary weighting under this subrule.

(3) “School resource officer” means the same as defined in 34 U.S.C. Section 10389.

(4) Shared school resource officer services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

m. College and career transition counselor or coordinator.

(1) Shared personnel must perform the services of a college and career transition counselor or coordinator as defined in subparagraph 97.7(2)“m”(3).

EDUCATION DEPARTMENT[281](cont'd)

(2) Superintendents, principals, curriculum directors, deans of students, school counselors, work-based learning coordinators, or other support services personnel in the guidance services function area shall not be considered a shared college and career transition counselor or coordinator under this subrule.

(3) “College and career transition counselor or coordinator” means a licensed school counselor or an appropriately trained individual responsible for providing direct services to students, parents, families, schools, and postsecondary institutions to support college preparation and postsecondary success, such as college preparation, financial aid processing, and transition to postsecondary institution enrollment.

(4) Shared college and career transition counselor or coordinator services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

ITEM 4. Amend paragraphs 97.7(10)“a” and “c” as follows:

a. A school district that shares an operational function in the area of superintendent management shall be assigned a supplementary weighting of ~~eight~~ nine pupils for the function.

c. A school district that shares the operational functions of a curriculum director, master social worker, independent social worker, school counselor, work-based learning coordinator, special education director, ~~or~~ mental health professional, school resource officer, or college and career transition counselor or coordinator shall be assigned a supplementary weighting of three pupils for the function. For the school budget years beginning July 1, 2022; July 1, 2023; and July 1, 2024, the weighting shall be two pupils.

ITEM 5. Amend subrule 97.7(11) as follows:

97.7(11) *Sharing arrangement duties.* A school district may receive the additional weighting for the sharing of services of an individual with a political subdivision ~~that is not a school corporation or another school district~~ even if the type of operational function performed by the individual for the school district and the type of operational function performed by the individual for the political subdivision or school district are not the same operational function, so long as either both operational functions are eligible for weighting or the operational function the individual performs for the school district is special education director. ~~In such either case,~~ in either case, the school district shall be assigned the additional weighting for the type of operational function that the individual performs for the school district, and the school district shall not receive additional weighting for any other function performed by the individual.

ARC 6590C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to state supplementary assistance and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 50, “Application for Assistance,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 249.4 and 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 249.4 and 249A.4.

Purpose and Summary

Chapter 50 was reviewed as part of the Department’s five-year rules review. Chapter 50 sets out the application process for the State Supplementary Assistance program. This rules review resulted in

HUMAN SERVICES DEPARTMENT[441](cont'd)

the following proposed technical amendments. Definitions are added to provide clarity to the program. Form numbers are added and form names are removed to provide consistency across programs. Outdated references are removed.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—50.1(249) as follows:

441—50.1(249) Definitions.

“Aged” shall mean a person 65 years of age or older.

“Applicant” means a person who is requesting state supplementary assistance on the person’s own behalf or a person for whom state supplementary assistance is requested.

“Blind” shall mean a person with central visual acuity of 20/200 or less in the better eye with use of corrective lens or visual field restriction to 20 degrees or less.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“Client” means a person who has been determined eligible and is a current or former recipient of state supplementary assistance.

“Disabled” shall mean that a person is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months or can be expected to result in death. Exception: For the supplement for Medicare and Medicaid eligibles, being engaged in substantial gainful activity shall not preclude a determination of disability. A child under the age of 18 is disabled if the child suffers from any medically determinable physical or mental impairment of comparable severity. For purposes of state-administered payments, the department shall determine disability according to rule 441—75.20(249A) 441—Chapter 75.

“Payment for a dependent relative” shall mean payment to a recipient on behalf of a dependent relative as defined in Iowa Code section 249.3(3). The payment shall be made in accordance with standards established by the department in rule 441—52.1(249).

“Payment for a protective living arrangement” shall mean payment to a recipient living in a family life home. The payment shall be made in accordance with standards established by the department by rule in 441—Chapter 52 in rule 441—52.1(249).

“Payment for residential care” shall mean payment to a recipient living in a residential care facility who is determined to be in need of care and payment is made on a per diem basis. The payment shall be made in accordance with standards established by the department in rule 441—52.1(249).

This rule is intended to implement Iowa Code section 249.3 as amended by 2004 Iowa Acts, House File 2134, section 4.

ITEM 2. Amend rule 441—50.2(249) as follows:

441—50.2(249) Application procedures.

50.2(1) and 50.2(2) No change.

50.2(3) Any person applying for payment for residential care, a dependent person allowance, payment for a protective living arrangement, or in-home health-related care shall make application at a local office of ~~with~~ the department of human services ~~or at the residential care facility where the person resides.~~ Any person applying for a dependent person allowance or for payment for a protective living arrangement or in-home, health-related care shall make application at a local office of the department. An application may also be filed in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided.

The application shall be made on the ~~Health Services Application, Form 470-2927 or 470-2927(S), or the Health and Financial Support Application, Form 470-0462 or 470-0462(S) Form 470-5170 or 470-5170(S).~~ The application shall be signed by the applicant or the authorized representative. Someone acting responsibly for an incapacitated, incompetent, or deceased person may sign the application on the person's behalf.

a. Each ~~individual~~ person wishing to do so shall have the opportunity to apply for assistance without delay.

b. An applicant may be assisted by ~~other individuals in the application process; the client may be accompanied by the individuals in contact with the department, and when so accompanied, may also be represented by them.~~ When the applicant has a guardian, the guardian shall participate in the application ~~process~~ an authorized representative, as defined in rule 441—76.1(249). If the applicant is unable to act on the applicant's own behalf, a responsible person may act on the applicant's behalf pursuant to rule 441—76.9(249A).

~~c. The applicant shall immediately be given an application form to complete. When the applicant requests that the forms be mailed, the department shall send the necessary forms in the next outgoing mail.~~

~~d. c.~~ The decision with respect to eligibility shall be based primarily on information furnished by the applicant. The department shall notify the applicant in writing of additional information or verification that is required to establish eligibility for assistance. Failure of the applicant to supply the

HUMAN SERVICES DEPARTMENT[441](cont'd)

information or refusal to authorize the department to secure the information from other sources shall serve as a basis for denial of assistance.

50.2(4) An application for Medicaid from a person who meets the requirements of rule 441—51.6(249) shall be considered as an application for the supplement for Medicare and Medicaid eligibles.

This rule is intended to implement Iowa Code section 249.4 as amended by 2004 Iowa Acts, House File 2134, section 5.

ITEM 3. Amend rule 441—50.3(249) as follows:

441—50.3(249) Approval of application and effective date of eligibility.

50.3(1) to 50.3(3) No change.

50.3(4) Payment for the supplement for Medicare and Medicaid eligibles shall be effective retroactive to October 1, 2003, or to the first month when all eligibility requirements are met, whichever is later.

This rule is intended to implement Iowa Code section 249.4 as amended by 2004 Iowa Acts, House File 2134, section 5.

ITEM 4. Amend rule 441—50.4(249) as follows:

441—50.4(249) Reviews.

50.4(1) Any eligibility factor shall be reviewed whenever a change in circumstances occurs.

50.4(2) All eligibility factors shall be reviewed at least annually.

50.4(3) For purposes of an annual review to be performed by the department, ~~Form 470-3118 or 470-3118(S), Medicaid Review, shall be completed~~ the client shall complete and return Form 470-5482, 470-5482(S), 470-5482(M), or 470-5482(MS).

~~**50.4(4)** Rescinded IAB 10/31/01, effective 1/1/02.~~

This rule is intended to implement Iowa Code section 249.4.

ITEM 5. Amend rule 441—50.5(249) as follows:

441—50.5(249) Application under conditional benefits. When the applicant or client is seeking state supplementary assistance (SSA) under the conditional benefit policy of the supplemental security income (SSI) program in accordance with 20 CFR 416.1242 as amended to March 15, 2022, the applicant or client shall be required to do the following:

50.5(1) Sign Complete and return Form 470-2909, Agreement to Sell Excess Property, in order to be eligible.

50.5(2) ~~Describe the efforts that are made to sell the property on~~ Complete and return Form 470-2908, Description of Efforts to Sell Property, as requested by the department. The department shall request that the form be completed no more often than specified. as follows:

a. For personal property, ~~being sold Form 470-2908 shall be completed no more often than every 30 days during the conditional benefits period.~~

b. For real property, ~~being sold Form 470-2908 shall be completed beginning 35 days after conditional benefits are granted and no more often than every 60 days thereafter for nine months. If eligibility continues and the real property is not sold, the applicant or client shall complete the form shall be completed no more often than every 90 days.~~

50.5(3) Sign an agreement to repay the state supplementary assistance granted during the conditional period using Form 470-2835, State Supplementary Assistance Agreement to Repay Conditional Benefits. The amount of repayment is limited to the lesser of:

a. The amount by which the revised value of resources (resources counted at the beginning of the conditional period plus the net value of resources sold) minus both the resource limit and the amount that SSI recovers for conditional benefits.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. The amount of state supplementary assistance actually paid in the conditional period, minus the amount that SSI recovers for conditional benefits.

This rule is intended to implement Iowa Code sections 249.3, 249.4 and 249A.4.

ARC 6586C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to five-year rules review and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 51, “Eligibility,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249.2.

Purpose and Summary

Chapter 51 was reviewed as part of the Department’s five-year rules review. Chapter 51 sets out requirements for eligibility to receive State Supplementary Assistance. This rules review resulted in proposed technical changes. References to federal regulations are proposed to be updated to provide accurate listings. Outdated references are proposed to be removed.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—51.3(249) as follows:

441—51.3(249) Eligibility for residential care.

51.3(1) Licensed facility. Payment for residential care shall be made only when the facility in which the applicant or recipient is residing is currently licensed by the department of inspections and appeals pursuant to laws governing health care facilities.

51.3(2) Physician’s statement. Payment for residential care shall be made only when there is on file an order written by a physician certifying that the applicant or recipient being admitted requires residential care but does not require nursing services. The certification shall be updated whenever a change in the recipient’s physical condition warrants reevaluation, but no less than every 12 months.

51.3(3) Income eligibility. The resident shall be income eligible when the income according to 441—paragraph 52.1(3)“a” is less than 31 times the maximum per diem rate of the facility. Partners in a marriage who both enter the same room of the residential care facility in the same month shall be income eligible for the initial month when their combined income according to 441—paragraph 52.1(3)“a” is less than twice the amount of allowed income for one person (31 times the maximum per diem rate of the facility).

~~**51.3(4) Diversion of income.** Rescinded IAB 5/1/91, effective 7/1/91.~~

~~**51.3(5) Resources.** Rescinded IAB 5/1/91, effective 7/1/91.~~

This rule is intended to implement Iowa Code section 249.3.

ITEM 2. Amend rule **441—51.6(249)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 249.3 ~~as amended by 2005 Iowa Acts, House File 825, section 108.~~

ITEM 3. Amend subrule 51.9(1) as follows:

51.9(1) Definitions.

“*Administrative overpayment*” means assistance incorrectly paid to or for the client because of continuing assistance during the appeal process.

“*Agency error*” means assistance incorrectly paid to or for the client because of action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.
4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the local office.
6. Failure to make prompt revisions in payment following changes in policies requiring the changes as of a specific date.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Client*” means a person who has been determined eligible and is a current or former applicant or recipient of state supplementary assistance.

“*Client error*” means assistance incorrectly paid to or for the client because the client or client’s representative failed to disclose information, or gave false or misleading statements, oral or written, regarding the client’s income, resources, or other eligibility and benefit factors. It also means assistance incorrectly paid to or for the client because of failure by the client or client’s representative to timely report as defined changes as described in rule 441—76.10(249A) 441—Chapter 76.

“*Department*” means the department of human services.

ARC 6587C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to five-year rules review and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 52, “Payment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249.2.

Purpose and Summary

Chapter 52 was reviewed as part of the Department’s five-year rules review. Chapter 52 sets out the guidelines for payment by the Department to recipients under the State Supplementary Assistance program. This rules review resulted in proposed technical changes. References to federal regulations are proposed to be updated to provide accurate listings. Outdated references are proposed to be removed.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—52.1(249), introductory paragraph, as follows:

441—52.1(249) Assistance standards. Assistance standards are the amounts of money allowed on a monthly basis to recipients of state supplementary assistance in determining financial need and the amount of assistance granted. Current assistance standards shall be published on the department’s website. Assistance standards shall be adjusted annually to reflect cost-of-living adjustments (COLA) adopted by the Social Security Administration, in accordance with 20 CFR §§416.2095 and 416.2096 as amended to March 15, 2022. Adjustments to the assistance standards based on COLA are effective January 1 of each year.

ITEM 2. Amend subrule 52.1(3) as follows:

52.1(3) Residential care. For periods of eligibility before July 1, 2017, the department will reimburse a recipient in either a privately operated or non-privately operated residential care facility on a flat per diem rate or on a cost-related reimbursement system with a maximum per diem rate established consistent with the assistance standards principles provided in rule 441—52.1(249). ~~The department shall establish a cost-related per diem rate for each licensed residential care facility choosing the cost-related reimbursement method of payment according to rule 441—54.3(249).~~

For periods of eligibility beginning July 1, 2017, and thereafter, payment to a recipient in a ~~privately operated~~ licensed residential care facility shall be based on the maximum per diem rate. ~~Reimbursement for recipients in non-privately operated residential care facilities will be based on the flat per diem rate or be based on the cost-related reimbursement system with a maximum per diem rate established consistent with the assistance standards principles provided in rule 441—52.1(249).~~

The facility shall accept the per diem rate established by the department for state supplementary assistance recipients as payment in full from the recipient and make no additional charges to the recipient.

a. to f. No change.

g. ~~The per diem rate established for recipients of state supplementary assistance shall not exceed the average rate established by the facility for private pay residents.~~

~~(1) Residents placed in a facility by another governmental agency are not considered private paying individuals. Payments received by the facility from such an agency shall not be included in determining the average rate for private paying residents.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(2) To compute the facilitywide average rate for private paying residents, the facility shall accumulate total monthly charges for those individuals over a six-month period and divide by the total patient days care provided to this group during the same period of time.~~

ARC 6589C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to five-year rules review and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 82, “Intermediate Care Facilities for Persons with an Intellectual Disability,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

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

Purpose and Summary

Chapter 82 was reviewed as part of the Department’s five-year rules review. Chapter 82 sets out requirements for intermediate care facilities for persons with an intellectual disability, including licensing and certification, staffing and treatment, individual program plans, Medicaid participation, financial and statistical reports, eligibility for services, billing procedures and audits. This rules review resulted in proposed technical changes. References to federal regulations are proposed to be updated to provide accurate listings. Names of forms and outdated references are proposed to be removed. The word “enterprise” is proposed to be removed from the Iowa Medicaid name. Outdated language is proposed to be removed from cost reporting rules.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **441—82.1(249A)**, definition of “Intermediate care facility for persons with an intellectual disability level of care,” as follows:

“*Intermediate care facility for persons with an intellectual disability level of care*” means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009 as amended to March 29, 2022; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

ITEM 2. Amend subparagraph **82.2(3)“b”(5)** as follows:

(5) Professional program staff shall be licensed, certified, or registered, as applicable, to provide professional services by the state in which the staff practices. Those professional program staff who do not fall under the jurisdiction of state licensure, certification, or registration requirements shall meet the following qualifications:

1. to 8. No change.

9. To be designated as a professional dietitian, an individual shall be eligible for registration by the ~~American Dietetics Association~~ Academy of Nutrition and Dietetics.

10. To be designated as a human services professional, an individual shall have at least a bachelor’s degree in a human services field (including, but not limited to, sociology, special education, rehabilitation counseling ~~and~~ or psychology).

ITEM 3. Amend subparagraph **82.2(4)“b”(4)** as follows:

(4) If a client is to be either transferred or discharged, the facility shall have documentation in the client’s record that the client was transferred or discharged for good cause; and shall provide a reasonable time to prepare the client and the client’s parents or guardian for the transfer or discharge (except in emergencies).

ITEM 4. Amend subparagraph **82.2(4)“c”(3)** as follows:

(3) Within 30 days after admission, the interdisciplinary team shall perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The

HUMAN SERVICES DEPARTMENT[441](cont'd)

comprehensive functional assessment shall take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and shall:

1. to 4. No change.

5. Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development, ~~and~~ auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and, ~~as applicable~~, vocational skills as applicable.

ITEM 5. Amend subparagraph **82.2(5)“a”(1)** as follows:

(1) The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures shall:

1. Promote the growth, development, and independence of the client.

2. to 4. No change.

ITEM 6. Amend subparagraph **82.2(6)“f”(1)** as follows:

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility unless the examination was completed within 12 months ~~before~~ prior to admission.

ITEM 7. Amend paragraph **82.2(6)“n”** as follows:

n. Laboratory services.

(1) No change.

(2) If a facility chooses to provide laboratory services, the laboratory shall meet the management requirements specified in 42 CFR 493.1407 as amended to March 29, 2022, and provide personnel to direct and conduct the laboratory services.

The laboratory director shall be technically qualified to supervise the laboratory personnel and test performance and shall meet licensing or other qualification standards established by the state with respect to directors of clinical laboratories.

The laboratory director shall provide adequate technical supervision of the laboratory services and ensure that tests, examinations and procedures are properly performed, recorded and reported.

The laboratory director shall ensure that the staff has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently; is sufficient in number for the scope and complexity of the services provided; and receives in-service training appropriate to the type of complexity of the laboratory services offered.

The laboratory technologists shall be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory shall meet the proficiency testing requirements specified in 42 CFR 493.801 as amended to March 29, 2022.

~~(4) The laboratory shall meet the quality control requirements specified in 42 CFR 493.1501.~~

~~(4)~~ (4) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory shall be an approved Medicare laboratory.

ITEM 8. Amend paragraph **82.3(1)“b”** as follows:

b. The facility shall request an application, Form 470-0254, ~~Iowa Medicaid Provider Enrollment Application~~, from the Iowa Medicaid ~~enterprise~~ provider services unit.

ITEM 9. Amend subrule 82.5(3) as follows:

82.5(3) Submission of reports. The facility's cost report shall be received by the Iowa Medicaid ~~enterprise~~ provider cost audit and rate setting unit no later than September 30 each year except as described in subrule 82.5(14).

a. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid ~~enterprise~~ provider cost audit and rate setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly

HUMAN SERVICES DEPARTMENT[441](cont'd)

assigned to the facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 82.5(3) "c."

b. No change.

c. Failure to timely submit the complete report shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective October 1 and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

d. No change.

e. When an intermediate care facility for persons with an intellectual disability continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid enterprise provider cost audit and rate setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

f. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 10. Amend paragraph **82.5(11)"e"** as follows:

e. A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and

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rate setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 82.5(3)“c.”

(2) Reasonableness—requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions, and depends upon the facts and circumstances of each case.

(3) No change.

(4) The base maximum allowed compensation for an administrator who is involved in ownership of the facility or who is an immediate relative of an owner of the facility is \$1,926 per month plus \$20.53 per month per licensed bed capacity for each bed over 60, not to exceed \$2,852 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of 5 percent or more.

On a ~~semiannual~~ annual basis, the maximum allowed compensation amounts for these administrators shall be increased or decreased by the inflation factor applied to facility rates.

(5) to (7) No change.

ITEM 11. Amend subparagraph **82.5(12)“a”(4)** as follows:

(4) When a participating facility is leased, a transfer of ownership is considered to have taken place. When the entire facility is leased, the total agreement with the lessor terminates. When only part of the facility is leased, the agreement remains in effect with respect to the unleased portion, but terminates with respect to the leased portion.

ITEM 12. Amend paragraph **82.5(14)“b,”** introductory paragraph, as follows:

b. Initial cost report. Following six months of operation as a Medicaid-certified ICF/ID, the facility shall submit a report of actual costs. The rate computed from this cost report shall be adjusted to 100 percent occupancy plus the annual percentage increase of the Consumer Price Index for all urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index). ~~For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used to adjust costs for inflation, instead of the annual percentage increase of the Consumer Price Index.~~ Business start-up and organization costs shall be accounted for in the manner prescribed by the Medicare and Medicaid standards. Any costs that are properly identifiable as start-up costs, organization costs or capitalizable as construction costs must be appropriately classified as such.

ITEM 13. Amend subparagraph **82.5(14)“d”(1)** as follows:

(1) A new maximum allowable base cost will be calculated each year by increasing the prior year’s maximum allowable base by the annual percentage increase of the Consumer Price Index. ~~For the period beginning July 1, 2009, and ending June 30, 2010, the prior year’s maximum allowable base cost shall be increased by 3 percent, instead of the annual percentage increase of the Consumer Price Index.~~

ITEM 14. Amend paragraph **82.5(14)“e”** as follows:

e. Maximum rate. Facilities shall be subject to a maximum rate set at the eightieth percentile of the total per diem cost of all participating community-based ~~ICFs/MR~~ ICFs/ID with established base rates. The eightieth percentile maximum rate shall be adjusted July 1 of each year using cost reports on file December 31 of the previous year.

ITEM 15. Amend paragraph **82.5(14)“f,”** introductory paragraph, as follows:

f. Incentive factor. New facilities which complete the second annual period of operation that have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index, as described in 82.5(14)“d,” shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference multiplied by the actual per diem cost for the annual period just completed is the incentive factor. ~~For the period beginning July 1, 2009, and ending June 30, 2010, the incentive factor shall be calculated using 3 percent in place of the percentage increase of the Consumer Price Index.~~

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ITEM 16. Amend subparagraph **82.5(14)“g”(1)** as follows:

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by multiplying the lower of the prior year's actual or the projected reimbursement per diem by the Consumer Price Index plus one. For the period beginning July 1, 2009, and ending June 30, 2010, the projected reimbursement will be determined using a multiplier of 3 percent instead of the Consumer Price Index.

ITEM 17. Amend subrule 82.5(16) as follows:

82.5(16) Payment to existing facilities. The following reimbursement limits shall apply to all non-state-owned ICFs/MR ICFs/ID:

a. to c. No change.

d. Facilities which have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index or of less than 3 percent for rates effective July 1, 2009, through June 30, 2010, shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference multiplied by the actual per diem costs for the annual period just completed is the incentive factor.

(1) No change.

(2) Facilities whose annual per unit cost decreased from the prior year shall receive their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index as an incentive for cost containment. For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used in lieu of the percentage increase in the Consumer Price Index.

e. Administrative costs shall not exceed 18 percent of total facility costs. Administrative costs are comprised of those costs incurred in the general management and administrative functions of the facility. Administrative costs include, but are not necessarily limited to, the administrative portion of the following:

- ~~(1) Administrator's salary.~~
- ~~(2) Assistant administrator's salary.~~
- ~~(3) Bookkeeper's salary.~~
- ~~(4) Other accounting and bookkeeping costs.~~
- ~~(5) Other clerical salaries and clerical costs.~~
- ~~(6) Administrative payroll taxes.~~
- ~~(7) Administrative unemployment taxes.~~
- ~~(8) Administrative group insurance.~~
- ~~(9) Administrative general liability and worker's compensation insurance.~~
- ~~(10) Directors' and officers' insurance or salaries.~~
- ~~(11) Management fees.~~
- ~~(12) Indirect business expenses and other costs related to the management of the facility including home office and other organizational costs.~~
- ~~(13) Legal and professional fees.~~
- ~~(14) Dues, conferences and publications.~~
- ~~(15) Postage and telephone.~~
- ~~(16) Administrative office supplies and equipment, including depreciation, rent, repairs, and maintenance as documented by a supplemental schedule which identifies the portion of repairs and maintenance, depreciation, and rent which applies to office supplies and equipment.~~
- ~~(17) Data processing and bank charges.~~
- ~~(18) Advertising.~~
- ~~(19) Travel, entertainment and vehicle expenses not directly involving residents.~~
- (1) Administrator wages.
- (2) Business office wages.
- (3) Advertising and marketing wages.
- (4) Employer's taxes (administrative).
- (5) Group/life and retirement benefits (administrative staff).

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- (6) Workers' compensation insurance (administrative staff).
- (7) Employment advertising and recruitment (administrative staff).
- (8) Criminal record checks (administrative staff).
- (9) Education and training (administrative staff).
- (10) Office supplies (administrative staff).
- (11) Telephone.
- (12) Equipment rental.
- (13) Home office costs.
- (14) Management fees.
- (15) Accounting fees.
- (16) Professional organization dues.
- (17) Licensing fees.
- (18) Information technology expenses.
- (19) Legal fees—direct patient-care-related.
- (20) Legal fees—other.
- (21) Working capital interest.
- (22) General liability insurance.
- (23) Travel, entertainment and auto expenses.
- (24) Advertising and public relations.
- (25) Other.

f. No change.

g. Total patient days for purposes of the computation shall be inpatient days as determined in subrule 82.5(7) or 80 percent of the licensed capacity of the facility, whichever is greater. The reimbursement rate shall be determined by dividing total reported patient expenses by total patient days during the reporting period. This cost per day will be limited by an inflation increase which shall not exceed the percentage change in the Consumer Price Index. ~~For the period beginning July 1, 2009, and ending June 30, 2010, the inflation increase shall be 3 percent, notwithstanding the percentage change in the Consumer Price Index.~~

h. State-owned ~~ICFs/MR~~ ICFs/ID shall submit semiannual cost reports and shall receive semiannual rate adjustments based on actual costs of operation inflated by the percentage change in the Consumer Price Index. ~~For the period beginning July 1, 2009, and ending June 30, 2010, costs of operation shall be inflated by 3 percent instead of the percentage change in the Consumer Price Index.~~

i. The projected reimbursement for the first annual period will be determined by multiplying the per diem rate calculated for the base period by the Consumer Price Index ~~plus one~~.

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by multiplying the lower of the prior year's actual or the projected reimbursement per diem by the Consumer Price Index ~~plus one~~. ~~For the period beginning July 1, 2009, and ending June 30, 2010, the projected reimbursement will be determined using a multiplier of 3 percent instead of the Consumer Price Index.~~

(2) No change.

ITEM 18. Amend subrule 82.7(3) as follows:

82.7(3) Approval of level of care. Medicaid payment shall be made for ICF/ID care upon certification of need for this level of care by a licensed physician of medicine or osteopathy and approval by the Iowa Medicaid ~~enterprise (IME) medical services~~ quality improvement organization (QIO) unit.

ITEM 19. Amend rule ~~441—82.7(249A)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 249A.12 ~~as amended by 2012 Iowa Acts, Senate File 2336, section 58.~~

ITEM 20. Amend rule 441—82.8(249A) as follows:

441—82.8(249A) Determination of need for continued stay. For clients not enrolled with a managed care organization, certification of need for continued stay shall be made according to procedures established by the Iowa Medicaid ~~enterprise (IME) medical services~~ QIO unit. For all clients enrolled

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with a managed care organization, the managed care organization shall review the Medicaid client's need for continued care in an ICF/ID at least annually. The managed care organization must submit documentation to the ~~IME medical services~~ Iowa Medicaid QIO unit for all reviews that indicate a change in the client's level of care. The ~~IME medical services~~ Iowa Medicaid QIO unit shall make a final determination for any reviews that indicate a change in the level of care.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 21. Amend subrule 82.13(1), introductory paragraph, as follows:

82.13(1) Content. The facility shall as at a minimum maintain the following records:

ITEM 22. Amend rule ~~441~~—**82.14(249A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 249A.12 as ~~amended by 2012 Iowa Acts, Senate File 2336, section 58.~~

ITEM 23. Amend subrule 82.15(1) as follows:

82.15(1) Claims. Claims for service for clients not enrolled with a managed care organization must be sent to the Iowa Medicaid ~~enterprise~~ after the month of service and within 365 days of the date of service. Such claims must be submitted electronically through ~~IME's~~ Iowa Medicaid's electronic clearinghouse.

a. No change.

b. Adjustments to claims may be made electronically as provided for by the Iowa Medicaid ~~enterprise~~.

ITEM 24. Amend paragraphs **82.17(2)“a”** and **“b”** as follows:

a. ~~The Iowa Medicaid enterprise~~, the department's contracted managed care organizations, field auditors of the department of inspections and appeals and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit billings to the department and receipts of client participation, to ensure that the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

b. ~~The Iowa Medicaid enterprise~~, the department's contracted managed care organizations, field auditors of the department of inspections and appeals and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 82.9(3).

ARC 6588C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to five-year rules review and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 84, “Early and Periodic Screening, Diagnosis, and Treatment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

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

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Purpose and Summary

Chapter 84 was reviewed as part of the Department's five-year rules review. Chapter 84 defines the early and periodic screening, diagnosis, and treatment (EPSDT) services provided under the Medicaid program to eligible children under the age of 21. This rules review resulted in proposed technical changes. References to federal regulations are proposed to be updated to provide accurate listings. Outdated references are proposed to be removed.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend **441—Chapter 84**, preamble, as follows:

PREAMBLE

This chapter defines and structures the early and periodic screening, diagnosis and treatment services provided under the Medicaid program to eligible children under the age of 21. As further described in these rules, services include physical and mental health screenings (including hearing and vision),

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laboratory tests, immunizations, and health education. Services are provided in compliance with federal regulations at Title 42, Part 441, Subpart B, as amended to ~~November 16, 1984~~ March 29, 2022.

ITEM 2. Amend subrule 84.3(4) as follows:

84.3(4) Health education including anticipatory guidance. ~~See 441—subparagraph 78.18(6) “b”(1) for a description of the information services.~~ Services are provided in compliance with federal regulations at Title 42, Part 441, Subpart B, as amended to March 29, 2022.

ITEM 3. Amend subrule 84.4(1) as follows:

84.4(1) The availability of early and periodic screening shall be discussed with the payee for any Medicaid-eligible child under the age of 21 at the time of application and periodically thereafter in compliance with federal regulations at Title 42, Part 441, Subpart B, as amended to ~~November 16, 1984~~ March 29, 2022.

ARC 6571C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action****Proposing rule making related to health care employment agencies and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to adopt new Chapter 55, “Health Care Employment Agencies,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 10A.105 and 2022 Iowa Acts, House File 2521.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 2521.

Purpose and Summary

The proposed adoption of Chapter 55 implements 2022 Iowa Acts, House File 2521. The legislation defines “health care employment agency” and requires a health care employment agency operating in the state to register with the Department. The legislation requires a health care employment agency to maintain liability insurance, verify and document that its agency workers meet minimum standards for their profession, and submit quarterly data regarding the average amount the agency charges and the average amount paid to agency workers. The legislation also proscribes the restriction of employment opportunities of agency workers by noncompetition clauses and provides penalties for failure to adhere to this requirement.

Fiscal Impact

In accordance with Iowa Code section 17A.4(4) and after analysis and review of this rule making, the Department does not anticipate expenditures requiring a fiscal impact statement. Registration fees and additional costs to the Department to implement this rule making are not anticipated to exceed the amounts set forth in Iowa Code section 17A.4(4).

Jobs Impact

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

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** 481—Chapter 55:

CHAPTER 55
HEALTH CARE EMPLOYMENT AGENCIES

481—55.1(89GA, HF2521) Definitions. The definitions set forth in Iowa Code section 135Q.1 as enacted by 2022 Iowa Acts, House File 2521, are incorporated herein by reference. As used in this chapter, unless the context otherwise requires, the following terms apply:

“*Direct services*” includes services performed by registered nurses, licensed practical nurses, certified nurse aides, certified medication aides, and medication managers. For purposes of this chapter, janitorial, housekeeping, laundry, and meal preparation services are not considered direct services.

“*Health care employment agency*” does not include a recruitment firm that contracts with a health care entity to identify and screen potential candidates for hire and does not provide agency workers for temporary, temporary-to-hire, direct hire, or other contract or employee placements in this state. “Health care employment agency” does not include a group of physical therapists licensed under Iowa Code chapter 148A, occupational therapists licensed under Iowa Code chapter 148B, or speech pathologists or audiologists licensed under Iowa Code chapter 154F providing services to a health care entity.

“*Health care entity*” includes, but is not limited to, any entities licensed or certified pursuant to Iowa Code chapters 135B (hospitals), 135C (health care facilities), 135G (subacute mental health care

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facilities), 135H (psychiatric medical institutions for children), 135J (licensed hospice programs), 231C (assisted living programs), and 231D (adult day services) or any ambulatory surgical center, home health agency, hospice, end-stage renal disease center, rural health clinic, or federally qualified health care center certified by the Centers for Medicare and Medicaid Services.

481—55.2(89GA, HF2521) Health care employment agency registration.

55.2(1) A health care employment agency operating in the state shall file a statement of registration and pay a registration fee in accordance with Iowa Code section 135Q.2(1) as enacted by 2022 Iowa Acts, House File 2521. A health care employment agency with multiple locations may complete one registration containing the information required in subrule 55.2(3) for each location and may remit one payment for the total registration fee required.

a. A health care employment agency in operation prior to July 1, 2022, shall register with the department no later than January 4, 2023.

b. A health care employment agency in operation on or after July 1, 2022, shall register with the department 30 days prior to operation.

55.2(2) The statement of registration may be submitted electronically via an Internet-based system provided by the department for such purpose; by mail to the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by fax to (515)242-5022.

55.2(3) The registrant shall include, at a minimum, the following information on the statement of registration:

a. Name(s) of the owner(s) and managing entity(ies);

b. Location of the health care employment agency, including street address, city, and ZIP code; and

c. Contact information for the owner(s) and managing entity(ies), including telephone number, mailing address, and email address.

55.2(4) The health care employment agency shall notify the department of any changes to the information on the annual statement of registration within 30 days of the date the change occurs, including cessation of operation. Changes shall be submitted in the manner described in subrule 55.2(2).

55.2(5) The department shall issue each location a separate certification of registration upon approval of registration and payment of the fee.

481—55.3(89GA, HF2521) General requirements. A health care employment agency shall adhere to all requirements under Iowa Code section 135Q.2(2) as enacted by 2022 Iowa Acts, House File 2521, and do all of the following:

55.3(1) *Verification of employment standards.* A health care employment agency shall ensure that its agency workers comply with all applicable state and federal requirements under Iowa Code sections 135Q.2(2) “a” through “c” as enacted by 2022 Iowa Acts, House File 2521, including but not limited to the following:

a. The health care employment agency shall ensure completion of all requirements regarding criminal, dependent adult abuse, and child abuse record checks that would otherwise be the responsibility of the health care entity if the health care entity employed the agency worker directly;

b. The health care employment agency shall ensure completion of the physical examination and screening and testing for tuberculosis procedures that would otherwise be the responsibility of the health care entity if the health care entity employed the agency worker directly; and

c. The health care employment agency shall ensure that an agency worker has completed all education, training, and continuing education requirements for the agency worker’s occupation and that the agency worker is in good standing with any minimum licensing or certification standards to appropriately engage in the workers’ profession.

55.3(2) *Allegations of dependent adult abuse.*

a. If a health care employment agency receives an allegation of dependent adult abuse against an agency worker, the health care employment agency shall immediately notify the facility in which the

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alleged abuse occurred so that the facility may immediately separate the victim and alleged dependent adult abuser. The health care employment agency shall also notify the department within 24 hours or the next business day. If the health care employment agency has reason to believe that immediate protection for the dependent adult is advisable, the health care employment agency should also make an oral report to an appropriate law enforcement agency. After receiving notice of an allegation of dependent adult abuse against an agency worker and before the department's dependent adult abuse investigation is completed and the abuse determination is made, the health care employment agency shall disclose such investigation to any prospective health care entity with which the agency worker will be placed.

b. In addition to any other requirement under state or federal law with respect to the receipt of an allegation of dependent adult abuse, if a health care entity receives an allegation of dependent adult abuse against an agency worker, the health care employment agency shall immediately notify the health care employment agency of the allegation. This does not except the health care entity from any of its duties with respect to alleged dependent adult abuse under state or federal law.

c. If the health care employment agency terminates the alleged dependent adult abuser as a result of the investigation or the alleged dependent adult abuser resigns, the alleged dependent adult abuser shall disclose such termination or investigation to any prospective facility or program employer.

481—55.4(89GA, HF2521) Prohibitions.

55.4(1) A health care employment agency shall not restrict the employment opportunities of an agency worker in accordance with Iowa Code section 135Q.2(3) as enacted by 2022 Iowa Acts, House File 2521.

55.4(2) Subrule 55.4(1) shall not apply to a contract between a health care employment agency and a health care entity or a health care employment agency worker that meets all of the following criteria:

a. The contract is for the purpose of placing an agency worker the health care employment agency assisted in obtaining authorization to work in the United States;

b. The contract contains an initial contract term of no less than 24 months and has a total duration, including any renewals or extensions, of no longer than 36 months; and

c. The contract requires the agency worker to work at a single health care entity for the duration of the contract.

481—55.5(89GA, HF2521) Record retention and reporting.

55.5(1) *Document retention.* A health care employment agency shall maintain documentation in its files regarding each agency worker's compliance with the minimum licensing, certification, training, health requirements, and continuing education standards as described in subrule 55.3(1).

55.5(2) *External reporting.* A health care employment agency shall report, file, or otherwise provide any required documentation pursuant to Iowa Code section 135Q.2(2) "c" as enacted by 2022 Iowa Acts, House File 2521, including, but not limited to:

a. For any agency workers who are certified nurse aides, the health care employment agency shall report to the direct care worker registry completed work assignments of the agency worker sufficient to maintain an active status on the registry pursuant to requirements set forth in 441—subparagraph 81.16(5) "c"(2) and 441—paragraph 81.16(5) "e," and 42 CFR 483.35(d)(6) and 483.156(c)(2).

b. The health care employment agency shall report allegations of dependent adult abuse as set forth in subrule 55.3(3).

55.5(3) *Quarterly reporting to the department.*

a. The quarterly report required by Iowa Code section 135Q.2(4) as enacted by 2022 Iowa Acts, House File 2521, shall provide the following:

(1) A detailed list of each health care entity participating in Medicare or Medicaid with whom the agency has contracted over the prior quarter;

(2) A detailed list of the average amount charged by the health care employment agency to the health care entity participating in Medicare or Medicaid over the prior quarter, broken down by provider type (e.g., hospital, nursing facility) and each individual agency worker category (e.g., certified nurse aide, registered nurse, licensed practical nurse) within that provider type; and

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(3) A detailed list of the average amount paid by the health care employment agency participating in Medicare or Medicaid to agency workers over the prior quarter, broken down by provider type (e.g., hospital, nursing facility) and each individual agency worker category (e.g., certified nurse aide, registered nurse, licensed practical nurse) within that provider type.

b. The report data and submission dates shall be as follows:

(1) The quarterly report containing data from January 1 through March 31 shall be submitted no later than April 15;

(2) The quarterly report containing data from April 1 through June 30 shall be submitted no later than July 15;

(3) The quarterly report containing data from July 1 through September 30 shall be submitted no later than October 15; and

(4) The quarterly report containing data from October 1 through December 31 shall be submitted no later than January 15.

481—55.6(89GA, HF2521) Complaints.

55.6(1) *Complaints.*

a. The process for filing a complaint is as follows:

(1) Any person with a concern regarding the operation of a health care employment agency may file a complaint at the department's physical location, complaint hotline, or website, as follows:

Physical address:	Department of Inspections and Appeals Complaint/Incident Unit Lucas State Office Building, Third Floor 321 E. 12th Street Des Moines, Iowa 50319-0083
Complaint hotline:	1-877-686-0027
Website address:	dia.iowa.gov

(2) When the nature of the complaint is outside the department's authority, the department shall forward the complaint to the appropriate investigatory entity.

(3) If other state agencies receive a complaint that relates to a health care employment agency, the agencies shall forward the complaint to the department.

b. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the health care employment agency or is without a reasonable basis. If the department, upon preliminary investigation, determines that the complaint is intended to harass or is without a reasonable basis, the department may dismiss the complaint.

55.6(2) *Content of complaint reports.* The complaint shall include as much of the following information as possible: the complainant's name, address, and telephone number; the complainant's relationship to the health care employment agency; and the reason for the complaint. The complainant's name shall be confidential information and shall not be released by the department.

55.6(3) *Time frames for investigation of complaints.* Upon receipt of a complaint made in accordance with this rule, the department shall make a preliminary investigation of the complaint to determine if probable cause exists to further investigate the complaint. If probable cause exists, an investigation of the health care employment agency shall be initiated within 45 working days.

55.6(4) *Standard for determining whether a complaint is substantiated.* The department shall apply a preponderance of the evidence standard in determining whether a complaint is substantiated.

55.6(5) *Notification of the health care employment agency or alleged health care employment agency of results of investigation.* The department shall notify the health care employment agency or alleged health care employment agency, in writing, of the final report of the complaint investigation.

55.6(6) *Notification of the complainant of results of investigation.* The complainant, if known, shall be notified of the final findings of a complaint investigation. The complainant, if known, shall also be

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

notified if the department determines not to further investigate after the preliminary investigation and shall receive an explanation of the department's decision.

481—55.7(89GA, HF2521) Investigations.

55.7(1) *Initiation of investigations.* Investigations may be initiated because of a complaint or other information received by the department or upon referral from other agencies. If the department determines there is probable cause to believe that a health care employment agency is an unregistered health care employment agency or that a registered health care employment agency is not in compliance with state, federal, or local statutes or rules, an investigation shall be initiated.

55.7(2) *Evaluation of allegations and referral to other agencies.* If an investigation is initiated, the department shall evaluate the allegations to determine whether the allegations should also be referred to other local, state, or federal agencies. If the department believes a criminal violation has occurred or is occurring, it shall notify the appropriate law enforcement entities.

55.7(3) *Access to records.* An inspector of the department may enter a health care employment agency without a warrant and may examine and copy all records and items pertaining to the investigation unless the record or item is protected by some other legal privilege.

481—55.8(89GA, HF2521) Penalties. A health care employment agency that violates Iowa Code sections 135Q.2(1) through 135Q.2(3) as enacted by 2022 Iowa Acts, House File 2521, or rule 481—55.3(89GA, HF2521) shall be subject to the associated penalties under Iowa Code section 135Q.2(5) as enacted by 2022 Iowa Acts, House File 2521.

481—55.9(89GA, HF2521) Public and confidential information.

55.9(1) *Public disclosure.* The following records are open and available for inspection:

- a. Registration forms and accompanying materials;
- b. Final findings of the department's investigations;
- c. Official notices of penalties; and
- d. Any records required to be submitted to the department by the health care employment agency pursuant to Iowa Code section 135Q.2(4) as enacted by 2022 Iowa Acts, House File 2521, and subrule 55.5(3) (quarterly reporting to the department).

55.9(2) *Confidential information.* Confidential information includes the following:

- a. Information obtained by the department that does not comprise a final finding resulting from a complaint investigation. Investigation information which does not comprise a final finding may be made public in a contested case proceeding concerning the department's final findings, including the imposition of a monetary penalty or the denial or revocation of registration.
- b. Names and identifying information of all complainants.

55.9(3) *Redaction of confidential information.* If a record normally open for inspection contains confidential information, the confidential information shall be redacted prior to an agency's providing the record for inspection.

These rules are intended to implement 2022 Iowa Acts, House File 2521.

ARC 6578C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

**Proposing rule making related to permitted weapons for wild turkey hunting
and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 98, "Wild Turkey Spring Hunting," and Chapter 99, "Wild Turkey Fall Hunting," Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 481A.38, 481A.39 and 481A.48 and section 483A.7 as amended by 2022 Iowa Acts, Senate File 2334.

Purpose and Summary

Chapter 98 regulates spring wild turkey hunting for both residents and nonresidents and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation tag requirements.

Chapter 99 regulates fall wild turkey hunting for residents and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation tag requirements.

This rule making proposes to amend both chapters as required by recent legislation. 2022 Iowa Acts, Senate File 2334 (signed by Governor Reynolds on May 24, 2022), authorizes the use of a caliber .410 shotgun or a 28-gauge shotgun for hunting turkey. It further requires that a caliber .410 shotgun or a 28-gauge shotgun shall only shoot shot not smaller than shot size number 10. These requirements are proposed to be added to both chapters.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

James Coffey
Natural Resource Commission
Chariton Research Station
24570 US Hwy 34
Chariton, Iowa 50049
Email: james.coffey@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Chris Ensminger, wildlife

NATURAL RESOURCE COMMISSION[571](cont'd)

research supervisor, via email at chris.ensminger@dnr.iowa.gov. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Mr. Ensminger prior to the hearing to facilitate an orderly hearing.

October 25, 2022
12 noon to 1 p.m.

Video/conference call

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **98.2(1)“a”** as follows:

a. Combination shotgun-or-archery license. Wild turkey may be taken by shotgun or muzzleloading shotgun not smaller than ~~20-gauge~~ caliber .410 and shooting only shot sizes number 4 through & 10 lead or nontoxic shot; and by bow and arrow as defined in paragraph 98.2(1) “b.” A person shall not have shotshells containing shot of any size other than number 4 through & 10 lead or nontoxic shot on the person while hunting wild turkey.

ITEM 2. Amend subrule 98.12(1) as follows:

98.12(1) Permitted weapons. Wild turkey may be taken only with shotguns and muzzleloading shotguns not smaller than ~~20-gauge~~ caliber .410 and shooting only shot sizes number 4 through & 10 lead or nontoxic shot. No person may have shotshells containing shot of any size other than number 4 through & 10 lead or nontoxic shot on the person while hunting wild turkey. Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.22(481A), only longbow, compound, or recurve bows shooting broadhead arrows are permitted. Blunthead arrows with a minimum diameter of 9/16 inch may also be used. Arrows must be at least 18 inches long. No explosive or chemical devices may be attached to the arrow, broadhead, or blunthead.

ITEM 3. Amend subrule 99.8(1) as follows:

99.8(1) Permitted weapons. In accordance with the type of license issued, wild turkey may be taken by shotgun and muzzleloading shotgun not smaller than ~~20-gauge~~ caliber .410 and shooting only shot sizes number 4 through & 10 lead or nontoxic shot; and by longbow, recurve, or compound bow shooting broadhead or blunthead (minimum diameter 9/16 inch) arrows only. No person may carry or have in possession shotshells containing shot of any size other than number 4 through & 10 lead or nontoxic shot while hunting wild turkey. Arrows with chemical or explosive pods are not permitted.

ARC 6579C**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action****Proposing rule making related to deer hunting
and providing an opportunity for public comment**

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 481A.38, 481A.39 and 481A.48 and section 483A.8 as amended by 2022 Iowa Acts, Senate File 581.

Purpose and Summary

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

This rule making proposes seven amendments necessary to align Chapter 106 with recent legislation. More specifically, 2022 Iowa Acts, Senate File 581 (signed by Governor Reynolds on June 17, 2022), establishes a mandatory rifle-based January antlerless-deer-only season whenever a county has unsold antlerless deer licenses available in its county quota. That season and the rifle requirement have both been added to the chapter. Additionally, the legislation requires that the deer depredation program sell its license and shooting permits for \$5. Those fees have been appropriately adjusted.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

NATURAL RESOURCE COMMISSION[571](cont'd)

Tyler Harms
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: tyler.harms@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Chris Ensminger, wildlife research supervisor, via email at chris.ensminger@dnr.iowa.gov. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Mr. Ensminger prior to the hearing to facilitate an orderly hearing.

October 25, 2022
12 noon to 1 p.m.

Video/conference call

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 106.1(6) as follows:

106.1(6) *January antlerless-deer-only licenses.*

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

b. Excess tag season. Licenses for the excess tag January antlerless-deer-only season may be issued in any county. Excess tag January antlerless-deer-only licenses shall be issued for a county only when a minimum of one antlerless-deer-only license, as described in subrule 106.6(6), remains unsold for a given county through January 10. Remaining antlerless-deer-only licenses shall be made available starting on January 11 for the excess tag January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in subrule 106.6(6) is met.

ITEM 2. Amend subrule 106.2(5) as follows:

106.2(5) *Population management and excess tag January antlerless-deer-only season seasons.* Deer may be taken in accordance with the type, season, and zone designated on the license from January 11 through the second Sunday following that date.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 3. Amend subrule 106.4(5) as follows:

106.4(5) *Population management and excess tag January antlerless-deer-only ~~season~~ seasons.* The bag limit is one deer per license. The possession limit is one deer per license.

ITEM 4. Amend subrule 106.6(4) as follows:

106.6(4) *Population management and excess tag January antlerless-deer-only ~~season~~ seasons.* Only antlerless-deer-only licenses, paid or free, are available in counties pursuant to the conditions described in subrule 106.1(6). A license must be used during the population management or excess tag January antlerless-deer-only season as described in subrule 106.2(5) and in the county or deer population management area selected at the time the license is purchased. Free antlerless-deer-only licenses shall be available only in the portion of the farm unit located in a county where paid antlerless-deer-only licenses are available during the population management or excess tag January antlerless-deer-only season.

ITEM 5. Amend subrule 106.7(5) as follows:

106.7(5) *January antlerless-deer-only ~~season~~ seasons.*

a. Population management January antlerless-deer-only season. Bows, crossbows, shotguns, muzzleloaders, ~~rifles (including centerfire rifles .240 to .350)~~, and handguns, as each is described in this rule, and rifles as described in Iowa Code section 483A.8(9) as enacted by 2022 Iowa Acts, Senate File 581, section 4, may be used during the population management January antlerless-deer-only season.

b. Excess tag January antlerless-deer-only season. Only rifles as described in Iowa Code section 483A.8(9) as enacted by 2022 Iowa Acts, Senate File 581, section 4, shall be used during the excess tag January antlerless-deer-only season.

ITEM 6. Amend paragraph **106.11(4)“a”** as follows:

a. Deer depredation licenses. Deer depredation licenses may be sold to resident hunters only for ~~the regular deer license~~ a fee of \$5 for use during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) to (7) No change.

ITEM 7. Amend subparagraph **106.11(4)“b”(1)** as follows:

(1) Deer shooting permits will be issued ~~at no cost~~ for a fee of \$5 to the applicant.

ARC 6577C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to services subject to sales tax and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 26, “Sales and Use Tax on Services”; to amend Chapter 203, “Elements Included in and Excluded from a Taxable Sale and Sales Price”; to adopt new Chapter 211, “Taxable Services”; to amend Chapter 213, “Miscellaneous Taxable Sales,” Chapter 214, “Agricultural Rules,” Chapter 215, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” and Chapter 216, “Events, Amusements, and Other Related Activities”; to adopt new Chapter 218, “Services Related to Vehicles”; and to amend Chapter 219, “Sales and Use Tax on Construction Activities,” Chapter 220, “Exemptions Primarily of Benefit to Consumers,” and Chapter 225, “Resale and Processing Exemptions Primarily of Benefit to Retailers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 423.

REVENUE DEPARTMENT[701](cont'd)

Purpose and Summary

The Department proposes this rule making to replace its longstanding chapter of rules on services subject to sales tax. Chapter 26 includes several out-of-date elements that prompted this rule making: references to terms such as “gross receipts” rather than “sales price,” references to Iowa Code sections that have been repealed for several years, and a general lack of modern rule-writing features such as subparts and catchwords. Most of the differences between Chapter 26 and proposed Chapter 211 reflect these updates. Other changes from Chapter 26 include a reorganization of rules into more subject-focused chapters, such as those for agriculture (Chapter 214); events, amusements, and other related activities (Chapter 216); services related to vehicles (Chapter 218); and construction (Chapter 219). Other items in this proposed rule making update cross-references that lead to Chapter 26.

In addition to these mostly nonsubstantive revisions, the Department proposes three substantive changes to current rules in Chapter 26 as well as new rules to implement relatively new taxable services. First is proposed rule 701—211.17(423) (machine operators), which replaces current rule 701—26.28(422). The current rule includes some language that creates confusion: “In addition, to be taxable as machine operation, the operation of the machine must be the *primary* service that is being performed and *not just incidental* to the performance of the primary service being rendered” [emphasis added]. Typically, the use of “primary” in Department rules indicates a temporal value, such that the primary use of an item equals how it is used for more than half of its usefulness. After reviewing this current rule, the Department does not believe the original intent of rule 701—26.28(422) was to use a time-based analysis. Proposed rule 701—211.17(423) does not include this language and has additional examples to describe situations in which a person may or may not be a machine operator based on the person’s use of a computer to perform job functions.

Second, current rules 701—26.42(422) and 701—26.78(422,423) implement the services enumerated in Iowa Code section 423.2(6)“ax”: “Storage of household goods, mini-storage, and warehousing of raw agricultural products.” Rule 701—26.42(422) relates to storage of household goods and warehousing of raw agricultural products, while rule 701—26.78(422,423) relates to mini-storage. Upon reviewing these rules, it makes more sense to the Department to group storage of household goods and mini-storage together, so proposed rule 701—211.25(423) does this, and the bulk of the text related to warehousing of raw agricultural products has been moved into the chapter on agriculture, Chapter 214. Additionally, some of rule 701—26.78(422,423) created confusion about what is or is not considered mini-storage, so the language in proposed rule 701—211.25(423) has been revised to clarify what is or what is not subject to sales tax.

Third, the Department proposes to replace rule 701—26.24(422), “Golf and country clubs and all commercial recreation,” with new rule 701—216.3(423). The current rule attempts to determine whether an activity is taxable “commercial recreation” by utilizing criteria about whether instruction is provided and, if so, the type of training the instructor received before providing the instruction. As the variety of services provided has expanded over time, this rule has created confusion for businesses that offer these activities. The Director has determined through the Declaratory Order process in recent years that, thanks to rule 701—26.24(422), yoga and Pilates classes are not taxable, but cycling classes are taxable. Because the statute clearly imposes tax on “all commercial recreation,” the Department proposes to replace rule 701—26.24(422) with a rule that defines “recreation” and indicates that all sales of recreation are subject to sales tax.

Lastly, 2018 Iowa Acts, Senate File 2417, imposed sales tax on a variety of new, digital-based services (Iowa Code section 423.2(6)“bq” through “bu”). Shortly after the enactment of that legislation, the Department crafted nonbinding guidance for taxpayers looking for help in understanding these new taxable services. The Department now proposes to adopt its interpretations of those services into binding administrative rules.

Fiscal Impact

The Department estimates proposed rule 701—216.3(423) to have a fiscal impact of \$2.43 million for General Fund sales tax revenue and \$0.38 million for local option sales tax (LOST) revenue in fiscal year

REVENUE DEPARTMENT[701](cont'd)

2023, assuming it goes into effect in early January 2023. For a full fiscal year impact, these numbers increase to \$4.95 million for sales tax and \$0.78 million for LOST in fiscal year 2024 and increase gradually thereafter due to inflation. Additional information is available from the Department upon request. The Department does not anticipate any other items in this rule making to have a fiscal impact.

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.782.0535
Email: tim.reilly@iowa.gov

Public Hearing

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

October 25, 2022
11 a.m. to 12 noon

Room 1 NW
Hoover State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve **701—Chapter 26**.

ITEM 2. Amend subrule 203.5(3) as follows:

203.5(3) Trade for services. The trade-in provisions referenced in Iowa Code section 423.1(47) "a"(7) and found in Iowa Code section 423.3(59) do not apply to taxable enumerated services.

REVENUE DEPARTMENT[701](cont'd)

When taxable enumerated services are traded, the sales price would be determined based on the value of the service or other consideration.

EXAMPLE: A and B agree that A will purchase a car which 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; ~~reference rule 701—26.34(422)~~ 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.

ITEM 3. Adopt the following **new** 701—Chapter 211:

CHAPTER 211
TAXABLE SERVICES

701—211.1(423) Definitions and scope.

211.1(1) Definitions. For purposes of this chapter:

“Persons engaged in the business of” means persons who offer the named service or services to the public or others in exchange for consideration, regardless of whether such person offers the service or services continuously, part-time, seasonally, or for short periods.

“Repair” includes the mending or renovation of existing parts and the replacement of defective parts or subassemblies. Repair does not include the installation of new parts or accessories that are not replacements.

“Sales price” means the same as defined in Iowa Code section 423.1(51).

“Services” means the same as defined in Iowa Code section 423.1(54).

211.1(2) Scope. Iowa imposes tax upon the sales price of rendering, furnishing, or performing at retail certain enumerated services, described in more detail in this chapter.

This rule is intended to implement Iowa Code section 423.2.

701—211.2(423) Interstate commerce. Services performed in interstate commerce are exempt from tax if the imposition of tax would violate the United States or Iowa Constitution or laws of the United States. Services performed on tangible personal property are exempt from tax if those services are performed on property that the retailer of the property transfers to a carrier for shipment to a point outside Iowa, places in the United States mail or parcel post directed to a point outside Iowa, or transports to a point outside Iowa by means of the retailer's own vehicles and that is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption does not apply to services performed on property if the purchaser, the consumer, or the agent of either a purchaser or consumer, other than a carrier, takes physical possession of the property in Iowa. Iowa Code sections 423.3(1) and 423.3(43) contain more information.

This rule is intended to implement Iowa Code section 423.3(1).

701—211.3(423) Services performed for employers. Services rendered, furnished, or performed for an “employer,” as defined in Iowa Code section 422.4, are not taxable.

This rule is intended to implement Iowa Code section 423.1(54).

701—211.4(423) Services purchased for resale. Services purchased for resale are not subject to sales tax. A service is purchased for resale when it is subcontracted by the person contracted to perform the service. Tax imposed on services is collectible at the time the service is complete even if the services are not purchased by the ultimate beneficiary.

EXAMPLE 1: X is a printer and enters into a contract with Y to print 500 bulletins. X subcontracts the job to Z, who prints the 500 bulletins. Tax does not apply to the contract between X and Z since X purchased the printing service from Z for resale to Y. The sale from X to Y is subject to sales tax.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 2: D owns an auto repair shop, and F brings an automobile in to have the air conditioner fixed. D is unable to fix the unit, so the car is sent to G who is an air conditioning specialist. The sale of G's service to D is a sale for resale by D to F, so there is no tax imposed. The sale from D to F is subject to sales tax.

EXAMPLE 3: K operates a test laboratory business. K agrees to provide testing services to J. In the course of conducting the tests, K rents equipment from M. In computing the fee that J has agreed to pay K for testing services, K will include K's costs, including the taxable rental K paid to M in rendering the testing services. Under these circumstances, K furnished J with testing services and not with the equipment rental services, which M furnished to K. K is the consumer of the equipment rental services that are not resold to J, and J is the consumer of the testing services. Rule 701—15.3(422,423) contains more information regarding resale certificates.

EXAMPLE 4: R operates a retail farm implement dealership. R accepts a motorboat as part consideration for a piece of farm equipment. R then contracts with D to repair the motor on the boat. R does not normally sell motorboats in the regular course of R's business. Therefore, the repair service performed by D for R is subject to sales tax.

This rule is intended to implement Iowa Code section 423.3(2).

701—211.5(423) Alteration and garment repair. Persons engaged in the business of altering or repairing any type of garment or clothing are selling a service subject to sales tax. This includes services rendered, furnished, or performed by tailors, dressmakers, furriers, and others engaged in similar occupations.

This rule is intended to implement Iowa Code section 423.2(6)“a.”

701—211.6(423) Dry cleaning, pressing, dyeing and laundering. Persons engaged in the business of dry cleaning, pressing, dyeing, or laundering services are selling a service subject to sales tax. Self-pay washers and dryers are excluded from this rule.

This rule is intended to implement Iowa Code section 423.2(6)“o.”

701—211.7(423) Sewing and stitching. Persons engaged in the business of sewing and stitching are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6)“au.”

701—211.8(423) Shoe repair and shoeshine. Persons engaged in the business of repairing or shining any type of footwear including but not limited to shoes, boots, and sandals are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6)“av.”

701—211.9(423) Furniture, rug, and upholstery repair and cleaning.

211.9(1) In general. Persons engaged in the business of repairing, restoring, renovating, or cleaning furniture, rugs, or upholstery are selling a service subject to sales tax.

211.9(2) Definitions. For purposes of this rule:

“Furniture” includes all indoor and outdoor furnishings.

“Rugs” includes all types of rugs and carpeting.

“Upholstery” includes all materials used to stuff or cover any piece of furniture.

This rule intended to implement Iowa Code section 423.2(6)“t.”

701—211.10(423) Fur storage and repair.

211.10(1) In general. Persons engaged in the business of storing fur for preservation and future use and refurbishing, repairing, and renovating fur, including the addition of new skins and furs, are selling a service subject to sales tax.

211.10(2) Definition. For purposes of this rule:

“Fur” includes both natural fur and synthetic products resembling fur.

This rule is intended to implement Iowa Code section 423.2(6)“u.”

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701—211.11(423) Investment counseling. Persons engaged in the business of counseling others relative to investment in or on the disposition of property or rights, whether real, personal, tangible, or intangible, and who charge for that counseling, are selling a service subject to sales tax. This includes investment counseling rendered, furnished, or performed by a trust department.

This rule is intended to implement Iowa Code section 423.2(6)“e.”

701—211.12(423) Bank and financial institution service charges.

211.12(1) *In general.* The service charges imposed by financial institutions relating to a depositor’s checking account are subject to sales tax. If the same service is performed by a financial institution relating to an account that does not qualify as a checking account, the service charge imposed by the financial institution is not subject to sales tax.

211.12(2) *Definitions.* For purposes of this rule:

“*Bank*” means an institution empowered to do all banking business, including issue negotiable notes, discount notes, receive deposits payable on demand, and buy and sell bills of exchange. Savings and loan associations and other financial institutions not commonly considered to be banks do not fall within the meaning of a bank.

“*Checking account*” means an account on which withdrawals may be made from the account via a written instrument, including but not limited to a check, draft, or negotiable order of withdrawal (NOW). Whether or not an account pays interest does not determine whether an account qualifies as a checking account. The term “checking account” is characterized by its general meaning rather than a technical definition, and other types of accounts, not described in this rule, may qualify as checking accounts. Certificates of deposits do not qualify as checking accounts.

“*Financial institutions*” means the same as defined in Iowa Code section 423.2(6)“f.”

211.12(3) *Checking account charges.* All charges relating to a checking account are subject to sales tax, including but not limited to charges for the following:

- a. Withdrawals made by check or bank card.
- b. Nonproprietary automatic teller machine (ATM) transactions.
- c. Transferring funds from one account to another (if billed to a checking account).
- d. Stop payment.
- e. Debit card replacement.
- f. Copy and research.
- g. Bill payment.
- h. Returned deposit items.
- i. Issuance of a certified check, drawn from a particular account.

211.12(4) *Other service charges.* Service charges not usually subject to sales tax by virtue of having no relationship to checking accounts include but are not limited to:

- a. Safety deposit box rentals.
- b. Mortgage and loans.
- c. Trust department fees for probating estates, administering trusts, administering agency accounts, administering pension and profit-sharing plans, serving as stock transfer agents or registrars, serving as farm managers, and fees or commissions charged to customers for handling security transactions. Some of these services may qualify as investment counseling and may be subject to sales tax. Rule 701—211.11(423) contains more information about investment counseling services.
- d. Real estate appraisals.
- e. Servicing real estate loans.
- f. Contract collection and collection not related to the maintenance of a checking account.
- g. Special lockbox handling.
- h. Finance charges, including those for credit cards.
- i. Escrow agent.
- j. Safekeeping, handling and cashing coupons or certificates kept in a bank’s possession.
- k. Penalties on early withdrawal for saving certificates.

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- l.* Purchasing or selling securities for customers, unless used as a disguise for investment counseling fees.
- m.* Real estate collection exchange, including collecting and transferring mortgage payments.
- n.* Traveler's or a similar type of check, bank cashier's checks, bank drafts, or money orders with no relation to a customer's checking account.
- o.* Check exchanges.
- p.* Noncustomer point of sale or ATM access fees or service charges.

211.12(5) Exceptions. Fees charged to a checking account depositor for a depositor's failure to adhere to contractual obligations with a bank or financial institution are not subject to sales tax. These charges, such as fees for overdrafts or returned checks, are penalties rather than service charges. Bank service charges that are never assessed against the expense of maintaining a checking account are not subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) "f."

701—211.13(423) Barber and beauty.

211.13(1) In general. Persons engaged in the business of barbering and beauty are selling a service subject to sales tax.

211.13(2) Definitions. For purposes of this rule:

"*Barbering*" means the same as defined in Iowa Code section 158.1.

"*Barbershop*" means the same as defined in Iowa Code section 158.1.

"*Beauty*" means the same as "cosmetology" and "esthetics" as those terms are defined in Iowa Code section 157.1.

211.13(3) Sales tax permits.

a. Each barber, beauty or other beautification shop or establishment shall receive only one permit and remit tax as one enterprise when operated under a common management.

b. When an operator leases space and is an independent operator, the lessee shall notify the department and secure a sales tax permit whereby the lessee will be responsible directly for the sales tax due. In order to be considered independent, the lessee must also be independent from the lessor for the purposes of withholding income tax, unemployment compensation, and social security taxes.

211.13(4) Leasing. The lessor who has leased a part of the premises shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee's sales, the lessor shall, after the name of each lessee, show the amount of net taxable sales made by the lessee on each report to the department and which net taxable sales are included in the lessor's return. Rule 701—15.11(423) contains more information.

This rule is intended to implement Iowa Code sections 423.2(6) "g" and 423.36.

701—211.14(423) Photography and retouching.

211.14(1) Definitions. For purposes of this rule:

"*Photography*" means the art or process of capturing or producing still or moving images, films, or videos using any device designed to record or capture images, film, or video. Taxable sales associated with photography services include but are not limited to sitting or photoshoot fees and fees relating to taking or producing photographs or videos, including editing.

"*Retouching*" means the alteration, restoration, or renovation of a picture, film, video, image, artwork, likeness, or design.

211.14(2) In general. The sales price of photography services and retouching services are taxable regardless of whether the service results in the production of tangible personal property or specified digital products.

EXAMPLE 1: Standalone photography service. X operates a photography business where customers can purchase a half-hour photoshoot session for \$50 and may purchase physical or electronic copies of any photographs taken during the photoshoot for \$10 each. Y purchases a half-hour photoshoot from X for \$50; however, after viewing the images, Y decides not to purchase any copies of any of

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the photographs. X must collect and remit sales tax and any applicable local option tax on \$50, the cost of the photography service, even though Y decided not to purchase any of the resulting photographs.

EXAMPLE 2: Photography service and sale of photographs. Same facts as Example 1, except that Y decides to purchase ten photographs for \$10 each. X must collect and remit sales tax and any applicable local option tax on \$150, the total cost of the \$50 photography service and the \$100 cost of the ten photographs. Here, the photography service is taxable and the photographs are taxable as the sale of tangible personal property if they are delivered in hard copy or as the sale of specified digital products if they are delivered electronically.

211.14(3) Sourcing. More information about how various aspects of photography services may be sourced is available in 701—subrule 205.2(1).

This rule is intended to implement Iowa Code sections 423.2(6) “*bo*” and “*bp*.”

701—211.15(423) Household appliance, television, and radio repair.

211.15(1) In general. Persons engaged in the business of repairing household appliances, television sets, or radio sets are selling a service subject to sales tax.

211.15(2) Definition. For purposes of this rule:

“*Household appliances*” includes all mechanical devices normally used in the home, whether or not the appliances are actually used in the home.

This rule is intended to implement Iowa Code section 423.2(6) “*y*.”

701—211.16(423) Jewelry and watch repair. Persons engaged in the business of repairing jewelry or watches are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*aa*.”

701—211.17(423) Machine operators.

211.17(1) In general. Persons engaged in the business of operating machines of all kinds that belong to other persons and charge a fee for operating are selling a service subject to sales tax. Operation of the machine must be the central function of the service being performed and not incidental to the performance of the service the operator was hired to perform.

211.17(2) Definitions. For purposes of this rule:

“*Machine*” includes but is not limited to typewriters, computers, calculators, cash registers, and manufacturing machinery and equipment. “*Machine*” does not include telephones, automobiles, or airplanes.

“*Machine operator*” is a person who manages, controls, and conducts a mechanical device or a combination of mechanical powers and devices used to perform a function and produce a certain result or effect.

211.17(3) Machine operators as employees. The services of a machine operator are not subject to sales tax if the operation of machinery is by an employee directly for an employer. Rule 701—211.3(423) contains information about services performed by an employee for an employer.

EXAMPLE 1: Employee A is hired to perform data entry on a computer for A’s employer. While Employee A is performing the service of a machine operator, because Employee A is performing the service directly for A’s employer, A’s service is not subject to sales tax.

EXAMPLE 2: Through a temporary employment agency, Worker B performs data entry on a computer for Company Z. Company Z pays a set per-hour fee for data entry services. Worker B is performing the service of a machine operator, not directly for Company Z but for the temporary employment agency. Company Z must pay sales or use tax on the fee imposed by the temporary employment agency. Rule 701—211.23(423) contains information about the service of private employment agencies.

EXAMPLE 3: Through a temporary employment agency, Worker C performs telemarketing services for Company X. Because Worker C is operating a telephone, which is not considered a machine for purposes of this rule, Company X would not pay sales or use tax on the fee imposed by the temporary employment agency.

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EXAMPLE 4: Company Y hires Lawyer D through a temporary employment agency. Lawyer D spends most of the work time performing legal research and writing memoranda, both of which are done at a computer. Lawyer D is not a machine operator just because Lawyer D uses a computer. Lawyer D was hired by Company Y to perform legal services. Lawyer D's use of the computer is incidental to the legal services Lawyer D was hired to perform.

EXAMPLE 5: Company X hires Employee A as a purchaser. In this role, Employee A procures materials for Company X, negotiates and manages purchasing agreements, and communicates with vendors. To perform these job duties, Employee A spends the majority of working hours on a computer. Employee A is not a machine operator, because the central function of the job is as a purchaser and the computer use is incidental to the performance of job duties.

This rule is intended to implement Iowa Code section 423.2(6) "ad."

701—211.18(423) Machine repair of all kinds.

211.18(1) In general. Persons engaged in the business of repairing machines of all kinds are selling a service subject to sales tax.

211.18(2) Definition. For purposes of this rule:

"Machine" means a mechanical device or combination of mechanical powers and devices used to perform some function and produce a certain result or effect. Machines include devices that have moving parts, are operated by hand, and are powered by a motor, engine, or other form of energy.

211.18(3) Musical instruments. For purposes of this rule, a musical instrument does not constitute a machine.

EXAMPLE: Person A owns an electric piano and an acoustic upright piano. Both pianos require repairs; the electric piano needs a new power cord, and the acoustic piano needs keys replaced. The electric piano repair would be taxable under 701—subrule 219.13(8). The repair to the acoustic piano is not taxable.

This rule is intended to implement Iowa Code section 423.2(6) "ae."

701—211.19(423) Motor repair. Persons engaged in the business of repairing motors powered by any means are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) "af."

701—211.20(423) Oilers and lubricators.

211.20(1) In general. Persons engaged in the business of oiling, changing oil in, lubricating, or greasing vehicles and machines of all types are selling a service subject to sales tax.

211.20(2) Definition. For purposes of this rule:

"Machine" includes those items with moving parts or powered by a motor or engine or other form of energy. "Machine" also includes heavy equipment vehicles or implements, whether such equipment functions in a state of rest or a state of motion.

This rule is intended to implement Iowa Code section 423.2(6) "ah."

701—211.21(423) Office and business machine repair. Persons engaged in the business of repairing office and business machines are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) "ai."

701—211.22(423) Parking facilities.

211.22(1) In general. Persons engaged in the business of operating a parking facility for a fee are selling a service subject to sales tax.

211.22(2) Definition. For purposes of this rule:

"Parking facility" means any place that is used for parking a vehicle for consideration. It is irrelevant whether the charge is by the hour, day, month, or any other period of time.

This rule is intended to implement Iowa Code section 423.2(6) "ak."

701—211.23(423) Private employment agency, executive search agency.

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211.23(1) *In general.* Private employment agencies engaged in the business of providing listings of available employment, counseling others with respect to future employment, or aiding another in any way to procure employment are selling a service subject to sales tax, regardless of whether the service is rendered for a prospective employer or prospective employee.

211.23(2) *Principal place of employment outside of Iowa.* Services rendered by private employment agencies which place a person and where the person's principal place of employment is outside of Iowa are not subject to Iowa sales tax. For purposes of this rule, "principal place of employment" means the primary work location of the employee.

EXAMPLE 1: Company X contracts with Agency Z, an Iowa employment agency, to secure employment for an employee to work at a production plant in Illinois. Agency Z finds a suitable employee who is hired by Company X. Because the employee's principal place of employment is outside the state, this service is not subject to Iowa sales tax.

EXAMPLE 2: Company B, a sales company, contracts with Agency C, an employment agency, to secure a salesperson to travel throughout Iowa, Missouri, and Nebraska. Both Company B and Agency C are located in Iowa. Agency C is successful in finding a salesperson for Company B. Though the salesperson will be traveling throughout the three states, because Company B, the principal place of the salesperson's employment, is located within Iowa, Agency C's service is subject to Iowa sales tax.

211.23(3) *Executive search agencies.* Executive search agencies that are engaged in the business of securing employment for top-level management positions are selling a service subject to sales tax, regardless of whether the executive search agency is licensed under Iowa Code chapter 94A or not. Further, unlike the exclusion found in subrule 211.23(2) for private employment agencies, executive search agencies' services performed in Iowa are subject to Iowa sales tax regardless of whether the principal place of employment for the person the agency placed into employment is located within Iowa.

211.23(4) *Private employment versus executive search agencies.* To determine if an agency is an executive search agency or a private employment agency, the following nonexhaustive lists of elements may be used to distinguish the two.

- a. Private employment agency:
 - (1) All levels of jobs in an organization. All salary levels.
 - (2) Large number of clients at all times. Both possible employers and employees.
 - (3) Individual's résumé circulated to many possible employers.
 - (4) No extensive analysis of the position or the individual.
 - (5) Normally does not make travel arrangements for interviews, does not conduct salary negotiations, does not perform detailed follow-up studies.
 - (6) Paid by either the company or the job seeker.
 - (7) Paid on a contingent-fee basis. Paid only if a referred person is hired.
 - (8) Does engage in general advertising of available positions.
 - (9) Overall placement of an individual is not as extensive or sophisticated.
- b. Executive search agency:
 - (1) Top-level management positions.
 - (2) Serve only a few clients at one time. Employers only.
 - (3) Send information regarding one individual to one possible employer only. Résumés never circulated to other possible employers.
 - (4) Extensive analysis of the position to be filled. Extensive analysis of the individuals who are candidates. Preparation of detailed professional assessment of strengths and weaknesses of individuals.
 - (5) Make travel arrangements for interviews, conduct salary negotiations, perform follow-up studies.
 - (6) Only paid by the company seeking the employee.
 - (7) Paid on retainer or by an hourly charge or by contract. Paid whether or not an individual is hired.
 - (8) Does not advertise available positions.

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(9) Overall placement of an individual requires extensive and sophisticated analysis of position and individual.

This rule is intended to implement Iowa Code section 423.2(6) “*ap*” and “*aq*.”

701—211.24(423) Storage of household goods and mini-storage.

211.24(1) *In general.* The sales price from the sale of the storage of household goods and mini-storage are subject to sales and use tax.

211.24(2) *Definitions.* For purposes of this rule:

“*Household goods*” means tangible personal property ordinarily located in a person’s residence that is not inventory.

“*Mini-storage*” means a commercial operation that provides individual storage units of various sizes to persons for the purpose of storing tangible personal property. “Mini-storage” includes a secured area in which vehicles, boats, recreational vehicles, camping trailers and other types of tangible personal property can be stored. “Mini-storage” is taxable, regardless of whether the buyer or the seller provides particular security measures including but not limited to locks, fences, gates, security cameras, or password-protected entrances. “Mini-storage” is taxable regardless of whether the buyer has sole access to the unit. “Mini-storage” does not include storage lockers, storage units, or garages at apartment complexes for the primary convenience of the tenant if such lockers, units, or garages are part of the nonitemized price of an apartment rental. Mini-storage space is not a warehouse. Rule 701—214.22(423) contains provisions on warehousing of raw agricultural products.

This rule is intended to implement Iowa Code section 423.2(6) “*ax*.”

701—211.25(423) Telephone answering service. Persons engaged in the business of providing a telephone answering service, whether by person or machine, are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*bb*.”

701—211.26(423) Test laboratories.

211.26(1) *In general.* Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific, or commercial purpose are selling a service subject to sales tax. “Test laboratories” includes but is not limited to mobile testing laboratories and field testing by test laboratories.

211.26(2) *Exempt testing services.* Test laboratory services performed on humans and animals and environmental testing services are not taxable. “Environmental testing services” includes but is not limited to the physical and chemical analysis of soil, water, wastewater, air, or solid waste performed in order to ascertain the presence of environmental contamination or degradation.

211.26(3) *Nonprofit blood centers.* Test laboratory services rendered, furnished, or performed for a nonprofit blood center registered by the federal Food and Drug Administration are exempt when the services are directly and primarily used in the processing of human blood.

This rule is intended to implement Iowa Code sections 423.2(6) “*bc*,” 423.3(102), and 423.3(26A).

701—211.27(423) Termite, bug, roach, and pest eradicators.

211.27(1) *In general.* Persons engaged in the business of eradicating, controlling, or preventing the infestation by termites, insects, roaches, and all other living pests, by spraying or other means, are selling a service subject to sales tax. This includes persons who eradicate, prevent, or control pest infestations in farmhouses, outbuildings, and other structures, such as grain bins, used in agricultural production.

211.27(2) *Spraying of cropland exempt.* This rule does not include those persons who are engaged in the business of spraying cropland used in agricultural production to eradicate or prevent the infestation by pests of the cropland. The service of spraying cropland is exempt. Rule 701—211.1(423) contains the definition of “agricultural production.”

This rule is intended to implement Iowa Code sections 423.2(6) “*bd*” and 423.3(5).

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701—211.28(423) Tin and sheet metal repair. Persons engaged in the business of repairing tin or sheet metal, whether it has or has not been formed into a finished product, are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*be.*”

701—211.29(423) Turkish baths, massage, and reducing salons.

211.29(1) *In general.* Persons engaged in the business of operating Turkish baths, massage, and reducing salons are selling a service subject to sales tax. This includes persons engaged in the business of operating a health studio which, as a part of its operation, offers any services of Turkish baths, massage, or reducing facilities or programs. The sales price of those services is subject to sales tax.

211.29(2) *Definitions.* For purposes of this rule:

“*Massage*” means the kneading, rubbing, or manipulation of the body to condition the body. “*Massage*” does not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts or those provided by massage therapists licensed under Iowa Code chapter 152C.

“*Reducing salons*” means any type of establishment that offers facilities or a program of activities for the purpose of weight reduction.

“*Turkish baths*” means any type of facility where an individual is warmed by steam or dry heat.

This rule is intended to implement Iowa Code section 423.2(6) “*bg.*”

701—211.30(423) Weighing. Persons engaged in the business of weighing any item of tangible personal property are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*bi.*”

701—211.31(423) Welding. Persons engaged in the business of welding materials for whatever purpose are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*bj.*”

701—211.32(423) Wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables. Persons engaged in the business of wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables are selling a service subject to sales tax. A person who provides a service described in this rule incidental to the sale of such items without charging separately for the service does not need to collect or remit tax. 701—Chapter 206 contains additional information on bundled transactions.

This rule is intended to implement Iowa Code section 423.2(6) “*bl.*”

701—211.33(423) Wrecking service.

211.33(1) *In general.* Persons engaged in the business of wrecking are selling a service subject to sales tax.

211.33(2) *Definition.* For purposes of this rule:

“*Wrecking*” includes defacing or demolishing tangible personal or real property or any part thereof.

This rule is intended to implement Iowa Code section 423.2(6) “*bm.*”

701—211.34(423) Cable and pay television.

211.34(1) *In general.* Persons engaged in the business of distributing the signals of one or more television broadcasting stations or other television programming to subscribers and using any transmission path, including but not limited to cable, satellite, streaming video, video on-demand, or pay-per-view, for those signals are selling a service subject to sales tax. The sales price for the rental of any device used to decode or receive television broadcasting signals from a communications satellite is also subject to sales tax.

211.34(2) *Signals to exhibitors.* Any person distributing or providing signals to exhibitors on screens in auditoriums or other buildings that show sporting or other events are selling a service subject to sales tax.

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211.34(3) *Applicability.* This rule applies to the transmissions of single events and subscriptions and to television services that serve fewer than 50 subscribers or are serving only customers located in one or more multiple unit dwellings that are under common ownership, control, or management.

This rule is intended to implement Iowa Code section 423.2(6) “al.”

701—211.35(423) Camera repair.

211.35(1) *In general.* Persons engaged in the business of camera repair are selling a service subject to sales tax.

211.35(2) *Definition.* For purposes of this rule:

“*Camera repair*” includes the repair of any still photograph, motion picture, video, digital, or television camera. “*Camera repair*” includes the repair of any part of a camera considered to be a part of a camera that may be detached from the camera body but can only be used with a camera. Examples of such accessories include but are not limited to detachable lenses, flash units, and motor drives. “*Camera repair*” does not include the repair of cameras that are built into a cell phone or computer.

This rule is intended to implement Iowa Code section 423.2(6) “w.”

701—211.36(423) Gun repair.

211.36(1) *In general.* Persons engaged in the business of repairing guns are selling a service subject to sales tax.

211.36(2) *Definition.* For purposes of this rule:

“*Gun repair*” means the repair of any pistol, revolver or other hand gun, as well as the repair of any shoulder or hip-fired gun such as a rifle or shotgun.

This rule is intended to implement Iowa Code section 423.2(6) “w.”

701—211.37(423) Janitorial and building maintenance or cleaning.

211.37(1) *In general.* Persons engaged in the business of performing one or a number of janitorial services and building maintenance or cleaning are selling a service subject to sales tax.

211.37(2) *Definitions.* For purposes of this rule:

“*Building maintenance or cleaning*” includes but is not limited to the cleaning of exterior walls or windows of any building and any other act performed upon the exterior of a building with the intent to keep it in good condition or upkeep.

“*Janitorial services*” means the type of cleaning services performed by a janitor in the regular course of duty. These services may be performed individually under a separate contract or included within a general contract to perform a combination of such services. These services may include but are not limited to interior window washing, floor cleaning, vacuuming, waxing, cleaning of interior walls and woodwork, cleaning of restrooms and furnaces, and the movement of furniture or other personal property within a building.

211.37(3) *Exempt services.*

a. Janitorial services performed in a private residence, including apartment or multiple housing units, and paid for by the occupant of the residence are exempt from sales tax.

b. Repairs and any service performed upon the exterior of a building that is a private residence and paid for by an occupant of the building are excluded from the meaning of “building maintenance or cleaning.” However, these services may be taxable under a construction-related enumerated service, described in rule 701—219.13(423).

c. Janitorial services and building maintenance or cleaning performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a structure are exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “z.”

701—211.38(423) Lawn care, landscaping, and tree trimming and removal.

211.38(1) *Lawn care.*

a. *In general.* Persons engaged in the business of lawn care are selling a service subject to sales tax. Lawn care is a taxable service regardless of the age of the person performing the service. Lawn care

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services performed on properties including but not limited to cemetery grounds, golf courses, parks, and residential or commercial properties containing one or more buildings or structures are subject to sales tax.

b. Definitions. For purposes of this rule:

“*Landscaping*” includes services related to the arrangement and modification of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment.

“*Lawn*” means an open space between woods or ground that is covered with grass and is generally kept mowed or required to be kept mowed.

“*Lawn care*” includes but is not limited to services related to mowing, trimming, watering, fertilizing, reseeding, resodding, and the killing of weeds, fungi, vermin, and insects that may threaten a lawn.

c. Not taxable. The mowing of grass within a ditch is not a taxable service.

211.38(2) Landscaping.

a. In general. Persons engaged in the business of landscaping are selling a service subject to sales tax.

b. Landscape architects. Services that require licensure as a “landscape architect” pursuant to Iowa Code section 544B.2 are not subject to sales tax under this rule if those services are performed by a licensed landscape architect, are separately stated, and are separately billed as a charge for landscape architecture.

c. Exempt. Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of real property are not subject to sales tax. 701—Chapter 219 contains additional information on new construction, reconstruction, alteration, expansion, and the remodeling of real property.

211.38(3) Tree trimming and removal.

a. In general. Persons engaged in the business of tree trimming, tree removal, and stump removal are selling a service subject to sales tax. This includes but is not limited to removal of any portion of a tree, including branches or a trunk.

b. Shrubs with woody stems or trunks. For purposes of this rule, tree trimming and tree removal include the trimming or removal of any shrub that has a woody main stem or trunk with branches.

c. Sale of cut wood. Persons engaged in the business of tree trimming and tree removal who cut wood from the trees that they trim or remove into sizes suitable for sale as firewood and sell the wood as firewood are engaged in the sale of tangible personal property. The tree trimming or removal is not a sale for resale. The sales price from the sale of this wood is subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*ab.*”

701—211.39(423) Pet grooming.

211.39(1) In general. Persons engaged in the business of pet grooming are selling a service subject to sales tax. This includes persons who are not veterinarians and groom dogs.

211.39(2) Definitions. For purposes of this rule:

“*Pet*” means any animal that has been tamed or gentled and is kept by its owner for pleasure or affection, rather than for utility or profit. Service animals or assistance animals as defined in Iowa Code section 216.8B and livestock are not considered pets.

“*Pet grooming*” includes any act performed to maintain or improve the appearance of a pet. This includes but is not limited to washing, combing, currying, hair cutting, and nail clipping, regardless of whether the person performing the act is a veterinarian.

211.39(3) Veterinary pet grooming. 701—Chapter 206 contains more information on bundled transactions to aid in determining the taxability of pet grooming when it is completed for both veterinary and cosmetic reasons.

211.39(4) Livestock showing. Services related to the pet grooming of livestock, including but not limited to the preparation of livestock for exhibition at fairs or shows, are exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “*am.*”

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701—211.40(423) Reflexology.

211.40(1) *In general.* Persons engaged in the business of reflexology are selling a service subject to sales tax.

211.40(2) *Definition.* For purposes of this rule:

“*Reflexology*” means the same as defined in Iowa Code section 152C.1.

This rule is intended to implement Iowa Code section 423.2(6) “*ar.*”

701—211.41(423) Tanning beds and tanning salons. Persons engaged in the business of providing tanning beds and tanning salons are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*az.*”

701—211.42(423) Water conditioning and softening.

211.42(1) *In general.* Persons engaged in the business of water conditioning and softening are selling a service subject to sales tax.

211.42(2) *Definitions.* For purposes of this rule:

“*Water conditioning*” means any action other than water softening taken with respect to water that renders the water fit for its intended use, more healthful, or enjoyable for human consumption. “*Water conditioning*” includes but is not limited to water filtration, purification, deionization, and reverse osmosis.

“*Water softening*” means the removal of minerals from water to render it more suitable for drinking and washing.

211.42(3) *Water purification.* When performed for residential, commercial, industrial, or agricultural users, the service of water purification is subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*bh.*”

701—211.43(423) Security and detective services.

211.43(1) *In general.* Persons engaged in the business of providing security or detective services are selling a service subject to sales tax.

211.43(2) *Definitions.* For purposes of this rule:

“*Detective service*” means a service of investigation with the purpose to obtain information regarding any of the following subjects: crimes or wrongs done or threatened; the habits, conduct, movements, location, associations, transactions, reputation, or character of a person; credibility of witnesses or other persons; inquiry or recovery of lost or stolen property; cause, origin, or responsibility of a fire, accident, or damage to property; or veracity or falsity of any statement or representation, or means a service of investigation with the purpose to detect deception or to secure evidence to be used before an authorized investigation committee, before boards of award or arbitration, or in a civil or criminal trial.

“*Security service*” means a service with the purpose to protect property from theft, vandalism, or destruction or individuals from physical attack or harassment. “*Security service*” includes but is not limited to the rental of guard dogs; burglar or fire alarms; providing security guards, bodyguards or mobile patrols; or the protection of computer systems against unauthorized access.

211.43(3) *Exempt.* The sales price of the following services or activities are not subject to sales tax under this rule:

a. Peace officer engaged privately in security or detective work with the knowledge and consent of the chief executive officer of the peace officer’s law enforcement agency.

b. Person employed full- or part-time by an employer in connection with the affairs of the employer.

c. Attorney licensed to practice law in Iowa while performing duties as an attorney.

d. Person engaged exclusively, either as an employee or independent contractor, in conducting investigations and adjustments for insurance companies.

e. Person serving notice or any other document to a party, witness, or any other individual in connection with any criminal, civil, or administrative litigation.

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- f.* Solicitation of a debtor to pay or collect payment for a debt.
- g.* Consulting, rendering advice, or providing training with regard to security or detection matters.
- h.* Charges for mileage, travel expenses, lodging, meal expenses, fees paid for records, and amounts paid for information if those charges are separately identified, separately billed, and reasonable in amount.

This rule is intended to implement Iowa Code section 423.2(6) “*as.*”

701—211.44(423) Solid waste collection and disposal services.

211.44(1) *In general.* Persons engaged in the business of solid waste collection and disposal are selling a service subject to sales tax.

211.44(2) *Definitions.* For purposes of this rule:

“*Nonresidential commercial operation*” means any operation that is an industrial, commercial, agricultural, or mining operation, whether for profit or not. “Commercial” refers to those involved in the buying and selling of goods and services, rather than just meaning a for-profit operation.

1. “Nonresidential commercial operation” includes but is not limited to hotels, motels, restaurants, realtors, professional firms (doctors, lawyers, accountants, or dentists), repair persons, persons selling and renting all sorts of tangible personal property, persons selling insurance of any kind, appraisers, skilled trades (e.g., plumbers, carpenters, and electricians), construction contractors, banks, savings and loans, barbers and beauticians, day care centers, counseling services, employment agencies, janitorial services, landscapers, painters, pest control, photography, printing, and storage services. Also included within the meaning of nonresidential commercial operation are the United Way, the American Cancer Society, the Elks, Masons, houses of worship (e.g., churches, synagogues, and mosques), and not-for-profit hospitals that are not licensed under Iowa Code chapter 135B.

2. “Nonresidential commercial operation” does not include apartment complexes, mobile home parks, manufactured home communities, and single-family or multifamily dwellings. Also excluded from the meaning are nonprofit hospitals licensed pursuant to Iowa Code chapter 135B.

“*Recyclable material*” includes but is not limited to used motor oil, paper, glass, metals (e.g., copper, aluminum, and iron), and batteries, as long as the recycled materials are separated from the solid waste for the purpose of recycling the materials.

“*Recycling facilities*” means facilities where recyclable materials are separated or processed for the purpose of reusing a material in its original form or using it in a manufacturing process that will not cause the destruction of the recyclable material to preclude its further use. A facility that produces insulation from used glass would qualify as a recycling facility under this rule, while a facility that separates or processes recyclable materials for use as fuel would not qualify as a recycling facility under this rule.

“*Solid waste*” means the same as defined in Iowa Code section 423.2(7).

211.44(3) *Nonresidential commercial operations.* Counties, municipalities, and cities that provide the service of solid waste collection and disposal to nonresidential commercial operations are obligated to collect and remit the tax from these services. Additionally, any person who has contracted to provide solid waste collection and disposal service to a city or municipality is obligated to collect and remit the tax from those services provided to nonresidential commercial operations located within that city or municipality. If the solid waste collection and disposal service is rendered to multiple businesses or organizations, tax must be collected and remitted only on those portions that meet the definition of nonresidential commercial operations.

211.44(4) *Bundled transaction of solid waste collections and disposal services.* 701—Chapter 206 contains more information on bundled transactions regarding when both taxable and nontaxable solid waste collection and services are provided to a customer.

211.44(5) *Disposal or tipping charges.*

a. Taxable. Charges for disposal or tipping of solid waste are also subject to sales tax. Persons or businesses who transport their own solid waste and persons who transport, without compensation, solid waste generated by another must pay the required tax upon the disposal or tipping charge or fee imposed by the collection or disposal facility.

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b. Exempt. Charges or fees imposed for the service of collecting and managing recyclable material separated by solid waste by a waste generator are not subject to sales tax.

211.44(6) Recycling facilities. The sales price of the service of solid waste collection and disposal provided to recycling facilities that separate or process recyclable materials is not subject to sales tax if, as a result of the separation or processing, the volume of the waste collected is reduced by 85 percent and the waste is collected and disposed of separately from other solid waste.

This rule is intended to implement Iowa Code section 423.2(7).

701—211.45(423) Sewage services.

211.45(1) In general. Persons engaged in providing sewage service to nonresidential commercial operations are selling a service subject to sales tax.

211.45(2) Definitions. For purposes of this rule:

“*Agricultural operation*” means any enterprise engaged in the raising of crops or livestock for market on an acreage.

“*Industrial operation*” means a business that purchases or rents machinery or equipment eligible for the Iowa sales and use tax exemption for industrial machinery and equipment.

“*Mining operation*” means a business engaged in underground mining, strip mining, or quarrying.

“*Nonresidential commercial operation*” means the same as defined in rule 701—211.44(423).

“*Sewage services*” means the services of collecting rainwater, liquid and solid refuse, or excreta for drainage or purification by means of pipes, channels, or conduits usually placed underground.

211.45(3) Nonresidential commercial operations. Counties, municipalities, sanitary districts, or any other person providing sewage service to nonresidential commercial operations are obligated to collect and remit the applicable Iowa sales tax. Any person or entity that has contracted to provide sewage services to a county or municipality is obligated to collect and remit the applicable Iowa sales tax performed for the county or city on behalf of the nonresident commercial operations located within that county or city.

This rule is intended to implement Iowa Code section 423.2(6) “*at.*”

701—211.46(423) Aircraft rental.

211.46(1) In general. Persons engaged in the business of renting aircraft for 60 days or less are selling a service subject to sales tax.

211.46(2) Definition. For purposes of this rule:

“*Aircraft*” means the same as defined in Iowa Code section 328.1. “Aircraft” also includes any drone aircraft or any aircraft transporting only the pilot.

This rule is intended to implement Iowa Code section 423.2(6) “*bf.*”

701—211.47(423) Sign construction and installation.

211.47(1) In general. Persons engaged in the business of constructing and installing signs are selling a service subject to sales tax.

211.47(2) Definition. For purposes of this rule:

“*Sign*” means notices erected and maintained for the purpose of providing information, notices, markers, and the advertising of products or services. Signs include but are not limited to billboards, indoor or outdoor sign devices, and any structure erected and maintained for the purpose of conveying information.

This rule is intended to implement Iowa Code section 423.2(6) “*aw.*”

701—211.48(423) Swimming pool cleaning and maintenance. Persons engaged in the business of cleaning or maintaining a swimming pool are selling a service subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*ay.*”

701—211.49(423) Taxidermy.

211.49(1) In general. Persons engaged in the business of taxidermy are selling a service subject to sales tax.

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211.49(2) Definition. For purposes of this rule:

“*Taxidermy*” means the art or operation of preparing, stuffing, or mounting the skin, head, carcass, or part of a carcass of a dead animal.

This rule is intended to implement Iowa Code section 423.2(6) “*ba.*”

701—211.50(423) Dating services.

211.50(1) In general. Persons engaged in providing dating services are selling a service subject to sales tax.

211.50(2) Definition. For purposes of this rule:

“*Dating service*” means the service of providing an opportunity for individuals to meet and interact socially with the possibility of forming a relationship. Dating services include but are not limited to the services of those who provide an opportunity for individuals to describe themselves to and meet potential partners through escort services, smartphone applications, online websites and applications, and videotapes. Excluded from the definition are marriage matchmakers, telephone numbers that only provide opportunities for conversation rather than in-person interaction, and advertisements in newspapers or magazines soliciting companionship.

This rule is intended to implement Iowa Code section 423.2(6) “*n.*”

701—211.51(423) Personal transportation service.

211.51(1) Personal transportation service defined. “Personal transportation service” means the arrangement or provision of transportation of a person or persons for consideration, regardless of whether the person or entity providing such service supplies or uses a vehicle in conjunction with the service. “Personal transportation service” includes but is not limited to the following:

a. Transportation services provided by a human driver, including but not limited to drivers with a Class C, Class D endorsement 3, or Class M license, or by a chauffeur as defined in Iowa Code section 321.1(8). Examples of such services include but are not limited to taxi services, driver services, limousine services, bus services, shuttle services, and rides for hire;

b. Transportation services provided by a nonhuman driver, autonomous vehicle, or driverless vehicle; and

c. Ride sharing services, including but not limited to use of a network to connect transportation network company riders to transportation network company drivers who provide prearranged rides as defined in Iowa Code section 321N.1(4).

EXAMPLE 1: Marketplace X is a transportation network company that operates a network to connect drivers to riders. Driver D provides rides in Iowa exclusively through X’s network. A person in Iowa requests a ride through X’s network, and D provides the ride in D’s car. X is a marketplace facilitator. X must collect Iowa sales tax and applicable local option sales tax on the sales price of the ride. Because D makes all of D’s Iowa sales through X, which collects all applicable taxes on all of D’s rides, D does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. X will report the sales tax on X’s Iowa sales tax return.

EXAMPLE 2: D provides rides for X and Y, two different transportation network companies. X is a marketplace facilitator responsible for collecting and remitting Iowa sales tax and applicable local option sales tax on the sales price of the rides D provides through X’s network. Y is also a marketplace facilitator responsible for collecting all applicable taxes on the rides D provides through Y’s network. D does not need to register for an Iowa sales tax permit or file an Iowa sales tax return.

EXAMPLE 3: D independently provides rides in addition to providing rides through X’s network. X must collect all applicable taxes on the rides D provides through its network. X is not responsible for collecting tax on any of the rides D provides independent from X’s network. D, a seller of personal transportation service with physical presence in Iowa, must collect and remit Iowa sales tax and applicable local option sales tax on the sales price of the rides D sells independent of X’s network.

211.51(2) Tax imposed; sourcing. The sales price from the sale of personal transportation service in Iowa is subject to Iowa sales tax. The tax is imposed if the personal transportation service is first used in Iowa and is sourced to the location at which the service is first received.

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EXAMPLE: R schedules a personal transportation service while at R's residence in Des Moines. R schedules the transportation service to transport R from Grinnell to Iowa City. R independently travels to Grinnell, where R enters a vehicle owned by the transportation service. The transportation service takes R from Grinnell to Iowa City, where the service ends and R pays for the service. The sale is sourced to Grinnell, the location at which R first received the transportation service. The transportation service must charge sales tax and the applicable local option tax in Grinnell, even though R scheduled the service while in Des Moines and the service concluded and payment was made in Iowa City.

211.51(3) *No tax imposed on interstate motor carrier transportation service.* Where a personal transportation service involves interstate travel by a motor carrier as defined in 49 U.S.C. Section 13102(14), no tax shall be imposed on the transaction to the extent prohibited by 49 U.S.C. Section 14505.

211.51(4) *Exemption for transportation services furnished by a qualified public transit system, medical transportation service, or paratransit service.* The sales price from sales of transportation services by public transit systems, medical transportation services, or paratransit services is exempt from tax. For purposes of the exemption under Iowa Code section 423.3(106), the following definitions shall apply:

“Medical transportation” means a personal transportation service for an individual to travel to a health care provider for the individual's medical care. Medical transportation is not limited to transportation services for immediate life-threatening or serious injuries.

“Paratransit service” means a personal transportation service provided to individuals with disabilities.

“Public transit system” means a public transit system as defined in Iowa Code section 324A.1(4).

This rule is intended to implement Iowa Code sections 423.2(6) “*ac*” and 423.3(106).

701—211.52(423) Information services.

211.52(1) *In general.* Persons engaged in the business of providing access to information services provided through any tangible or electronic medium are selling a service subject to sales tax.

211.52(2) *Definition.* For purposes of this rule:

“Information services” means the same as defined in Iowa Code section 423.1(22A).

211.52(3) *Taxable examples.* Examples of information services include but are not limited to database files, research databases, genealogical information, mailing lists, subscription files, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, price lists or guides, scouting reports, and other similar items of compiled information prepared for a particular customer.

211.52(4) *Nontaxable examples.* “Information services” does not include the furnishing of artwork (including musical compositions and films), drawings, illustrations, or other graphic material or information prepared for general dissemination to the public in the form of books, magazines, newsletters, videotapes or audiotapes, compact discs, or any other medium commonly used to communicate with large numbers of customers. The sale of a book, magazine, or similar item is not the sale of an information service, even if the item contains material of practical use (e.g., in conducting a private, for-profit business) to its purchaser. These items sold in digital formats may be taxable as a specified digital product.

This rule is intended to implement Iowa Code section 423.2(6) “*br*.”

701—211.53(423) Software as a service.

211.53(1) *In general.* Persons engaged in the business of providing software as a service are selling a service subject to sales tax. The content or material accessed by way of software as a service does not impact the taxability of the software itself.

211.53(2) *Definitions.* For purposes of this rule:

“Software as a service” means the sale, storage, use, or other consumption of vendor-hosted computer software, such as but not limited to software accessible on the cloud. “Software as a service” does not include services commonly understood to constitute “infrastructure as a service” but may

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include what is described as “platform as a service” based on the facts and circumstances relating to that particular service. A relevant declaratory order, *In the Matter of study.com, LLC*, Iowa Dep’t of Revenue Declaratory Order No. 2020-310-2-0649 (Apr. 20, 2021), provides further discussion of software as a service.

“*Vendor-hosted computer software*” means computer software that is accessed through the Internet or a vendor-hosted server whether the access is permanent or temporary, whether any downloading occurs, or whether the software is hosted by the retailer of the software or by a third party.

211.53(3) Exemptions. Software as a service may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) “*bu.*”

701—211.54(423) Video game services and tournaments.

211.54(1) In general. Persons engaged in the business of providing video game services and tournaments are selling a service subject to sales tax. Taxable services relating to video game tournaments include fees paid for participating in such tournaments and related services as well as observing a video game tournament. Participation in or observation of such tournaments is taxable regardless of whether or not a prize is provided to any participants.

211.54(2) Definitions. For purposes of this rule:

“*Video games*” means any virtual, digital, or electronic game in which a user interacts with a user interface to generate visual feedback on a video device such as a computer monitor, television screen, or mobile device. Video games may be transferred through any physical or electronic medium, including by cartridge, disc, or electronic file, or through access to any server or network of servers.

“*Video game services*” means providing access to video games, support and account services, in-game currency exchanges, payment processing services, and any other service related to the hosting or provision of video games.

“*Video game tournament*” means an event where participants compete in the playing of video games. Participants may be playing video games by being physically present in the same location or playing remotely.

This rule is intended to implement Iowa Code section 423.2(6) “*bt.*”

701—211.55(423) Services related to specified digital products or software sold as tangible personal property.

211.55(1) In general. Persons engaged in the business of providing services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products or software sold as tangible personal property are selling a service subject to sales tax.

211.55(2) Definition.

“*Specified digital products*” means the same as defined in Iowa Code section 423.1.

211.55(3) Exemption. Services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products or software sold as tangible personal property may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) “*bs.*”

701—211.56(423) Storage of tangible or electronic files, documents, or other records.

211.56(1) In general. Persons engaged in the business of providing storage of tangible or electronic files, documents, or other records are selling a service subject to sales tax.

211.56(2) Exemption. Storage of tangible or electronic files, documents, or other records may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) “*bq.*”

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ITEM 4. Adopt the following **new** rule 701—213.27(423):

701—213.27(423) Webinars.

213.27(1) *In general.* Webinars are generally taxable as specified digital products. Specifically, webinars fall into the “other digital products” category as a news or information product. Purchasing access to a live or pre-recorded webinar, even if the webinar’s purpose is educational or otherwise, is not treated as purchase of a service.

213.27(2) *Nontaxable live webinars with virtual participation.* Purchases of access to a live webinar, meaning access to viewing a presentation occurring in real time, are not always subject to sales tax. Attending a presentation in person, if it is not an admission to an amusement, is generally not taxable under Iowa law. Similarly, purchasing access to a live webinar is not taxable if the live webinar allows for a level of participation that is substantially similar to an in-person presentation.

213.27(3) *Exemptions.* Since purchases of webinars are taxable as specified digital products, any sales tax exemptions that apply to specified digital products may also apply to webinars.

EXAMPLE 1: A person purchases access to a live webinar to view on the person’s computer or mobile device. The in-person presentation, which can be viewed by people with access to the live webinar, allows for in-person attendees to ask questions throughout the presentation. Persons viewing the presentation through the live webinar on their computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar are not substantially similar. The purchase of access to view this live webinar is subject to sales tax.

EXAMPLE 2: A person purchases access to a live webinar to view on the person’s computer or mobile device. The in-person presentation, which is viewable by people with access to the live webinar, does not allow in-person attendees to ask questions throughout the presentation. The person viewing the presentation through the live webinar on the person’s computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar is substantially similar. The purchase of access to view this live webinar is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.1(55B).

ITEM 5. Adopt the following **new** rule 701—214.21(423):

701—214.21(423) Farm implement repair of all kinds.

214.21(1) *In general.* Persons engaged in the business of repairing, restoring, or renovating implements, tools, machines, vehicles, or equipment used in the operation of farms, ranches, or acreages on which crops of all kinds are grown and on which livestock, poultry, or fur-bearing animals are raised or used for any purpose are selling a service subject to sales tax.

214.21(2) *Installation not taxable.* Those services relating to the installation of new parts or accessories which are not replacements are not taxable.

This rule is intended to implement Iowa Code section 423.2(6) “r.”

ITEM 6. Adopt the following **new** rule 701—214.22(423):

701—214.22(423) Warehousing of raw agricultural products.

214.22(1) *In general.* The sales price on the warehousing of raw agricultural products is subject to sales tax unless the warehousing of raw agricultural products is storage in transit and has a destination outside of Iowa, regardless of whether the raw agricultural products originated within or outside of Iowa. Because the tax imposed by Iowa Code section 423.2(6) “ax” is imposed on the warehousing and not the sale of raw agricultural products, the interstate commerce exceptions found in Iowa Code section 423.3 do not apply.

214.22(2) *Definition.* For purposes of this rule:

“Raw agricultural products” include but are not limited to corn, beans, oats, milo, fruits, vegetables, animal semen, and like items that have not been subjected to any form of processing. For purposes of this rule, grain drying is not considered processing.

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214.22(3) Other charges. Other charges relating to warehousing of raw agricultural products may be subject to sales tax when separately invoiced. 701—Chapter 205 contains more information about bundled transactions.

214.22(4) Transit warehouses. The warehousing of raw agricultural products to be delivered within Iowa is subject to sales tax, while the warehousing of those products placed into interstate commerce is not subject to sales tax.

a. Formula. Transit warehouses may compute the tax on warehousing fees based upon a formula consisting of a numerator that is the quantity of raw agricultural products housed at the warehouse with intended intrastate delivery in Iowa and a denominator that is the total quantity of raw agricultural products housed in the warehouse.

b. Definition. For purposes of this rule:

“Transit warehouses” are those warehouses where raw agricultural products in bulk quantities are transported to and then shipped to different locations at different times.

c. Numerator. Raw agricultural products picked up at the warehouse or delivered to a location in Iowa must be included in the numerator, even if the products may be or are subsequently delivered to a common carrier for shipment outside of Iowa.

d. Information used to calculate tax. The information used in the formula for the computation of tax on storage fees must be, in most cases, supplied by the principal storing the products in the warehouse. The warehouse is responsible for acquiring and verifying the information used in the formula with the principal at least once every 90 days.

214.22(5) Exemptions. Warehousing service will not be subject to sales tax if a contract for the warehousing of raw agricultural products is with a tax-certifying or tax-levying body of the state of Iowa; any instrumentality of the state, county, or municipal government; the federal government or its instrumentalities; a tribal government as defined in Iowa Code section 216A.161; or an agency or instrumentality of a tribal government if used for public purposes.

a. Consignment to federal government. Fees for the warehousing of raw agricultural products placed into storage by a producer that are later consigned to the federal government under a loan agreement are subject to sales tax.

b. Federal government activity. Warehousing of raw agricultural products is exempt from sales tax only if the federal government makes payment to the warehouse for warehousing and the federal government actually owns the products or goods during the time the products or goods are warehoused.

This rule is intended to implement Iowa Code sections 423.2(6) “ax” and 423.3(31).

ITEM 7. Amend subrule 215.8(3) as follows:

215.8(3) Exempt design and installation services. The sales price from furnishing design and installation services, including electrical and electronic installation, of machinery and equipment the sale or rental of which is exempt under subrule ~~230.8(4)~~ 215.8(1) is exempt from tax. ~~Reference rule 701—26.16(422) for~~ Rule 701—219.13(423) contains characterizations of the words “installation” and “electronic installation.”

ITEM 8. Amend paragraph **215.15(4)“b,”** definition of “Transporting for hire,” as follows:

“Transporting for hire” means the service of moving persons or property for consideration, including but not limited to the use of a “personal transportation service” as that term is described in Iowa Code section 423.2(6) and rule ~~701—26.80(422,423)~~ 701—211.5(423).

ITEM 9. Adopt the following **new** rule 701—216.2(423):

701—216.2(423) Dance schools and dance studios.

216.2(1) In general. The sales price from the services sold by dance schools or dance studios are subject to sales tax. This includes all activities, such as acrobatics, exercise, baton-twirling, tumbling, or modeling taught in dance schools or dance studios.

216.2(2) Definitions. For purposes of this rule:

“Dance school” means any institution established primarily for the purpose of teaching one or more types of dancing.

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“*Dance studio*” means any room or groups of rooms in which any one or more types of dancing are taught.

This rule is intended to implement Iowa Code section 423.2(6) “m.”

ITEM 10. Adopt the following new rule 701—216.3(423):

701—216.3(423) Golf and country clubs and all commercial recreation.

216.3(1) *Golf and country clubs.* The sales price from all services sold by a golf club or country club are subject to sales tax. All fees, dues, assessments, or other charges paid to golf clubs and country clubs are subject to sales tax.

216.3(2) *Commercial recreation.*

a. In general. The sales price from all services sold by persons making recreation available to purchasers are subject to sales tax. Recreation under this rule does not include fees or charges for admission taxed under Iowa Code section 423.2(3).

b. Definition. For purposes of this rule:

“*Recreation*” means activities pursued for pleasure. Recreation includes all activities that promote physical fitness, including but not limited to sports, games, exercise classes, martial arts classes, and swim classes. Recreation includes instructional classes pursued for pleasure unrelated to fitness or athletics, including but not limited to pottery classes, cooking classes, and music lessons. Recreation also includes activities without any instructional element, such as hunting or fishing ranges or camps. Elements that do not determine whether or not an activity is recreation include whether an instructor leads an activity or class, the level of training or ability the instructor has, and the location of the activity.

This rule is intended to implement Iowa Code section 423.2(6) “v.”

ITEM 11. Adopt the following new rule 701—216.4(423):

701—216.4(423) Campgrounds.

216.4(1) *In general.* Persons engaged in the business of renting campground sites are selling a service subject to sales tax, regardless of the duration of the rental. This includes the sales price for the operation of a campground and the use of a campground site.

216.4(2) *Definition.* For purposes of this rule:

“*Campground*” is any location at which sites are provided for persons to place their own temporary shelter, such as a tent, travel trailer, or motorhome. “*Campground*” does not include any hunting, fishing, or other type of camp where accommodations are provided, though such camps are likely subject to sales tax as commercial recreation under rule 701—216.3(423).

216.4(3) *Related charges.* The sale price of charges, whether mandatory or optional, imposed on persons using a campground site that are subject to sales tax include but are not limited to entry fees, utility (electric, water, sewer) fees, fees for the use of swimming pools or showers, and fees for extra persons or vehicles.

216.4(4) *Public parks.*

a. The sales price for the use of a state park as a campground is subject to sales tax; however, the sales price for the use of a county or municipal park as a campground is not subject to sales tax.

b. The sales price of vehicle entry fees into any state, county, or municipal park, commonly called “park user fees,” is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “j.”

ITEM 12. Adopt the following new 701—Chapter 218:

CHAPTER 218
SERVICES RELATED TO VEHICLES

701—218.1(423) Armored car. Persons engaged in the business of either providing armored car service to others or converting a vehicle into an armored car are selling a service subject to sales tax. For purposes

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of this rule, “armored car” means a wheeled vehicle affording defensive protection by use of a metal covering or other elements of ordinance.

This rule is intended to implement Iowa Code section 423.2(6) “b.”

701—218.2(423) Vehicle repair.

218.2(1) *In general.* Persons engaged in the business of repairing vehicles are selling a service subject to sales tax. Rule 701—225.4(423) contains more information on purchases made by auto body shops.

218.2(2) *Definitions.* For purposes of this rule:

“*Repair*” includes any type of restoration, renovation or replacement of any motor, engine, working parts, accessories, body, or interior of a vehicle. “*Repair*” does not include the installation of new parts or accessories, which are not replacements, added to a vehicle.

“*Vehicle*” means the same as defined in Iowa Code section 321.1(90).

218.2(3) *Disposal fees.* Fees charged with the disposal of any item in connection with the performance of this service is subject to sales tax if the disposal fee of the item is not separately contracted for or itemized in the billing of the repair service. If the disposal fee is itemized or separately contracted for, the disposal fee is not subject to sales tax. Items that may be subject to disposal fee include but are not limited to air filters, batteries, oil, or tires.

This rule is intended to implement Iowa Code section 423.2(6) “c.”

701—218.3(423) Motorcycle, scooter, and bicycle repair.

218.3(1) *In general.* Persons engaged in the business of repairing motorcycles, scooters, and bicycles are selling a service subject to sales tax.

218.3(2) *Definitions.* For purposes of this rule:

“*Bicycle*” includes human-powered bicycles and electric bicycles.

“*Motorcycle*” includes autocycles.

“*Repair*” means the same as defined in rule 701—211.1(423).

This rule is intended to implement Iowa Code section 423.2(6) “ag.”

701—218.4(423) Battery, tire, and allied.

218.4(1) *Batteries in general.* Persons engaged in the business of installing, repairing, maintaining, restoring, or recharging batteries and any services related to or connected therewith are selling a service subject to sales tax.

218.4(2) *Tires in general.* Persons engaged in the business of installing, repairing, or maintaining tires and any services related to or connected therewith are selling a service subject to sales tax.

218.4(3) *Disposal fees.* Disposal fees charged in connection with the performance of the services identified in this rule are subject to sales tax if the disposal fee is not itemized or separately contracted for in the billing for the charge of the service. If the disposal fee charged in connection with the performance of the services identified in this rule are itemized or separately contracted for, then the disposal fee is not subject to sales tax. Items that may be subject to disposal fee include but are not limited to air filters, oil, tires, and batteries.

This rule is intended to implement Iowa Code sections 423.2(6) “d” and 423.2(7) “a”(1).

701—218.5(423) Boat repair.

218.5(1) *In general.* Persons engaged in the business of repairing watercraft are selling a service subject to sales tax.

218.5(2) *Definitions.* For purposes of this rule:

“*Repair*” means the same as defined in rule 701—211.1(423).

“*Watercraft*” means the same as defined in Iowa Code section 462A.2.

This rule is intended to implement Iowa Code section 423.2(6) “h.”

701—218.6(423) Vehicle wash and wax.

REVENUE DEPARTMENT[701](cont'd)

218.6(1) *In general.* Persons engaged in the business of vehicle washing and waxing are selling a service subject to sales tax, whether performed by hand, machine, or coin-operated device. Rule 701—225.7(423) contains more information on purchases of inputs in vehicle wash and wax services.

218.6(2) *Definition.* For purposes of this rule:

“*Vehicle*” means the same as defined in Iowa Code section 321.1(90).

This rule is intended to implement Iowa Code section 423.2(6) “*i.*”

701—218.7(423) Wrecker and towing.

218.7(1) *In general.* Persons engaged in the business of towing any vehicle are selling a service subject to sales tax. Included in this are services charges for a person to travel to any place to lift, extricate, tow, or salvage a vehicle.

218.7(2) *Definitions.* For purposes of this rule:

“*Towing*” includes any means of pushing, pulling, carrying, or freeing any vehicle from mud, snow, or any other impediment, including any incidental hoisting. “*Towing*” does not include transporting operable vehicles from one location to another when no operative aspect of the vehicle is integral to the transporting.

“*Vehicle*” means the same as defined in Iowa Code section 321.1(90).

This rule is intended to implement Iowa Code sections 423.1(7) and 423.2(6) “*bn.*”

701—218.8(423) Flying service.

218.8(1) *In general.* Persons engaged in the business of teaching a course of instruction in the art of operation and flying of an airplane, and instructions in repairing, renovating, reconditioning an airplane, or any other related service are selling a service subject to sales tax.

218.8(2) *Not included.* Flying services do not include those relating to agricultural aerial application, those relating to aerial commercial and chartered transportation services, and those services exempted by rule 701—211.2(423).

218.8(3) *Flight instruction charges.* Charges relating to flight instruction can be taxable or nontaxable. Taxable charges include but are not limited to the sales price for the following:

- a. Instructors’ services, ground instruction, and ground school.
- b. Students learning to fly with an instructor and dual flying.
- c. Rental of a plane. Rule 701—211.47(423) contains more information.

This rule is intended to implement Iowa Code section 423.2(6) “*s.*”

ITEM 13. Adopt the following **new** subrules 219.13(6) to 219.13(14):

219.13(6) *Carpentry repair or installation.* Persons engaged in the business of carpentry, as the trade is known in the usual course of business, are selling a service subject to sales tax, regardless of whether they perform repair or installation. The carpentry services can be conducted on or within real or personal property.

219.13(7) *Roof, shingle, and glass repair.* Persons engaged in the business of repairing, restoring, or renovating roofs or shingles or restoring or replacing glass, whether the glass is personal property or affixed to real property, are selling a service subject to sales tax.

219.13(8) *Electrical and electronic repair and installation.*

a. *In general.* Persons engaged in the business of repairing or installing electrical wiring, fixtures, or switches in or on real property, or repairing or installing any article of tangible personal property powered by electric current, are selling a service subject to sales tax. This includes installation of semiconductors, such as vacuum tubes, transistors, or integrated circuits, or installation or repair of machinery or equipment that functions mainly through the use of semiconductors.

b. *New machinery or equipment.* The sales price of the electrical or electronic installation is exempt from tax if the sales price is charged for the installation of new machinery or equipment.

c. *Definition.* For purposes of this subrule:

“*Installation*” includes affixing electrical wiring, fixtures or switches to real property; affixing any article of personal property powered by electric current to any other article of personal property; or

REVENUE DEPARTMENT[701](cont'd)

making any article of personal property powered by electric current operative with respect to its intended function or purpose.

219.13(9) Excavating and grading.

a. In general. Persons engaged in the business of excavating and grading are selling services subject to sales tax.

b. Definitions. For purposes of this subrule:

“*Excavation*” means the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. “*Excavation*” ordinarily includes not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface.

“*Grading*” means a physical change of the earth’s structure by scraping and filling in the surface to reduce it to a common level. “*Grading*” includes the reducing of the surface of the earth to a given line fixed as the grade, involving excavating, filling, or both.

219.13(10) Painting, papering and interior decorating.

a. In general. Persons engaged in the business of painting, papering, and interior decorating are selling a service subject to sales tax.

b. Definitions. For purposes of this subrule:

“*Interior decoration*” means the designing or decoration of the interior of houses or buildings, counseling with respect to such design or decoration, or the procurement of furniture fixtures or home or building decorations.

“*Painting*” means the covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant, with some suitable liquid to form a solid adherent when spread on the surface in thin coats for decoration, protection, or preservation purposes. This includes all necessary preparations, including surface preparation. “*Painting*” does not include automobile undercoating, the coating of railroad cars, storage tanks, or the plating of tangible personal property with metal such as but not limited to chromium, bronze, tin, galvanized metal, or platinum.

“*Papering*” means the application of wallpaper or wall fabric to the interior of a house or building and any necessary preparations, including surface preparation.

c. Incidental service. When a person provides interior decorating services without charge, incidental to the sale of real or tangible personal property, no sales tax shall be charged in addition to the tax paid on the sales price or any part thereof of the real or tangible personal property.

219.13(11) Pipe fitting and plumbing.

a. In general. Persons engaged in the business of pipe fitting and plumbing are selling a service subject to sales tax.

b. Definition. For purposes of this rule:

“*Pipe fitting and plumbing*” means the trade of fitting, threading, installing, and repairing pipes, fixtures, or apparatus used for heating, refrigeration, or air conditioning, or concerned with the introduction, distribution, and disposal of a natural or artificial substance.

219.13(12) Wood preparation.

a. In general. Persons engaged in the business of wood preparation or treatment for others are selling a service subject to sales tax.

b. Definition. For purposes of this rule:

“*Wood preparation*” includes all processes whereby wood is sawed from logs in measured dimensions, planed, sanded, oiled, or treated in any manner before being used to repair an existing structure or create or become a part of a new structure. If such preparation is engaged solely for the purpose of processing lumber or wood products for ultimate sale at retail, such preparation may not be deemed as selling a service subject to sales tax.

219.13(13) Well drilling. Persons engaged in the business of well drilling are selling a service subject to sales tax.

219.13(14) Landscaping. Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of a building or structure are not subject to sales tax. Rule 701—211.39(423) contains more information about landscaping services.

REVENUE DEPARTMENT[701](cont'd)

ITEM 14. Amend subrule 219.21(1) as follows:

219.21(1) Exempt lease or rental of machinery and equipment. ~~On and after July 1, 2004, the~~ The sales price on the lease or rental only of the following types of machinery and equipment is exempt from tax: all machinery, equipment, and replacement parts directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures and all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the equipment and replacement parts so used. A contractor's, subcontractor's, or builder's purchases of this equipment would continue to be taxable, as would a lessor's purchases of machinery, equipment, or replacement parts for subsequent exempt rental to a contractor, subcontractor, or builder. ~~Reference rule 701—26.18(422,423) for an extensive explanation of this matter.~~

ITEM 15. Adopt the following new rule 701—219.22(423):

701—219.22(423) House and building moving. Persons engaged in the business of moving houses or buildings from one location to another, for any reason, are selling a service subject to sales tax. The sales price from this service is not considered a transportation charge.

This rule is intended to implement Iowa Code section 423.2(6) "x."

ITEM 16. Amend **701—Chapter 219**, implementation sentence, as follows:

These rules are intended to implement 2005 Iowa Code ~~subsections~~ sections 423.1(42), 423.2(1) "b" and "c," 423.2(6), 423.3(37), 423.3(64), 423.3(85), and 423.5(2) and ~~2005 Iowa Code Supplement subsections 423.3(37) and 423.3(85).~~

ITEM 17. Rescind and reserve rule **701—220.13(423)**.

ITEM 18. Rescind and reserve rule **701—225.2(423)**.

ITEM 19. Amend rule **701—225.7(423)**, implementation sentence, as follows:

This rule is intended to implement 2011 Iowa Code Supplement section 423.3 as amended by 2012 Iowa Acts, Senate File 2342, section 13 Iowa Code section 423.3(98).

ARC 6576C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to the quotation process for governmental entities for public improvement for vertical infrastructure and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 180, "Public Improvement Quotation Process for Governmental Entities for Vertical Infrastructure," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 314.1A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 26.2 and 314.1A.

Purpose and Summary

The proposed amendments add a new definition of "public improvement for vertical infrastructure" and remove unneeded definitions for "public improvement" and "repair or maintenance work" because the terms are no longer used within Chapter 180. The title of the chapter and wording within the chapter are proposed to be amended to coordinate with the changes made to the definitions. Also, rule

TRANSPORTATION DEPARTMENT[761](cont'd)

761—180.4(314) is proposed to be rescinded; this rule is no longer needed because of the other changes being made.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on October 28, 2022, via conference call at 9 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend **761—Chapter 180**, title, as follows:

~~PUBLIC IMPROVEMENT QUOTATION PROCESS FOR GOVERNMENTAL ENTITIES FOR~~
PUBLIC IMPROVEMENT FOR VERTICAL INFRASTRUCTURE

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 2. Amend rule 761—180.1(314) as follows:

761—180.1(314) Purpose. The purpose of these rules is to prescribe the manner by which governmental entities shall administer competitive quotations for contracts pertaining to a public improvement ~~contracts~~ for vertical infrastructure, in accordance with Iowa Code section 26.14.

ITEM 3. Amend rule 761—180.3(26,314) as follows:

761—180.3(26,314) Definitions.

“Estimated total cost of a public improvement” means the same as defined in Iowa Code section 26.2.

“Governmental entity” means the same as defined in Iowa Code section 26.2.

~~*“Public improvement”* means as defined in Iowa Code section 26.2.~~

~~*“Repair or maintenance work”* means as defined in Iowa Code section 26.2.~~

“Responsible quotation” means a quotation submitted by a contractor who is capable of performing the work. To be considered responsible, the contractor must possess the necessary financial and technical capability to perform the work, as well as the ability to complete the work as demonstrated by past performance or other appropriate considerations.

“Responsive quotation” means a quotation in which the contractor agrees to do everything required by the governmental entity’s solicitation of quotations and by the plans and specifications and other related documents, without any conditions, qualifications or exclusions.

~~*“Vertical Public improvement for vertical infrastructure”* means buildings, all appurtenant structures, utilities, incidental street improvements including sidewalks, site development features, recreational trails, and parking facilities. Vertical infrastructure does not include any work constructed in conjunction with those matters excluded from the definition of is a “public improvement” as defined in Iowa Code section 26.2(3) “a” and “b” but excludes those improvements in Iowa Code section 26.2(3) “b”(1) to (6).~~

ITEM 4. Rescind and reserve rule **761—180.4(314)**.

ITEM 5. Amend subrule 180.5(1) as follows:

180.5(1) A governmental entity shall solicit competitive quotations for a public improvement for vertical infrastructure when the estimated total cost of the public improvement for vertical infrastructure exceeds the competitive quotation threshold established in Iowa Code section 26.14, as adjusted pursuant to Iowa Code section 314.1B, but is less than the competitive bid threshold established in Iowa Code section 26.3, as adjusted pursuant to Iowa Code section 314.1B. The adjusted thresholds are published on the department’s website at www.iowadot.gov.

ARC 6574C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rule making related to railroads
and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 800, “Items of General Application for Railroads,” Chapter 810, “Railroad Safety Standards,” and Chapter 821, “Highway-Railroad Grade Crossing Surface Repair Fund,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 327G.24.

TRANSPORTATION DEPARTMENT[761](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 312.2, 327C.4, 327C.38, 327C.41, 327G.24 and 327G.30.

Purpose and Summary

This proposed rule making corrects the name of the Modal Transportation Bureau throughout Chapters 800, 810 and 821.

The proposed amendments to Chapter 800 correct the formatting within the definitions, require that affected railroads submit their annual reports to the Department electronically, and adopt 49 Code of Federal Regulations (CFR) Part 1152 as of October 1, 2021. Iowa Code section 327G.24 requires the Department to adopt rules consistent with the Surface Transportation Board (STB) regulation titled Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 United States Code 10903, which is found in 49 CFR Part 1152.

The Track Safety Standards of the Federal Railroad Administration (FRA) set out safety standards that are applicable to all railroads nationwide and are found in 49 CFR Part 213. A proposed amendment to Chapter 810 adopts 49 CFR Part 213 as of October 1, 2021. Iowa Code section 327C.4 requires the Department to inspect railroad tracks for safe operation. To accomplish this, the Department is a member of the FRA's State Rail Safety Participation Program, which provides benefits to states in training and technical proficiency in understanding and applying federal standards.

The proposed amendments to Chapter 821 make changes as to how the Department processes agreements to request that the jurisdiction and railroad provide cost estimates for work responsibilities. The proposed amendments also remove the requirement for signing three copies of the agreement and update the description of how the Department provides payment to the railroad to include actual project cost.

Proposed federal regulations are published in the Federal Register (FR) to allow a period for public comment, and after adoption the final regulations are published in the FR. To ensure the consistency required by statute, the Department adopts the specified parts of 49 CFR as adopted by the STB and the FRA.

The following list provides a specific description of the amendments to the FR that have become final and effective from October 2, 2017, through October 1, 2021, and affect Chapters 800 and 810.

Part 213 (FR Vol. 84, No. 100, Pages 23730-23737, 5-23-19)

This final rule eliminates unnecessary costs and improves public access. The FRA has removed its civil penalties schedule and guidelines from the CFR and instead publishes them on the FRA website. Effective date: May 23, 2019.

Part 213 (FR Vol. 85, No. 195, Pages 63362-63392, 10-7-20)

This final rule revises FRA regulations governing the minimum safety requirements for railroad track. The changes include allowing inspection of rail using continuous rail testing, allowing the use of flange-bearing frogs in crossing diamonds, relaxing the guard check gage limits on heavy-point frogs used in Class 5 track, removing an inspection-method exception for high-density commuter lines, and other miscellaneous revisions. The revisions benefit track owners, railroads, and the public by reducing unnecessary costs and incentivizing innovation while improving rail safety. Effective date: October 7, 2020.

Part 213 (FR Vol. 86, No. 83, Pages 23241-23260, 5-3-21)

This final rule provides the 2021 inflation adjustment amounts to civil penalties that may be imposed for certain U.S. Department of Transportation regulations in accordance with the Federal Civil Penalties Inflation Adjustment Act of 2015. Effective date: May 3, 2021.

Part 1152 (FR Vol. 83, No. 68, Pages 15075-15081, 4-9-18)

This final rule updates STB regulations to reflect certain statutory changes enacted in the Surface Transportation Board Reauthorization Act of 2015 and to replace certain obsolete or incorrect references in the regulations. Effective date: May 2, 2018.

Part 1152 (FR Vol. 83, No. 74, Page 16786, 4-17-18)

TRANSPORTATION DEPARTMENT[761](cont'd)

This is a citation correction to a rule document published on April 9, 2018.

Part 1152 (FR Vol. 84, No. 64, Pages 12940-12946, 4-3-19)

This final rule adopts modifications to STB regulations pertaining to certain payment, filing and service procedures. The adopted rule also updates and clarifies fees for copying, printing, and related services and removes outdated language from the STB regulations. Effective date: May 10, 2019.

Part 1152 (FR Vol. 84, No. 233, Pages 66320-66326, 12-4-19)

This final rule amends the STB regulations related to the National Trails System Act to: (1) provide that the initial term for certificates or notices of interim trail use or abandonment will be one year (instead of 180 days), (2) permit up to three one-year extensions of the initial period if the trail sponsor and the railroad agree, and (3) permit additional one-year extensions if the trail sponsor and the railroad agree and extraordinary circumstances are shown. Effective date: February 2, 2020.

Fiscal Impact

The fiscal impact cannot be determined. The federal regulations proposed to be adopted by this rule making were subject to fiscal impact review by either the FRA or the STB when enacted and were determined not to be cost prohibitive.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on October 27, 2022, via conference call at 9 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

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

TRANSPORTATION DEPARTMENT[761](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—800.1(307) as follows:

761—800.1(307) Definitions. The following terms when used in this division of rules shall have the following meanings:

Crossing. The "Crossing" means the point where the railroad tracks and highway meet at the same location.

Department. The "Department" means the state department of transportation.

Railroad. Persons "Railroad" means persons who own rail facilities or who are responsible for their operation and maintenance.

This rule is intended to implement Iowa Code sections 307.1 and 307.26.

ITEM 2. Amend rule 761—800.2(17A) as follows:

761—800.2(17A) Location and submission of documents. All documents concerning railroad matters which, according to statute or rule, must be submitted to the department shall be submitted to the following address: ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 3. Amend subrule 800.4(2) as follows:

800.4(2) A railroad company not required to submit an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit an annual report to the department ~~on Form 010030 electronically~~ on or before April 1 following the close of the calendar year.

ITEM 4. Amend rule ~~761—800.15(327F)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 327F.31 and ~~2002 Iowa Op. Att'y Gen. _____ (#01-5-2)~~ 2001 Iowa Op. Att'y Gen. #01-5-2.

ITEM 5. Amend subrule 800.20(1) as follows:

800.20(1) 49 CFR Part 1152 contains the regulations governing the abandonment and discontinuance of railroad lines and rail transportation under 49 U.S.C. 10903 et seq. This part also contains the regulations and procedures for the acquisition or use of railroad rights-of-way proposed for abandonment for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d).

For the purpose of this rule, ~~this part 49 CFR Part 1152~~ is adopted as of ~~October 1, 2017~~ October 1, 2021.

ITEM 6. Amend subrule 810.1(1) as follows:

810.1(1) Standards. The department adopts the railroad track safety standards contained in 49 CFR Part 213 (~~October 1, 2017~~ October 1, 2021).

ITEM 7. Amend subrule 810.5(2) as follows:

810.5(2) Report procedure.

a. No change.

b. If within 30 days the railroad company does not respond or if the response is unsatisfactory, the person may report the alleged violation to the department at the following address: ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

c. No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

d. The director of the ~~office of rail~~ modal transportation bureau or the director's designee may request additional information from the person submitting the report, the railroad worker transportation company or the railroad.

e. The director of the ~~office of rail~~ modal transportation bureau or the director's designee, which may include peace officers ~~in the office of~~ within motor vehicle enforcement, may investigate the alleged violation.

f. The director of the ~~office of rail~~ modal transportation bureau or the director's designee shall issue a decision within 20 days of receipt of the report or 20 days after receipt of the requested additional information. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

g. and *h.* No change.

ITEM 8. Amend subrule 810.6(2) as follows:

810.6(2) Report procedure.

a. A person shall report an alleged violation in writing to the department at the following address: ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. No change.

c. The director of the ~~office of rail~~ modal transportation bureau or the director's designee may request additional information from the driver, railroad worker transportation company or railroad.

d. The director of the ~~office of rail~~ modal transportation bureau or the director's designee, which may include peace officers ~~in the office of~~ within motor vehicle enforcement, may investigate the alleged violation.

e. The director of the ~~office of rail~~ modal transportation bureau or the director's designee shall issue a decision within 60 days of receipt of the report or 60 days after receipt of the requested additional information. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

f. and *g.* No change.

ITEM 9. Amend subrule 821.2(2) as follows:

821.2(2) Program information, applications and application instructions are available on the department's ~~Web site~~ website at www.iowadot.gov. The program is administered by the ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1108.

ITEM 10. Amend subrule 821.3(3) as follows:

821.3(3) Processing an agreement.

a. No change.

b. If the work constitutes grade crossing surface repair and when funds are available in the repair fund, the department shall ~~furnish the railroad and request that the jurisdiction with three copies of an agreement for grade crossing surface repair and railroad provide cost estimates for the work for which each party is responsible. Upon receipt of the estimates, the department will furnish an agreement for grade crossing surface repair to the railroad and jurisdiction.~~

c. The railroad and the jurisdiction shall sign ~~all three copies of~~ the agreement and return ~~them~~ it to the department.

d. The department shall:

(1) No change.

(2) Sign ~~all three copies of~~ the agreement, retain one copy of the fully executed agreement, transmit one copy to the jurisdiction, and transmit one copy to the railroad, authorizing work to proceed.

ITEM 11. Amend paragraph **821.3(6)“c”** as follows:

c. Once the department approves the billing, the department shall pay to the railroad from the repair fund an amount equal to 60 percent of the actual project cost of the agreed-upon work.

ARC 6575C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action****Proposing rule making related to highway-railroad grade crossings
and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 811, “Highway-Railroad Grade Crossing Warning Devices,” Chapter 812, “Classifications and Standards for Highway-Railroad Grade Crossings,” and Chapter 820, “Highway Grade Crossing Safety Fund,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 307.26(7) and 327G.15.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 307.26 and 327G.15.

Purpose and Summary

This proposed rule making updates Iowa Code citations and adds or updates contact information within Chapters 811, 812 and 820.

The following sentences explain the additional proposed amendments to these three chapters:

- Correct the title of Part 8 of the “Manual on Uniform Traffic Control Devices,” published by the U.S. Department of Transportation, Federal Highway Administration, for conformance of standards concerning the installation of all highway-railroad grade crossing warning devices.
- Make clarifying changes to state that the highway authority shall consider the safety impacts that a project may have on a crossing when planning a highway improvement project encompassing or adjacent to that crossing.
- Update the definition of “AAR signal unit” to reference an updated document that provides units and interpretations for an active warning device, correct the style used within the definitions, and add the option to send any submissions electronically to the Department.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

TRANSPORTATION DEPARTMENT[761](cont'd)

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on October 27, 2022, via conference call at 10:30 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—811.1(307) as follows:

761—811.1(307) Standards. All highway-railroad grade crossing warning devices installed shall conform to Part 8, "Traffic Controls for ~~Highway-Rail~~ Railroad and Light Rail Transit Grade Crossings," of the "Manual on Uniform Traffic Control Devices" as adopted in 761—Chapter 130.

This rule is intended to implement Iowa Code ~~paragraph 307.26(5) "b"~~ and sections 307.26(7) "b," 321.252 and 327G.2.

ITEM 2. Adopt the following **new** rule 761—811.2(307):

761—811.2(307) Contact information. Information about this chapter may be obtained by contacting the department at the following address: Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1108.

This rule is intended to implement Iowa Code section 307.26.

ITEM 3. Amend rule 761—812.1(307) as follows:

761—812.1(307) Purpose and contact information.

812.1(1) This chapter implements Iowa Code ~~paragraph 307.26(5) "c."~~ section 307.26(7) "b." This statute requires the department to classify highway-railroad grade crossings based upon their characteristics, conditions and hazards and to adopt standards for warning devices for each classification.

812.1(2) Information about this chapter may be obtained by contacting the department at the following address: Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1108.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 4. Amend subrule 812.3(4) as follows:

812.3(4) When planning a highway improvement project encompassing or adjacent to a crossing, the highway authority shall consider the ~~effects of~~ safety impacts that the project may have on the crossing.

ITEM 5. Amend subrule 812.4(1) as follows:

812.4(1) In accordance with Iowa Code ~~paragraph 307.26(5)“e,”~~ section 307.26(7)“b,” the department of transportation is not liable for the development or adoption of the classifications or standards. A government agency, department, or political subdivision is not liable for failure to implement the standards.

ITEM 6. Amend **761—Chapter 812**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~paragraph 307.26(5)“e.”~~ section 307.26(7)“b.”

ITEM 7. Amend rule 761—820.1(327G) as follows:

761—820.1(327G) Definitions. The following terms when used in this chapter of rules shall have the following meanings:

~~AAR signal unit.~~ The “AAR signal unit” means the relative maintenance difficulty value assigned to component parts of an active warning device. Units and interpretations are designated by the 2021 Revision of the American Railway Engineering and Maintenance-of-Way Association of American Railroads Signal Manual, Part 203 (1984) (AREMA) Communications and Signals Manual, Volume 1, Section 1 (1.3.2) [Recommend Table of Signal and Interlocking Units and Interpretations].

~~Active warning devices.~~ Traffic “Active warning devices” means traffic control devices activated by the approach or presence of a train, such as flashing light signals, flashing light signals with cantilever assemblies, and flashing light signals with automatic gate arms, all of which actively warn motorists of a train.

~~Maintenance costs of active warning devices.~~ Costs “Maintenance costs of active warning devices” means costs incurred by a railroad associated with the repair or replacement of obsolete, worn out, damaged, or missing component parts of an approved active warning device. Maintenance costs shall include repair or replacement of damaged, vandalized, or stolen component parts only for that amount which exceeds the amount recovered from the liable party or the liable party’s insurer.

~~Safety fund.~~ The “Safety fund” means the highway grade crossing safety fund established in Iowa Code section 327G.19, and administered by the department.

ITEM 8. Amend rule 761—820.3(327G) as follows:

761—820.3(327G) Information and submissions. Information about this chapter may be obtained by contacting the department at the following address: ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone ~~(515)239-1140~~ (515)239-1108. Submissions to the department under this chapter ~~shall~~ may be sent or delivered to this address or may be electronically filed with the program manager.

ARC 6572C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to school transportation services provided by regional transit systems under contract with local schools and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 911, “School Transportation Services Provided by Regional Transit Systems,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.377.

TRANSPORTATION DEPARTMENT[761](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.1 and 321.377.

Purpose and Summary

This proposed rule making corrects the name of the Modal Transportation Bureau and updates the definition of “automobile” to include the specific subsection within Iowa Code section 321.1 so the definition can be found easily.

The proposed amendments add new paragraph 911.6(7)“b” to explain the need to submit a current medical examiner’s certificate upon a commercial driver’s license issuance or renewal in order to comply with the Federal Motor Carrier Safety Administration’s regulations concerning license type and the need for a medical examiner certificate.

The proposed amendments also adopt the Code of Federal Regulations (CFR) dated October 1, 2021, for 49 CFR Part 38, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles; 49 CFR Part 571, Federal Motor Vehicle Safety Standards; and 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations. While the CFR date in subrule 911.5(1) has not been updated since 2017, no final rule changes to 49 CFR Part 38 have occurred during that time. However, the following list provides a specific description of the amendments to 49 CFR Part 571 and 49 CFR Part 655 that have become final and effective from October 2, 2017, through October 1, 2021, that affect Chapter 911:

Part 571 (FR Vol. 83, No. 75, Pages 17091-17093)

This is a correction to a figure concerning standard No. 217, bus emergency exits and window retention and release, that was revised on October 1, 2017.

Part 655 (FR Vol. 84, No. 78, Pages 16770-16775, 4-23-19)

This final rule made minor technical corrections to the Office of the Secretary of Transportation, Federal Aviation Administration, Federal Transit Administration and Pipeline and Hazardous Materials Safety Administration’s regulations governing drug testing for safety-sensitive employees. This final rule ensures consistency with the amendments to the U.S. Department of Transportation’s regulation “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” which added requirements to test for oxycodone, oxymorphone, hydrocodone, and hydromorphone to the U.S. Department of Transportation-regulated drug testing programs. The changes to the U.S. Department of Transportation’s regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6-acetylmorphine, and codeine, by the more inclusive term “opioids,” rather than “opiates.”

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

TRANSPORTATION DEPARTMENT[761](cont'd)

Tracy George
 Department of Transportation
 DOT Rules Administrator, Government and Community Relations
 800 Lincoln Way
 Ames, Iowa 50010
 Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on October 27, 2022, via conference call at 1 p.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 911.1(2) as follows:

911.1(2) Information. Information and forms may be obtained from the ~~Office of Public Transit~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870; or the department's website at www.iowadot.gov.

ITEM 2. Amend rule ~~761—911.2(321,324A)~~, definition of "Automobile," as follows:

"Automobile" means the same as defined in Iowa Code section ~~321.1~~ 321.1(42) "d."

ITEM 3. Amend subrule 911.5(1) as follows:

911.5(1) Code of Federal Regulations. The department of transportation adopts the following portions of the ~~October 1, 2017~~ October 1, 2021, Code of Federal Regulations, which are referenced throughout this chapter:

- a. 49 CFR Part 38, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- b. 49 CFR Part 571, Federal Motor Vehicle Safety Standards.
- c. 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.

ITEM 4. Amend subrule 911.6(7) as follows:

911.6(7) Physical fitness.

a. Each driver who transports students must undergo a physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners in accordance with Iowa Code section 321.375(1) "d" and with department of education rule 281—43.15(285) or 281—43.17(285). Annually, the driver must submit the signed medical examiner's certificate to the driver's employer.

b. Upon a commercial driver's license issuance or renewal, the driver shall self-certify as to the type of driving the driver does and, if required, provide a current medical examiner's certificate to the department unless the driver's medical examiner's certification is provided to the department

TRANSPORTATION DEPARTMENT[761](cont'd)

electronically by the Federal Motor Carrier Safety Administration pursuant to 761—paragraph 607.37(1)“a” and 761—subrule 607.50(2).

ARC 6573C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to the state management plan for administering federal transit funds and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 922, “Federal Transit Assistance,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 324A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 324A.

Purpose and Summary

The proposed amendments to Chapter 922 update the date of the state management plan and correct the name of the Modal Transportation Bureau.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on October 27, 2022, via conference call at 2:30 p.m. Persons who wish to participate in the conference call should contact

TRANSPORTATION DEPARTMENT[761](cont'd)

Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrule 922.1(2) as follows:

922.1(2) State management plan.

a. Sections 5310, 5311 and 5339 of Title 49 United States Code federal transit assistance programs within Iowa shall be administered according to the "Iowa State Management Plan for Administration of Funding and Grants Under the Federal Transit Administration, Sections 5310, 5311, 5316, 5317 and 5339 Programs," dated ~~March 2017~~ May 2020, which has been prepared by the department and approved by the Federal Transit Administration in conformance with FTA Circulars 5100.1, 9040.1G and 9070.1G.

b. Copies of the state management plan are available from the ~~Office of Public Transit~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870; or the department's website at www.iowadot.gov.

ARC 6580C

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Notice of Intended Action

**Proposing rule making related to veterans license fee fund
and providing an opportunity for public comment**

The Iowa Department of Veterans Affairs hereby proposes to amend Chapter 17, "Veterans License Fee Fund," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 35A.5(12).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 35A.

Purpose and Summary

This proposed rule making updates language in Chapter 17.

Fiscal Impact

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

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. Comments should be directed to:

Melissa Miller
Iowa Department of Veterans Affairs
Camp Dodge, Bldg. #3465
7105 NW 70th Avenue
Johnston, Iowa 50131
Email: melissa.miller2@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rules 801—17.1(35A) to 801—17.3(35A) as follows:

801—17.1(35A) Purpose. These rules establish authorized expenditures from the veterans license fee fund. Authorized expenditures will meet the department’s mission to educate, inspire, support, and remember, as follows.

17.1(1) Educate. Provide marketing materials, resources, books, and updated manuals to keep the veterans community updated on benefits.

17.1(2) Inspire. Ensure community and nonprofit organizations receive funds to promote public initiatives that honor military service and inspire esprit de corps amongst service branches.

17.1(3) Support. Provide funding support to nationally accredited veteran service organizations within the state of Iowa that aid and assist service members within communities.

17.1(4) Remember. Fund community and nonprofit programs that remember and honor Iowa’s fallen heroes to keep the memory of their sacrifices and service alive for generations.

801—17.2(35A) Moneys. Moneys in this fund may be used for the administrative expenses related to the business of the Iowa commission of veterans affairs, to include mileage, per diem, conference

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

call capabilities, printing costs for quarterly meetings, ~~and~~ expenses incurred for hearings at the Iowa Veterans Home, and nationally accredited veterans service organizations.

801—17.3(35A) Expenditures. Moneys in this fund may be used for expenditures that have the intent to benefit all Iowa veterans. (Examples include benefit books, educational materials, and ~~research~~ outreach programs.)

ARC 6563C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Rule making related to service documentation

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

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

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

Purpose and Summary

The Department is amending the documentation requirements for narrative service documentation for each service encounter and each shift for 24-hour services. This rule making removes this administrative burden related to delivering services.

These amendments clarify that Medicaid providers must include all records and documentation to substantiate the services provided to the member and all information necessary to allow accurate adjudication of the claim. In addition, documentation requirements must meet the professional standards pertaining to the service provided.

This rule making will positively impact direct service providers by removing the requirement for narrative service documentation for each service encounter or shift and replacing it with the requirement to provide a narrative only when any incident or illness or unusual or atypical event occurs during the service encounter.

This rule making will provide immediate relief to providers struggling to recruit and retain direct care staff. Providers have requested the amendments in response to the direct care workforce crisis.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 27, 2022, as **ARC 6419C**.

The Department received comments as well as questions from 12 respondents on the proposed amendments. Six of the respondents commented that they support the proposed changes.

Comment: Regarding the introductory paragraph of subparagraph 79.3(2)“c”(3), a respondent expressed concern that the proposed language, “the provider may document the services in any format so long as the documentation adequately substantiates the medical necessity and that the services were rendered,” is broad and vague and could leave too much room for interpretation.

Department response: The language is consistent with the requirement in the Iowa Medicaid provider agreement and the federal regulations at 42 CFR 431.107(b)(1)(2) and ensures that Iowa Medicaid documentation requirements are no more than are necessary to substantiate the medical necessity of the services being provided. Providers must also meet the requirements in paragraph 79.3(2)“d” to include all records and documentation that substantiate the services provided and meet the professional standards pertaining to the service provided. No changes have been made based on this comment.

Comment: Five respondents commented on numbered paragraph 79.3(2)“c”(3)“6,” which identifies a mileage log with “the name, date, purpose of the trip, and total miles for transportation provided as part of the service” as an item to be included in the service record.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The respondents were concerned that the requirement to include this information in each service record is an additional administrative burden, especially for providers who may provide transportation to many destinations in a given day. Comments were received that stated there would be added focus on tracking this information instead of focusing on the consumer and the reason for the trip. Respondents asked how the mileage log requirement would be handled when more than one person served is being transported at one time. A respondent asked if the information needed to be kept in the individual case record or kept on a log separate from the member's individual records.

Department response: This requirement is applicable to all providers who provide transportation as a service or who provide transportation as a component of the service and is not a new requirement.

Mileage logs are currently required for home- and community-based service (HCBS) delivery under subparagraph 79.3(2)“d”(35). Typically, HCBS providers that provide transportation as a component maintain a log in the vehicle used to transport members, logging the date and time of the trip, the type of trip, names of the members transported, the origination location and destination location, and total miles. When staff are using their own vehicle to transport, the agency should have a policy and procedure to address how that transportation is logged. The mileage logs are used to substantiate the services provided and to validate that the member is being transported during the service when transportation is a component of the service. No changes have been made based on these comments.

Comment: Regarding numbered paragraph 79.3(2)“c”(3)“5,” a respondent asked whether a medication administration record (MAR) has to be completed if the client administers and dispenses the client's medications independently but the provider observes and corrects the client. The respondent noted that the respondent sees some of the respondent's clients only once or twice per week, and the clients are accurate most of the time.

Department response: Subrule 77.37(5) requires that if the provider stores, handles, prescribes, dispenses, or administers prescription or over-the-counter medications, the provider develops procedures for the storage, handling, prescribing, dispensing or administration of medication. If the provider does not store, handle, prescribe, dispense, or administer prescription or over-the-counter medications as a component of the service being delivered, then a MAR is not required. No changes have been made based on this comment.

Comment: Three respondents commented on numbered paragraph 79.3(2)“c”(3)“7,” which pertains to a narrative description of any incidents or illnesses or unusual or atypical occurrences that occur during service provision. The respondents requested additional clarification on unusual or atypical occurrences.

Department response: The narrative description in the service note for any minor or major incidents may simply reference the incident and that a minor or major incident report was completed. No further narrative description on the service note would be required. An example of the service entry for a major incident report might say, “Jane tripped and fell walking up the driveway and was taken to the ER. A major incident report was completed.”

Unusual or atypical occurrences that require a narrative note are those events that are irregular or unusual for the member and include but are not limited to atypical behavior, a major or minor incident, illness that is treated or untreated, vacationing with family, starting a new job, or attending a new day program. No changes have been made based on this comment.

Comment: One respondent provided the following general comment about narrative documentation: “During a recent meeting, a question was asked about the Centers for Medicare and Medicaid Services (CMS) narrative documentation requirement. It appeared that some version of narrative documentation may still be required to meet federal guidelines. If that is the case, we would like to recommend that all narrative documentation be included in the goals and the general supports authorized during a shift be documented as a checklist (in addition to incidents, illnesses, and atypical occurrences).”

Department response: The Department's amendments to subparagraph 79.3(2)“c”(3) allow for services to be documented in any format that the provider chooses as long as the documentation substantiates the medical necessity and that the services were rendered. No changes have been made based on this comment.

Comment: One respondent asked the following general question regarding the documentation requirements: “Will the managed care organizations (MCOs) follow these same Chapter 79 proposed

HUMAN SERVICES DEPARTMENT[441](cont'd)

rules for documentation, or can they still implement more stringent guidelines that providers will need to comply with?"

Department response: The MCOs may impose additional documentation guidelines within their contracts with network providers.

No changes from the Notice have been made.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on September 16, 2022. The Department is waiving the effective date because these amendments confer a benefit to providers by easing the documentation requirements for narrative service encounters and for each shift for 24-hour services. This will result in providing relief to providers struggling to recruit and retain direct care staff and assist with the direct care workforce shortage without affecting public safety.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on September 14, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making became effective on September 16, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **79.3(2)“c”(3)** as follows:

(3) Service documentation. The record for each service provided shall include information necessary to substantiate that the service was provided. ~~Service documentation shall include narrative documentation and may also include documentation in checkbox format.~~ Unless otherwise indicated below, the provider may document the services in any format so long as the documentation adequately substantiates the medical necessity and that the services were rendered. The service record shall include the following:

1. to 3. No change.

4. The location where the service was provided if otherwise required on the billing form or in 441—paragraph 77.30(5)“c” or “d,” 441—paragraph 77.33(6)“d,” 441—paragraph

HUMAN SERVICES DEPARTMENT[441](cont'd)

77.34(5)“d,” 441—paragraph 77.37(15)“d,” 441—paragraph 77.39(13)“e,” 441—paragraph 77.39(14)“d,” or 441—paragraph 77.46(5)“i,” or 441—subparagraph 78.9(10)“a”(1).

5. Medication administration record (MAR). The name, dosage, and route of administration of any medication dispensed or administered as part of the service.

6. Mileage log. The name, date, purpose of the trip, and total miles for transportation provided as part of the service.

7. Narrative description of any incidents or illnesses or unusual or atypical occurrences that occur during service provision.

6. 8. Any supplies dispensed as part of the service.

7. 9. The first and last name and professional credentials, if any, of the person providing the service.

8. 10. The signature of the person providing the service, or the initials of the person providing the service if a signature log indicates the person’s identity.

9. 11. For 24-hour care, documentation for every shift of the services provided, ~~the member’s response to the services provided, and the person who provided the services.~~

ITEM 2. Amend paragraph **79.3(2)“d,”** introductory paragraph, as follows:

d. Basis for service requirements for specific services. The health care provider should include all records and documentation that substantiate the services provided to the member and all information necessary to allow accurate adjudication of the claim. Additionally, documentation requirements must meet the professional standards pertaining to the service provided. The medical record for the following services must include, but is not limited to, the items specified below (unless the listed item is not routinely received or created in connection with the particular service or activity and is not required to document the reason for performing the service or activity, its medical necessity, or the level of care associated with it). ~~These items will be specified on Form 470-4479, Documentation Checklist, when the Iowa Medicaid enterprise program integrity unit requests providers to submit records for review. (See paragraph 79.4(2)“b.”)~~

[Filed Emergency After Notice 9/14/22, effective 9/16/22]

[Published 10/5/22]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6564C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Rule making related to child care center staff requirements

The Human Services Department hereby amends Chapter 109, “Child Care Centers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 237A.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237A.5.

Purpose and Summary

This rule making allows an increased number of children to be served per staff person in the two-year-old and three-year-old age categories in licensed child care centers. These amendments modify requirements when combining age groups and also allow a staff person under the age of 18 to

HUMAN SERVICES DEPARTMENT[441](cont'd)

provide care to school-aged children without being under the direct care of an adult. Clarification is added that a person under the age of 18 shall not be the sole provider on the premises of a child care facility or transport children. This rule making is based on 2022 Iowa Acts, House File 2198.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 13, 2022, as **ARC 6406C**.

One organization provided comments. In light of the changes enacted by 2022 Iowa Acts, House File 2198, the commenter stated concerns about the existing language in relettered paragraph 109.8(2)“d” that required adult supervision to be present in every room with children. The Department agreed and removed the requirement that an adult be present in every room.

One update was made to the preamble to reflect that this rule making is a result of House File 2198. After discussions with members of the Administrative Rules Review Committee, the jobs impact statement was also revised to state that the Department was unable to determine the jobs impact of this rule making at this time. The Department will work with child care providers to review the ongoing jobs impact.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 1, 2022, because these amendments remove burdensome regulations on the public that impact the ability to serve children and families.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on September 14, 2022.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, the Department is unable to determine the impact on jobs at this time.

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making became effective on October 1, 2022.

The following rule-making actions are adopted:

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ITEM 1. Amend subrule 109.8(1) as follows:

109.8(1) Staff requirements. Persons counted as part of the staff ratio shall meet the following requirements:

a. Be at least 16 years of age. If less than 18 years of age, the staff shall be under the direct supervision of an adult. However, a staff person under the age of 18 may not be the sole provider on the premises of a child care facility.

b. Be involved with children in programming activities.

c. At least one staff person on duty in the center and outdoor play area when children are present and present on field trips shall be over the age of 18 and hold current certification in first aid and cardiopulmonary resuscitation (CPR) as required in rule 441—109.7(237A).

d. Staff persons under the age of 18 shall not provide transportation to children in care.

e. If staff persons under the age of 18 are providing child care services without an adult, they shall only provide care to school-aged children.

ITEM 2. Amend subrule 109.8(2) as follows:

109.8(2) Staff ratio. The staff-to-child ratio shall be as follows:

Age of children	Minimum ratio of staff to children
Two weeks to two years	One to every four children
Two years	One to every six <u>seven</u> children
Three years	One to every eight <u>ten</u> children
Four years	One to every twelve children
Five years to ten years	One to every fifteen children
Ten years and over	One to every twenty children

a. Combinations of age groupings for children four years of age and older may be allowed and may have staff ratio determined on the age of the majority of the children in the group. If children three years of age and under are included in the combined age group, the staff ratio for children aged three and under shall be maintained for these children. Preschools shall have staff ratios determined on the age of the majority of the children, including children who are three years of age.

b. Combinations of age groupings for children between three years of age and five years of age may be allowed with a ratio of one staff member to every 12 children.

~~b. c.~~ If a child between the ages of 18 and 24 months is placed outside the infant area, as defined at subrule 109.11(2), Children between 18 months and three years of age may be combined, if appropriate to the developmental needs of the child. If a child under two years is in a combined age group, the staff ratio of ~~1~~ one to ~~4~~ seven shall be maintained as would otherwise be required for the group until the child reaches the age of two. Otherwise, staff ratio may be determined by the age of the majority of the children in the group.

~~e. d.~~ Every child-occupied program room shall have adult supervision present in the room. Brief absences of a staff member may be allowed for no more than five minutes when another staff person is present.

~~d. e.~~ During nap time, at least one staff shall be present in every room where children are resting. Staff ratio requirements may be reduced to one staff per room where children are resting for a period of time not to exceed one hour provided and staff ratio coverage can be maintained in the center. The staff ratio shall always be maintained in the infant area for children under two years of age.

~~e.~~ The minimum staff ratio shall be maintained at mealtimes and for any outdoor activities at the center.

f. When ~~seven~~ or more than eight children ~~over the age of three~~ are present on the licensed premises or are being transported in one vehicle, at least two adult staff shall be present. Only one adult is required when a center is transporting children in a center-owned vehicle with parent authorization for the sole purpose of transporting children to and from school. When a center contracts with another

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entity to provide transportation other than for the purpose of transporting school-age children to or from school, at least one adult staff in addition to the driver shall be present if at least ~~seven~~ eight children provided care by the center are transported.

g. Any child care center-sponsored program activity involving five or more children conducted away from the licensed facility shall provide a minimum of one additional staff over the required staff ratio for the protection of the children.

h. For a period of two hours or less at the beginning ~~or~~ and end of the center's hours of operation, one staff may care for ~~six~~ seven or fewer children, provided no more than ~~two~~ four of the children are under the age of two years and there are no more than ~~six~~ seven children in the center.

i. For centers or preschools serving school-age children, the ratio for school-age children may be exceeded for a period of no more than four hours during a day when school classes start late or are dismissed early or canceled due to inclement weather or structural damage provided the children are already enrolled at the center and the center does not exceed the licensed capacity.

ITEM 3. Amend subrule 109.11(2) as follows:

109.11(2) *Infants' area.* An area shall be provided properly and safely equipped for the use of infants and free from the intrusion of children two years of age and older. ~~Children over 18 months of age may be grouped outside this area if appropriate to the developmental needs of the child.~~ Upon the recommendation of a child's physician or the area education agency serving the child, a child who is two years of age or older with a disability that results in significant developmental delays in physical and cognitive functioning who does not pose a threat to the safety of the infants may, if appropriate and for a limited time approved by the department, remain in the infant area.

[Filed Emergency After Notice 9/14/22, effective 10/1/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6565C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Rule making related to child care assistance eligibility

The Human Services Department hereby amends Chapter 170, "Child Care Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237A.13 as amended by 2022 Iowa Acts, House File 2252.

Purpose and Summary

These amendments implement changes based on 2022 Iowa Acts, House File 2252, which removes language from Iowa Code section 237A.13 that previously required a medical incapacity to be temporary in order for a parent to be eligible for child care assistance (CCA). Removal of this requirement allows a family with one permanently disabled parent to be CCA-eligible based upon the needs of the parent who is not disabled.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 27, 2022, as **ARC 6430C**. No public comments were received. No changes from the Notice have been made.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 1, 2022, because the statute provides a benefit by allowing a family with one permanently disabled parent to be eligible for child care assistance based upon the needs of the parent who is not disabled. This is a benefit for households with a working parent and a permanently disabled parent and will allow such households to receive child care assistance.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on September 14, 2022.

Fiscal Impact

A fiscal impact of greater than \$100,000, but less than \$500,000, is expected over the next five years as a result of this rule making. This rule making is expected to increase overall demand for child care services as eligibility requirements are revised for CCA for disabled parents. The additional costs will be absorbed in the CCA budget with the balance of the federal Child Care Development Fund.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making became effective on October 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **170.2(2)“b,”** introductory paragraph, as follows:

b. Need for service. Except for assistance provided under subparagraph 170.2(2)“b”(3), assistance shall be provided to a two-parent family only during the parents' coinciding hours of participation in training, employment, or job search unless one parent is permanently disabled as described in subparagraph 170.2(2)“b”(4). Each parent in the household shall meet one or more of the following requirements:

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ITEM 2. Amend subparagraph **170.2(2)“b”(4)** as follows:

(4) The parent is absent from the home due to inpatient hospitalization or outpatient treatment because of physical or mental illness, or is present but due to medical incapacity is unable to care for the child or participate in work or training, as verified by a physician.

1. Eligibility under this paragraph is limited to parents who become temporarily medically incapacitated, or to instances of one parent in a two-parent household being permanently disabled, while eligible for child care assistance based on the need criteria in subparagraph 170.2(2)“b”(1) or 170.2(2)“b”(2).

2. Child care assistance shall continue to be available for up to 90 consecutive days after the parent becomes medically incapacitated. Assistance beyond 90 days may be approved by the service area manager or designee if extenuating circumstances are verified by a physician.

3. The number of units of service authorized shall be determined as follows:

- For a single-parent family ~~or for a two-parent family where both parents are incapacitated~~, the number of units authorized for the period of incapacity shall not exceed the number of units authorized for the family before the onset of incapacity.

- For a two-parent family where ~~only~~ one parent is temporarily incapacitated, the units of service authorized shall be based on the need of the parent who is not incapacitated.

- For a two-parent family, if one of the parents has a permanent disability and is unable to care for the child or participate in work or training, the disabled parent does not need to meet another need for service requirement. The units of service authorized shall be based only on the need of the parent who is not disabled.

[Filed Emergency After Notice 9/14/22, effective 10/1/22]

[Published 10/5/22]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6552C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

**Rule making related to choose Iowa promotional program
and value-added agricultural grant program**

The Agriculture and Land Stewardship Department hereby adopts new Chapter 52, "Marketing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 159.29 as enacted by 2022 Iowa Acts, House File 2581, and 2022 Iowa Acts, House File 2560.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 159.29 as enacted by 2022 Iowa Acts, House File 2581, and 2022 Iowa Acts, House File 2560.

Purpose and Summary

This rule making establishes rules for the Choose Iowa Promotional Program. The rules establish qualifications for various types of products grown and raised in Iowa, provide application procedures for participation in the program, establish fees and membership classifications, and set standards for use of the Choose Iowa logo and departmental procedure for enforcement of proper standards.

This rule making also establishes processes and procedures for the Value-Added Agriculture Grant Program. The rules provide for application and application review procedures and establish eligibility for applying, ineligible uses of grant funds, and scoring criteria used to evaluate applications.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 27, 2022, as **ARC 6433C**. The Iowa Wine Growers Association recommended that the minimum percentage of Iowa-grown grapes in a wine bearing the Choose Iowa logo be reduced to 75 percent to be in line with national recommendations.

In response to that comment, for the Choose Iowa Promotional Program, the Department reduced the percentage of Iowa-grown grapes required to be included in Iowa wine from 95 percent to 75 percent. Additionally, for the grant program, the time frame in which projects must be completed was changed to 12 months, rather than 18, with the possibility of an extension if circumstances warrant.

Adoption of Rule Making

This rule making was adopted by the Department on September 12, 2022.

Fiscal Impact

The Department will collect fee revenue from program participants. At this time, the Department does not have a good estimate on how much revenue this may generate. All fee revenue is deposited into the Choose Iowa Fund (Iowa Code section 159.31A as enacted by 2022 Iowa Acts, House File 2581, section 7) and will be used to further support the program.

Jobs Impact

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making action is adopted:

Adopt the following **new** 21—Chapter 52:

CHAPTER 52
MARKETING

CHOOSE IOWA PROMOTIONAL PROGRAM

21—52.1(159) Definitions.

“Department” means the Iowa department of agriculture and land stewardship.

“Food item” means any of the following:

1. A perishable item derived from an agricultural commodity, or processed from an agricultural commodity, that is fit for human consumption.

2. Honey produced from bees in a managed beehive.

“Iowa farm” means land in this state used to produce an agricultural commodity.

“Member” means a person who has applied for and been accepted to participate in the choose Iowa promotional program.

“Process” means to prepare a food item in a manner that allows it to be fit for human consumption.

“Processor” is a membership classification that means a person preparing a food item in a manner that allows it to be fit for human consumption.

“Producer” is a membership classification that means a person growing, raising, or harvesting agricultural commodities in the state of Iowa.

“Retailer” is a membership classification that means a person engaged in the business of selling agricultural products to consumers, including food service and restaurants.

“Wholesaler” is a membership classification that means a person engaged in the business of selling agricultural products to retailers.

21—52.2(159) Product qualification.

52.2(1) Authority of determination. The department has the sole authority in determining the eligibility of a product for participation in the program.

52.2(2) General product qualifications. Except as specified in this chapter, products must meet or exceed the following criteria:

a. Fresh produce and commodities bearing the choose Iowa logo shall be 100 percent grown or raised in Iowa.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

b. Meat and meat products bearing the choose Iowa logo shall be derived from animals born, raised, and finished in Iowa. Slaughter and processing must take place in a state- or federally inspected plant within the state of Iowa.

c. Dairy products bearing the choose Iowa logo shall be derived from animals in Iowa. Processing must take place in a state-inspected plant within the state of Iowa.

d. Eggs bearing the choose Iowa logo shall be derived from animals in Iowa.

e. Apicultural products produced by honey bees, including honey, wax, pollen, and propolis, bearing the choose Iowa logo shall be 100 percent of Iowa origin. Processed honey shall be 80 percent of Iowa origin.

f. Beer bearing the choose Iowa logo shall be brewed in Iowa and contain at least one Iowa agricultural product, such as Iowa malt, hops, or soluble remnant, excluding water.

g. Wine bearing the choose Iowa logo shall contain a minimum of 75 percent Iowa grapes.

h. Spirits bearing the choose Iowa logo shall be distilled in Iowa and contain at least one Iowa agricultural product, excluding water.

52.2(3) Exceptions. The department has the authority to establish product qualification requirements specific to individual products and commodities by written order.

21—52.3(159) Application for membership.

52.3(1) Application requirement. Persons interested in becoming a member in the choose Iowa promotional program shall do so by making application to the department. New applications may be submitted at any time throughout the year.

52.3(2) Application review and compliance verification. The department, upon receipt of an application, will verify the applicant's compliance with this chapter and approve or deny the application. The department will notify the applicant in writing of the approval or denial.

52.3(3) Duration of membership. Membership is on an annual basis, coinciding with the calendar year beginning January 1 and ending December 31.

52.3(4) Membership revocation and termination. Program membership may be revoked if the member company:

- a.* No longer meets the qualifications for membership;
- b.* Violates any applicable statute or rule;
- c.* Violates any agreement between the department and the member company;
- d.* Acts in a manner that may damage the reputation of the program.

21—52.4(159) Fees.

52.4(1) Membership fees. Membership fees will be listed in the membership application and will be charged at the following rates:

Producer	\$100
Processor	\$100
Wholesaler/distributor	\$100
Retailer	\$100
Supporting organization	\$100

52.4(2) New member fees. New member agreements issued during the program year will be assessed at 100 percent of the annual fee regardless of when an application for membership is submitted.

21—52.5(159) Approval for use of logo. Members who wish to use the choose Iowa logo on packaging, labels, flyers, promotional materials, or any other materials that will be viewed by the public must submit a proof of text and design to the department for approval. Requests for approval must be submitted to the department not less than five working days prior to the proposed date of use. Written approval from the department for logo use must be issued prior to use of the logo.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

21—52.6(159) Self-certification. All members shall self-certify that all products marked with the choose Iowa logo meet the qualification criteria as set forth in this chapter. Self-certification is subject to verification through the application and compliance processes.

21—52.7(159) Compliance.

52.7(1) Authority of department. The department may enter upon the premises of any member to examine any records or materials necessary to ensure compliance with these rules.

52.7(2) Random compliance inspection. The department may annually perform random compliance inspections.

52.7(3) Samples. Upon request of the department, a member shall provide samples of the labels, packaging, merchandising, and promotional materials featuring the choose Iowa logo.

21—52.8(159) Violations. Any person found in violation of these rules is subject to termination of membership privileges.

21—52.9 to 52.19 Reserved.

This division is intended to implement Iowa Code section 159.29 as amended by 2022 Iowa Acts, House File 2581.

VALUE-ADDED AGRICULTURE GRANT PROGRAM

21—52.20(159) Definitions. For purposes of this division:

“Agreement” means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

“Applicant” means a person applying for assistance under the program. This includes but is not limited to an individual, business, agricultural cooperative, nonprofit organization, or local government.

“Department” means the Iowa department of agriculture and land stewardship.

“Grant” means an award of assistance with the expectation that, with the fulfillment of the conditions, terms and obligations of the agreement with the department for the project, repayment of funds is not required.

“Program” means the value-added agriculture grant program established under this chapter.

“Project” means an activity or activities undertaken by the applicant to be carried out to meet the goals of the program.

21—52.21(159) Eligibility.

52.21(1) Eligible applicants. To be eligible for a grant under the program, an applicant shall meet all of the following requirements:

a. Be an individual, business, agricultural cooperative, nonprofit organization, or local government.

b. Be in good standing with the state of Iowa.

c. Currently reside or conduct business in Iowa.

52.21(2) Eligible projects. To be eligible for a grant under the program, a project shall:

a. Increase sales of Iowa agricultural products by increasing production capacity or expanding market access for value-added projects.

b. Not be in progress until a grant is awarded.

c. Be completed in 12 months or less.

d. Be conducted in Iowa.

52.21(3) Ineligible expenses. The following items are not eligible expenses under the program:

a. Equipment and infrastructure for meat processing;

b. Infrastructure for renewable fuels;

c. Expenses incurred prior to the awarding of a grant;

d. Start-up costs including but not limited to inventory, license fees, or working capital;

e. Advertising, public relations, or entertainment costs;

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

- f.* Employee benefits and wages;
- g.* Paying off existing debt, related collection costs, or legal costs;
- h.* Paying off existing fines, penalties, or settlements from failure to comply with any applicable law or regulations.

52.21(4) Grant amount and terms.

- a.* The maximum amount of financial assistance awarded to an eligible applicant under the program shall not exceed \$25,000.
- b.* An applicant must demonstrate the ability to provide matching support for the project on a one-to-one basis. The matching financial support shall be from private sources.

21—52.22(159) Application and review process.

52.22(1) The department will establish a uniform application process and make information about applying available on its website.

52.22(2) Applications will only be accepted during the times established by the department. Late submissions will not be accepted.

52.22(3) A scoring committee established by the department will review and evaluate applications based on the scoring criteria described in rule 21—52.23(159).

52.22(4) The department, after considering the recommendations made by the scoring committee, will determine which applications to fund and how much should be awarded to each applicant. The department has final decision-making authority on requests for financial assistance for the program.

21—52.23(159) Scoring criteria.

52.23(1) Application scoring. A scoring committee will be established by the department to evaluate applications on a scale of 0 to 100. Projects receiving a score below 70 will not be considered.

52.23(2) Scoring criteria. The department will use the following criteria to evaluate each application:

- a.* The extent to which the project addresses the goals of the program to increase the sale of Iowa agricultural products, increase market access, diversify markets, or increase processing capacity: 25 points.
- b.* The extent to which the project benefits Iowa including the potential to impact many farmers, both short-term and long-term impacts, and the possibility of creating jobs and investments: 20 points.
- c.* The ability of the applicant to demonstrate sound business management, financial aptitude, and stability: 15 points.
- d.* The sufficiency of the project's budget and financing structure: 15 points.
- e.* The sufficiency of the project's proposed work plan and timeline including a detailed description of the steps the applicant will take to complete the project as well as estimated dates: 15 points.
- f.* The extent to which measurable objectives can be determined that demonstrate the proposed project's benefit to the agriculture community: 10 points.

21—52.24(159) Disbursement of funds. The department will disburse funds for a project only after an agreement has been executed between the applicant and the department and all applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the agreement will be on a reimbursement basis for expenses incurred by the applicant.

This division is intended to implement 2022 Iowa Acts, House File 2560.

[Filed 9/14/22, effective 11/9/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6553C**CREDIT UNION DIVISION[189]****Adopted and Filed****Rule making related to generally accepted accounting principles (GAAP)**

The Credit Union Division hereby amends Chapter 2, “Organization, Chartering and Field of Membership of a Credit Union,” Chapter 9, “Real Estate Lending,” Chapter 15, “Foreign Credit Union Branch Offices,” Chapter 17, “Investment and Deposit Activities for Credit Unions,” and Chapter 18, “Maintenance of Allowance for Loan and Lease Losses Account,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 533.104.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 533.205, 533.301 and 533.303.

Purpose and Summary

The amendments to Chapters 2, 9, and 15 correct minor errors and provide necessary updates. The amendments to Chapters 17 and 18 mirror federal credit union regulation regarding application of generally accepted accounting principles (GAAP) and provide regulatory relief to credit unions with assets less than \$10 million. The amendments do not require a credit union with less than \$10 million in assets to comply with GAAP and therefore do not require compliance with Current Expected Credit Loss calculations.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6443C**. No public comments were received. No changes from the Notice have been made; however, Item 8 has been broadened to show all of subrule 18.5(1) in order to provide more context.

Adoption of Rule Making

This rule making was adopted by the Division on September 14, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 189—Chapter 23.

Review by Administrative Rules Review Committee

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

CREDIT UNION DIVISION[189](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 rule making will become effective on November 9, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 2.12(2) as follows:

2.12(2) *Method of notice of decisions on applications.* The superintendent shall notify the applicants in writing of the decision of approval or denial of any application made under this chapter and shall ~~mail~~ send the decision to the applicants. If an application is denied, the superintendent shall provide the applicants with the reasons for the denial.

ITEM 2. Amend subrule 9.1(3) as follows:

9.1(3) Real estate ~~loan~~ loans made for sale into the secondary market shall be considered in transit for a period of up to 90 days after being sold and shall not be considered risk assets for reserving purposes during this time period.

ITEM 3. Amend subrule 15.2(2) as follows:

15.2(2) The application may be obtained by writing the Superintendent, Credit Union Division, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309; or calling ~~(515)281-6514~~ (515)725-0505.

ITEM 4. Amend subrule 17.4(1) as follows:

17.4(1) ~~All state-chartered~~ State-chartered credit unions with assets of \$10 million or greater must comply with generally accepted accounting principles (GAAP) ~~applicable to reports or statements required to be in reports filed with the superintendent and maintained by the credit union. This contrasts with only federal credit unions with assets of \$10 million or greater that must comply with GAAP in reports and statements filed with the NCUA.~~ State-chartered credit unions with assets less than \$10 million may comply with GAAP or other regulatory accounting principles in reports filed with the superintendent and maintained by the credit union.

ITEM 5. Amend rule ~~189—~~**18.1(533)**, definition of “Allowance for loan and lease losses,” as follows:

“Allowance for loan and lease losses” means an estimate of loan and lease losses in the entire loan portfolio, including estimated inherent losses, ~~in conformity with generally accepted accounting principles and which meets regulatory requirements for full and fair disclosure of the financial statements.~~ Credit unions with assets of \$10 million or greater must conform with generally accepted accounting principles and meet regulatory requirements for full and fair disclosure of the financial statements. Credit unions with less than \$10 million in assets must conform with these rules and meet regulatory requirements for full and fair disclosure or generally accepted accounting principles.

ITEM 6. Amend subrule 18.3(1) as follows:

18.3(1) ~~Credit union~~ Credit unions with assets of \$10 million or greater must prepare financial statements ~~shall be prepared~~ in accordance with generally accepted accounting principles (GAAP); ~~except for authorized intentional regulatory accounting practices (RAP) which may differ, and.~~ Credit unions with assets of less than \$10 million may prepare financial statements in accordance with authorized intentional regulatory accounting principles (RAP). All credit union financial statements shall provide for the complete and accurate disclosure of all assets, liabilities, and equity, including any valuation allowance accounts as may be necessary to correctly present the financial position; and all income and expenses necessary to correctly present the results of operations for the period concerned.

ITEM 7. Amend subrule 18.4(1) as follows:

18.4(1) The amount carried in this account shall represent an amount at least equal to reasonably foreseeable loan and lease losses. Each credit union is required to establish and maintain a methodology to determine the amount needed in the allowance for loan and lease losses account ~~in accordance with~~

CREDIT UNION DIVISION[189](cont'd)

generally accepted accounting principles (GAAP). Credit unions with \$10 million or greater in assets must determine allowance for loan and lease losses account in accordance with generally accepted accounting principles (GAAP).

ITEM 8. Amend subrule 18.5(1) as follows:

18.5(1) Credit unions are responsible for determining an adequate allowance for loan and lease losses account and adopting a reasonable methodology for doing so. Credit unions with assets \$10 million or greater shall follow generally accepted accounting principles (GAAP). In determining the appropriate allowance, each credit union with less than \$10 million in assets shall:

- a. Separate the loan portfolio into homogenous loan pools based on common risk factors;
- b. Calculate the net loss percentage of each pool, using the historical loss or adjusted loss method which includes consideration of: loan delinquency status; collection experience of the credit union; economic conditions that may affect collectibility; availability of pledged shares; collateral, security, or endorsers; insured or guaranteed status; and the general credit reputation of the borrowers;
- c. Individually classify loans with unique characteristics;
- d. Add the resulting amounts to determine the amount needed in the allowance for loan and lease losses account.

[Filed 9/14/22, effective 11/9/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6556C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to five-year rules review

The Human Services Department hereby amends Chapter 36, "Facility Assessments," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

The rules in Chapter 36 were reviewed as part of the Department's five-year rules review. This rule making makes technical changes to remove the word "enterprise" from Iowa Medicaid, to remove form names, and to update unit names and addresses.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 29, 2022, as **ARC 6377C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on September 14, 2022.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **36.2(1)“a”** as follows:

a. Use Form 470-5422, ~~Intermediate Care Facilities for Individuals with an Intellectual Disability Assessment Calculation Worksheet~~, to calculate the quarterly fee due.

ITEM 2. Amend paragraph **36.2(4)“b”** as follows:

b. Requests for a ~~good-cause~~ good cause waiver must be submitted to the Iowa Medicaid ~~enterprise~~, provider cost audit and rate setting unit, within 30 days of notice to the facility that the penalty is due.

ITEM 3. Amend paragraph **36.6(2)“c”** as follows:

c. Effective July 1, 2019, nursing facilities with annual Iowa Medicaid patient days of 21,000 or more are required to pay a quality assurance assessment of \$2.45 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2021, the annual number of Iowa Medicaid patient days reported in the most current cost report submitted to the Iowa Medicaid ~~enterprise~~ as of June 1 of each year shall be used to determine the assessment level for the following state fiscal year.

ITEM 4. Amend paragraph **36.7(1)“a”** as follows:

a. Use Form 470-4836, ~~Nursing Facility Quality Assurance Assessment Calculation Worksheet~~, to calculate the quarterly assessment amount due.

ITEM 5. Amend paragraph **36.7(4)“b”** as follows:

b. Requests for a good cause waiver must be submitted to the Iowa Medicaid ~~Enterprise~~, Provider Cost Audit and Rate Setting Unit, ~~400 Army Post Road~~ 1305 East Walnut Street, Des Moines, Iowa ~~50315~~ 50319-0114, within 30 days of notice to the facility that the penalty is due.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend paragraph **36.11(5)“b”** as follows:

b. Requests for a good cause waiver must be submitted to ~~the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, 100 Army Post Road~~ 1305 East Walnut Street, Des Moines, Iowa ~~50315~~ 50319-0114, within 30 days of notice to the facility that the penalty is due.

[Filed 9/14/22, effective 12/1/22]

[Published 10/5/22]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6557C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to rent reimbursement program

The Human Services Department hereby adopts new Chapter 62, “Rent Reimbursement Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 425.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 425.37.

Purpose and Summary

Iowa Code chapter 425 provides for a property tax credit for low-income elderly and disabled Iowans. To provide parity for low-income elderly and disabled Iowans who do not own property, the law also establishes reimbursement for rent constituting property taxes paid by the property owner. Currently, both the property tax credit and the rent reimbursement program are administered by the Iowa Department of Revenue (IDR). Effective January 1, 2023, the Department of Human Services (DHS) will take over administration of the rent reimbursement portion of Iowa Code sections 425.15 through 425.40. This rule making establishes rules for the rent reimbursement program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 29, 2022, as **ARC 6382C**. No public comments were received.

After further review, the Department has made one change from the Notice in rule 441—62.1(425) to clarify this rule is effective for rent reimbursement claims received by the Department on or after January 1, 2023. This change is to facilitate the transition between IDR and DHS.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on September 14, 2022.

Fiscal Impact

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

Jobs Impact

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 1, 2023.

The following rule-making action is adopted:

Adopt the following **new** 441—Chapter 62:

CHAPTER 62 RENT REIMBURSEMENT

441—62.1(425) Eligible claimants. This rule is effective for rent reimbursement claims received by the Department on or after January 1, 2023.

62.1(1) The rent reimbursement program is available to claimants who:

- a.* Were at least 23 years of age or a head of household on December 31 of the base year,
- b.* Were not or will not be claimed as a dependent on another person's federal or state income tax return for the base year in the case of a claimant who is not disabled or at least 65 years of age,
- c.* Did not have household income in excess of the indexed amount determined pursuant to Iowa Code section 425.23(4) during the base year,
- d.* Are domiciled in Iowa at the time the claim is filed or were at the time of the claimant's death, and occupied and rented the property during any part of the base year.

62.1(2) If a homestead is occupied by two or more eligible claimants, each person may file a claim based upon each person's income and each person's share of the rent paid.

62.1(3) The computed reimbursement shall be determined in accordance with the applicable schedule provided in Iowa Code section 425.23(1) as adjusted by the indexed amount determined in Iowa Code section 425.23(4).

This rule is intended to implement Iowa Code sections 425.17(2) and 425.23.

441—62.2(425) Dual claims.

62.2(1) A claimant changing homesteads during the base year who will make property tax payments during the fiscal year following the base year and who also made rent payments during the base year is entitled to receive both a property tax credit and rent reimbursement.

62.2(2) Separate claim forms for the property tax credit and the rental reimbursement shall be filed with the county treasurer and the Iowa department of human services (DHS), respectively.

62.2(3) The claims are to be based on the actual property tax due and rent constituting property tax paid, with a combined maximum of \$1,000 upon which the credit and reimbursement can be calculated.

EXAMPLE: \$800 property tax due

\$400 rent constituting property taxes paid

- a.* The claim form for calculating the property tax credit shall reflect the entire \$800 amount.
- b.* The claim form for calculating the rent reimbursement shall reflect only the remaining \$200 of the \$1,000 maximum allowance.

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. DHS will issue refund warrants for rent reimbursement claims. The county treasurer shall apply the credit.

This rule is intended to implement Iowa Code section 425.24.

441—62.3(425) Multipurpose building.

62.3(1) A multipurpose building is a building which is used for other purposes in addition to being used for living accommodations. If a portion of a homestead property is utilized for business purposes, the property is considered to be a multipurpose building.

62.3(2) The portion of the property tax due or rent constituting property tax paid attributable to the homestead only is to be used in determining the allowable credit or reimbursement. This portion is to be calculated by determining the percentage of the homestead square footage to the square footage of the entire multipurpose structure. This percentage is then to be applied to the property tax due in the current fiscal year or rent constituting property tax paid for the base year.

This rule is intended to implement Iowa Code section 425.17(8).

441—62.4(425) Income.

62.4(1) Income includes the amount of in-kind assistance received by the claimant for housing expenses such as federal rent subsidy payments made directly to the landlord on behalf of the claimant and energy assistance benefits received by the claimant from or through a public utility.

62.4(2) In determining income, net operating losses and net capital losses are not to be considered. If the comparison of gains and losses results in a net gain, such amount shall be considered income. If the comparison results in a net loss, the net loss shall be disregarded.

This rule is intended to implement Iowa Code section 425.17(7).

441—62.5(425) Simultaneous homesteads. A person who rents one property and also rents another property for a simultaneous period of time is limited to claiming rent reimbursement on the property which is considered the person's domicile.

This rule is intended to implement Iowa Code section 425.17(4).

441—62.6(425) Confidential information. Information contained on a rent reimbursement claim form is confidential except that the information may be released to an employee of the department of inspections and appeals to assist in the performance of an audit or investigation. Rule 701—6.3(17A) contains guidelines that govern such audits and investigations.

This rule is intended to implement Iowa Code section 425.28.

441—62.7(425) Mobile, modular, and manufactured homes. Rent paid by an eligible claimant for occupancy of a mobile, modular, or manufactured home subject to the annual tax as provided in Iowa Code chapter 435 is subject to reimbursement regardless of how the home is taxed.

This rule is intended to implement Iowa Code section 425.17(4).

441—62.8(425) Totally disabled.

62.8(1) A person who is totally disabled must be unable to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment. In addition, the impairment must have lasted or must be reasonably expected to last for a continuous period of 12 months or must be expected to result in death. This disabled condition must be the determining factor in the person's inability to engage in gainful employment.

62.8(2) A claimant is considered totally disabled only if the physical or mental impairment or impairments are of such severity that the claimant is not only unable to do work previously performed but cannot, considering the claimant's age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which the claimant lives, or whether a specific job vacancy exists, or whether the claimant would be hired if the claimant applied for work. 42 U.S.C. §423 contains more information about disability insurance benefit payments.

HUMAN SERVICES DEPARTMENT[441](cont'd)

62.8(3) Examples of physical conditions which could possibly constitute total disability would include, but are not limited to:

- a. Loss of major function of one or both legs or arms;
- b. Progressive diseases which have resulted in the loss of one or both legs or arms or which have caused them to become useless; severe arthritis;
- c. Diseases of the heart, lungs, or blood vessels which have resulted in serious loss of heart or lung reserve;
- d. Diseases of the digestive system which have resulted in severe malnutrition, weakness, or anemia prohibiting gainful employment;
- e. Damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation, or memory; or
- f. Paralysis or diseases of the nervous system which prohibit coordination or major functioning of the body so as to prevent gainful employment.

62.8(4) For purposes of this rule, a person shall not be considered unable to engage in substantial gainful employment unless the person has attained the age of 18 on or before December 31 of the base year.

This rule is intended to implement Iowa Code section 425.17(11).

441—62.9(425) Nursing homes. A claimant whose homestead is a nursing home is eligible to file a reimbursement claim for rent constituting property tax paid unless the person is eligible for a property tax credit on an owned homestead.

This rule is intended to implement Iowa Code section 425.17(4).

441—62.10(425) Household. “Household” includes the claimant and the claimant’s spouse if living with the claimant at any time during the base year. “Living with” does not include a temporary visit. Only one claimant per household is entitled to a reimbursement.

This rule is intended to implement Iowa Code sections 425.17(5) and 425.22.

441—62.11(425) Homestead. A person who owns a homestead but is confined to a care facility shall be considered as occupying the owned homestead provided the person does not lease or otherwise receive profits from others for the use of the homestead. The person shall be eligible for a property tax credit but shall not be eligible for a rent reimbursement.

This rule is intended to implement Iowa Code section 425.17(4).

441—62.12(425) Household income.

62.12(1) Household income includes income of the claimant and the claimant’s spouse and actual monetary payments made to the claimant by any other person living with the claimant. Household income does not include social security benefits received by the claimant’s child and given to the claimant.

62.12(2) Monetary payments do not include goods and services provided to the claimant by a person living with the claimant.

This rule is intended to implement Iowa Code sections 425.17(6) and 425.17(7).

441—62.13(425) Timely filing of claims. If a timely mailed rent reimbursement claim is not received by DHS or is received after the June 1 filing deadline, the claim will be considered to have been timely filed if the claimant complies with the provisions of Iowa Code section 622.105. The director of DHS or the director’s designee may also extend the filing deadline for rent reimbursement claims through December 31 of the following year.

This rule is intended to implement Iowa Code section 425.20.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—62.14(425) Separate homestead—spousal rent reimbursements. If two spouses are both qualified claimants renting separate and distinct homesteads, and rent is paid by each, each is eligible to file an individual reimbursement claim for rent constituting property tax paid.

This rule is intended to implement Iowa Code section 425.17(4).

441—62.15(425) Gross rent/rent constituting property taxes paid. “Gross rent” means the total amount of rent paid for use of the homestead by the claimant, and “rent constituting property taxes paid” means 23 percent of the gross rent.

This rule is intended to implement Iowa Code sections 425.17(3) and 425.17(9).

441—62.16(425) Leased land. An individual who owns a dwelling located on land owned by another may claim a credit of property taxes due on the dwelling and a reimbursement of rental payments made for the use of the land if the land has been assessed for taxation.

This rule is intended to implement Iowa Code section 425.17(4).

441—62.17(425) Property: taxable status. In order for a claimant to be eligible to file a rent reimbursement claim, the property upon which the claimant resided during the base year must have been in a taxable status during the base year. If the property was taxable for only part of the base year, the rent reimbursement must be prorated accordingly (OP.ST. BD. Tax Rev. 187). However, this restriction does not apply to property that became tax exempt on or after July 1, 1986, provided the claimant received a reimbursement of rent constituting property taxes paid on the property when it was in a taxable status and continues to reside in the same property.

This rule is intended to implement Iowa Code section 425.17(4).

441—62.18(425) Income: spouse. The income of a spouse does not have to be reported on the claimant’s return unless the spouse lived with the claimant at the property upon which rent reimbursement is claimed. If the spouse lived with the claimant for only a portion of the base year, only that portion of the spouse’s income which was received while living with the claimant must be reported as income on the claimant’s return. If the spouse is eligible to claim reimbursement, the spouse does not have to include any income that was reported on the other claimant’s (spouse’s) return.

This rule is intended to implement Iowa Code section 425.17(6).

441—62.19(425) Common law marriage.

62.19(1) A common law marriage is a social relationship between two persons that meets all the necessary requisites of a marriage except that it was not solemnized, performed, or witnessed by an official authorized by law to perform marriages.

62.19(2) The necessary elements of a common law marriage are:

- a. A present intent of both parties freely given to become married,
- b. A public declaration by the parties or a holding out to the public that they are spouses,
- c. Continuous cohabitation together as spouses (this means consummation of the marriage), and
- d. Capability of both parties to enter into the marriage relationship.

62.19(3) No special time limit is necessary to establish a common law marriage.

This rule is intended to implement Iowa Code section 425.17.

441—62.20(425) Deceased claimant. A claim for rent reimbursement may be filed on behalf of a deceased person by the person’s spouse, attorney, or guardian, or the executor or administrator of the person’s estate.

This rule is intended to implement Iowa Code sections 425.17(2) and 425.18.

441—62.21(425) Audit of claim.

62.21(1) Authority. DHS may investigate the eligibility of a claimant for rent reimbursement.

62.21(2) Recomputed rent reimbursement claim. If DHS determines a computed rent reimbursement is in error, DHS shall collect any overpayment from the claimant or reimburse the claimant for any

HUMAN SERVICES DEPARTMENT[441](cont'd)

underpayment. If a claimant fails to reimburse DHS for an overpayment, the amount of overpayment shall be deducted from any future rent reimbursement to which the claimant is entitled.

This rule is intended to implement Iowa Code section 425.27.

441—62.22(425) Extension of time for filing a claim. The granting of an extension of time for filing a claim for reimbursement does not extend the time within which or the dates on or by which eligibility requirements must be satisfied.

This rule is intended to implement Iowa Code section 425.20.

441—62.23(425) Annual adjustment factor. The income levels used for determining the allowable percent rent reimbursement shall be adjusted each year to reflect the inflation factor as computed pursuant to Iowa Code section 422.4.

This rule is intended to implement Iowa Code sections 425.23 and 435.22(2).

441—62.24(425) Proration of claims. If the director of DHS or the director's designee determines that the amount of funding provided pursuant to Iowa Code section 425.39 will be insufficient to pay all rent reimbursement claims filed, the director or the director's designee shall estimate the percentage at which the claims will be paid and shall prorate the payment of each rent reimbursement claim by the same estimated percentage.

This rule is intended to implement Iowa Code sections 25B.7 and 425.39.

441—62.25(425) Unreasonable hardship. In order to avoid any unreasonable hardship to a claimant, the director of DHS or the director's designee may review the facts and circumstances of the claim as set forth by the claimant. The director or the director's designee may investigate all factors related to the specific case as deemed appropriate by the director or the director's designee. If the director or the director's designee is satisfied that the claim qualifies as an undue hardship for the claimant, the claim will be approved by the director or the director's designee.

This rule is intended to implement Iowa Code section 425.37.

441—62.26(425) Appeal. Notice of adverse action taken by DHS shall be issued in accordance with 441—Chapter 16, and the right to appeal shall be given in accordance with 441—Chapter 7.

This rule is intended to implement Iowa Code chapter 17A.

[Filed 9/14/22, effective 1/1/23]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6558C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to five-year review of rules

The Human Services Department hereby amends Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6 and 7 CFR Part 273.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Purpose and Summary

The rules in Chapter 65 were reviewed as part of the Department's five-year rules review.

This rule making:

- Changes the name of the program from Food Assistance (FA) to the federal Supplemental Nutrition Assistance Program (SNAP).
- Removes obsolete form names and numbers.
- Updates the rules with current requirements for verifying expenses, how the expenses are calculated, and how the Department acts on reported changes.
- Removes specific dollar amounts of reporting requirements and deductions and replaces those amounts with information about how the deduction or reporting requirement is determined.
- Updates the employment and training section with current information about who is eligible to receive services and how those services are managed.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 29, 2022, as **ARC 6394C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on September 14, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend **441—Chapter 65**, title, as follows:

~~FOOD~~ SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM ADMINISTRATION

ITEM 2. Amend **441—Chapter 65**, preamble, as follows:

PREAMBLE

The basis for the ~~food assistance program~~ Supplemental Nutrition Assistance Program (SNAP) is as provided in Title 7 of the Code of Federal Regulations. The purpose of this chapter is to provide

HUMAN SERVICES DEPARTMENT[441](cont'd)

for adoption of new and amended federal regulations as they are published, to establish a legal basis for Iowa's choice of administrative options when administrative options are given to the state in federal regulations, to implement the policy changes that the United States Department of Agriculture (USDA) directs states to implement that are required by law but are not yet included in federal regulations, and to implement USDA-approved demonstration projects and waivers of federal regulations.

ITEM 3. Amend rule 441—65.1(234) as follows:

441—65.1(234) Definitions.

“Department” means the Iowa department of human services.

“Food assistance” means ~~benefits provided by the federal program administered through Title 7, Chapter II of the Code of Federal Regulations, Parts 270 through 283.~~

“Notice of expiration” means ~~either a message printed on an application for continued program participation, Review/Recertification Eligibility Document (RRED), Form 470-2881, which is automatically issued to the household, or a hand-issued Form 470-0325, Notice of Expiration.~~

“Parent” means natural, legal, or stepmother or stepfather.

“Sibling” means biological, legal, step-, half-, or adoptive brother or sister.

“Supplemental Nutrition Assistance Program” or *“SNAP”* means benefits provided by the federal program administered through 7 CFR Parts 270 through 283 as amended to May 2, 2022.

ITEM 4. Amend subrule 65.2(1) as follows:

65.2(1) Application filing. Persons in need of ~~food assistance~~ SNAP benefits may file an application in person at any local department office in Iowa or ~~over the Internet~~ by mail, by fax, or online.

a. An application is filed the day a local department office receives an application for ~~food assistance~~ SNAP benefits that contains the applicant's name and address and is signed by either a responsible member of the household or the household's authorized representative. The application ~~may~~ must be filed on: Form 470-0462 or 470-0462(S). Applying through the self-service portal constitutes submission of this application.

~~(1) Form 470-0306 or 470-0307 (Spanish), Application for Food Assistance;~~

~~(2) Form 470-0462 or Form 470-0466 (Spanish), Health and Financial Support Application; or~~

~~(3) Form 470-4080 or 470-4080(S), Electronic Food Assistance Application.~~

b. When an application is ~~delivered~~ submitted to a closed office, it will be considered received on the first day that is not a weekend or state holiday following the day that the office was last open. An electronic application received outside of normal business hours is considered received on the first department workday following the date the department office received the application.

e. ~~A household shall complete a Health and Financial Support Application when any person in the household is applying for or receiving aid through the family investment program, family medical assistance program (FMAP)-related Medicaid, or the refugee resettlement assistance programs.~~

~~*d. c.* The application is complete when a completed application form is submitted. If an incomplete application form is submitted, the application cannot be processed until a completed form is received.~~

e. d. Households receiving ~~food assistance~~ SNAP benefits in Iowa may apply for continued participation by submitting Form 470-2881, ~~Review/Recertification Eligibility Document.~~

ITEM 5. Amend rule 441—65.3(234) as follows:

441—65.3(234) Administration of program. ~~The food assistance program~~ SNAP shall be administered in accordance with the Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., and in accordance with ~~federal regulation, Title 7, Parts 270 through 283~~ 7 CFR Parts 270 through 283 as amended to ~~June 19, 2006~~ May 2, 2022. A copy of the federal law and regulations may be obtained at no more than the actual cost of reproduction by contacting the Division of Financial, ~~Health~~ Food, and Work Supports, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, ~~(515)281-3133~~.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend rule 441—65.4(234), introductory paragraph, as follows:

441—65.4(234) Issuance. The department shall issue ~~food assistance~~ SNAP benefits by electronic ~~benefits~~ benefit transfer (EBT) cards.

ITEM 7. Amend rule 441—65.5(234) as follows:

441—65.5(234) Simplified reporting.

65.5(1) and **65.5(2)** No change.

65.5(3) Certification periods. Households shall be certified as follows:

a. and *b.* No change.

c. Exceptions:

(1) A household that has unstable circumstances or that includes an able-bodied adult without dependents shall be assigned a shorter certification period consistent with the household's circumstances, but ~~generally~~ no less than ~~three~~ four months.

(2) A shorter certification period may be assigned at application or recertification to match the ~~food assistance~~ SNAP recertification date to the family investment program (FIP) or medical assistance annual review date.

65.5(4) Reporting responsibilities. Simplified reporting households are required to report changes as follows:

a. and *b.* No change.

c. The household shall report if a member wins substantial lottery or gambling winnings. Substantial winnings are defined as a cash prize equal to or greater than the maximum allowable financial resource limit for elderly or disabled households. The household must report this change within ten days of the end of the month in which the winning occurs.

~~**65.5(5) Verification submitted with report form.** Rescinded IAB 9/10/08, effective 10/1/08.~~

~~**65.5(6) Additional information and verification.** Rescinded IAB 9/10/08, effective 10/1/08.~~

~~**65.5(7) Action on reported changes.** The department shall act on all reported changes for households regardless of the household's reporting requirements.~~

~~**65.5(8) Entering or leaving simplified reporting.** Rescinded IAB 9/10/08, effective 10/1/08.~~

~~**65.5(9) Reinstatement.** Rescinded IAB 9/10/08, effective 10/1/08.~~

ITEM 8. Amend rule 441—65.8(234) as follows:

441—65.8(234) Deductions.

65.8(1) Standard allowance for households with heating or air-conditioning expenses. When a household is receiving heating or air-conditioning service for which it is required to pay all or part of the expense or receives assistance under the Low-Income Home Energy Assistance Act (LIHEAA) of 1981, the heating or air-conditioning standard shall be allowed.

a. No change.

b. Effective October 1, ~~2013~~ 2021, ~~five~~ four dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction.

65.8(2) to **65.8(4)** No change.

65.8(5) Standard allowance for households without heating or air-conditioning expenses. When a household is receiving some utility service other than heating or air-conditioning for which it is responsible to pay all or part of the expense, the nonheating or air-conditioning standard shall be allowed. These utility expenses cannot be solely for telephone.

a. No change.

b. Effective October 1, ~~2013~~ 2021, ~~five~~ four dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction.

65.8(6) No change.

65.8(7) Excess medical expense deduction. Notwithstanding anything to the contrary in these rules or regulations, at certification, households having a member eligible for the excess medical expense deduction shall be allowed to provide verification of expenses so that a reasonable projection of the

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member's medical expenses anticipated to occur during the household's certification period can be made. The household may choose to claim actual expenses or to use the standard medical expense deduction.

- a. No change.
- b. *Standard medical expense.*

(1) A household may choose a standard medical expense deduction of \$105 if the household incurs more than \$35 per month in medical expenses.

- (2) No change.

(3) The amount of the standard medical expense deduction must be approved by the Food and Nutrition Service of the U.S. Department of Agriculture. The amount of the standard is reviewed periodically and adjustments are requested when needed.

~~c. Rescinded IAB 8/1/07, effective 10/1/07.~~

65.8(8) *Child support payment deduction.* ~~Rescinded IAB 5/2/01, effective 6/1/01.~~ A household may receive a deduction equal to the amount paid for legally obligated child support.

65.8(9) *Standard deduction.* ~~Each household will receive a standard deduction from income equal to 8.31 percent of the net income limit for food assistance eligibility. No household will receive an amount less than \$144 or more than 8.31 percent of the net income limit for a household of six members based on a formula set forth in regulations at 7 CFR 273.9(d) as amended to May 2, 2022.~~ The amount of the standard deduction is adjusted for inflation annually as directed by the Food and Nutrition Service of the U.S. Department of Agriculture.

~~65.8(10) *Sharing utility standards.* Rescinded IAB 9/4/02, effective 10/1/02.~~

~~65.8(11) *Excess shelter cap.* Rescinded IAB 5/2/01, effective 6/1/01.~~

65.8(10) *Homeless standard deduction.* A household in which all members are homeless may choose the homeless standard deduction in place of the shelter and utility expenses deduction.

a. Households choosing this option are not required to verify shelter-related expenses.

b. Households choosing this option are not eligible to receive a shelter or utility deduction.

c. The amount of the homeless standard deduction is determined by the Food and Nutrition Service of the U.S. Department of Agriculture and adjusted annually.

This rule is intended to implement Iowa Code section 234.12.

ITEM 9. Amend rule 441—65.9(234) as follows:

441—65.9(234) *Treatment centers and group living arrangements.* ~~Alcohol or drug treatment or rehabilitation centers and group living arrangements shall complete Form 470-2724, Monthly Facility Report, provide a list of participating residents to the department on a monthly basis and return the form to the local department office where the center is assigned.~~

ITEM 10. Amend rule 441—65.13(234) as follows:

441—65.13(234) *Joint processing.*

65.13(1) *Joint processing with SSI.* ~~The department will handle joint processing of supplemental security income and food assistance SNAP applications by having the social security administration complete and forward food assistance SNAP applications.~~

65.13(2) *Joint processing with public assistance.* ~~The department shall jointly process public assistance and food assistance SNAP applications.~~

65.13(3) *Single interview for assistance.* ~~In joint processing of public assistance and food assistance SNAP applications, the department shall conduct a single interview at initial application for both purposes.~~

ITEM 11. Amend rule 441—65.16(234) as follows:

441—65.16(234) *Complaint system.* ~~Clients wishing to file a formal written complaint concerning the food assistance program SNAP may submit Form 470-0323, or 470-0323(S), Food Assistance Complaint, to the office of field support. Department staff shall encourage clients to use the form.~~

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ITEM 12. Amend rule 441—65.20(234) as follows:

441—65.20(234) Notice of expiration issuance. Issuance of the automated Notice of Expiration will occur with the mailing of Form 470-2881, 470-2881(M), 470-2881(S), or 470-2881(MS).

~~65.20(1) Issuance of the automated Notice of Expiration will occur with the mailing of Form 470-2881, 470-2881(M), 470-2881(S), or 470-2881(MS), Review/Recertification Eligibility Document (RRED), or a hand-issued Form 470-0325, Notice of Expiration.~~

~~65.20(2) Issuance of the Notice of Expiration, Form 470-0325, will occur at the time of certification if the household is certified for one month, or for two months, and will not receive the automated Notice of Expiration.~~

ITEM 13. Amend rule 441—65.21(234) as follows:

441—65.21(234) Claims.

65.21(1) No change.

~~65.21(2) *Suspension status.* Rescinded IAB 7/1/98, effective 8/5/98.~~

~~65.21(3) *Application of restoration of lost benefits.* Rescinded IAB 3/6/02, effective 5/1/02.~~

~~65.21(4) **65.21(2) Demand letters.** Households that have food assistance SNAP claims shall return the repayment agreement no later than 20 days after the date the demand letter is mailed.~~

~~a. and b. No change.~~

~~65.21(5) **65.21(3) Adjustments for claim repayment.** A household or authorized representative may initiate a claim repayment by using benefits in an EBT account. The client or authorized representative shall complete Form 470-2574, EBT Adjustment Request, to authorize adjustments to a household's EBT account.~~

~~65.21(6) *Collection of claims.* Rescinded IAB 5/30/01, effective 8/1/01.~~

ITEM 14. Amend subrule 65.22(1) as follows:

65.22(1) Required verification.

a. *Income.* Households shall be required to verify income at time of application, recertification and when income is reported or when income changes with the following exceptions:

~~1. (1) Households are not required to verify the public assistance grant.~~

~~2. (2) Households are not required to verify job unemployment insurance benefits when the information is available to the department from the department of employment services.~~

~~3. (3) Households are only required to verify interest income at the time of application and recertification.~~

(4) If the reported income does not meet federal requirements for acting on changes during the certification period, verification will not be required until the next certification.

b. *Dependent care costs.* Rescinded IAB 3/10/10, effective 2/10/10. Households shall be required to verify dependent care costs at the time of application and recertification.

c. No change.

d. *Shelter costs.* Rescinded IAB 3/10/10, effective 2/10/10. Households shall be required to verify shelter costs at the time of application, recertification, or when an address change is reported.

e. *Utilities.* Rescinded IAB 3/10/10, effective 2/10/10. Households shall be required to verify utility costs at the time of application, recertification, or when an address change is reported.

f. *Telephone expense.* Rescinded IAB 5/2/01, effective 6/1/01. Households shall be required to verify telephone costs at the time of application and recertification.

g. *Child support payment deduction.* Households shall be required to verify legally obligated child support and child medical support payments made to a person outside of the food assistance SNAP household only at certification and recertification and whenever the household reports a change.

ITEM 15. Amend subrule 65.22(3) as follows:

65.22(3) Special verification procedures. Persons whose applications meet the initial criteria for error-prone cases may be subject to special verification procedures, including a ~~second~~ face-to-face

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interview and additional documentation requirements in accordance with department of inspections and appeals' rules in 481—Chapter 72.

~~Clients are required~~ Failure to cooperate with the investigation ~~investigations~~ division of the department of inspections and appeals in establishing eligibility factors, ~~including attending requested interviews.~~ Refusal to cooperate will not result in denial or cancellation of the household's food assistance SNAP benefits. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until cooperation occurs. The investigations division will gather as much information as possible without the client's cooperation. If further information is needed based on those findings, a request for information must be sent to the household.

ITEM 16. Amend rule 441—65.24(234) as follows:

441—65.24(234) Inclusion of foster children in household. Foster children living with foster parents will not be considered to be members of the ~~food assistance~~ SNAP household unless the household elects to include the foster children in the household. Foster care payments received for foster children not included in the household will be excluded from the income of the household receiving the payment.

ITEM 17. Amend rule 441—65.25(234) as follows:

441—65.25(234) Effective date of change. A ~~food assistance~~ SNAP change caused by, or related to, a public assistance grant change will have the same effective date as the public assistance change.

ITEM 18. Amend rule 441—65.27(234) as follows:

441—65.27(234) Voluntary quit or reduction in hours of work.

65.27(1) Applicant households. A member of an applicant household who without good cause voluntarily quits a job or reduces hours of work to less than 30 hours weekly within 30 days before the date the household applies for benefits shall be disqualified from participating in ~~the food assistance program~~ SNAP according to the provisions of paragraphs ~~65.28(12) "a"~~ 65.28(10) "a" and "b."

65.27(2) Participating individuals. Participating individuals are subject to the same disqualification periods as provided under subrule ~~65.28(12)~~ 65.28(10) when the participating individuals voluntarily quit employment without good cause or voluntarily reduce hours of work to less than 30 hours per week, beginning with the month following the adverse notice period.

ITEM 19. Amend rule 441—65.28(234) as follows:

441—65.28(234) Work requirements.

65.28(1) Persons required to register. Each household member who is not exempt by subrule 65.28(2) shall be registered for employment at the time of application, and once every 12 months after initial registration, as a condition of eligibility. Registration is accomplished when the applicant signs an application form that contains a statement that all members in the household who are required to register for work are willing to register for work. This signature registers all members of that ~~food assistance~~ SNAP household ~~that~~ who are required to register.

65.28(2) to 65.28(6) No change.

65.28(7) Employment and training (E&T) program. The department shall design and operate an employment and training program with the purpose of providing SNAP participants opportunities to gain skills, training, work, or experience that will increase their ability to obtain regular employment and meet state or local workforce needs in accordance with the Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq.

a. ~~The employment and training program for food assistance recipients is designed to assist~~ individuals who are:

(1) ~~Persons who have lost jobs or are underemployed and who need new skills in order to reenter the workplace because there are no jobs available for which the persons are trained~~ SNAP recipients or SNAP applicants.

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~~(2) Persons who have been out of the workforce for a period of time to regain licensure or certification in an area in which they are already trained~~ Not receiving FIP assistance or other cash assistance under Title IV such as Tribal Temporary Assistance for Needy Families (TANF) or Refugee Cash Assistance.

~~(3) Persons who wish to upgrade their employment for better wages and benefits~~ Physically and mentally able to work or will be able to work within the next one year.

b. ~~The department or its designee shall serve as the provider of employment and training services for food assistance SNAP recipients who wish to volunteer, except for those who are also recipients of family investment program (FIP) FIP benefits. Federal law prohibits FIP recipients from participating in any food assistance SNAP employment and training program.~~

c. ~~The program offers a range of services from basic skills to advanced occupational training in order to accommodate persons with various levels of need and abilities. The department or its designee may require a volunteer potential E&T participant to engage in aptitude or vocational testing activities when deemed necessary to determine if a component is appropriate for improving the volunteer's opportunity for employment employability.~~

d. ~~The E&T program shall be designed in consultation with the state workforce development board, or with private employers or employer organizations if the department determines the latter approach is more effective and efficient.~~

~~(1) The E&T program shall be designed to include case management services and at least one or more, or a combination of, employment and training components.~~

~~(2) An E&T plan shall be submitted to the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture annually in accordance with 7 CFR 273.7(c)(6) as amended to May 2, 2022, and shall be amended as necessary within the required time frame prior to implementation.~~

~~**65.28(8) Employment and training components.** All E&T participants shall be provided case management services and at least one employment and training component in accordance with 7 CFR 237.7(e) as amended to May 2, 2022. Employment and training components include individual job search, job club, educational services, and job retention services. The department or its designee shall offer employment and training components subject to the availability of sufficient funding to cover program costs. Availability of components may vary among the areas where employment and training are offered shall be provided as approved in the most recent FNS-approved E&T state plan.~~

~~*a. Individual job search.* The individual job search shall be modeled after the family investment program's PROMISE JOBS individual job search component, as described at 441—subrule 93.6(2).~~

~~*b. Job club.* The employment and training job club shall be modeled after the family investment program's PROMISE JOBS job club, as described at 441—subrule 93.6(1).~~

~~*c. Educational services.* Educational services offered shall include general educational development (GED), adult basic education (ABE), English as a second language (ESL), and vocational training or educational opportunities limited to a two-year college degree. Educational services may include, but are not limited to, obtaining continuing education credit hours needed for a recipient to become recertified or to renew licensure for a profession.~~

~~*d. Job retention services.* Job retention services are intended to provide needed assistance with costs associated with beginning employment. Services are available only to persons who have received employment or training services under this subrule. Job retention services will be offered up to 90 days after the person secures employment. Services may include payment of:~~

~~(1) A transportation allowance of \$50 per month for round-trip travel of 50 miles or less or \$100 per month for round-trip travel of 51 miles or more.~~

~~(2) The cost of testing, certification, licensing, bonding, or legal services required for employment.~~

~~(3) The cost of equipment, tools, uniforms, or other special clothing required by the job.~~

~~(4) Other reasonable and necessary costs related to starting and retaining employment.~~

~~**65.28(9) Exemptions from employment and training programs.** Rescinded IAB 5/5/10, effective 4/15/10.~~

~~**65.28(10) Time spent in an employment and training program.** Rescinded IAB 5/5/10, effective 4/15/10.~~

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~~65.28(11)~~ **65.28(9)** *Supportive services.* Program participants shall be provided with services necessary to complete an employment and training component to the extent allowable under federal regulations at 7 CFR 237.7(e)(4) as amended to January 1, 2009, and to the extent there is sufficient funding to cover the costs. The department shall provide participant reimbursements for expenses that are reasonable and necessary and directly related to participation in the E&T program. Supportive services shall be provided to the extent allowable under federal regulations at 7 CFR 237.7(d)(4) as amended to May 2, 2022, and as approved in the most recent FNS-approved E&T state plan and to the extent there is sufficient funding to cover the costs.

~~a.~~ The department shall provide participants in employment and training components an allowance for costs of transportation or other costs reasonably necessary and directly related to participation in the components as follows:

~~(1)~~ A transportation allowance of \$50 per month for round-trip travel of 50 miles or less or \$100 per month for round-trip travel of 51 miles or more.

~~(2)~~ Reasonable and necessary costs of attending a specific course of study, such as tuition, books, fees, training manuals, tools, equipment, uniforms and special clothing, safety items, and other items that all students in the course are required to have.

~~b.~~ The department may authorize the employment and training service provider to reimburse the provider of care directly for the costs of dependent care expenses that the employment and training service provider determines to be necessary for the participation of a person in the components.

~~(1)~~ Reimbursement for dependent care shall be authorized only to the extent that another source is not available to provide the care at no cost to the employment and training program and shall be based on the child care assistance program reimbursement rates as described at 441—paragraph 170.4(7)“a.”

~~(2)~~ The caretaker relative of a dependent in a family receiving FIP is not eligible for the dependent care reimbursement.

~~65.28(12)~~ **65.28(10)** *Failure to comply.* This subrule applies only to persons who are mandatory work registrants as required by subrule 65.28(1).

~~a.~~ When a person has refused or failed without good cause to comply with the work registration requirements in this rule, that person shall be ineligible to participate in the food assistance program SNAP as follows:

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

~~b.~~ No change.

~~65.28(13)~~ **65.28(11)** *Noncompliance with comparable requirements.* The department shall treat a mandatory work registrant's failure to comply with an unemployment compensation requirement that is comparable to a food assistance SNAP work registration requirement as a failure to comply with the corresponding food assistance SNAP requirement. Disqualification procedures in subrule ~~65.28(12)~~ 65.28(10) shall be followed.

~~65.28(14)~~ **65.28(12)** *Ending disqualification.* Following the end of the disqualification periods for noncompliance and as provided in rules 441—65.27(234) and 441—65.28(234), participation may resume.

~~a. to c.~~ No change.

~~65.28(15)~~ **65.28(13)** *Suitable employment.* Employment shall be considered unsuitable if:

~~a. to e.~~ No change.

~~65.28(16)~~ **65.28(14)** *Applicants for supplemental security income (SSI) and food assistance SNAP.* Household members who are jointly applying for SSI and for food assistance SNAP shall have the requirements for work registration waived until:

~~a. and b.~~ No change.

~~65.28(17)~~ **65.28(15)** *Determining good cause.* The department or its designee shall determine whether good cause exists for failure to comply with the work registration, employment and training, and voluntary quit requirements in 441—Chapter 65. In determining whether good cause exists, the facts and circumstances shall be considered, including information submitted by the household member involved and the employer.

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Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness of the registrant or of another household member requiring the presence of the registrant, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age 6 but are under age 12.

~~65.28(18)~~ **65.28(16)** *Measuring the three-year period for able-bodied nonexempt adults without dependents.* The three-year period as provided for in federal regulations at 7 CFR 273.24 as amended to ~~June 19, 2002~~ May 2, 2022, starts on December 1, 2002, and ends November 30, 2005. Subsequent three-year periods start with the month of December following the end of the previous period.

~~65.28(19)~~ **65.28(17)** *Mini-simplified food assistance program SNAP.*

a. *Scope.* The department operates a mini-simplified ~~food assistance program~~ SNAP for households that:

- (1) Also receive benefits under ~~the family investment program~~ FIP; and
- (2) Include a parent who is exempt from ~~food assistance~~ SNAP requirements for work registration due to caring for a child under the age of six.

b. *Effect.* The mini-simplified ~~food assistance program~~ SNAP allows replacement of certain ~~food assistance program~~ SNAP work rules with work rules of the ~~Temporary Assistance to Needy Families~~ TANF program. The value of the household's monthly ~~food assistance~~ SNAP benefits shall be combined with the household's monthly ~~family investment program~~ FIP benefit amount to determine the maximum number of hours the department can require a household member under ~~the family investment program~~ FIP to participate in an unpaid work activity that is subject to the federal Fair Labor Standards Act. Maximum required hours of participation for a month are determined by dividing the total amount of benefits by the state or federal minimum wage, whichever wage is higher.

ITEM 20. Amend rule 441—65.29(234) as follows:

441—65.29(234) Income.

65.29(1) *Self-employment income.* "Self-employment income" means the net profit from self-employment.

a. *Determination of net profit.* "Net profit from self-employment" means gross self-employment income less:

- (1) No change.
- (2) At the household's request, actual allowable expenses as specified in federal regulations at 7 CFR 273.11 as amended to ~~January 1, 2014~~ May 2, 2022.

b. No change.

65.29(2) *Job Unemployment insurance benefits.* ~~When the department of human services uses information provided by the department of workforce development to verify job insurance benefits, the benefits shall be considered received the second day after the date that the check was mailed. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day. The department shall verify unemployment insurance benefits by using information supplied by the department of workforce development.~~

When the client notifies the agency that the amount of job unemployment insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. A benefit adjustment shall be made when indicated. The client must report the discrepancy before the benefit month or within ten days of the date on the Notice of Decision, Form 470-0485, 470-0486, or 470-0486(S), applicable to the benefit month, whichever is later, in order to receive corrected benefits.

~~65.29(3)~~ *Exclusion of income from 2000 census employment.* ~~Rescinded IAB 9/4/02, effective 10/1/02.~~

65.29(4) **65.29(3)** *Interest income.* Prorate interest income by dividing the amount anticipated during the certification period by the number of months in the certification period.

~~65.29(5)~~ **65.29(4)** *Social security plans for achieving self-support (PASS).* Notwithstanding anything to the contrary in these rules or regulations, exclude income amounts necessary for fulfillment of a plan for achieving self-support (PASS) under Title XVI of the Social Security Act.

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~~65.29(6)~~ **65.29(5)** *Student income*. In determining eligibility, the department shall exclude educational income, including any educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like excluded under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); for the state's modified adjusted gross income (MAGI)-related medical assistance program, subject to paragraph 65.29(5) "d."

a. to c. No change.

d. Certain types of student income must be treated as follows, regardless of how they are considered for MAGI-related medical assistance.

(1) Wages may not be excluded.

(2) Federally funded work study is excluded.

(3) State-funded work study is excluded up to the amount earmarked for educational expenses.

~~65.29(7) *Elementary and high school student income*. Rescinded IAB 5/2/01, effective 6/1/01.~~

~~65.29(8) *Vendor payments*. Rescinded IAB 5/2/01, effective 6/1/01.~~

~~65.29(9) *HUD or FmHA utility reimbursement*. Rescinded IAB 5/2/01, effective 6/1/01.~~

~~65.29(10)~~ **65.29(6)** *Welfare reform and regular household honorarium income*. All moneys paid to a ~~food assistance~~ SNAP household in connection with the welfare reform demonstration longitudinal study or focus groups shall be exempted.

~~65.29(11)~~ **65.29(7)** *Income of ineligible aliens*. The department shall use all but a ~~pro-rata~~ pro rata share of ineligible aliens' income and deductible expenses to determine eligibility and benefits of any remaining household members.

~~65.29(12)~~ **65.29(8)** *Unearned income*. Unearned income is any income in cash that is not gained by labor or service. When taxes are withheld from nongovernment sources of unearned income, the amount considered will be the net income after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes). Net unearned income shall be determined by deducting reasonable income-producing costs from the gross unearned income. Money left after this deduction shall be considered gross income available to the household.

ITEM 21. Amend subrule 65.30(2) as follows:

~~65.30(2) *Resource limit*. The resource limit for a household that includes a person aged 60 or over or a disabled person is \$3000. The resource limit for other households is \$2000. These amounts limits follow federal regulations at 7 CFR 273.8(b) as amended to May 2, 2022, and are adjusted for inflation annually as directed by the Food and Nutrition Service of the U.S. Department of Agriculture.~~

ITEM 22. Amend subrule 65.30(3) as follows:

~~65.30(3) *Resources of SSI and FIP household members*. Notwithstanding anything to the contrary in these rules or in federal regulations, all resources of SSI or FIP recipients are excluded. For food assistance SNAP purposes, those members' resources, if identified, cannot be included when a household's total resources are calculated.~~

ITEM 23. Amend paragraph ~~65.30(4)~~ "a" as follows:

a. The person receiving the EITC was participating in ~~the food assistance program~~ SNAP at the time the credits were received; and

ITEM 24. Amend subrule 65.30(5) as follows:

~~65.30(5) *Student income*. Exclude from resources any income excluded by subrule 65.29(6) 65.29(5).~~

ITEM 25. Amend subrule 65.30(6) as follows:

~~65.30(6) *Motor vehicles*. One motor vehicle per household shall be excluded without regard to its value. The value of remaining motor vehicles shall be determined using federal regulations at 7 CFR 273.8, as amended to April 29, 2003 May 2, 2022.~~

ITEM 26. Amend rule 441—65.31(234) as follows:

~~441—65.31(234) *Homeless meal providers*. When a local office of the department is notified that an establishment or shelter has applied to be able to accept food assistance SNAP benefits for homeless~~

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persons, staff shall obtain a written statement from the establishment or shelter. The statement must contain information on how often meals are served by the establishment or shelter, the approximate number of meals served per month, and a statement that the establishment or shelter does serve meals to homeless persons. This information must be dated and signed by a person in charge of the administration of the establishment or shelter and give the person's title or function with the establishment.

The establishment or shelter shall cooperate with agency staff in the determination of whether or not meals are served to the homeless.

ITEM 27. Amend rule 441—65.37(234) as follows:

441—65.37(234) Eligibility of noncitizens. The following groups of aliens who are lawfully residing in the United States and are otherwise eligible are eligible for ~~food assistance~~ SNAP benefits:

65.37(1) Aliens who are receiving benefits or assistance for blindness or disability as specified in 7 CFR 271.2; as amended to ~~April 6, 1994~~ May 2, 2022, regardless of their immigration date.

65.37(2) and **65.37(3)** No change.

65.37(4) Aliens aged 18 or under, regardless of their immigration date. The department shall exclude the income and resources of a sponsor when determining ~~food assistance~~ SNAP eligibility and benefits for an alien aged 18 or under.

ITEM 28. Amend rule 441—65.39(234) as follows:

441—65.39(234) Categorical eligibility.

65.39(1) Notwithstanding anything to the contrary in these rules or in federal regulations, a household in which all members are recipients of a state or local general assistance (GA) program is subject to categorical eligibility provisions of ~~the food assistance program~~ SNAP provided that the state or local program:

- a. Has income limits at least as stringent as the ~~food assistance~~ SNAP gross income test; and
- b. No change.

65.39(2) Notwithstanding anything to the contrary in these rules or in federal regulations, a household is subject to categorical eligibility provisions of ~~the food assistance program~~ SNAP for any month in which the household is determined eligible for the Iowa promoting healthy marriage program pursuant to rule 441—47.2(234).

ITEM 29. Amend rule 441—65.46(234) as follows:

441—65.46(234) Disqualifications. Notwithstanding anything to the contrary in these rules, ~~food assistance program~~ SNAP violation disqualifications for persons who are not participating in ~~the food assistance program~~ SNAP shall be imposed in the same manner as program violation disqualifications are imposed for persons who are participating in ~~the food assistance program~~ SNAP.

65.46(1) No change.

65.46(2) *Conviction on trafficking in ~~food assistance~~ SNAP benefits.* The penalty for any individual convicted of trafficking in ~~food assistance~~ SNAP benefits of \$500 or more shall be permanent disqualification.

65.46(3) *Receiving or attempting to receive multiple benefits.* An individual found to have made a fraudulent statement or representation with respect to identity or residency in order to receive multiple benefits shall be ineligible to participate in ~~the food assistance program~~ SNAP for a period of ten years.

65.46(4) *Fleeing felons and probation or parole violators.* Rescinded IAB 10/3/01, effective 10/1/01.

65.46(5) 65.46(4) *Conviction of trading firearms, ammunition or explosives for benefits.* The penalty for any individual convicted of trading firearms, ammunition or explosives for ~~food assistance~~ SNAP benefits shall be permanent disqualification.

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ITEM 30. Amend rule 441—65.50(234) as follows:

441—65.50(234) No increase in benefits. When a household's means-tested federal, state, or local public assistance cash benefits are reduced because of a failure to perform an action required by the public assistance program, the department shall reduce the household's ~~food assistance~~ SNAP benefit allotment by 10 percent as provided for in federal regulations at 7 CFR 273.11(j), (k), and (l) as amended to ~~June 1, 2001~~ May 2, 2022, for the duration of the other program's penalty.

ITEM 31. Amend rule 441—65.51(234) as follows:

441—65.51(234) State income and eligibility verification system. The department shall maintain and use an income and eligibility verification system (IEVS) as specified in 7 CFR 272.8 as amended to ~~November 21, 2000~~ May 2, 2022.

ITEM 32. Amend rule 441—65.52(234) as follows:

441—65.52(234) Systematic alien verification for entitlements (SAVE) program. The department shall participate in the SAVE program established by the ~~U.S. Bureau of Citizenship and Immigration Service (BCIS)~~ U.S. Citizenship and Immigration Services (USCIS) as specified in 7 CFR 272.11 as amended to ~~November 21, 2000~~ May 2, 2022, in order to verify the validity of documents provided by aliens applying for ~~food assistance~~ SNAP benefits with the central data files maintained by ~~BCIS~~ USCIS.

[Filed 9/14/22, effective 12/1/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6559C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to five-year rules review

The Human Services Department hereby amends Chapter 66, "Emergency Food Assistance Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6.

Purpose and Summary

Chapter 66 is amended as part of the Department's five-year rules review. As part of the review, the name of the Division of Financial, Health, and Work Supports has been updated throughout the rules to the Division of Financial, Food, and Work Supports. Additional information has been provided on The Emergency Food Assistance Program (TEFAP) as authorized by the Emergency Food Assistance Act of 1983 and amended through Public Law 107-249, October 23, 2002. The chapter is updated to provide additional guidance to consumers on how eligibility is determined for TEFAP and how claims are established against TEFAP entities.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 13, 2022, as **ARC 6410C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on September 14, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend **441—Chapter 66**, preamble, as follows:

PREAMBLE

This chapter sets forth the rules governing ~~the emergency food assistance program~~ The Emergency Food Assistance Program (TEFAP) in Iowa. The Iowa department of human services has been designated by the governor as the agency responsible for administration of the emergency food assistance program. The department is responsible for receiving, storing, distributing, and accounting for foods donated through the U.S. Department of Agriculture (USDA). The department contracts with food banks that provide services in the state for TEFAP.

For information about ~~the emergency food assistance program~~ TEFAP and other food distribution programs, contact the Iowa Department of Human Services, Division of Financial, ~~Health~~ Food, and Work Supports, Food Distribution Program Manager, 1305 East Walnut Street, Des Moines, Iowa 50319-0114; telephone ~~(515)281-5410~~ (515)443-2736. Clarifications of federal policy may be obtained by referencing 7 CFR Part 251 and 7 CFR Part 250, when applicable.

ITEM 2. Amend rule **441—66.1(234)**, definitions of “Eligible recipient agency” and “Food distribution program,” as follows:

“*Eligible recipient agency*” means a charitable institution that has entered into a contract with the department for the receipt of commodities or administrative funds or has entered into an agreement with another eligible recipient agency that has signed such a contract with the department. Eligible recipient agencies may include food banks, food pantries, soup kitchens, hunger relief centers, hospitals,

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retirement homes, Nutrition Services Incentive Programs that operate congregate meals sites or provide home-delivered meals (to the extent that they serve predominately needy persons), summer camps for children or child nutrition programs providing food service, and disaster relief programs. An eligible recipient agency shall meet federal requirements as described at 7 CFR 251.3(d) and 7 CFR 251.5(a), as published on January 1, 2005 amended to May 2, 2022.

“*Food distribution program*” means the office in the department’s division of financial, ~~health~~ food, and work supports that is responsible for administering the FNS food distribution programs.

ITEM 3. Amend rule 441—66.2(234) as follows:

441—66.2(234) Application to be a TEFAP contractor or subcontractor. An organization that seeks to be a TEFAP contractor shall submit a written request to the Iowa Department of Human Services, Division of Financial, ~~Health~~ Food, and Work Supports, Food Distribution Program Manager, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. The written request shall contain sufficient information about the applicant to enable the department to determine whether the applicant qualifies to be an eligible recipient agency as defined at 441—66.1(234). An organization that seeks to be a TEFAP subcontractor shall submit a written request to the food bank contracted with the department to administer TEFAP in the organization’s service area. The written request shall contain sufficient information about the applicant to enable the food bank to determine whether the applicant qualifies to be an eligible recipient agency as defined at 441—66.1(234).

66.2(1) Determination of eligibility. Within ten days of receipt of an applicant’s written request to be a TEFAP contractor, the program manager shall notify the applicant in writing ~~of that the department’s decision~~ department has received the applicant’s request. The department shall approve an applicant’s request to be a TEFAP contractor only when ~~both~~ of the following are true:

- a. The applicant qualifies to be an eligible recipient agency as defined at 441—66.1(234).
- b. Priority is given to current food banks that service contiguous counties and food banks that are a Feeding America partner.

~~b. c.~~ A contract with the applicant, in addition to those eligible recipient agencies currently under contract with the department, will allow the department to distribute commodities in Iowa to needy individuals or households in the most cost-effective and comprehensive manner possible.

66.2(2) Administrative review of denial of eligibility.

a. When an applicant’s request to be a TEFAP contractor is denied by the program manager, the applicant may request an administrative review by sending a letter requesting review of the denial to the administrator of the division of financial, ~~health~~ food, and work supports. The applicant shall send the letter within five days of receipt of the letter of denial.

~~a. (1)~~ When more information is needed, the administrator shall request the information within five days of receipt of the request for review.

~~b. (2)~~ The administrator shall review the denial and shall issue a decision within ten days of the request for review or of the receipt of additional information, whichever is later.

~~c. (3)~~ When the division administrator reverses the denial, the applicant shall be given the opportunity to negotiate a TEFAP contract.

b. When an applicant’s request to be a TEFAP subcontractor is denied by the food bank, the applicant may request an administrative review by sending a letter requesting review of the denial to the food distribution program manager. The applicant shall send the letter within five days of receipt of the letter of denial.

(1) When more information is needed, the program manager shall request the information within five days of receipt of the request for review.

(2) The program manager shall review the denial and shall issue a decision within ten days of the request for review or of the receipt of additional information, whichever is later.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) When the program manager reverses the denial, the applicant shall be given the opportunity to negotiate a TEFAP subcontract with the applicable food bank.

ITEM 4. Amend rule 441—66.4(234) as follows:

441—66.4(234) Distribution. The department is the agency responsible for food distribution in Iowa under TEFAP. TEFAP commodities and funds are allocated and delivered to Iowa by the USDA according to the USDA formula as defined at 7 CFR 251.3(h), as ~~published on January 1, 2005~~ amended to May 2, 2022.

66.4(1) No change.

66.4(2) Allocation to contractors. The department shall make commodities available for distribution to contractors in accordance with the provisions of 7 CFR Part 251, as ~~published on January 1, 2005~~ amended to May 2, 2022, and of 7 CFR Part 250, as ~~published on January 1, 2005~~ amended to May 2, 2022, when the provisions of Part 250 are not inconsistent with 7 CFR Part 251.

a. No change.

b. *Basis for allocation.* The allocation of commodities to each contractor is based on the percentage of ~~the Iowa residents with income at or below 185 percent of the federal poverty level who live in the area that each contractor serves based on the formula identified in 7 CFR 251.3(h), as amended to May 2, 2022,~~ for entitlement. Bonus items will be allocated using this same formula, unless agreed upon by the eligible recipient agencies with direct contracts with the department.

66.4(3) No change.

66.4(4) Special provisions for situations of disaster and distress. The department reserves the right to distribute commodities in situations of disaster, emergency, or distress to any affected area in Iowa. ~~In these situations, the department shall use commodities in the central warehouse first and shall then, if necessary, use commodities from the inventory of each contractor.~~ Federal regulations at 7 CFR 250.43 and 7 CFR 250.44, as ~~published on January 1, 2005~~ amended to May 2, 2022, shall apply in these situations.

ITEM 5. Amend paragraph **66.5(3)“c”** as follows:

c. *Income exclusions.* When calculating total household income for this program, all income shall be excluded that is specifically excluded for food assistance by federal statute, especially those sources listed in federal regulations at 7 CFR 273.9(c)(10) as ~~published on January 1, 2005~~ amended to May 2, 2022.

ITEM 6. Amend rule 441—66.6(234), introductory paragraph, as follows:

441—66.6(234) Reimbursement for allowable costs. To the extent that funds are available for payment, the department shall pay allowable costs to contractors as reimbursement for expenses attributable to the program. TEFAP payments by the department are subject to federal regulations at 7 CFR Part 251, as ~~published on January 1, 2005~~ amended to May 2, 2022, especially 7 CFR 251.8(e).

ITEM 7. Amend subrule 66.6(2) as follows:

66.6(2) Reimbursement request. Contractors must complete ~~Form 470-0298, Federal Emergency Assistance Food Distribution Report/Reimbursement Request,~~ the form provided by the department in order to file for reimbursement.

ITEM 8. Amend subrule 66.6(3) as follows:

66.6(3) Rate of reimbursement. The department shall reimburse each contractor at ~~a per gross pound rate to be determined by the department and included in the agreement with the contractor~~ the same rate as commodity allocations are determined pursuant to 7 CFR 251.3(h) as amended to May 2, 2022. In the event the department cannot maintain this level of reimbursement throughout the term of the contract, the reimbursement shall be adjusted based on the available funds remaining from the USDA grant.

ITEM 9. Amend subrule 66.7(3) as follows:

66.7(3) Determination of fault and claim procedures. The program manager shall investigate the commodity loss and determine who is at fault as described in FNS Instruction 410-1, Claims for Losses

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of Donated Foods and Related Administrative Losses — Procedures for the State Distributing Agency, published on December 29, 2010.

a. ~~Losses exceeding \$100~~ Value of loss does not exceed \$500. The department shall not initiate a claim action against an entity that has been determined to be at fault if the value of the accumulated commodity loss ~~exceeds \$100~~ does not exceed \$500. EXCEPTION: If there is evidence of violation of a federal or state statute, procedures in subrule 66.7(7) shall apply.

b. ~~Losses exceeding \$2,500~~ \$500. When the department believes that a claim exists against an entity and the value of the lost commodities exceeds ~~\$2,500~~ \$500, the department shall immediately refer the claim determination to the FNS regional office. When the department receives notice from FNS that a claim exists, the department shall immediately initiate the claim procedure.

c. and d. No change.

e. ~~Late charge.~~ Interest shall be assessed against an entity beginning on the thirty-first day following the date of the first demand letter, unless an extension has been granted. Interest shall be assessed at the rate determined by the U.S. Treasury Department at the beginning of each fiscal quarter.

ITEM 10. Amend subrule 66.7(5) as follows:

66.7(5) *Administrative review of claim.* An entity may request an administrative review of a claim by sending a letter requesting review of the claim and a copy of a demand letter to the administrator of the division of financial, ~~health~~ food, and work supports within 20 days of receipt of its first demand letter.

a. and b. No change.

ITEM 11. Amend rule 441—66.8(234), introductory paragraph, as follows:

441—66.8(234) *State monitoring.* The department shall annually review at least 25 percent of the TEFAP contractors and 10 percent of other eligible recipient agencies receiving commodities as subcontractors or 20 agencies, whichever is fewer. The department ~~may~~ shall not contract with another entity to carry out these activities.

ITEM 12. Adopt the following new paragraph **66.8(1)“h”**:

h. Civil rights.

[Filed 9/14/22, effective 12/1/22]

[Published 10/5/22]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6560C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to five-year rules review

The Human Services Department hereby amends Chapter 89, “Debts Due from Transfers of Assets,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Purpose and Summary

Chapter 89 was reviewed as part of the Department's five-year rules review. The update reflects the operative effective date for transfers that took place between July 1, 1993, and December 31, 2018. This portion of the program was suspended effective January 1, 2019, and there have not been any referrals to recover resources from anyone who received the transferred resources since then. The amendment to the chapter's implementation sentence removes the Iowa Acts reference because the Act has been codified.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 13, 2022, as **ARC 6409C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on September 14, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on December 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **89.2(1)“a”** as follows:

a. The transfer is made while the transferor is receiving medical assistance or within five years prior to application for medical assistance and ~~on or after~~ between July 1, 1993, and December 31, 2018.

ITEM 2. Amend **441—Chapter 89**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 249F ~~as amended by 2000 Iowa Acts, chapter 1060.~~

[Filed 9/14/22, effective 12/1/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6561C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to Medicare subsidy application procedures**

The Human Services Department hereby amends Chapter 91, “Medicare Drug Subsidy,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 249A.4 and 17A.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 249A and section 17A.7.

Purpose and Summary

Public Law 108-173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, created a prescription drug benefit for Medicare beneficiaries (Medicare Part D) and a subsidy to reduce or eliminate costs associated with the Medicare drug benefit for persons with limited income and resources. Both the federal Social Security Administration and the state Medicaid agency are to accept and adjudicate subsidy applications. Chapter 91 implements the procedures for the Department to process subsidy applications that are received by the Department.

This rule making removes forms that have become obsolete, updates the rules, and provides correct rule references as part of the Department’s five-year rules review.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 13, 2022, as **ARC 6411C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on September 14, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

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

Effective Date

This rule making will become effective on December 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule **441—91.1(249A)**, definitions of “Application,” “Authorized representative” and “Responsible person,” as follows:

“*Application*” or “*Medicare drug subsidy application*” means the federal Social Security Administration’s Form SSA-1020B-OCR-SM, Application for Help with Medicare Prescription Drug Plan Costs, ~~accompanied by the department’s Form 470-4159, Authorization for Department to Process.~~

“*Authorized representative*” means a person representing an applicant or recipient as described in ~~441—paragraph 76.1(7)“b.”~~ 441—subrule 76.9(2).

“*Responsible person*” means a person acting on an applicant’s or recipient’s behalf as described at ~~441—paragraph 76.1(7)“a.”~~ 441—subrule 76.9(1).

ITEM 2. Amend paragraph **91.2(2)“a”** as follows:

a. An identifiable application is an application that contains:

(1) The legible name and address of the applicant; and

(2) The signature of the applicant, a responsible person, or an authorized representative on ~~both~~ Form SSA-1020B-OCR-SM, Application for Help with Medicare Prescription Drug Plan Costs, ~~and Form 470-4159, Authorization for Department to Process.~~

ITEM 3. Amend paragraph **91.3(2)“a”** as follows:

a. The applicant or recipient shall have ~~five~~ ten working days to supply the information or verification requested by the department. The local office may extend the deadline for a reasonable period when the applicant or recipient is making every effort to secure the required information or verification from a third party but has been unable to do so.

ITEM 4. Amend subrule 91.6(2) as follows:

91.6(2) *Timely report.* A report shall be considered timely when received in the local office within ten days from the date the change is known to a recipient ~~and within five days from the date the change is known to an~~ or applicant.

ITEM 5. Amend subrule 91.7(1) as follows:

91.7(1) *Application requested.* When requested to do so by the department, the recipient shall complete the Medicare drug subsidy application as part of the reinvestigation process. The application shall be completed within ~~five~~ ten working days from the date a written request is issued. Failure to complete the application shall be a basis for cancellation or reduction of the subsidy.

ITEM 6. Amend subrule 91.7(2), introductory paragraph, as follows:

91.7(2) *Additional information requested.* The recipient shall supply additional information needed to establish eligibility or level of subsidy within ~~five~~ ten working days from the date a written request is issued.

[Filed 9/14/22, effective 12/1/22]

[Published 10/5/22]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6568C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to food establishments and home food processing establishments

The Inspections and Appeals Department hereby amends Chapter 30, “Food and Consumer Safety,” and Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 10A.104(5) and 137F.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 2431.

Purpose and Summary

This rule making amending Chapters 30 and 31 implements 2022 Iowa Acts, House File 2431, and makes revisions in conformance with the replacement of Chapter 34, “Home Bakeries,” with a new Chapter 34, “Home Food Processing Establishments” (**ARC 6569C**, IAB 10/5/22). House File 2431 defines “home food processing establishment” and expands opportunities for the sale of homemade food items through the home food processing establishment license, formerly the home bakery license. It also defines “cottage food” and exempts cottage food from state licensing and inspection.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6455C**. No public comments were received. One change from the Notice has been made to correct a citation in paragraph 30.13(1)“j.”

Adoption of Rule Making

This rule making was adopted by the Department on September 15, 2022.

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, there may be a positive impact on jobs through increased opportunity for self-employment. This rule making, in conjunction with the authorizing legislation (2022 Iowa Acts, House File 2431), creates opportunities for the sale of cottage food.

Waivers

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

Review by Administrative Rules Review Committee

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

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule 481—30.1(10A,137C,137D,137F) as follows:

481—30.1(10A,137C,~~137D~~,137F) Food and consumer safety bureau. The food and consumer safety bureau inspects food establishments and food processing plants including food storage facilities (warehouses), ~~home bakeries~~, food and beverage vending machines, and hotels and motels. The food and consumer safety bureau is also responsible for social and charitable gambling and amusement devices. Separate chapters have been established for the administration of social and charitable gambling (481—Chapters 100 to 103, 106, and 107) and amusement devices (481—Chapters 104 and 105).

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and ~~Iowa Code~~ chapters 137C,~~137D~~ and 137F.

ITEM 2. Amend rule 481—30.2(10A,137C,137D,137F) as follows:

481—30.2(10A,137C,~~137D~~,137F) Definitions. If both the 2017 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,~~137D~~,137F) define a term, the definition in rule 481—30.2(10A,137C,~~137D~~,137F) shall apply.

“Baked goods” means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

“Bed and breakfast home” means a private residence which provides lodging and meals for guests, in which the host or hostess resides, and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

“Bed and breakfast inn” means a hotel which has nine or fewer guest rooms.

“Catering” means the preparation of food for distribution to an individual, business or organization for exclusive service to the individual's, business's or organization's nonpaying guests, employees or members.

“Certified wild-harvested mushroom identification expert” means an individual who has within the last three years successfully completed a wild-harvested mushroom identification training program provided by an accredited college, university, or state mycological society. The training program must include a component of actual identification of physical specimens or simulations of mushroom species. A document must be issued by an accredited college, accredited university, or state mycological society certifying the individual's successful completion of the wild-harvested mushroom identification training program and specifying the species of wild mushrooms the individual is qualified to identify.

“Commissary” means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment's own outlets.

“Contractor” means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C,~~137D~~ or 137F. A list of contractors is maintained on the department's website.

“Cottage food” means the production and sale of food produced at a private residence other than time/temperature control for safety food as provided in Iowa Code section 137F.20 as enacted by 2022 Iowa Acts, House File 2431, section 10, and food for resale that is not time/temperature control for safety food. “Cottage food” includes home-processed and home-canned pickles, vegetables, or fruits that have

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a finished equilibrium pH value of 4.60 or lower or a water activity value of 0.85 or less for which each batch has been measured by a pH meter or a water activity meter and each container that is sold or offered for sale contains the date the food was processed and canned. "Cottage food" does not include any of the following:

1. Milk or milk products regulated under Iowa Code chapters 192 and 194.
2. Meat, meat food products, poultry, or poultry food products regulated under Iowa Code chapter 189A.

"Criminal offense" means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

"Critical violation" means a foodborne illness risk factor and public health intervention and the violations defined as such by the Food Code adopted in rule 481—31.1(137F) and pursuant to Iowa Code section 137F.2.

"Cultivated mushroom" means a mushroom grown through a process in which the grower inoculates a substrate (logs, beds, straw, etc.) with a known strain or species of mushroom spawn in a dedicated space, whether outdoors or indoors, that is under the control of the grower, for the purpose of fruiting mushrooms.

"Department" means the department of inspections and appeals.

"Event" means a significant occurrence or happening sponsored by a civic, business, governmental, community, or veterans organization and may include an athletic contest. For example, an event does not include a single store's grand opening or sale.

"Farmers market" means a marketplace which operates seasonally, principally as a common market for Iowa-produced farm products on a retail basis for consumption elsewhere.

"Farmers market time/temperature control for safety food license" means a license for a temporary food establishment that sells time/temperature control for safety foods at farmers markets. A separate annual farmers market time/temperature control for safety food license is required for each county in which the licensee sells time/temperature control for safety foods at farmers markets. The license is only applicable at farmers markets and is not required in order to sell wholesome, fresh shell eggs to consumer customers. "Farmers market time/temperature control for safety food license" does not include a temporary food establishment that sells packaged time/temperature control for safety food items from a licensed source at farmers markets.

"Food establishment" means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, or the state training school. Assisted living programs and adult day services are included in the definition of food establishment to the extent required by 481—subrules 69.28(6) and 70.28(6). "Food establishment" does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not time/temperature control for safety foods.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home bakery food processing establishment pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market if unpackaged time/temperature control for safety foods are not sold or distributed from the premises.

6. Premises of a residence in which food ~~that is not a time/temperature control for safety food is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales~~ is produced pursuant to Iowa Code section 137F.20 as enacted by 2022 Iowa Acts, House File 2431, section 10.

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7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

8. A private home or private party where a personal chef or hired cook is providing food preparation services to a client and the client's nonpaying guests.

9. A private home that receives catered or home-delivered food.

10. Child day care facilities and other food establishments located in hospitals or health care facilities that serve only patients and staff and are subject to inspection by other state agencies or divisions of the department.

11. Supply vehicles or vending machine locations.

12. Establishments that are exclusively engaged in the processing of meat and poultry and are licensed pursuant to Iowa Code section 189A.3.

13. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises covered by a current Class "A" beer permit, including a Class "A" native beer permit as provided in of a beer manufacturer, distributor, or wholesaler under Iowa Code chapter 123;

- Premises covered by a current Class "A" wine permit, including a Class "A" native wine permit as provided in of a wine manufacturer, distributor, or wholesaler under Iowa Code chapter 123; and

- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

14. Premises or operations that are exclusively engaged in the processing of milk and milk products, are regulated by Iowa Code ~~section~~ sections 192.107 and 194.1, and have a milk or milk products permit issued by the department of agriculture and land stewardship.

15. Premises or operations that are exclusively engaged in the production of shell eggs, are regulated by Iowa Code section 196.3, and have an egg handler's license.

16. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

17. Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long as the nonprofit organization does not exceed the following restrictions:

- The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;

- Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and

- The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.

18. A stand operated by a minor.

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include any of the following:

1. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises covered by a current Class "A" beer permit, including a Class "A" native beer permit as provided in of a beer manufacturer, distributor, or wholesaler under Iowa Code chapter 123;

- Premises covered by a current Class "A" wine permit, including a Class "A" native wine permit as provided in of a beer manufacturer, distributor, or wholesaler under Iowa Code chapter 123; and

- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

2. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

3. Premises or operations that are exclusively engaged in the processing of meat and poultry and are licensed pursuant to Iowa Code section 189A.3.

4. Premises or operations that are exclusively engaged in the processing of milk or milk products, are regulated by Iowa Code ~~section~~ sections 192.107 and 194.1, and have a milk or milk products permit issued by the department of agriculture and land stewardship.

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5. Premises or operations that are exclusively engaged in the production of shell eggs, are regulated by Iowa Code section 196.3, and have an egg handler's license.

6. Premises or operations that are exclusively engaged in the preparation or processing of Siluriformes, including catfish, and are regulated and inspected by the United States Department of Agriculture under a federal grant of inspection.

7. Premises that are a home food processing establishment pursuant to Iowa Code chapter 137D. "*Food service establishment*" means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or is subject to Iowa sales tax as provided in Iowa Code section 423.3.

~~"Home bakery" means a business on the premises of a residence that is operating as a home-based bakery where baked goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed \$35,000. "Home bakery" does not include:~~

- ~~1. A food establishment;~~
- ~~2. A food processing plant;~~
- ~~3. A residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations;~~
- ~~4. A residence that prepares or distributes honey;~~
- ~~5. A residence that distributes shell eggs;~~
- ~~6. A residence that prepares foods that are not time/temperature control for safety foods for sale at a farmers market; or~~
- ~~7. A residence that prepares baked goods that are not time/temperature control for safety foods sold directly from the residence. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.~~

~~"Hotel" means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.~~

~~"License holder" means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C, 137D or 137F.~~

~~"Mobile food unit" means a food establishment that is self-contained, with the exception of grills and smokers, and readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.~~

~~"Patrol dog" means a dog that is accompanying a law enforcement officer or security officer.~~

~~"Personal chef" or "hired cook" means a person who provides food preparation services in a private home or at a private party for a client and the client's nonpaying guests. "Personal chef" or "hired cook" does not include a person who provides the ingredients intended to be used in food preparation.~~

~~"Pet dog" means a dog that does not meet the definition of a "patrol dog" or a "service animal" as defined in the Code of Federal Regulations, Title 28, Part 36.~~

~~"Pushcart" means a non-self-propelled vehicle food establishment limited to serving foods that are not time/temperature control for safety foods or commissary-wrapped foods maintained at proper temperatures or precooked foods that require limited assembly, such as frankfurters.~~

~~"Retail food establishment" means a food establishment that sells to consumer customers food or food products intended for preparation or consumption off the premises.~~

~~"Revoke" means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C, 137D or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.~~

~~"Stand operated by a minor" means a stand or other facility operated by a person or persons under the age of 18 at which food is sold directly to consumers that is not time/temperature control for safety food or an alcoholic beverage and that operates on a temporary and occasional basis on private property with the permission of the owner of the property.~~

~~"Suspend" means to render a license issued under Iowa Code chapter 137C, 137D, or 137F invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.~~

~~"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event.~~

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“*Time/temperature control for safety food*” means a food that requires time and temperature controls for safety to limit pathogenic microorganism growth or toxin formation.

“*Transient guest*” means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

“*Unattended food establishment*” means an operation that provides packaged foods or whole fruit using an automated payment system and has controlled entry not accessible by the general public. “Controlled entry,” for the purposes of the definition of “unattended food establishment,” means selective restriction or limitation of access to a place or location.

“*Vending machine*” means a self-service device which, upon insertion of a coin, paper currency, token, card or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged foods that are not time/temperature control for safety foods, panned candies, gumballs or nuts are exempt from licensing but may be inspected by the department upon receipt of a written complaint. “Panned candies” are those with a fine, hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

“*Vending machine location*” means the room, enclosure, space, or area where one or more vending machines are installed and operated, including the storage areas on the premises that are used to service and maintain the vending machine.

“*Wild-harvested mushroom*” means a fresh mushroom that has been found or foraged in the natural environment and has not been processed (e.g., dried or frozen). “Wild-harvested mushroom” does not include cultivated mushrooms or mushrooms that have been packaged in an approved food processing plant.

This rule is intended to implement Iowa Code sections 10A.104, and 137C.8, ~~and 137D.2~~ and chapter 137F.

ITEM 3. Amend rule 481—30.3(137C,137D,137F), introductory paragraph, as follows:

481—30.3(137C,~~137D~~,137F) Licensing and postings. A license to operate any food establishment or food processing plant defined in rule 481—30.2(10A,137C,~~137D~~,137F) must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; locations of buildings; and other data relative to the license requested. Applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from contractors. An application for licensure shall be submitted 30 days in advance of the opening of the food establishment or food processing plant. Temporary food establishment license applications shall be submitted a minimum of 3 business days prior to opening.

ITEM 4. Amend subrule 30.3(5), introductory paragraph, as follows:

30.3(5) Documentation of gross sales. The regulatory authority shall require from a license holder documentation of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing plant unless the establishment is paying the highest license fee required by rule 481—30.4(137C,~~137D~~,137F). The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. For food processing plants that are food storage facilities and food establishments whose sales are included in a single rate with lodging or other services, the value of the food handled should be used. Documentation shall include at least one of the following:

ITEM 5. Amend rule **481—30.3(137C,137D,137F)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 10A.104, and 137C.8, ~~and 137D.2~~ and chapter 137F.

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ITEM 6. Amend rule 481—30.4(137C,137D,137F) as follows:

481—30.4(137C,137D,137F) License fees. The license fee is the same for an initial license and a renewal license. License applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from a contractor. License fees are set by the Iowa Code sections listed below and are charged as follows:

30.4(1) No change.

30.4(2) *Food service establishments.* License fees for food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) or subject to Iowa sales tax as provided in Iowa Code section 423.3 as follows:

a. to c. No change.

30.4(3) *Vending machines.* License fees for food and beverage vending machines are \$50 for the first machine and \$10 for each additional machine (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

~~**30.4(4) *Home bakery.*** The license fee for a home bakery is \$50 (Iowa Code section 137D.2(1) as amended by 2018 Iowa Acts, Senate File 2390).~~

~~**30.4(5)**~~ **30.4(4) *Hotels.*** License fees for hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

a. to c. No change.

~~**30.4(6)**~~ **30.4(5) *Mobile food units or pushcarts.*** The license fee for a mobile food unit or a pushcart is \$250 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

~~**30.4(7)**~~ **30.4(6) *Temporary food establishments.***

a. The fee for a temporary food establishment license issued for up to 14 consecutive days in conjunction with a single event is \$50 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

b. The annual fee for a temporary food establishment license issued for multiple nonconcurrent events on a countywide basis during a calendar year is \$200 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390). Temporary food establishments that operate simultaneously at more than one location within a county are required to have a separate license for each location.

~~**30.4(8)**~~ **30.4(7) *Food processing plants including food storage facilities (warehouses).*** For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or food storage facility (warehouse) (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

a. to c. No change.

~~**30.4(9)**~~ **30.4(8) *Farmers market.*** A person selling time/temperature control for safety food at a farmers market must pay an annual license fee of \$150 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

~~**30.4(10)**~~ **30.4(9) *Certificate of free sale or sanitation.*** The fee for a certificate of free sale or sanitation is \$35 for the first certificate and \$10 for each additional identical certificate requested at the same time.

~~**30.4(11)**~~ **30.4(10) *Unattended food establishment.*** The annual license fee for an unattended food establishment is based on the annual gross food and beverage sales (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

a. and b. No change.

~~**30.4(12)**~~ **30.4(11) *Events.*** The license fee for an event is \$50, which shall be submitted with a license application to the appropriate regulatory authority at least 60 days in advance of the event. An “event” for purposes of this subrule does not include a function with ten or fewer temporary food establishments, a fair as defined in Iowa Code section 174.1, or a farmers market.

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~~30.4(13)~~ **30.4(12)** *Voluntary inspection fee.* The department shall charge a voluntary inspection fee of \$100 when a premises that is not a food establishment requests a voluntary inspection.

This rule is intended to implement Iowa Code sections 137C.9, ~~137D.2(1)~~, and 137F.6 and 2018 Iowa Acts, Senate File 2390.

ITEM 7. Amend subrule 30.5(3) as follows:

30.5(3) *Civil penalty for violations.* A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of \$100 for each violation. Prior to assessment of the penalty, the license holder shall have an opportunity for a hearing using the process outlined in rule 481—30.11(10A,137C,~~137D~~,137F).

ITEM 8. Amend rule 481—30.6(137C,137D,137F) as follows:

481—30.6(137C,~~137D~~,137F) Returned checks. If a check intended to pay for any license provided for under Iowa Code chapter 137C, ~~137D~~, or 137F is not honored for payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license. Furthermore, any late penalties assessed pursuant to rule 481—30.5(137F) will accrue and must be paid.

This rule is intended to implement Iowa Code sections 137C.9, ~~137D.2(1)~~, and 137F.6.

ITEM 9. Amend rule 481—30.8(137C,137D,137F) as follows:

481—30.8(137C,~~137D~~,137F) Inspection frequency.

30.8(1) *Food establishments.* Food establishments shall be inspected based upon risk assessment and shall have routine inspections at least once every ~~36~~ 60 months. Very low risk food establishments will not have a routine inspection frequency.

30.8(2) to 30.8(4) No change.

~~**30.8(5)** *Home bakeries and vending machines.* Home bakeries and vending machines shall have a pre-opening inspection and then shall not have a specific inspection frequency. An inspection may be triggered, for example, by complaints, potential foodborne illness, or information about potential violations of law or rules.~~

30.8(6) ~~**30.8(5)**~~ *Farmers market time/temperature control for safety food.* Farmers market time/temperature control for safety food licensees shall be inspected at least once annually.

~~**30.8(7)**~~ **30.8(6)** *Temporary food establishments.* Temporary food establishments issued an annual license pursuant to paragraph ~~30.4(7)“b”~~ 30.4(6)“b” shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, ~~137D.2~~, and 137F.10.

ITEM 10. Amend rule ~~481—30.9(22)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapters 137C, ~~137D~~, 137F and 22.

ITEM 11. Amend rule 481—30.10(17A,137C,137D,137F), parenthetical implementation statute, as follows:

481—30.10(17A,137C,~~137D~~,137F) Denial, suspension, or revocation of a license to operate.

ITEM 12. Amend subrule 30.10(1) as follows:

30.10(1) *Immediate suspension of license.* To the extent not inconsistent with Iowa Code chapters 17A, 137C, ~~137D~~, and 137F and rules adopted pursuant to those chapters, chapter 8 of the Food Code shall be adopted for food establishments ~~and home bakeries~~. The department or contractor may immediately suspend a license in cases of an imminent health hazard. The procedures of Iowa Code section 17A.18A and Food Code chapter 8 shall be followed in cases of an imminent health hazard. The appeal process in rule 481—30.11(10A,137C,~~137D~~,137F) is available following an immediate suspension. The department may immediately suspend the license of a food processing plant or hotel

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if an imminent health hazard finding is made and the procedures of Iowa Code section 17A.18A are followed.

ITEM 13. Amend paragraph **30.10(2)“d”** as follows:

d. The department’s decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of rule 481—30.11(10A,137C,~~137D~~,137F).

ITEM 14. Amend rule **481—30.10(17A,137C,137D,137F)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapters 17A, 137C,~~137D~~ and 137F.

ITEM 15. Amend rule 481—30.11(10A,137C,137D,137F), parenthetical implementation statute, as follows:

481—30.11(10A,137C,~~137D~~,137F) Formal hearing.

ITEM 16. Amend rule **481—30.11(10A,137C,137D,137F)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 10A.104 and Iowa Code chapters 137C,~~137D~~, and 137F.

ITEM 17. Adopt the following new rule 481—30.13(10A,137F):

481—30.13(10A,137F) Cottage food.

30.13(1) Cottage food is exempt from all licensing, permitting, inspection, packaging, and labeling laws of the state if the food complies with all of the following:

a. The food does not require time/temperature control for safety. When it is not obvious whether a food requires time/temperature control for safety, the food producer must provide documentation that a food does not require time/temperature control for safety to the regulatory authority upon request.

b. The food is not a milk or milk product regulated under Iowa Code chapters 192 and 194.

c. The food is not a meat, meat food product, poultry, or poultry food product regulated under Iowa Code chapter 189A.

d. The food is not unpasteurized fruit or vegetable juice.

e. The food is produced in a private residence.

f. The food is sold and delivered by the producer directly to the consumer.

g. The cottage food is labeled or affixed with the following information:

(1) Information to identify the name and address, phone number, or electronic mail address of the person preparing the food.

(2) The common name of the food.

(3) The ingredients of the cottage food in descending order of predominance.

(4) The following statement: “This product was produced at a residential property that is exempt from state licensing and inspection.”

(5) If the cottage food contains one or more major food allergens, an additional allergen statement identifying each major allergen contained in the food by the common name of the allergen.

(6) If the food is home-processed and contains home-canned pickles, vegetables, or fruits permitted under this rule, the date that the food was processed and canned.

h. Home-processed and home-canned pickles, vegetables, or fruits sold under this rule must comply with the following:

(1) Each batch must be measured by a pH meter or a water activity meter and shall have a finished equilibrium pH value of 4.60 or lower or a water activity value of 0.85 or less.

(2) Each container that is sold or offered for sale must contain the date the food was processed and canned.

i. The cottage food producer must provide batch testing records to the regulatory authority upon request, including at the point of sale.

j. Cottage food shall not be offered for sale in a food establishment except in a temporary food establishment, provided that the temporary food establishment is operated by the cottage food producer

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and the cottage food is offered for sale in a packaged form and labeled in accordance with paragraph 30.13(1) “g.”

30.13(2) Compliance with the cottage food exemption provided in this rule does not represent compliance with federal law.

This rule is intended to implement Iowa Code chapter 137F as amended by 2022 Iowa Acts, House File 2431.

ITEM 18. Renumber subrules **31.1(4)** to **31.1(17)** as **31.1(5)** to **31.1(18)**.

ITEM 19. Adopt the following **new** subrule 31.1(4):

31.1(4) *Homemade food items prepared in a licensed home food processing establishment.* Section 3-201.11 is amended to allow homemade food items that are eligible for resale and are prepared, packaged, and labeled pursuant to 481—Chapter 34 to be offered for human consumption in a food establishment.

ITEM 20. Amend renumbered subrule 31.1(16) as follows:

31.1(16) *Nonprofit exception for temporary events.* Nonprofit organizations that are licensed as temporary food establishments may serve non-time/temperature control for safety food from an unapproved source for the duration of the event. This does not include home-canned pickles, vegetables, or fruits produced in accordance with Iowa Code section 137F.20 as enacted by 2022 Iowa Acts, House File 2431, section 10.

ITEM 21. Amend subrule 31.2(3) as follows:

31.2(3) *Stop sale.* Any article of food that is adulterated or misbranded when introduced into commerce may be embargoed until such a time as the adulteration ~~of~~ or misbranding is remedied or the product is destroyed. The action is immediate, but the licensee may appeal the decision following the process outlined in ~~rule rules~~ rules 481—30.11(10A,137C,~~137D~~,137F) and 481—34.14(137D).

ITEM 22. Amend subrule 31.2(5) as follows:

31.2(5) *Adulterated food.* See ~~rule rules~~ rules 481—31.3(~~137D~~,137F) and 481—34.5(137D).

ITEM 23. Amend rule 481—31.3(137D,137F), parenthetical implementation statute, as follows:

481—31.3(~~137D~~,137F) Adulterated food and disposal.

ITEM 24. Amend paragraph **31.5(2)“i”** as follows:

i. Approved food source. All food supplies shall come from a commercial manufacturer or an approved source. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant or home food processing establishment is prohibited. Transport vehicles used to supply food products are subject to inspection and shall protect food from physical, chemical and microbial contamination. Cottage foods may be offered for sale in a temporary food establishment if the temporary food establishment is operated by the cottage food producer and the cottage food is offered for sale in a packaged form and labeled pursuant to 481—paragraph 30.13(1) “g.”

[Filed 9/15/22, effective 11/9/22]

[Published 10/5/22]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6569C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to home food processing establishments

The Inspections and Appeals Department hereby rescinds Chapter 34, “Home Bakeries,” and adopts a new Chapter 34, “Home Food Processing Establishments,” Iowa Administrative Code.

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Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 10A.104(5) and 137D.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 2431.

Purpose and Summary

This rule making implements 2022 Iowa Acts, House File 2431. The legislation defines “home food processing establishment” and expands opportunities for sale of homemade food items through the home food processing establishment license, formerly the home bakery license. The legislation also defines “cottage food” and exempts cottage food from state licensing and inspection.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6454C**. Public comments were received from the Institute for Justice and Iowa Restaurant Association.

The Institute for Justice commented that expressly excluding raw agricultural commodities from the definition of “homemade food item” in the proposed rules suggests that raw agricultural commodities cannot be sold from the home with or without a home food processing establishment license, and thus suggested removing “raw agricultural commodity” from the exclusions in the definition. The Institute for Justice also suggested that, with respect to homemade food item disclosures on the application, the Department either remove the requirement and state on the application all items that are prohibited or require home food processors to notify the Department of new food items that they intend to sell, rather than requiring Department approval through the application process. Notably, the rule’s requirement that processors update their applications with new food items that they intend to sell is a notice process and requires no additional Department approval, and thus the practice contemplated by the rule as proposed is the same as suggested by the Institute for Justice.

The Institute for Justice also commented that the complete prohibition of pets in food processing or storage areas was unreasonable and requested exclusion only at the time of processing. It noted that the potential for requiring dedicated refrigeration was burdensome and should be removed. It also suggested requiring that food and ingredients be obtained from an “approved source” rather than an “approved facility” and suggested that the requirement that water be obtained from “an approved and safe source” be further defined.

Opposing public commentary was received related to made-to-order foods and food safety training. The Institute for Justice commented that it found the exclusion of made-to-order foods and the food safety training requirement to be unsupported by the legislation and requested that both be removed. The Iowa Restaurant Association, on the other hand, noted its extreme concern that 2022 Iowa Acts, House File 2431, would lead the members of the public to believe they can legally run restaurants out of their homes without the safety, sanitation, and inspection requirements of a licensed food establishment, and thus appreciated that the distinction between a home food processing establishment and a licensed food establishment was specified through such rules as the made-to-order foods prohibition. It requested that “the definition of ‘made-to-order food’ remains as written and the proposed limitations to home businesses remain in place.” It also commented that it appreciated the food safety training requirement, although it would prefer home food processing establishments be required to have a certified food protection manager, as is required for licensed food establishments.

In response to these comments, the following changes were made:

- The Department clarified that although a raw agricultural commodity is not included in the definition of “homemade food item,” a raw agricultural commodity (other than raw bean or seed sprouts)

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

requires no license by the Department for sale and may be sold by home food processing establishments even though it is not a homemade food item.

- The Department revised the prohibition against dogs, cats, or other pets and animals being present in rooms where food is being processed or stored even when homemade food items are not being produced and now requires exclusion only at the time of processing or packaging.

- The Department revised the statement that dedicated refrigeration may be required for homemade food items “if deemed necessary by the regulatory authority” and now makes clear that dedicated refrigeration may be required only if shared refrigeration equipment is inadequate to maintain safe temperature control including safe cooling temperatures, prevent cross contamination, prevent allergen cross contact, and protect food from other sources of contamination.

- The Department clarified that foods and ingredients shall be obtained from an “approved source” rather than an “approved facility.”

In addition, one nonsubstantive change from the Notice was made in subrule 34.11(1).

Adoption of Rule Making

This rule making was adopted by the Department on September 15, 2022.

Fiscal Impact

Implementation of 2022 Iowa Acts, House File 2431, and these rules will require modifications to the Department’s online licensing and inspection system and website. The Department anticipates one-time IT development costs in the amount of \$60,000 for these tasks. Implementation of these administrative rules is based on the Department’s current resources. The Department anticipates an approximate 5 percent increase in its current workload to accommodate additional inspections, complaint response, and compliance-related activities.

The Food and Consumer Safety Bureau currently has 21 Environmental Specialist full-time equivalent (FTE) positions to conduct inspections in 63 of the 99 counties in Iowa, with an inventory of over 12,000 establishments. The anticipated increase in the workload for inspections, complaint response, and compliance-related activities is expected to be 5 percent over the current workload. The Department anticipates that its currently allocated FTE positions are insufficient to appropriately absorb the increased workload, and one additional Environmental Specialist FTE position will be necessary to implement these changes. The cost of one Environmental Specialist FTE position is \$85,000. The Department also currently has .5 Environmental Specialist Senior FTE position dedicated to provide regulatory guidance to home food processing establishments, cottage food producers, local contracting health departments, and Iowa State University Extension. An additional .5 FTE position is anticipated to be required to appropriately absorb the increase in demand for technical assistance and to provide regulatory guidance to industry, home-based food producers, and local contracting public health departments. The cost of .5 Environmental Specialist Senior FTE position is \$50,000.

The Department anticipates that individuals seeking home food processing establishment licenses may double in comparison to current home bakery licenses, from approximately 400 license holders to approximately 800 license holders. Iowa Code section 137D.2 requires the Department to collect a \$50 fee for the cost of the license.

Jobs Impact

After analysis and review of this rule making, there may be a positive impact on jobs through increased opportunity for self-employment. This rule making, in conjunction with the authorizing legislation (2022 Iowa Acts, House File 2431), expands current opportunities for sales of homemade food items through the home food processing establishment license and exempts cottage food from state licensing and inspection requirements.

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Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making action is adopted:

Rescind 481—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34
HOME FOOD PROCESSING ESTABLISHMENTS

481—34.1(137D) Definitions. As used in this chapter, unless the context otherwise requires:

“Acidified foods” means low-acid foods to which an acid or high-acid food is added. Acidified foods have a water activity (a_w) greater than 0.85 and have a finished equilibrium pH of 4.60 or below. These foods may be called or may purport to be “pickles” or “pickled.”

“Active water” or *“water activity”* or *“(a_w)”* means the measured free moisture in a food. The quotient of the water vapor pressure of the food divided by the vapor pressure of pure water at the same temperature provides the measured free moisture in the food.

“Adulterated” means the same as stated in the Federal Food, Drug and Cosmetic Act, Section 402.

“Allergen cross contact” means the unintentional incorporation of a food allergen into a food.

“Contractor” means a municipal corporation, county, or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137D. A list of contractors is maintained on the department's website.

“Cross contamination” means the inadvertent transfer of bacteria or other contaminants from one surface, substance, etc., to another, especially because of unsanitary handling procedures.

“Demonstrate control” means the ability to provide clear and convincing evidence that a home food processing establishment has implemented written standard processes and practices that are intended to control food safety hazards including but not limited to standardized recipes, standard operating procedures, personal hygiene standards, temperature monitoring records, equipment calibration records, production or batch records, sanitation records, predefined corrective actions, training documents, distribution records, and receiving records.

“Department” means the department of inspections and appeals.

“Equilibrium pH” means the final pH measured in a food after all the components of the food have achieved the same acidity.

“Fermentation” means a metabolic process in which an organism converts a carbohydrate, such as starch or a sugar, into an alcohol or an acid. For example, yeast performs fermentation by converting sugar into alcohol. Bacteria perform fermentation by converting carbohydrates into lactic acid.

“Fish” means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

“Food” means the same as defined in Iowa Code chapter 137F.

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“Food contact surface” means a surface of equipment or utensil with which food normally comes into contact; or a surface of equipment or utensil from which food may drip, drain, or splash into a food or onto a surface normally in contact with food.

“Game animal” means an animal, the products of which are food, that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301.2 or as poultry or fish.

1. “Game animal” includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

2. “Game animal” does not include ratites.

“HACCP plan” means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

“High-acid food” means a food that has an equilibrium pH of 4.60 or lower without the addition of an acid.

“Home food processing establishment” means a business on the premises of a residence in which homemade food items are produced for sale or resale, for consumption off the premises, if the business has gross annual sales of less than \$50,000. However, “home food processing establishment” does not include a residence in which food is prepared to be used or sold by churches, fraternal societies, charitable organizations, or civic organizations.

“Homemade food item” means a food that is produced and, if packaged, packaged in a home food processing establishment. “Homemade food item” includes food that is not time/temperature control for safety food but does not include such food if it is produced and sold under Iowa Code section 137F.20. Homemade food items do not include the following:

1. Unpasteurized fruit or vegetable juice;
2. Raw sprout seeds;
3. Foods containing game animals;
4. Fish or shellfish;
5. Alcoholic beverages;
6. Bottled water;
7. Packaged ice;
8. Consumable hemp products;
9. Food that will be further processed by a food processing plant or another home food processing establishment;
10. Time/temperature control for safety food packaged using a reduced oxygen packaging method;
11. Milk or milk products regulated under Iowa Code chapters 192 and 194;
12. Meat or meat food products, and poultry or poultry products regulated under Iowa Code chapter 189A, except for any of the following products when sold directly to the end consumer:
 - Poultry, poultry byproduct, or poultry food product if the producer raised the poultry pursuant to the exemption set forth in 9 CFR 381.10(c)(1) limiting the producer to slaughtering not more than one thousand poultry during the calendar year;
 - Poultry, poultry byproduct, or poultry food product if the poultry is from an inspected source exempted pursuant to 9 CFR 381.10(d); or
 - Meat, meat byproduct, or meat food product if the meat is from an inspected source exempted pursuant to 9 CFR 303.1(d); or
13. A raw agricultural commodity. Other than raw bean or seed sprouts, raw agricultural commodities do not require a license issued by the department to sell and may be sold by home food processing establishments, although they are not homemade food items.

“Low-acid canned food” means a thermally processed low-acid food packaged in a hermetically sealed container.

“Low-acid food” means any food, other than alcoholic beverages, with a pH greater than 4.60 and (a_w) greater than 0.85.

“Made-to-order food” means foods that are customarily provided by restaurants, snack bars, cafeterias or catering operations that are regularly prepared immediately upon an order; promptly

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served, delivered, or otherwise provided to a consumer; and intended for immediate consumption. Made-to-order food does not include meal kits, foods that have been prepared and then cooled, or other packaged foods that are provided to the consumer in a refrigerated or frozen state.

“Major food allergen” means milk, egg, fish (such as bass, flounder, or cod), crustacean shellfish (such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, soybeans, and sesame; or a food ingredient that contains protein derived from these foods.

“Packaged” means bottled, canned, cartoned, bagged, or wrapped. “Packaged” does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer, by a food employee, upon consumer request.

“pH” means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity, and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

“Produce” means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, freezing, dehydrating, growing, raising, or other process. “Produce” does not include the following preparation methods:

1. Low-acid canning;
2. Acidification;
3. Curing food; or
4. Smoking for preservation rather than flavor enhancement.

“Raw agricultural commodity” means any food in its raw or natural state, including all fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

“Ready-to-eat food” means any food that is normally eaten in its raw state or any other food, including a processed food, for which it is reasonably foreseeable that the food will be eaten without further processing that would significantly minimize biological hazards.

“Recall” means an action taken when a food producer takes a product off the market because there is reason to believe the product may cause consumers to become ill. In some situations, government agencies may request a food recall. Food recalls may happen for many reasons, including but not limited to:

1. Discovery of organisms, including bacteria such as Salmonella or parasites such as Cyclospora;
2. Discovery of foreign objects such as broken glass or metal; or
3. Discovery of a major allergen that does not appear on the product label.

“Reduced oxygen packaging” means reducing the amount of oxygen in a package by removing oxygen, displacing oxygen and replacing it with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21 percent at sea level). Reduced oxygen packaging includes vacuum packaging, modified atmosphere packaging, controlled atmosphere packaging, cook chill packaging, and sous vide packaging.

“Revoke” means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137D. The entire application process, including the payment of applicable license fees, shall be repeated to regain a valid license following a revocation.

“Shellfish”

1. “Crustacean shellfish” means crab, lobster and shrimp.
2. “Molluscan shellfish” means any edible species of oysters, clams, mussels, or scallops.

“Special dietary use food” includes a food that contains an artificial sweetener, except when specifically and solely used for achieving a physical characteristic in the food that cannot be achieved with sugar or other nutritive sweetener. In addition, “special dietary use food” means a food that is used for the following:

1. Supplying particular dietary needs that exist by reason of a physical, physiological, pathological, or other condition including but not limited to the conditions of diseases, convalescence, pregnancy, lactation, allergic hypersensitivity to food, underweight, and overweight;

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2. Supplying particular dietary needs that exist by reason of age including but not limited to the ages of infancy and childhood; or

3. Supplementing or fortifying the ordinary or usual diet with any vitamin, mineral, or other dietary property. Any such particular use of a food is a special dietary use, regardless of whether such food also purports to be or is represented for general use.

“*Sprouts*” means seeds or beans used to grow sprouts that are harvested with their seed or root intact.

“*Standardized recipe*” means a recipe that has been tried, adapted, and retried several times for use by a given food service operation and has been found to produce the same good results and yield every time when the exact procedures are followed with the same type of equipment and same quantity and quality of ingredients. At a minimum, a standardized recipe includes the recipe name, listing of each ingredient, a measurement of each ingredient, equipment and utensils used, preparation instructions, and procedures to ensure the safety of the food.

“*Suspend*” means to render a license issued under Iowa Code chapter 137D invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

“*Time/temperature control for safety*” or “*TTCS*” means a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation. TTCS food does not include foods that have an equilibrium pH less than 4.60 or an active water (a_w) content below 0.85. Examples of TTCS foods include:

1. Animal food that is raw or heat-treated.
2. Plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes, or garlic-in-oil mixtures.

“*Traceback*” means to determine and document the distribution and production chain, and the source(s) of a product that has been implicated in a foodborne illness investigation.

481—34.2(137D) Licensing.

34.2(1) *Application for license.* A person shall not operate a home food processing establishment until a license has been obtained from the department. Application for a license shall be made on a form furnished by the department containing the name of the business, name of the owner, physical address of the business, and list of all homemade food items the home food processing establishment intends to prepare. Applications shall be completed using the department’s online application system unless extenuating circumstances exist that prevent the applicant from completing the online application. Paper applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from the department’s contractors. An application for a license shall be submitted 30 days prior to the anticipated opening of the home food processing establishment.

34.2(2) *Homemade food item disclosure.* Homemade food items not listed on the application shall not be sold or distributed. New homemade food items may be added to an application at any time using the online application system or by submission of a paper form to the department.

34.2(3) *Transferability.* A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license.

34.2(4) *Refunds.* License fees are refundable only if the license is surrendered to the department prior to the effective date of the license. License fees are not refundable for a new home food processing establishment if an inspection has occurred.

34.2(5) *Expiration and renewal.* A home food processing establishment license, unless sooner suspended or revoked, shall expire one year after the application for license is approved by the department. A home food processing establishment license shall be renewed annually through the department’s online registration system, accompanied by the required fee, prior to expiration.

34.2(6) *Renewal 60 days or more after expiration.* A delinquent license shall only be renewed if application for renewal is made within 60 days of expiration of the license. If a delinquent license is not renewed within 60 days, an establishment shall apply for a new license and meet all of the requirements for an initial license. An establishment that has not renewed the license within 60 days of the expiration

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of the license shall be closed by the department or a contractor. An establishment shall not be reopened until a new license has been submitted and approved.

34.2(7) Documentation of gross sales. The license holder shall maintain documentation of annual gross sales of homemade food items. The documentation shall be provided to the regulatory authority upon request. The documentation submitted by the license holder will be kept confidential. Documentation shall include at least one of the following:

- a. A copy of the establishment's business tax return;
- b. Four quarters of gross sales of homemade food items;
- c. A letter from an independent tax preparer; or
- d. Other records documenting annual gross sales of homemade food items.

34.2(8) Returned payments. The department will attempt to redeem a payment submitted for an establishment that is not honored by the bank on which it is drafted. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored payment. If the department does not receive payment, the establishment will be operating without a valid license.

481—34.3(137D) Physical facilities and equipment.

34.3(1) The floors, walls, ceilings, utensils, equipment, and supplies in the food processing and storage areas, and all vehicles used in the transportation of homemade food items, shall be maintained clean and in good repair.

34.3(2) Outer openings shall be protected by tight fitting doors, windows, or screens.

34.3(3) Dogs, cats, or other pets and animals shall be excluded from entering rooms where food is being processed or packaged.

34.3(4) Persons unnecessary to the production of homemade food items may not be allowed in food processing areas while homemade food items are exposed or being produced.

34.3(5) Adequate lighting and ventilation shall be available in all areas where food is processed or stored.

34.3(6) An establishment shall have an adequate supply of hot and cold potable water under pressure from an approved and safe source. In addition:

- a. There shall be no direct or indirect connection of safe and unsafe water;
- b. If the residence is not served by a public water system, the water shall be tested at least annually for nitrates and coliforms;
- c. In the event a water test shows coliforms are present or nitrates are at an unsafe level, the home food processing establishment shall cease operations and notify the regulatory authority. The home food processing establishment may not resume operations until approved by the regulatory authority; and
- d. In the event a home food processing establishment's water source is under a water advisory indicating the water may be unsafe to consume, the home food processing establishment shall not produce homemade food items until the advisory is lifted.

34.3(7) There shall be a conveniently located sink in each food processing area that is maintained clean and accessible for handwashing during production and packaging. The sink shall be supplied with hot and cold running water, hand soap, and sanitary towels.

34.3(8) An establishment shall have adequate equipment, such as a sink or dishwasher, to wash, rinse, and sanitize utensils.

34.3(9) An establishment shall have proper and conveniently located toilet facilities, equipped with a hand-washing sink, complete with hot and cold potable water under pressure and hand soap. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near the hand-washing sink.

34.3(10) All waste and waste water produced by the home food processing establishment shall be disposed of in a sanitary manner in compliance with applicable laws. In the event the home food processing establishment has a waste backup, the home food processing establishment shall cease operation and notify the regulatory authority. The home food processing establishment may not resume preparation of homemade food items until approved by the regulatory authority.

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34.3(11) All garbage and refuse shall be kept in containers and removed from the premises regularly to eliminate insects and rodents, offensive odors, or other health hazards. Garbage and refuse containers shall be durable, easy to clean, insect- and rodent-resistant, and of material that neither leaks nor absorbs liquid.

34.3(12) Food processing and storage areas shall be free of pests. Pesticides, if used, shall be approved for use in commercial food establishments, clearly labeled, and used as directed by the manufacturer.

34.3(13) Hazardous chemicals or other toxic materials shall be stored, applied and used as directed by the manufacturer in a manner that protects food, equipment, and food contact surfaces from contamination.

34.3(14) Refrigeration design and capacity shall be adequate to maintain safe temperature control including safe cooling temperatures, prevent cross contamination, prevent allergen cross contact, and protect food from other sources of contamination. Dedicated refrigeration may be required for homemade food items if shared refrigeration equipment is inadequate to maintain the food safety required by this rule.

34.3(15) All refrigeration units shall be equipped with an accurate thermometer.

34.3(16) Appropriate thermometers shall be used to accurately measure the internal temperature of food during processing and storage.

34.3(17) All food contact surfaces shall be intended for use with food, made of safe materials, easy to clean, smooth, nonabsorbent, and noncorrosive.

481—34.4(137D) Management and personnel.

34.4(1) *Person in charge.* There shall be a person in charge of operations during all hours of food processing who has a thorough understanding of food safety principles and is able to demonstrate control over food safety hazards including:

- a. Time/temperature controls for cooking, hot holding, cooling, cold holding, and reheating foods;
- b. Cross contamination during storage and preparation;
- c. Major food allergens and allergen cross contact;
- d. Sanitation of food contact surfaces;
- e. Food handling, hygienic practices, and communicable diseases;
- f. Receiving and distribution; and
- g. If applicable, pH and (a_w).

34.4(2) *Food safety training.* The person in charge shall attend a food safety training course approved by the department and provide proof of attendance prior to the issuance of a home food processing establishment license.

34.4(3) *Exclusions from handling food.* Food handlers shall be excluded from handling food, utensils, or packaging materials in the following instances:

- a. If they are diagnosed with a communicable or contagious disease that can be transmitted through food;
- b. If they have experienced diarrhea or vomiting in the past 24 hours;
- c. If they are jaundiced;
- d. If they have a sore throat with a fever; or
- e. If they have exposed sores or infected wounds on their hands or arms.

34.4(4) *Hygienic practices.*

a. All food handlers must keep themselves and their clothing clean, hair must be effectively restrained, and hands must be washed as often as necessary to protect food and food contact surfaces from contamination;

b. Ready-to-eat foods must not be handled with bare hands; and

c. Eating, drinking, and use of tobacco is prohibited in food processing areas while homemade food items are exposed or being produced.

481—34.5(137D) Receiving, storage, and distribution.

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34.5(1) Receiving. All foods and ingredients shall be obtained from an approved source, and those foods shall have been produced in compliance with applicable law. Honey from an unlicensed establishment and eggs from the home food processing establishment's own flock may be used in the preparation of homemade food items. All food shall be received in sound condition; at safe temperatures; free from spoilage, filth, or other contamination; unadulterated; and safe for human consumption.

34.5(2) Storage. Food storage areas shall be clean and located in an area which protects the food from contamination at all times. All food products shall be stored off of the floor. If removed from the original container, foods shall be stored in labeled and closed containers. Containers shall be of a material that will not cause the food to become adulterated.

34.5(3) Distribution.

a. Foods containing raw or undercooked foods of animal origin may not be sold or distributed in a ready-to-eat form.

b. Foods produced in a home food processing establishment shall not be distributed for further processing by a food processing plant or another home food processing establishment.

c. Time/temperature control for safety homemade food items shall not be distributed or otherwise provided to a business or end consumer at any temperature above 41°F.

d. A home food processing establishment shall not distribute made-to-order foods.

e. Time/temperature control for safety homemade food items shall be maintained at or below 41°F during shipping and transportation.

f. No one may produce, distribute, offer for sale, or provide adulterated food to the public. Adulterated food shall be disposed of in a reasonable manner as determined by the department.

481—34.6(137D) Food preparation and protection.

34.6(1) Food protection. Foods shall be processed, stored, and distributed in a manner that protects food from contamination, including cross contamination and contamination from the environment. Foods containing one or more major food allergens shall be processed, stored, and distributed in a manner that prevents allergen cross contact.

34.6(2) Cooking. All animal foods or foods containing animal products, if cooked, shall be cooked to an internal temperature sufficient to destroy organisms which are injurious to health. Homemade food items shall not contain raw or undercooked animal foods except for packaged raw meat or poultry items labeled with safe handling instructions informing the consumer how to safely store, prepare, and handle raw meat and poultry products in the home.

34.6(3) Holding. All time/temperature control for safety foods shall be held at an internal temperature of 41°F or less or 135°F or higher to control bacterial growth or toxin formation.

34.6(4) Cooling.

a. Time/temperature control for safety foods that have been heat-treated shall be cooled from 135°F to 70°F within two hours and from 70°F to 41°F within an additional four hours. Total cooling time shall not exceed six hours.

b. Time/temperature control for safety foods prepared with ingredients above 41°F shall be cooled to 41°F or below within four hours from the beginning of preparation.

34.6(5) Reheating.

a. Homemade food items that are time/temperature control for safety and have been previously heated and cooled shall be reheated to an internal temperature of 165°F within two hours or less.

b. Commercially processed time/temperature control for safety foods shall be reheated to 135°F within two hours or less.

34.6(6) Preparation methods.

a. High-acid foods that are produced and sold under the home food processing establishment license and that are controlled by pH such as barbeque sauce, condiments, and dressings may be produced as homemade food items if:

- (1) The products have been produced following a standardized recipe;
- (2) The product does not contain more than 10 percent low-acid food ingredients by weight;

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(3) The product recipe including the name and weight of each ingredient is submitted and approved by the regulatory authority;

(4) The equilibrium pH of each batch is tested with a calibrated pH tester designed for use with food. The pH shall be below 4.60, and the pH value shall be recorded on a production or batch record; and

(5) The product is adequately heated to destroy spoilage organisms.

b. Dried foods that are produced and sold under the home food processing establishment license that are controlled by active water (a_w) such as dehydrated or freeze-dried food may be produced as a homemade food item if:

(1) The products have been produced following a standardized recipe;

(2) The homemade food items do not contain raw or undercooked foods of animal origin;

(3) Each batch is tested for active water (a_w) or the standardized written procedure for each homemade food item has been validated to ensure the final product is at or below 0.85 (a_w).

c. Jams, jellies, preserves, and fruit butters that are produced and sold under the home food processing establishment license shall meet the standard of identity specified in 21 CFR Part 150 and be produced following a standardized recipe. The home food processing establishment shall provide documentation, such as an analysis from an accredited food laboratory, that a product meets the standard of identity when requested by the regulatory authority.

d. Nonstandardized fruit jellies shall be produced following a standardized recipe and made with 45 parts of fruit to 55 parts of sugar and concentrated to 65 percent soluble solids. The home food processing establishment shall provide documentation, such as an analysis from an accredited food laboratory, that a product meets this requirement when requested by the regulatory authority.

e. Nonstandardized nonfruit jellies shall be produced following a standardized recipe and shall have a soluble solids content of 65 percent. The home food processing establishment shall provide documentation, such as an analysis from an accredited food laboratory, that a product meets this requirement when requested by the regulatory authority.

f. Standardized sweeteners and table syrups shall meet the standard of identity specified in 21 CFR Part 168. The home food processing establishment shall provide documentation that a product meets this requirement when requested by the regulatory authority.

g. A home food processing establishment that wishes to prepare foods using fermentation shall submit a HACCP plan to the department that has been validated by a recognized process authority. A list of recognized process authorities is maintained on the department's website. A home food processing establishment shall not ferment food until the department has approved the HACCP plan.

h. A home food processing establishment shall not engage in the following processes to produce homemade food items:

(1) Low-acid canning (e.g., canned vegetables);

(2) Acidification to produce shelf-stable acidified foods (e.g., salsa, pickled vegetables, hot sauce);

(3) Curing (e.g., bacon, jerky, meat sticks); or

(4) Smoking food for preservation rather than flavor enhancement.

481—34.7(137D) Packaging and labeling requirements.

34.7(1) *Legible labels.* All required labeling information shall be legibly written or printed on the label in a location that is easily identifiable by the consumer.

34.7(2) *Labels and packaging on homemade food items, exception.* A homemade food item shall be packaged in the home food processing establishment, and all required labeling shall be affixed to the homemade food item before it is delivered to the consumer, with the exception of a homemade food item picked up by the consumer in person at the home food processing establishment. In the case of the exception, the homemade food item shall still be protected from contamination and all required labeling information shall be provided to the consumer.

34.7(3) *Raw meat and poultry products.* Packaged homemade food items that contain raw meat or poultry shall be labeled with safe handling instructions informing the consumer how to safely store, prepare, and handle raw meat and poultry products in the home.

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34.7(4) Expiration date. Refrigerated time/temperature control for safety homemade food items that are ready-to-eat foods shall be labeled with an expiration date not to exceed seven days from the date of preparation, and the date of preparation is counted as day one. Time/temperature control for safety homemade food items may be labeled with an expiration date that exceeds seven days if the expiration date has been determined to be safe by an accredited food science institution and documentation is provided to the regulatory authority upon request.

34.7(5) Contents.

a. A home food processing establishment shall label homemade food items with all of the following information:

(1) The name or license number of the home food processing establishment. If the name used on the label is different from the name stated on the issued home food processing establishment license, the license number shall be included in the labeling.

(2) The common or usual name of the food.

(3) The ingredients (including sub-ingredients) of the homemade food item in descending order of predominance by weight.

(4) The net quantity of contents (weight, volume, or numeric count).

(5) For refrigerated time/temperature control for safety foods, an expiration date based on food safety.

(6) The following statement: "This product was produced at a home food processing establishment."

(7) If the homemade food item contains one or more major food allergens, an additional allergen statement identifying each major allergen contained in the food by the common name of the allergen.

(8) Labeling statements. Labels or other marketing materials associated with homemade food items must be truthful and not misleading.

b. Claims on labels or other marketing materials associated with homemade food items that are related to the following must conform to the United States Food and Drug Administration's (FDA's) Food Labeling Guide. A link to the labeling guide may be found on the department's website or on the FDA's website.

(1) Health claims;

(2) Qualified health claims;

(3) Nutrient content claims (i.e., low sodium, high fiber, low fat, sugar free); or

(4) Structure/function claims.

c. Homemade food items labeled or marketed as a special dietary use food must conform to 21 CFR Part 105. The home food processing establishment shall provide documentation, such as a nutritional analysis by an accredited food laboratory, to the regulatory authority upon request.

d. Labels or other marketing materials shall not contain any claims that the homemade food item can be used in the diagnosis, cure, mitigation, treatment, or prevention of disease.

481—34.8(137D) Sanitation.

34.8(1) There shall be sufficient means to clean, rinse, and sanitize all multi-use food contact surfaces. Cleaners and sanitizers used for these purposes shall be intended and approved for use in a commercial food establishment.

34.8(2) All food contact surfaces shall be clean to sight and touch when not in use.

34.8(3) All food contact surfaces shall be cleaned and sanitized:

a. Between each use;

b. At least every four hours if under continuous use to control microbial growth;

c. At a frequency necessary to prevent cross contamination; and

d. At a frequency necessary to prevent allergen cross contact.

34.8(4) If chemical sanitizers are used, they shall be used according to the manufacturer directions for use and a means shall be provided for testing the proper level of chemical concentration, such as test strips designed specifically for the chemical being used.

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34.8(5) Food processing, handling, and storage areas shall be neat; clean; and free from excessive accumulation of product, dust, trash, and unnecessary articles.

481—34.9(137D) Maintenance of records by licensee.

34.9(1) A home food processing establishment shall maintain standardized recipes for each homemade food item.

34.9(2) For recall and traceback purposes, a home food processing establishment shall maintain production or batch records that include, at a minimum, product name, date of production, and date of packaging.

34.9(3) For recall and traceback purposes, a home food processing establishment shall maintain records of foods received as ingredients. Records shall include, at a minimum, the name and address of the supplier, name of the ingredient, and date received. A receipt of purchase is a sufficient record if it contains all of the required information.

34.9(4) For recall and traceback purposes, a home food processing establishment shall maintain distribution records of all homemade food items that are distributed for resale. The distribution records shall contain the product name, the name and address of the business where the homemade food items were distributed, the date distributed, the quantity distributed, and the date the homemade food item was produced.

34.9(5) A license holder whose home food processing establishment is not served by a public water system shall maintain records of annual water tests.

34.9(6) If the home food processing establishment produces homemade food items that require food safety parameters to be monitored throughout production, such as temperature, pH, or (a_w), the testing instruments shall be used as directed by the manufacturer and calibrated for accuracy according to the manufacturer's instructions. Monitoring results shall be documented as part of the batch record.

34.9(7) A license holder shall maintain all required records for a minimum of six months. All required records shall be made available for official review or copying upon request by the regulatory authority.

481—34.10(137D) Violations and enforcement.

34.10(1) All violations shall be corrected within a time frame not to exceed 90 days. The license holder shall make a written report to the regulatory authority, stating the action taken to correct the violation, within five days of correction.

34.10(2) Violation of these rules or any provision of Iowa Code chapter 137D shall be subject to a civil penalty in the amount of \$100 per violation. Each day that the violation continues constitutes a separate violation.

34.10(3) The department may employ various remedies if violations are discovered including, but not limited to:

- a. Suspension or revocation of the license;
- b. Issuance of a civil penalty;
- c. Injunction; or
- d. Issuance of an embargo, a stop-sale, or recall orders.

481—34.11(137D) Denial, suspension, or revocation of license.

34.11(1) *Denial, suspension, or revocation of a license.* Unless otherwise stated, notice of denial, suspension, or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice. The department may suspend or revoke a license issued pursuant to this chapter if either of the following occurs:

- a. The home food processing establishment does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.
- b. The license holder conducts an activity constituting a criminal offense in the home food processing establishment and is convicted of a serious misdemeanor or a more serious offense as a

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

result. A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

A deferred judgment shall be considered a conviction for purposes of this rule.

34.11(2) Immediate suspension of license. To the extent not inconsistent with Iowa Code chapters 17A and 137D and rules adopted pursuant to those chapters, the department or contractor may immediately suspend a license in cases of an imminent health hazard, as defined by chapter 8 of the 2017 FDA Food Code (the “food code”). The procedures of Iowa Code section 17A.18A and chapter 8 of the food code shall be followed in cases of an imminent health hazard.

34.11(3) Contesting denial, suspension, or revocation of license. The department’s decision to deny, suspend, or revoke a license may be contested by the adversely affected party pursuant to the provisions of rule 481—34.14(137D).

481—34.12(137D) Inspection and access to records.

34.12(1) The department shall provide for periodic inspection of a home food processing establishment, either in person or virtually through use of video technology. The inspection frequency for a home food processing establishment shall be based upon a risk assessment.

34.12(2) The inspector may enter the home food processing establishment at any reasonable hour to make the inspection. The department shall inspect only those areas related to preparing or storing food for sale. The manager or person in charge of the home food processing establishment shall afford free access to records and every part of the premises where homemade food items and ingredients are stored or prepared and shall render all aid and assistance necessary to enable the inspector to make a thorough and complete inspection.

481—34.13(137D) Public examination of records.

34.13(1) Public information. Generally, information collected by the food and consumer safety bureau and contractors is considered public information. Records are stored in computer files and are not matched with any other data system. Inspection reports are available for public viewing at iowa.safefoodinspection.com. Other information is available for public review and will be provided when requested from the department.

34.13(2) Confidential information.

a. The following are examples of confidential records:

- (1) Trade secrets and proprietary information including items such as formulations, standardized recipes, processes, policies and procedures, and customer lists;
 - (2) Health information related to foodborne illness complaints and outbreaks;
 - (3) The name or any identifying information of a person who files a complaint with the department;
- and
- (4) Other state or federal agencies’ records.

b. A party claiming that information submitted to the department contains trade secrets or proprietary information should clearly mark those portions of the submission as confidential/trade secret.

34.13(3) Other agencies’ records. For records of other state or federal agencies, the department shall refer the requester of such information to the appropriate agency.

481—34.14(137D) Appeals.

34.14(1) All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing shall be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 9.

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

34.14(2) For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule 481—9.3(10A,17A).

These rules are intended to implement Iowa Code chapter 137D as amended by 2022 Iowa Acts, House File 2431.

[Filed 9/15/22, effective 11/9/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6548C

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to travel insurance

The Insurance Division hereby amends Chapter 10, "Insurance Producer Licenses and Limited Licenses," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 515K.10 as enacted by 2022 Iowa Acts, House File 2540, section 10.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 2540.

Purpose and Summary

The adopted amendments update Chapter 10 to reflect changes made in 2022 Iowa Acts, House File 2540, regarding travel insurance.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 13, 2022, as **ARC 6402C**.

A commenter suggested deletion of the second sentence in Item 22. The Division considered and accepted the change. The Division rejected a suggestion to insert new language in Item 22 regarding designated responsible producers as not permissible pursuant to 2022 Iowa Acts, House File 2540.

In Item 22, the following sentence was deleted: "All provisions of this chapter apply to travel insurance producers except those specific provisions of Iowa Code chapter 515K as enacted by 2022 Iowa Acts, House File 2540."

Adoption of Rule Making

This rule making was adopted by Douglas Ommen, Iowa Insurance Commissioner, on September 12, 2022.

Fiscal Impact

The Division is unable to determine how many new licensees, and resulting licensing fees, this rule making may result in.

INSURANCE DIVISION[191](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule 191—10.1(522B) as follows:

191—10.1(515K,522B) Purpose and authority.

10.1(1) No change.

10.1(2) These rules are authorized by Iowa Code section 505.8 and are intended to implement Iowa Code chapters 252J, 272D, 515K and 522B.

ITEM 2. Amend rule 191—10.2(522B), parenthetical implementation statute, as follows:

191—10.2(515K,522B) Definitions.

ITEM 3. Amend rule 191—10.3(522B), parenthetical implementation statute, as follows:

191—10.3(515K,522B) Requirement to hold a license.

ITEM 4. Amend rule 191—10.4(522B), parenthetical implementation statute, as follows:

191—10.4(515K,522B) Licensing of resident producers.

ITEM 5. Amend rule 191—10.5(522B), parenthetical implementation statute, as follows:

191—10.5(515K,522B) Licensing of nonresident producers.

ITEM 6. Amend rule 191—10.6(522B), parenthetical implementation statute, as follows:

191—10.6(515K,522B) Issuance of license.

ITEM 7. Amend rule 191—10.8(522B), parenthetical implementation statute, as follows:

191—10.8(515K,522B) License renewal.

ITEM 8. Amend rule 191—10.9(522B), parenthetical implementation statute, as follows:

191—10.9(515K,522B) License reinstatement.

INSURANCE DIVISION[191](cont'd)

ITEM 9. Amend rule 191—10.10(522B), parenthetical implementation statute, as follows:

191—10.10(515K,522B) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

ITEM 10. Amend rule 191—10.12(522B), parenthetical implementation statute, as follows:

191—10.12(515K,522B) Change in name, address or state of residence.

ITEM 11. Amend rule 191—10.13(522B), parenthetical implementation statute, as follows:

191—10.13(515K,522B) Reporting of actions.

ITEM 12. Amend rule 191—10.14(522B), parenthetical implementation statute, as follows:

191—10.14(515K,522B) Commissions and referral fees.

ITEM 13. Amend rule 191—10.15(522B), parenthetical implementation statute, as follows:

191—10.15(515K,522B) Appointments.

ITEM 14. Amend rule 191—10.16(522B), parenthetical implementation statute, as follows:

191—10.16(515K,522B) Appointment renewal.

ITEM 15. Amend rule 191—10.17(522B), parenthetical implementation statute, as follows:

191—10.17(515K,522B) Appointment terminations.

ITEM 16. Amend rule 191—10.18(522B), parenthetical implementation statute, as follows:

191—10.18(515K,522B) Licensing of a business entity.

ITEM 17. Amend rule 191—10.20(522B), parenthetical implementation statute, as follows:

191—10.20(515K,522B) Violations and penalties.

ITEM 18. Amend rule 191—10.21(252J,272D), parenthetical implementation statute, as follows:

191—10.21(252J,272D,515K) Suspension for failure to pay child support or state debt.

ITEM 19. Amend rule 191—10.25(522B), parenthetical implementation statute, as follows:

191—10.25(515K,522B) Forms.

ITEM 20. Amend rule 191—10.26(522B), parenthetical implementation statute, as follows:

191—10.26(515K,522B) Fees.

ITEM 21. Amend rule 191—10.51(522A,522E), parenthetical implementation statute, as follows:

191—10.51(515K,522A,522E) Limited licenses.

ITEM 22. Adopt the following **new** subrule 10.51(3):

10.51(3) Limited licenses for persons who sell travel insurance. Travel insurance is an authorized limited line of authority in this state. Travel retailers operating under Iowa Code section 522B.3 and registering with a limited lines travel insurance producer are not required to be licensed as an insurance producer.

[Filed 9/12/22, effective 11/9/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6547C**INSURANCE DIVISION[191]****Adopted and Filed****Rule making related to review of rules**

The Insurance Division hereby amends Chapter 35, “Accident and Health Insurance,” Chapter 40, “Health Maintenance Organizations,” Chapter 55, “Licensing of Public Adjusters,” Chapter 58, “Third-Party Administrators,” Chapter 71, “Small Group Health Benefit Plans,” Chapter 101, “Burial Sites and Cemeteries,” and Chapter 102, “Iowa Retirement Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 509.13, 510.9, 513B.1, 514B.23, 514C.4, 522C.3, 523D.10 and 523I.207.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 509, 510, 513B, 514B, 514C, 522C, 523D and 523I.

Purpose and Summary

This rule making is the result of the Division’s ongoing review of rules.

Rule 191—35.21(509) is updated to be consistent with Iowa Code section 509.1(1), which permits the Commissioner to examine discretionary and nondiscretionary groups to ensure they provide health care benefits that are valuable for Iowa consumers. As health care costs and insurance premiums continue to rise from year to year, the Division has seen an influx of these types of groups. The Division needs the authority to appropriately regulate them and protect Iowa consumers.

The phrase “autism spectrum disorders” is updated as “autism spectrum disorder” in rule 191—35.40(514C) to conform to 2022 Iowa Acts, House File 2167.

Subrule 40.12(4) is rescinded since the fee required by this subrule is no longer needed because health maintenance organizations (HMOs) are covered by the Iowa Insurance Guaranty Association pursuant to Iowa Code section 507C.3(7). This fee has not been collected since HMOs were added to the insurers included under Iowa Code section 507C.3.

New subrule 55.20(7) explains how the examination fee for public adjusters is set. This is the same method used for other licensees under the Division’s authority.

The amendments to Chapter 58 regarding third-party administrators correspond to the standard for insurance producers under Iowa Code section 522B.11(1). The amendments enable the Division to have more effective oversight of third-party administrators.

A statutory reference is corrected in subrule 71.14(9).

The amendments to Chapters 101 and 102 correct references and update language.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 13, 2022, as **ARC 6408C**. No public comments were received. A change from the Notice has been made to amend the definition of “autism spectrum disorders” to reflect changes made in 2022 Iowa Acts, House File 2167, section 5. Subsequent items have been renumbered.

Adoption of Rule Making

This rule making was adopted by Douglas Ommen, Iowa Insurance Commissioner, on September 12, 2022.

INSURANCE DIVISION[191](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule 191—35.21(509) as follows:

191—35.21(509) Review of certificates issued under group policies.

35.21(1) Nondiscretionary groups. A certificate of coverage delivered in this state under a group life or accident and health insurance policy issued to a group substantially as described in Iowa Code section 509.1, subsections (1) to (7), shall sections 509.1(1) to 509.1(7) may not be reviewed by the commissioner if the policy is issued outside of this state.

35.21(2) Discretionary groups. A certificate of coverage delivered in this state under a group life or accident and health insurance policy issued to a group not substantially as described in Iowa Code section 509.1, subsections (1) to (7), shall sections 509.1(1) to 509.1(7) may not be reviewed by the commissioner if the policy is issued outside of this state and if the policy is issued or offered in a state which has reviewed and approved the policy under a statute substantially similar to Iowa Code section 509.1(8).

ITEM 2. Strike “autism spectrum disorders” wherever it appears in rule **191—35.40(514C)** and insert “autism spectrum disorder” in lieu thereof.

ITEM 3. Amend subrule **35.40(2)**, definition of “Autism spectrum disorders,” as follows:

“Autism spectrum disorders disorder” means the following neurological disorders as defined under the following diagnostic classes within the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, edition DSM-5: a mental health condition that meets the diagnostic criteria for such disorder as published in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders as published by the American Psychiatric Association.

1. ~~Autistic disorders. Diagnostic code 299.00.~~
2. ~~Rett’s Disorder. Diagnostic code 299.80.~~
3. ~~Childhood Disintegrative Disorder. Diagnostic code 299.10.~~
4. ~~Asperger’s Disorder. Diagnostic code 299.80.~~
5. ~~Pervasive Developmental Disorder NOS. Diagnostic code 299.80.~~

INSURANCE DIVISION[191](cont'd)

ITEM 4. Rescind subrule **40.12(4)**.

ITEM 5. Adopt the following **new** subrule 55.20(7):

55.20(7) The fee for an examination may be set by the outside testing service under contract with the division and must be approved by the division.

ITEM 6. Amend subrule 58.3(2) as follows:

58.3(2) Application.

a. All third-party administrators wishing to do business in Iowa shall electronically file a completed application and any required attachments in the form prescribed by the division. The division may require the applicant to identify the following persons affiliated with the third-party administrator: owners with 10 percent interest or voting interest, and any partners, officers, directors, members or managers of the business entity. The application shall be accompanied by a filing fee as stated in rule 191—58.18(510).

b. All third-party administrator applicants shall submit a completed biographical affidavit, in a form prescribed by the commissioner, for all individuals identified in paragraph 58.3(2) “a.”

~~*b. c.*~~ Application for resident third-party administrator certificate of registration.

(1) and (2) No change.

~~*e. d.*~~ Application for nonresident third-party administrator certificate of registration.

(1) to (3) No change.

~~*d. e.*~~ The division may refuse to issue a certificate of registration to an applicant as provided in Iowa Code section 510.21, or may refuse to issue a certificate of registration if the division determines that any of the grounds set forth in rule 191—58.16(510) exist with respect to the third-party administrator.

~~*e. f.*~~ If an application is approved, the division will electronically deliver to the third-party administrator a certificate of registration.

ITEM 7. Amend subrule 58.16(3) as follows:

58.16(3) The commissioner may deny, suspend, revoke, or not renew a third-party administrator’s certificate of registration if the commissioner finds that the third-party administrator:

a. Has violated or failed to comply with any lawful rule insurance laws or any regulation, subpoena, or order of the commissioner or any provision of the insurance laws of this state the commissioner of another state;

b. No change.

c. Has filed an provided incorrect, misleading, incomplete, or materially untrue information in the license application or any necessary forms with the division that contain fraudulent information or omissions;

d. No change.

e. Has provided insufficient explanation, as determined by the commissioner, of the circumstances surrounding evidence that an owner, principal, officer, partner, manager, director, stockholder, trustee, employee of the third-party administrator any person identified in the application of the third-party administrator pursuant to paragraph 58.3(2) “a” or the third-party administrator itself:

(1) Has had an insurance license, or its equivalent, or an application for an insurance such license in any state denied, suspended, revoked, or not renewed in any other state, province, district, or territory;

(2) and (3) No change.

(4) Has been charged, tried, convicted of, or had a judgment withheld or deferred with respect to, pled guilty or no contest to, or is currently charged with any felony or misdemeanor;

(5) Has ever been named or involved as a party in an administrative proceeding, including with any state insurance department, federal agency, or a Financial Industry Regulatory Authority (FINRA) sanction or arbitration proceeding regarding any professional or occupational license or registration.

f. to m. No change.

INSURANCE DIVISION[191](cont'd)

ITEM 8. Amend subrule 71.14(9) as follows:

71.14(9) All carriers shall provide benefits in the standard health benefit plan for the cost associated with equipment, supplies, and education for the treatment of diabetes pursuant to Iowa Code section ~~514C.14~~ 514C.18.

ITEM 9. Amend rule 191—101.1(523I) as follows:

191—101.1(523I) Purpose. This chapter is intended to implement and administer the provisions of Iowa Code chapter 523I ~~as amended by 2016 Iowa Acts, House File 2394~~, which regulates burial sites and cemeteries.

ITEM 10. Amend subrule 101.8(12), introductory paragraph, as follows:

101.8(12) Annual report of total return distribution method information. As part of the annual report required by Iowa Code section 523I.813 and rule ~~199—101.9(523I)~~ 191—101.9(523I), a perpetual care cemetery using the total return distribution method shall file an addendum to the annual report related to the total return distribution method, detailing the following:

ITEM 11. Amend rule 191—101.9(523I) as follows:

191—101.9(523I) Filing annual reports.

101.9(1) Annual reports filed by perpetual care cemeteries.

a. Each year between January 1 and April 30, perpetual care cemeteries shall file a complete and accurate annual report for the prior reporting period, in the form and manner required by the division. For purposes of Iowa Code section 523I.813 ~~as amended by 2016 Iowa Acts, House File 2394, section 13~~, and of this rule, “reporting period” means a calendar year.

b. No change.

101.9(2) Forms and instructions. Forms and instructions for perpetual care cemeteries filing the annual report required by Iowa Code section 523I.813 ~~as amended by 2016 Iowa Acts, House File 2394, sections 12 and 13~~, can be found on the division’s ~~Web site~~ website, www.iid.iowa.gov.

ITEM 12. Amend rule **191—Chapter 101**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523I ~~as amended by 2016 Iowa Acts, House File 2394~~.

ITEM 13. Amend rule 191—102.3(523D) as follows:

191—102.3(523D) Forms and filings.

102.3(1) Copies of all required forms and instructions are available on the ~~commissioner’s Web site~~ division’s website, www.iid.iowa.gov.

102.3(2) All filings, fees and payments shall be made as directed by the commissioner. Instructions are available at the ~~commissioner’s Web site~~ division’s website, www.iid.iowa.gov.

[Filed 9/12/22, effective 11/9/22]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6549C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to licensure fees for behavior analysts

The Board of Behavioral Science hereby amends Chapter 5, “Fees,” Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 147.80.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 147.80.

Purpose and Summary

This rule making amends behavior analyst license fees. When behavior analyst and assistant behavior analyst licensure first started, fees were set at a higher rate to pay back startup costs associated with licensing the profession. Those startup costs have been paid back. This rule making reduces the higher rate behavior analysts are currently paying for initial licensure to the same rate paid by members of the rest of the professions licensed by the Board.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 13, 2022, as **ARC 6401C**. A public hearing was held on August 2, 2022, at 9 a.m. in the Fifth Floor Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on September 8, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making action is adopted:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Amend subrule 5.3(3) as follows:

5.3(3) License fee for license to practice as a behavior analyst or assistant behavior analyst is **\$300** **\$120**. Behavior analyst and assistant behavior analyst licenses issued for less than one year shall not be subject to a renewal fee for the first renewal.

[Filed 9/13/22, effective 11/9/22]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6554C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to the center for congenital and inherited disorders

The Public Health Department hereby amends Chapter 4, "Center for Congenital and Inherited Disorders," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 136A.8 and 2022 Iowa Acts, Senate File 2345.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 136A and 2022 Iowa Acts, Senate File 2345.

Purpose and Summary

These amendments accomplish the following:

- Add definitions of "Iowa newborn screening panel," "Iowa newborn screening program," and "federal recommended uniform screening panel" (pursuant to 2022 Iowa Acts, Senate File 2345).
- Rescind language requiring State Board of Health approval to add disorders to or remove disorders from the newborn screening panel.
- Provide a fax number for the submission of refusal forms.
- Remove language establishing the newborn screening fee and describe the authority given to the State Hygienic Laboratory (SHL) to establish the newborn screening fee, pursuant to Senate File 2345.
- Describe the authority given through Senate File 2345 to the Congenital and Inherited Disorders Advisory Committee (CIDAC) to review newborn screening conditions on the federal recommended uniform screening panel (U.S. Department of Health and Human Services Recommended Uniform Screening Panel (RUSP)) to determine whether to add them to Iowa's newborn screening panel.
- Establish timelines for CIDAC's review and consideration of RUSP conditions (within 12 months of the addition of the condition to the RUSP) and for the Department to add the condition(s) to the state newborn screening panel (within 18 months of CIDAC's recommendation).
- Add a description of CIDAC membership pursuant to Senate File 2345.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 27, 2022, as **ARC 6432C**. No public comments were received. No changes from the Notice have been made.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Adoption of Rule Making

This rule making was adopted by the State Board of Health on September 14, 2022.

Fiscal Impact

This rule making may have a fiscal impact to the State of Iowa. There will be additional expenses for laboratory equipment and infrastructure to support the testing, including test supplies, education materials, and training provided to expecting parents and providers. 2022 Iowa Acts, Senate File 2345, gives authority to the SHL to establish a newborn screening fee schedule in a manner sufficient to support the newborn screening system of care. The costs of the additional jobs, equipment, supplies, trainings, and educational materials are dependent on the type of disorders added to the newborn screening panel; each disorder comes with specific testing methodology and expertise requirements, so costs are unknown until such time as the capacity of the current system and the administration, laboratory, clinical, and follow-up needs for expansion of the panel for the specific disorder(s) can be assessed.

Jobs Impact

The addition of disorders to the newborn screening panel as required by 2022 Iowa Acts, Senate File 2345, may create additional jobs for those with expertise in the disorder(s) added, such as laboratory scientists, bioinformaticians, medical geneticists, genetic counselors, and follow-up nurses.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 4.1(1) as follows:

4.1(1) Advisory committee. The center for congenital and inherited disorders advisory committee represents the interests of the people of Iowa and assists in the development of programs that ensure the availability of and access to quality genetic and genomic health care services by all residents. The advisory committee advises the director of the department of public health regarding issues related to genetics and hereditary and congenital disorders and makes recommendations about the design and implementation of the center's programs.

ITEM 2. Adopt the following **new** definitions of "Federal recommended uniform screening panel," "Iowa newborn screening panel" and "Iowa newborn screening program" in rule **641—4.2(136A)**:

"*Federal recommended uniform screening panel*" means the list of disorders for which the U.S. Department of Health and Human Services recommends states screen as part of their state newborn screening panels.

"*Iowa newborn screening panel*" or "*newborn screening panel*" means the list of disorders for which the department screens Iowa newborns.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Iowa newborn screening program*” or “*INSP*” means a program that provides screening of live-born Iowa newborns for the disorders listed on the Iowa newborn screening panel.

ITEM 3. Amend rule **641—4.2(136A)**, definitions of “Committee” and “Specialty genetics provider,” as follows:

“*Committee Advisory committee*” means the congenital and inherited disorders advisory committee (CIDAC).

“*Specialty genetics provider*” means a medical geneticist, genetic nurse, or genetic counselor.

ITEM 4. Amend paragraphs **4.3(1)“a”** and “**b**” as follows:

a. All newborns and infants born in the state of Iowa shall be screened for all congenital and inherited disorders on the Iowa newborn screening panel as specified by the center and approved by the state board of health.

b. As new disorders are recognized and new technologies and tests become available, the center shall follow protocols developed by the department in regard to the addition of disorders to or the deletion of disorders from the screening panel. ~~The state board of health shall provide final approval for the addition of disorders to or the deletion of disorders from the screening panel.~~

ITEM 5. Amend paragraph **4.3(2)“b”** as follows:

b. *Refusal of screening.* Should a parent or guardian refuse the screening, said refusal shall be documented in the infant’s medical record, and the parent or guardian shall sign the refusal of screening form. The birthing facility or attending health care provider shall submit the signed refusal of screening form to the central laboratory within six days of the refusal. The birthing facility or attending health care provider may submit refusal forms via the courier service established for the transportation of newborn screening specimen collection forms or via secure facsimile to (319)384-5116.

ITEM 6. Amend subparagraph **4.3(9)“a”(2)** as follows:

(2) Refusal. Should a parent or guardian refuse the screening, said refusal shall be documented in the infant’s medical record, and the parent or guardian shall sign the refusal of screening form. The birthing facility or attending health care provider shall submit the signed refusal form to the central laboratory within six days of the refusal. The birthing facility or attending health care provider may submit refusal forms via the courier service established for the transportation of newborn screening specimen collection forms or via secure facsimile to (319)384-5116.

ITEM 7. Amend subrule 4.3(10) as follows:

4.3(10) INSP and IMPSP fees.

a. ~~The department shall annually review and determine the fee to be charged for all activities associated with the INSP and the IMPSP. The review and fee determination shall be completed at least one month prior to the beginning of the fiscal year. The newborn screening fee is \$122. In consultation with the department, the SHL shall establish the newborn screening fee schedule in a manner sufficient to support the newborn screening system of care including, but not limited to, laboratory screening costs, short-term and long-term follow-up program costs, the newborn screening developmental fund, and the cost of the department’s newborn screening data system.~~

b. ~~The department SHL shall include as part of the INSP fee an amount determined by the committee and department to fund the provision of special medical formula and foods for eligible individuals with inherited diseases of amino acids and organic acids who are identified through the programs.~~

c. Funds collected through newborn screening fees shall be used for newborn screening program activities only.

d. Funds collected through maternal prenatal screening fees shall be used for maternal prenatal screening activities only.

e. In order to support newborn and maternal prenatal screening activities, the department shall authorize the expenditure and exchange of newborn screening and maternal prenatal screening developmental funds between the SHL (as designated fiscal agent) and the department.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~f. Upon department approval of proposed budgets, a~~ A portion of INSP and IMPSP fees shall be distributed to the department to support activities of the INSP and the IMPSP at the center for congenital and inherited disorders (CCID).

ITEM 8. Amend rules 641—4.11(136A) to 641—4.13(136A) as follows:

~~641—4.11(136A) Purpose. CIDAC represents the interests of the people of Iowa and assists in the development of programs that ensure the availability of and access to quality genetic and genomic health care services by all residents. The committee advises the director regarding issues related to genetics and hereditary and congenital disorders. A congenital and inherited disorders advisory committee (CIDAC or advisory committee) is established to assist the center for congenital and inherited disorders and the department in the development of programs that ensure the availability of and access to quality genetic and genomic health care services for all Iowans.~~

641—4.12(136A) Duties of the advisory committee. CIDAC shall perform the following duties:

4.12(1) Make recommendations about the design and implementation of the center's programs, including but not limited to:

a. The Iowa newborn screening program; including management of the Iowa newborn screening panel.

(1) The advisory committee shall assist the center for congenital and inherited disorders and the department in designating the conditions to be included in the newborn screening and in regularly evaluating the effectiveness and appropriateness of the newborn screening.

(2) Beginning July 1, 2022, the advisory committee shall ensure that all conditions included in the federal recommended uniform screening panel as of January 1, 2022, are included in the newborn screening.

(3) Within 12 months of the addition of a new condition to the federal recommended uniform screening panel, the advisory committee shall consider and make a recommendation to the department regarding inclusion of the new condition in the newborn screening panel, including the current newborn screening capacity to screen for the new condition and the resources necessary to screen for the new condition going forward.

(4) If the advisory committee recommends inclusion of a new condition, the department shall include the new condition in the newborn screening panel within 18 months of receipt of the recommendation;

b. The regional genetics consultation service;

c. The maternal prenatal screening program;

d. The neuromuscular and related genetic disorders program; and

e. The Iowa registry for congenital and inherited disorders.

4.12(2) Support the development of special projects and conferences regarding genetic and genomic health care services and issues.

4.12(3) Advocate for quality genetic and genomic health care services for all residents in the state of Iowa.

~~641—4.13(136A) Membership. The members of the advisory committee shall be appointed by the director and shall include persons with relevant expertise and interest including parent representatives. Membership will be comprised of representatives of professional groups, agencies, legislators, parents, consumers, and professional health care providers.~~

~~4.13(1) CIDAC shall be comprised of regular, ex officio, and honorary members membership.~~

a. to e. No change.

4.13(2) No change.

4.13(3) The director will appoint regular and honorary advisory committee members for three fiscal years. Reappointment of regular and honorary members shall be at the discretion of the director.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 9. Amend subrule 4.14(1) as follows:

4.14(1) Meetings of the advisory committee will be held as necessary and at the call of the director or the chairperson. There shall be a minimum of four meetings per year.

ITEM 10. Amend subparagraph **4.14(6)“b”(1)** as follows:

(1) A designee of similar standing must be able to reasonably fulfill the member's role on the advisory committee in discussions.

[Filed 9/14/22, effective 11/9/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6555C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to water treatment systems

The Public Health Department hereby rescinds Chapter 14, “Water Treatment Systems,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 714 and 2022 Iowa Acts, Senate File 2232.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 714 and 2022 Iowa Acts, Senate File 2232.

Purpose and Summary

The rescission of Chapter 14 eliminates the registration requirement at the state level for water treatment systems. On April 21, 2022, Governor Reynolds signed 2022 Iowa Acts, Senate File 2232, which strikes Iowa Code section 714.16(2)“h,” which currently states that it is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state, for which claims or representation of removing health-related contaminants are made, unless the water treatment system has been performance-tested by a third-party testing agency that has been authorized by the Department. 2022 Iowa Acts, Senate File 2232, provides that it is now unlawful for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state, for which claims or representations related to the removal of health-related contaminants are made, unless a certification body accredited by the American National Standards Institute certifies all of the claims or representations related to the removal of health-related contaminants.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 27, 2022, as **ARC 6420C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on September 14, 2022.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on January 1, 2023.

The following rule-making action is adopted:

Rescind and reserve **641—Chapter 14**.

[Filed 9/14/22, effective 1/1/23]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6583C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to general administration and public record requests

The Revenue Department hereby rescinds Chapter 5, "Public Records and Fair Information Practices," and adopts a new Chapter 5 with the same title, and amends Chapter 6, "Organization, Public Inspection," and Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.3.

Purpose and Summary

The purpose of this rule making is to update the Department's rules regarding general administration, including public records requests. This rule making clarifies and updates Chapters 5 and 6 based on

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current Departmental practice. Specifically, Item 1 rescinds Chapter 5 and replaces it with an updated and clarified Chapter 5, which reflects current Departmental policies and procedures. Item 2 amends the title of Chapter 6 because the rules related to public inspection are being moved to Chapter 5. Item 3 rescinds rule 701—6.1(17A) on establishment and organization of the Department and replaces it with a rule on the establishment of the Department. Other topics previously covered in rule 701—6.1(17A) have been moved to new rules. Item 4 adopts a new rule 701—6.2(17A) that describes the Department's mission, which was previously described in rule 701—6.1(17A). Item 5 rescinds rule 701—6.3(17A) because the content is better aligned with information in Chapter 5, which includes that content. New rule 701—6.3(17A) describes the Department's office, which was previously covered in rule 701—6.1(17A). Item 6 rescinds rule 701—6.4(17A), which was duplicative of information covered in Chapter 7, and adopts a new rule 701—6.4(17A), which identifies the Department's website. Item 7 rescinds rule 701—6.5(17A), which was duplicative of information covered in Chapter 7, and adopts a new rule 701—6.5(17A), which describes the organization of the Department and replaces information previously covered in rule 701—6.1(17A). Item 8 rescinds rule 701—6.6(422) because the information contained in it was duplicative of Iowa Code section 422.68. Item 9 rescinds rule 701—6.7(68B) because the information contained in it was duplicative of Iowa Code section 68B.4 and of rule 351—6.11(68B). Items 10 and 11, respectively, rescind rule 701—6.8(421) on disaster recovery extensions and create new rule 701—10.8(421), which covers the same information. Disaster recovery extensions are more similar to the content covered in Chapter 10, and this move will make the pertinent information easier to locate.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6452C**. No public comments were received. Minor changes from the Notice have been made to make grammatical changes for the purpose of clarity and to remove two outdated Iowa Code references.

Adoption of Rule Making

This rule making was adopted by the Department on September 16, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

REVENUE DEPARTMENT[701](cont'd)

The following rule-making actions are adopted:

ITEM 1. Rescind 701—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

701—5.1(17A,22,421,422) Definitions. As used in this chapter:

“*Confidential record*” means a record that is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include but are not limited to records or information contained in records that the department is prohibited by law from making available for examination by members of the public; records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record; and confidential state tax information and federal tax information. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Confidential state tax information*” means information that is protected from disclosure by Iowa Code sections 422.20 and 422.72. Confidential state tax information includes but is not limited to state tax returns and return information. Confidential state tax information does not include federal tax information (FTI). If confidential state tax information is contained in a record, that record may also be considered a confidential record protected by Iowa Code chapter 22.

“*Custodian*” means the department, the director of revenue, the department’s public information officer, or a person lawfully delegated authority by the department to act for the department in implementing Iowa Code chapter 22.

“*Department*” means the department of revenue.

“*Federal tax information*” or “*FTI*” means return or return information received directly from the IRS or obtained through an authorized secondary source such as Social Security Administration (SSA), federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS) or Centers for Medicare and Medicaid Services (CMS) or another entity acting on behalf of the IRS pursuant to an IRC §6103(p)(2)(B) agreement. Copies of tax returns or return information provided to the department directly by a taxpayer or the taxpayer’s representative or obtained from public information files (e.g., federal tax liens on file with the county clerk, Offers in Compromise available for public inspection, court records) are not considered FTI for the purposes of this chapter.

“*GovConnectIowa*” means the e-services portal of the department.

“*IRC*” means the Internal Revenue Code.

“*IRS*” means the Internal Revenue Service.

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

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system. The term “personally identifiable information” includes “personal information” as defined in Iowa Code section 715C.1.

“*Record*” means the whole or a part of a “public record” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the department. Records include confidential records.

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

“*Routine use*” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. “Routine use” includes disclosures required to be made by statute other than the public records laws codified at Iowa Code chapter 22.

“*System*” means any of the following:

1. Computer hardware or software;

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2. Computerized processes and procedures;
3. Noncomputerized processes and procedures.

“*Tax administration*” means the administration, management, conduct, direction, and supervision of the execution and application of the state tax laws; means the development and formulation of state tax policy; and includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.2(17A,22,421,422) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound department determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The department is committed to the policies set forth in Iowa Code chapter 22 as well as to the taxpayer confidentiality provisions in Iowa Code chapter 422. Department staff shall cooperate with members of the public in implementing the relevant provisions of Iowa Code chapters 22 and 422.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.3(17A,22,421,422) Requests for public records.

5.3(1) Availability of records. Department records are open for public inspection and copying unless they are confidential or otherwise not subject to public inspection by rule or law. The department is not obligated to create a record if a requested record does not exist.

5.3(2) Methods for submitting a records request. Record requests shall be submitted using one of the following methods:

a. Mail. Requests by mail should be addressed to: Public Information Officer, Iowa Department of Revenue, P.O. Box 10457, Des Moines, Iowa 50306.

b. Electronic submission. Instructions for submitting requests electronically can be found on the department’s website, tax.iowa.gov.

c. Hand delivery. Requests should be hand-delivered to the department of revenue office on the first floor of the Hoover State Office Building, 1305 East Walnut St., Des Moines, Iowa.

d. Telephone. Instructions for submitting requests by telephone can be found on the department’s website, tax.iowa.gov.

5.3(3) Content of a records request.

a. Requests shall identify the particular records sought by name or description and include the name, address, email, and telephone number of the person requesting the records.

b. A person shall not be required to give a reason for requesting an open record. However, if a person requesting a record requests a fee waiver pursuant to paragraph 5.3(6)“f,” the department may require the requester to provide information to support granting a fee waiver, including the reason for the records request. Requests for confidential records must comply with this rule and rule 701—5.4(17A,22,421,422). Department staff may request additional information from the requester for the purposes of clarification or identification of appropriate documents.

5.3(4) Response to requests. Records shall be provided as soon as feasible. Release of an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The redaction and request for redaction process in Iowa Code sections 422.20(5) and 422.72(8) and rule 701—7.8(17A) shall be considered a determination of whether a government record is a public record or a confidential record under Iowa Code section 422.8(4)“c.” The custodian shall promptly give notice to the requester of the reason for any delay in providing an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing. The custodian of a record may deny members of the public access to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), that the record is a confidential record, or that its disclosure is prohibited by the order of the director or the director’s designee. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 701—5.4(17A,22,421,422) and other applicable provisions of law.

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5.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

5.3(6) Fees.

a. When charged. Pursuant to Iowa Code section 22.3, the department may charge fees in connection with the search, retrieval, examination, and copying of requested records.

b. Copying and postage fees. Price schedules for published materials and for photocopies of records supplied by the department shall be posted on the department's website. Copies of records may be made for members of the public on department photocopy machines or from electronic storage systems at costs determined and posted on the department's website. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Search, retrieval, and examination fee. An hourly fee may be charged for actual department expenses associated with the search, retrieval, and examination of requested records. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. The department provides the first two hours of search, retrieval, and examination free of charge.

d. Estimated fee. Within a reasonable time after a request is made, the department shall provide to the requester an estimated fee of the actual costs expected to be incurred by the department in fulfilling the request.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

f. Fee waivers. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.4(17A,22,421,422) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. The procedure governing the request and release of such confidential records is addressed below.

5.4(1) Procedure. In requesting the custodian to permit the examination and copying of such confidential records, the following procedures apply and are in addition to those specified for requests for access to records in rule 701—5.3(17A,22,421,422).

a. Form of request. A person requesting access to confidential records shall submit the request in writing. The department may require the requester to provide additional documentation, including but not limited to proof of identity and authority to secure access to the record. The department may also require the requester to sign a certified statement or affidavit listing the specific reasons justifying access to the record and provide any proof necessary to establish relevant facts.

b. Response to request. The department must notify the requester of approval or denial of the request for access. The notice must include:

(1) The name and title or position of the person responding on behalf of the department; and

(2) If the request for access is denied, a brief statement of the grounds for denial including a citation to the applicable statute or other provision of law.

c. Request granted. When the department grants a request for access to a confidential record to a particular person, the department must notify that person and indicate any lawful restrictions imposed by the department on that person's inspection and copying of the record.

d. Reconsideration of denial. A requester whose request is denied by the department may apply to the director for reconsideration of the request.

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e. Persons who must follow procedure. The procedure described in this subrule must be followed by any person requesting information on delinquent tax, interest, penalty or other confidential information under rule 701—202.12(423).

5.4(2) Notice to subject of record and opportunity to obtain an injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, or whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

5.4(3) Requesting a copy of a return. A taxpayer requesting a copy of the taxpayer's own tax return must do so via GovConnectIowa. There will be a \$5 charge for each return requested. Payment must be received prior to release of the return.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.5(17A,22,421,422) Requests for treatment of a record as a confidential record and its withholding from examination. The department may treat a record as a confidential record and withhold it from examination only to the extent that it is authorized by Iowa Code sections 22.7, 422.20, and 422.72; other applicable provisions of law; or an order. Persons may request that the department treat a document as a confidential record and withhold the document from public inspection. The procedures for making a request are described below.

5.5(1) Requests related to records submitted as part of an appeal or contested case. Any person who seeks to request confidential treatment for any document submitted as part of an appeal or contested case filed under 701—Chapter 7 must file a motion for redaction as described in rule 701—7.8(17A).

5.5(2) Requests for confidential treatment of any other record. Any person who seeks to request confidential treatment of any record that has not been submitted as part of an appeal or contested case filed under 701—Chapter 7 must follow the following procedure:

a. Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

b. Request. A request that a record be treated as a confidential record and be withheld from public inspection shall:

- (1) Be in writing; and
- (2) Be filed with the department using the one of the methods in subrule 5.3(2), excluding submission by telephone listed in paragraph 5.3(2)“d”; and
- (3) Set forth the legal and factual basis justifying such confidential record treatment for that record; and
- (4) Include the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. A person may request that a record be treated as confidential for a limited period of time. Requests for limited confidential record treatment shall also specify the precise period of time for which that treatment is requested.

(5) The requester shall, if possible, include a copy of the record for which confidential record treatment is being sought with the request.

c. Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record, unless otherwise provided by law. However, if a person who has submitted information to the department that could be considered a confidential record under Iowa Code section 22.7(3) or 22.7(6) does not request that it be withheld from

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public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

d. Timing of decision. A decision by the custodian about whether to disclose a record or a portion of a record to members of the public may be made when a request for confidential record treatment is filed, or when the custodian receives a request for access to the record by a member of the public.

e. Request granted or deferred. If a request for confidential record treatment is granted, or if action on a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection during the pendency of that subsequent request.

f. Request denied and opportunity to seek an injunction. If a request for confidential record treatment is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.6(17A,22,421,422) Consensual disclosure of confidential records.

5.6(1) Consent to disclosure by a subject. To the extent permitted by law, the subject may consent in writing to department disclosure of confidential records as provided in rules 701—5.7(17A,22,421,422) and 701—7.6(17A,22,421,422).

5.6(2) Complaints to public officials not an authorization—separate authorization required. A letter from the subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the department shall not, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter. The subject of a confidential record filing a complaint must submit a disclosure authorization as provided in rules 701—5.7(17A,22,421,422) and 701—7.6(17A,22,421,422).

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.7(17A,22,421,422) Tax information disclosure designation.

5.7(1) Powers authorized. A taxpayer may designate an individual to receive, inspect, and discuss the taxpayer's confidential state tax information from the department. Such designation does not authorize the designee to act or authorize any action on the taxpayer's behalf in any way other than to receive information and communicate with the department. For transfers of decision-making authority, see Iowa Code section 421.59 and rule 701—7.6(17A,22,421,422).

5.7(2) Contents of the tax information disclosure designation form. A taxpayer must use the department's tax information disclosure designation form, or other designated method authorized by the department, to designate an individual to receive, inspect, and discuss confidential state tax information. A tax information disclosure designation form must contain the following information to be valid:

a. Legal name and address of the taxpayer;

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- b.* Identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or any federal- or Iowa-issued tax identification number);
- c.* The designee's name, mailing address, and identification number (i.e., preparer's tax identification number (PTIN), FEIN, SSN, individual taxpayer identification number (ITIN), or Iowa department of revenue-issued account number (IAN)). In lieu of a designee's identification number, a taxpayer may indicate that an IAN is being requested for the designee;
- d.* Description of the matter(s) for which disclosure is authorized, which may include:
 - (1) The type of tax(es) involved or an indication that all tax types are within the scope of disclosure;
 - (2) The specific year(s) or period(s) involved or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date); and
 - (3) Business tax permit number or an indication that all tax types are within the scope of authority;
- e.* A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 5.7(1);
- f.* An authorized signature of an individual listed in subrule 5.7(4) meeting the requirements of rule 701—8.2(17A,421);
- g.* Any other information required by the department.

5.7(3) Authorization period for a tax information disclosure designation.

a. A tax information disclosure designation may not be used to authorize disclosure for tax periods that end more than three years after the date on which the tax information disclosure designation is signed by the taxpayer. A tax information disclosure designation may concern an unlimited number of tax periods that have ended prior to the date on which the tax information disclosure designation is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax periods section is left blank, all tax periods, including those ending up to three years in the future, are included.

b. A tax information disclosure designation continues to be effective for tax periods as defined in paragraph 5.7(3) "a" until revocation by the taxpayer, incapacity of the taxpayer, death of the taxpayer, or withdrawal, death, or incapacity of the tax information disclosure designee.

5.7(4) Individuals who may execute a tax information disclosure designation. The individual(s) who may execute a tax information disclosure designation depends on the type of taxpayer involved:

a. Individual. In matters involving an individual taxpayer, a tax information disclosure designation must be signed by the individual.

b. Joint or combined returns. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return, each taxpayer must complete and submit a tax information disclosure designation form for the joint return.

c. Third parties. The tax information disclosure designation form may be signed by an individual who has been authorized to act on behalf of the taxpayer under Iowa Code section 421.59.

5.7(5) Revocation and withdrawal.*a. Revocation by the taxpayer.*

(1) By written statement. By filing a statement of revocation with the department, a taxpayer may revoke a tax information disclosure designation without authorizing a new representative. The statement of revocation must include the following:

- 1. Name, address, and identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number);
- 2. Name, address, and identification number (i.e., PTIN, FEIN, SSN, ITIN, or IAN) of the designee whose designation is to be revoked;
- 3. A clear statement to revoke the designee's disclosure designation; and
- 4. Signature of an authorized signatory as described in subrule 5.7(4).

(2) Does not automatically revoke. A new tax information disclosure designation for a particular tax type(s) and tax period(s) does not revoke a prior tax information disclosure designation for any tax type(s) and tax period(s), unless the taxpayer has indicated in a written submission to the department that a prior tax information disclosure designation is to be revoked.

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b. Withdrawal by the designee. By filing a statement with the department, a designee may withdraw from the designation in a matter in which a tax information disclosure designation has been filed. The statement must include the following:

- (1) Name, address, and identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number);
- (2) Name, address, and tax identification number (i.e., PTIN, FEIN, SSN, ITIN, or IAN) of the designee whose designation is to be withdrawn;
- (3) A clear statement that the designee wishes to withdraw;
- (4) Signature of withdrawing designee and signature date.

5.7(6) Submitting a form.

a. Submit separately. A tax information disclosure designation form may not be submitted as an attachment to a tax return except as provided by these rules. A tax information disclosure designation must be submitted separately to the department in accordance with the submission instructions on the form. However, the department may, at its discretion, provide a method for authorizing disclosure on the face of a tax return as defined in Iowa Code section 421.6.

b. Original or electronic forms accepted. The department will accept either the original, a copy, or an electronically scanned and transmitted form. A copy received by facsimile transmission (fax) or email will be accepted. All forms, whether original copy, received via fax, or electronically scanned and transmitted forms must include a valid signature meeting the requirements of rule 701—8.2(17A,421) of the taxpayer to be represented.

c. Timely submission. The form must be submitted within six months of the date it is signed, or it will be considered invalid.

d. Evaluation of documentation provided. The department will evaluate the tax information disclosure designation form and any additional documentation to confirm authorization. Authorization to receive, inspect, and discuss confidential state tax information from the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authorization to receive, inspect, and discuss confidential state tax information from the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authorization.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.8(17A,22,421,422) Disclosures without the consent of the subject. Open records and certain confidential records may be disclosed by the department without the consent of the subject. The guidelines governing such disclosures are described below.

5.8(1) Disclosure of open records. All open records may be disclosed without the consent of the subject.

5.8(2) Disclosure of confidential records that do not contain confidential state tax information. Certain confidential records that do not contain confidential state tax information may, in limited circumstances, be disclosed without the consent of the subject. The following disclosures will generally occur without notice to the subject:

a. For routine use. The following uses are considered routine uses:

- (1) Disclosure to those officers, employees, and agents of the department who have a need for the record in the performance of their duties;
- (2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory action;
- (3) Information released to staff of federal and state entities for audit purposes for purposes of determining whether the department is operating a program lawfully;
- (4) Any disclosure specifically authorized by statute.

b. To a recipient who has provided the department with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

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c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request pursuant to rule 701—5.4(17A,22,421,422) to the department specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual. Confidential information will be disclosed pursuant to this paragraph only after notice is sent by the department to the last-known address of the subject of the confidential information.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a lawful court order or subpoena.

5.8(3) Disclosure of confidential state tax information.

a. *Permitted disclosures.* Confidential state tax information may be disclosed without the consent of the subject only to the extent that it is expressly permitted by law. The following is a nonexclusive list of permitted disclosures:

(1) Disclosures to other agencies, employees, or officials of this state to the extent required as part of their official duties and responsibilities pursuant to Iowa Code section 422.72(1)“b.” Officers or employees of the state of Iowa may examine confidential state tax information belonging to the department to the extent that access to the information is required as part of their official duties and responsibilities. Such information will only be disclosed upon the express written approval of the director of revenue or the director’s designee. Written approval will be granted in only those situations where the information obtained is used for a tax administrative purpose. The written approval will cover the conditions and procedures under which specific information will be released.

(2) Disclosures permitted by statute for purposes other than tax administration. Confidential state tax information may be disclosed without the consent of the subject when disclosure is expressly permitted by statute. Such disclosures may be made without a tax administrative purpose, unless the authorizing statute provides otherwise.

(3) Disclosures to the federal government and agencies of other states. The director of revenue or director’s designee may disclose confidential state tax information to tax officials of another state or the United States government without the consent of the subject so long as the disclosures are made for a tax administrative purpose and are made only to officers of those jurisdictions which by agreement with this state limit the disclosure of the information as strictly as the laws of this state protecting the confidentiality of returns and return information.

(4) Disclosure pursuant to subpoena. The director of revenue or the director’s designee must provide confidential state tax information in response to a subpoena as outlined in Iowa Code section 422.72(7).

(5) Disclosure pursuant to Iowa Code section 421.19. The department may disclose confidential state tax information in exercising any power under Iowa Code section 421.19, regardless of whether such disclosure is made for a tax administration purpose.

b. *Penalties for unlawful disclosure of confidential state tax information.* Any officer, employee, agent, former officer, former employee, or former agent of the state of Iowa who engages in any of the following activities commits a serious misdemeanor:

(1) Knowingly files a false affidavit with the department to secure confidential state tax information;

(2) Willfully or recklessly divulges, prints, publishes, inspects or permits unauthorized examination of confidential state tax information in violation of Iowa Code sections 422.20 and 422.72 or divulges information received under this rule in any manner prohibited by this rule.

701—5.9(17A,22,421,422) Release to subject or owner of record.

5.9(1) The subject of a record may request to review the subject’s own records by following the procedures in rules 701—5.3(17A,22,421,422) and 701—5.4(17A,22,421,422). However, the department need not release the following records to the subject:

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a. Communications to the department that are protected from disclosure under Iowa Code section 22.7(18). Such protected communications include responses to questionnaires solicited by the department that relate to tax administration.

b. Records that are work product of an attorney or are otherwise privileged.

c. Peace officer’s investigative reports, except when disclosure is required by law.

d. Any other records that may be withheld by law.

5.9(2) Where a requested record contains information on multiple subjects, the department may take reasonable steps to protect confidential information relating to the subject or subjects that did not make the request when releasing the record to the requesting subject.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.10(17A,22,421,422) **Personally identifiable information collected and stored by the department.** The department collects and maintains both open records and confidential records that contain personally identifiable information. This rule describes the nature, extent, retrieval, storage, and processing of personally identifiable information within the department’s record systems.

5.10(1) *Nature and extent.* All record systems maintained by the department may contain personally identifiable information concerning matters such as income, property holdings, exchanges, financial transactions, and demographic information such as address and number of dependents.

5.10(2) *Retrieval.* Personal identifiers are used to retrieve information from any of the record systems that the department maintains that contain personally identifiable information.

5.10(3) *Means of storage.* Paper, microform, and various electronic means of storage are used to store records containing personally identifiable information.

5.10(4) *Comparison.* Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

5.10(5) *Comparison with data from outside the department.* Personally identifiable information in systems of records maintained by the department may be compared with information from outside the department when specified by law. Permitted comparisons include, but are not limited to, comparisons for the purpose of setoffs.

5.10(6) *Records containing personally identifiable information.*

a. Personally identifiable information is collected from documents, returns, and any other record filed with the department, as well as from outside sources, including state and federal agencies. Authority to collect this information is found throughout Iowa Code chapters 8A and 17A and Title X of the Iowa Code, including Iowa Code section 421.17(35). Such information is stored within the department, in electronic or physical format. The chart below describes department records that contain personally identifiable information and identifies which records are open records, confidential records, partially open or partially confidential. A single record may contain information from several categories in the chart. This information is compiled for the purposes of Iowa Code section 22.11.

Code.....Meaning

O.....The records are open for public inspection.

C.....The records are confidential and are not open to public inspection.

O/C.....The record is partly open and partly confidential.

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Description of Record	Type of Record	Legal Authority for Confidentiality
State tax returns, return information, permit records, tax liability and penalty records, tax policy, tax research records, and all related records	O/C	Iowa Code Title X, including Iowa Code sections 422.20 and 422.72
Nontax collection records	O/C	Iowa Code Title X, including Iowa Code sections 422.20 and 422.72, and contractual authority
Federal tax returns and return information	C	26 U.S.C. §6103
Department personnel records, communication records, budget records, and payroll records	O/C	Iowa Code section 22.7
Minutes of closed meetings of a government body	C	Iowa Code section 21.5(4)
Records that constitute attorney work product or attorney-client communications or are otherwise privileged	C	Iowa Code section 22.7(4), Iowa Rule of Civil Procedure 1.503, Federal Rule of Civil Procedure 26(b)(3), and case law

b. The procedure for public records request may be found in rule 701—5.3(17A,22,421,422).

c. The procedure for allowing a person to have additions, dissents, or objections entered in the record will be determined on a case-by-case basis.

d. The subject of the confidential record may either request the record independently and give it to the named third party or authorize the third party to request the subject's confidential information under Iowa Code section 421.59, 422.20(7), or 422.72(9).

e. The department will utilize information, including confidential information, in executing its duties under the Iowa Code. Subjects of the information will not be notified when the information is used. Persons outside of the department receiving confidential information are held to the same confidentiality standard as departmental employees. Whether information is required or optional will be indicated along with the request for information. Failing to provide required information may result in penalties or interest being charged.

f. The department utilizes more than one data processing system, and information is matched between systems.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.11(17A,22,421,422) Retention of submitted documents. When the subject or owner of a record has submitted a document to the department, the department will store the document in the same manner that it stores other records of a similar nature. Documents submitted to the department may be destroyed by the department at the conclusion of the applicable time period detailed in the department's record retention schedules, unless destruction is otherwise prohibited by law. The department discourages submitting original documents in situations where an original is not required. If an original document must be submitted, the person submitting the document shall indicate conspicuously that the document is an original and shall also indicate whether that person requests that the original be returned at the conclusion of its use by the department.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

701—5.12(17A,22,421,422) Limited applicability. This chapter does not:

1. Require the department to index or retrieve records that contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records that would otherwise not be available under Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of, or access to records in possession of the department that are governed by regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

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

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

ITEM 2. Amend **701—Chapter 6**, title, as follows:

~~ORGANIZATION, PUBLIC INSPECTION~~

ITEM 3. Rescind rule 701—6.1(17A) and adopt the following new rule in lieu thereof:

701—6.1(17A) Establishment of the department. Iowa Code section 421.2 establishes a department of revenue to be administered by a director of revenue.

ITEM 4. Adopt the following new rule 701—6.2(17A):

701—6.2(17A) Mission. The mission of the department is to serve Iowans and to support government services in Iowa by collecting all taxes required by law, but no more.

ITEM 5. Rescind rule 701—6.3(17A) and adopt the following new rule in lieu thereof:

701—6.3(17A) Office. The office of the department is maintained at the seat of government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa 50319.

ITEM 6. Rescind rule 701—6.4(17A) and adopt the following new rule in lieu thereof:

701—6.4(17A) Department Internet website. The department's Internet home page is tax.iowa.gov.

ITEM 7. Rescind rule 701—6.5(17A) and adopt the following new rule in lieu thereof:

701—6.5(17A) Organization of the department. The department consists of the director and such divisions as the director may from time to time create.

6.5(1) The office of the director. The essential functions of the office of the director include but are not limited to:

- a. Overall management of the agency.
- b. Review of protest and revocation cases on appeal.
- c. Strategic planning and coordination of the future operations and goals of the department.
- d. Provision of financial checks and balances within the department.
- e. Facilitation of a working relationship between the public sector and the private sector.

6.5(2) Divisions. For ease of administration, the director has organized the department into divisions and, in some instances, has organized those divisions into bureaus, sections, subsections, and units. The director may from time to time reorganize the department into administrative divisions in order to more efficiently and effectively carry out the authority's responsibilities. Reorganization may include creating new divisions, eliminating existing divisions, or combining divisions as the director deems necessary. Such divisions may include but are not limited to:

- a. Local government services.
- b. Tax management.
- c. Research and policy.
- d. Legal services and appeals.
- e. Internal services.

6.5(3) Designee. Unless otherwise delegated in statute, in rule, or otherwise in writing by the director, only the director, deputy director, or chief legal officer may enter into contracts or agreements on behalf of the department.

This rule is intended to implement Iowa Code sections 421.2, 421.9, 421.14, 421.17, 422.1 and 422.72.

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- ITEM 8. Rescind and reserve rule **701—6.6(422)**.
- ITEM 9. Rescind and reserve rule **701—6.7(68B)**.
- ITEM 10. Rescind and reserve rule **701—6.8(421)**.
- ITEM 11. Adopt the following new rule 701—10.8(421):

701—10.8(421) Tax return extension in disaster areas. If a natural disaster is declared by the governor in any area of the state, the director may extend for a period of up to one year the due date for the filing of any tax return and may suspend any associated penalty or interest that would accrue during that period of time for any affected taxpayer whose principal residence or business is located in the covered area, if the director determines it necessary for the efficient administration of the tax laws of this state. The director will notify the public of any possible extensions of tax filings as well as possible suspensions of penalty and interest. Notification will be made through different means available to the director including but not limited to press releases, media information, and the department's website. Persons eligible for extension shall complete any application or form if required by the department and satisfy any requirements or conditions for the extension.

This rule is intended to implement Iowa Code section 421.17(30).

[Filed 9/16/22, effective 11/9/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6551C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to tax-related due dates

The Revenue Department hereby amends Chapter 7, "Appeals, Taxpayer Representation, and Other Administrative Procedures," Chapter 39, "Filing Return and Payment of Tax," Chapter 48, "Composite Returns," Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Chapter 70, "Replacement Tax and Statewide Property Tax," Chapter 78, "Replacement Tax and Statewide Property Tax on Rate-Regulated Water Utilities," Chapter 87, "Iowa Estate Tax," and Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 2552.

Purpose and Summary

This rule making implements 2022 Iowa Acts, House File 2552, which amends due dates for the Iowa Department of Revenue that fall on Saturdays, Sundays, and holidays. Accordingly, this rule making amends various rules to reflect the enactment of Iowa Code section 421.9A. That section, cited in the amendments, was enacted by 2022 Iowa Acts, House File 2552, section 62.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6450C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 14, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—7.3(17A), introductory paragraph, as follows:

701—7.3(17A) How to submit an appeal, petition or related documents; service. Appeals, petitions, and other documents governed by this chapter may be filed electronically, by mail, or in person, in accordance with the limits described below. The principal office of the department in the Hoover State Office Building in Des Moines, Iowa, shall generally be open between the hours of 8 a.m. and 4:30 p.m. ~~each weekday, except Saturdays, Sundays, and legal holidays as prescribed in Iowa Code section 4.1(34)~~ daily, except Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A.

ITEM 2. Amend subrule 7.4(1) as follows:

7.4(1) Computing time. Time shall be computed in accordance with Iowa Code section ~~4.1(34)~~ 421.9A. For electronic submissions, in addition to the requirements described in Iowa Code section ~~4.1(34)~~ 421.9A, local time for the state of Iowa applies.

ITEM 3. Amend paragraph **7.19(8)“d”** as follows:

d. When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of the director

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within 30 days of the date of the order, including Saturdays, Sundays, and ~~legal~~ holidays as defined in Iowa Code section 421.9A, or 10 days, excluding Saturdays, Sundays, and ~~legal~~ holidays as defined in Iowa Code section 421.9A, for a revocation order pursuant to rule 701—7.39(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director's motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal or review within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become the final orders of the department for purposes of judicial review or rehearing. On an appeal from, review of, or application for rehearing concerning the presiding officer's order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues presented at the hearing before the presiding officer or raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

ITEM 4. Amend rule 701—39.2(422) as follows:

701—39.2(422) Time and place for filing.

39.2(1) Returns of individuals. A return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or for a fiscal year, or the last day of the period covered by an extension of time granted by the department. When the due date falls on Saturday, Sunday, or a ~~legal~~ holiday, the return will be due the ~~first business day following the~~ following day that is not a Saturday, Sunday, or legal holiday. Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the ~~mails~~ mail, properly addressed and postage paid, in ample time to reach the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Income Tax Return Processing, Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Farmers and fishermen have the same filing due date as other individual taxpayers; however, those farmers and fishermen who have elected not to file a declaration of estimated tax shall file their returns and pay the tax due, on or before March 1, to avoid penalty for underpayment of estimated tax.

39.2(2) to 39.2(4) No change.

This rule is intended to implement Iowa Code ~~section~~ sections 422.21 and ~~Iowa Code Supplement section~~ section 422.25.

ITEM 5. Amend subrule 48.9(1) as follows:

48.9(1) A composite return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the tax year of the partners, shareholders, employees, beneficiaries, estates or trusts included in the composite return, or the last day of the period covered by an extension of time granted by the department. When the due date falls on a Saturday, Sunday, or ~~legal~~ holiday, the composite return is due the ~~first business day following the~~ following day that is not a Saturday, Sunday, or legal holiday. Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the mail, properly addressed, postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Composite Return Processing, Department of Revenue, P.O. Box 10469, Des Moines, Iowa 50306.

ITEM 6. Amend subrule 52.2(1) as follows:

52.2(1) Returns of corporations. A return of income for all corporations must be filed on or before the due date. The due date for all corporations ~~excepting~~ except for cooperative associations as defined in Section 6072(d) of the Internal Revenue Code is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the last day of the period covered by an extension of time granted by the director. When the due

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date falls on a Saturday, Sunday, or a legal holiday, the return will be due the ~~first business day following the following day that is not a Saturday, Sunday, or legal holiday.~~ Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the ~~mails~~ mail, properly addressed and postage paid in ample time to reach the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Corporate Income Tax Processing, Hoover State Office Building, Des Moines, Iowa 50319.

ITEM 7. Amend subrule 58.2(1) as follows:

58.2(1) Returns of financial institutions. A return of income for all financial institutions must be filed on or before the delinquency date. The delinquency date for all financial institutions is the day following the last day of the fourth month following the close of the taxpayer's taxable year, whether the return is made on the basis of the calendar year or the fiscal year; or the day following the last day of the period covered by an extension of time granted by the director. When the last day prior to the delinquency date falls on a Saturday, Sunday, or a legal holiday, the return will be timely if it is filed on the ~~first business day following the following day that is not a Saturday, Sunday, or legal holiday.~~ Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the ~~mails~~ mail, properly addressed and postage paid in ample time to reach the department on or before the delinquency date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Franchise Tax Processing, P.O. Box 10413, Des Moines, Iowa 50306.

ITEM 8. Amend rule 701—70.2(437A) as follows:

701—70.2(437A) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

A taxpayer whose replacement tax liability before credits is \$300 or less is not required to file a return. A taxpayer should not file a replacement tax return under such circumstances.

When the due date falls on a Saturday, or Sunday, or holiday, the return will be due the ~~first business day following the following day that is not a Saturday, or Sunday, or holiday.~~ If a return is placed in the ~~mails~~ mail, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the ~~mails~~ mail, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: ~~Property Tax Division~~ Local Government Services, Hoover State Office Building, Des Moines, Iowa 50319.

ITEM 9. Amend paragraph **70.6(1)“b”** as follows:

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due to the appropriate county treasurer. If payment is made, and the person wishes to contest the matter, the person should file a timely claim for refund. However, payment will not be required until an assessment has been made (although interest will continue to accrue if timely payment is not made). If no payment has been made, the person may discuss with the agent, auditor, clerk, or employee who notified the person of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Department of Revenue, ~~Property Tax Division~~ Local Government Services, Hoover State Office Building, Des Moines, Iowa. Documents and records supporting the person's position may be required.

ITEM 10. Amend rule 701—70.15(437A) as follows:

701—70.15(437A) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of

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time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

When the due date falls on a Saturday, ~~or~~ Sunday, or holiday, the return will be due the ~~first business day following the~~ following day that is not a Saturday, ~~or~~ Sunday, or holiday. If a return is placed in the ~~mails~~ mail, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the ~~mails~~ mail, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: ~~Property Tax Division~~ Local Government Services, Hoover State Office Building, Des Moines, Iowa 50319.

ITEM 11. Amend rule 701—78.2(437B) as follows:

701—78.2(437B) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

A taxpayer whose replacement tax liability before credits is \$300 or less is not required to file a return. A taxpayer should not file a replacement tax return under such circumstances.

When the due date falls on a Saturday, ~~or~~ Sunday, or holiday, the return will be due the ~~first business day following the~~ following day that is not a Saturday, ~~or~~ Sunday, or holiday. Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the ~~mails~~ mail, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after the due date for filing. The functional meaning of this requirement is that if the return is placed in the ~~mails~~ mail, properly addressed and postage paid, on or before the due date for filing, no penalty will attach. Mailed returns should be addressed to Department of Revenue, Attention: ~~Property Tax Division~~ Local Government Services, Hoover State Office Building, Des Moines, Iowa 50319.

ITEM 12. Amend paragraph 78.6(1)“b” as follows:

b. Right of taxpayer upon receipt of notice of adjustment. A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due to the appropriate county treasurer. If payment is made, and the taxpayer wishes to contest the matter, the taxpayer should file a timely claim for refund. However, payment will not be required until an assessment has been made, although interest will continue to accrue if timely payment is not made. If no payment has been made, the taxpayer may discuss with the agent, auditor, clerk, or employee who notified the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. The taxpayer may also ask for a conference with the Department of Revenue, ~~Property Tax Division~~ Local Government Services, Hoover State Office Building, Des Moines, Iowa. Documents and records supporting the taxpayer’s position may be required.

ITEM 13. Amend rule 701—78.14(437B) as follows:

701—78.14(437B) Time and place for filing return. The return must be filed with the director on or before March 31 following the tax year. There is no authority for the director to grant an extension of time to file a return. Therefore, any return which is not filed on or before March 31 following the tax year is untimely.

When the due date falls on a Saturday, ~~or~~ Sunday, or holiday, the return will be due the ~~first business day following the~~ following day that is not a Saturday, ~~or~~ Sunday, or holiday. Iowa Code section 421.9A contains additional information on due dates that fall on a Saturday, Sunday, or holiday. If a return is placed in the ~~mails~~ mail, properly addressed and postage paid in ample time to reach the director or the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. The functional meaning of this requirement is that if the return is placed in the ~~mails~~ mail, properly addressed and postage paid, on or before the due date for filing, no penalty will attach.

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Mailed returns should be addressed to Department of Revenue, Attention: ~~Property Tax Division~~ Local Government Services, Hoover State Office Building, Des Moines, Iowa 50319.

ITEM 14. Amend subrule 87.3(7) as follows:

87.3(7) Return and payment due date. For estates of decedents dying prior to July 1, 1986, the return shall be filed with the department and the tax due paid within 12 months after the decedent's death, unless an extension of time has been granted by the department, in which case the return shall be filed and the tax paid within the time prescribed by the extension of time. For estates of decedents dying on or after July 1, 1986, the return must be filed and the tax due paid on or before the last day of the ninth month after the death of the decedent, unless an extension of time has been granted, in which case the return must be filed and the tax due paid within the time prescribed by the extension of time. See 701—paragraph 86.2(6) “a” ~~for~~ and Iowa Code section 421.9A contain additional information on the due date when the last day of the ninth month following death falls on a Saturday, Sunday, or ~~legal~~ holiday.

ITEM 15. Amend subrule 89.4(8) as follows:

89.4(8) Return due date. The fiduciary return must be filed with the department and the tax due paid in full on or before the last day of the fourth month following the end of the taxable year. Payment of 90 percent of the tax due with the filing of a return will grant a taxpayer a six-month automatic extension of time to pay the remaining tax due. If the due date falls on a Saturday, Sunday, or ~~legal~~ holiday, the due date is the next day ~~which that~~ is not a Saturday, Sunday, or ~~legal~~ holiday as defined in Iowa Code section ~~4-1 421.9A~~. Returns not timely filed with 90 percent of the tax timely paid are subject to penalty as provided in rule ~~89.6(422)~~ 701—89.6(422).

[Filed 9/14/22, effective 11/9/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6582C

REVENUE DEPARTMENT[701]

Adopted and Filed

**Rule making related to appeals, taxpayer representation,
and other administrative procedures**

The Revenue Department hereby amends Chapter 7, “Appeals, Taxpayer Representation, and Other Administrative Procedures,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and section 421.59.

Purpose and Summary

Through 2022 Iowa Acts, House File 2552, the Legislature provided changes to Iowa Code section 421.59. These changes are reflected in this rule making, including the removal of evidence requirements for officers and employees of corporations and associations, as well as the addition of authority categories for very small estates under Iowa Code section 633.356(2) and trusts.

Additionally, this rule making provides guidelines to allow taxpayers to appoint an entity as an authorized representative.

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Finally, this rule making includes certain clarifications regarding the administrative process including signature requirements for spouses and an authorized representative's duty to maintain an up-to-date address with the Department.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6449C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 16, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—7.6(17A,22,421,422) as follows:

701—7.6(17A,22,421,422) Authorized representatives—powers of attorney and representative certifications. No individual, including an attorney, accountant, or other representative, will be recognized as representing any taxpayer in regard to any claim, appeal, or other matter before the department or in any communication with, hearing before, or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization meeting the requirements of this rule and Iowa Code section 421.59. If a taxpayer wishes to allow the department to discuss otherwise confidential tax matters with an individual other than an authorized representative ~~or power of attorney~~, without giving that individual authority to act on the taxpayer's behalf, the taxpayer must provide the department with written authorization to disclose such confidential tax information as provided in rule 701—5.7(17A,22,421,422).

7.6(1) *Individuals authorized to represent a taxpayer; generally; transfers of decision-making authority.*

a. If a taxpayer wishes to have any other individual or individuals act on the taxpayer's behalf in matters before the department, the taxpayer must file with the department an Iowa department of revenue

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(IDR) power of attorney form, as described in subrule 7.6(5), authorizing that individual to do so. Even if an individual desires to represent a taxpayer only through correspondence with the department but does not intend to personally appear before the department in a hearing or conference, the taxpayer must submit an IDR power of attorney form appointing that individual to act on the taxpayer's behalf.

b. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file a representative certification form as described in subrule 7.6(6). ~~See subrule 7.6(6) for~~ Subrule 7.6(6) contains more information about individuals who may qualify as authorized representatives and the information required.

7.6(2) Powers authorized.

a. A An IDR power of attorney or representative certification form, as applicable, is required by the department before an individual can perform one or more of the following acts on behalf of the taxpayer:

(1) To receive copies of any notices or documents sent by the department, its representatives, or its attorneys.

(2) To receive, but not to endorse and collect, checks made payable to the taxpayer in payment of any refund of Iowa taxes, penalties, or interest. Certain representatives with a valid representative certification form may be authorized to receive, endorse, and collect checks made payable to the taxpayer in payment of any refund of Iowa taxes, penalties, or interest.

(3) To execute waivers (including offers of ~~waivers~~ waiver) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

(4) To execute consents extending the statutory period for assessment or collection of taxes.

(5) To fully represent the taxpayer in any hearing, determination, final or otherwise, or appeal. ~~See subrule 7.6(8) for~~ Subrule 7.6(8) contains additional requirements.

(6) To enter into any settlement or compromise with the department.

(7) To execute any release from liability required by the department as a prerequisite to divulging otherwise confidential information concerning the taxpayer.

(8) To authorize a third party as ~~power of attorney~~ authorized representative or disclosure designee for the taxpayer.

b. The taxpayer may limit the scope of the authority of a ~~power of attorney~~ an authorized representative appointed via an IDR power of attorney form by expressly stating the limitations, if any, on the IDR power of attorney form submitted to the department. The taxpayer may not expand the scope of authority of a ~~power of attorney~~ an authorized representative beyond those powers authorized in this rule.

7.6(3) Submitting a form.

a. Submit separately. An IDR power of attorney form or representative certification may not be submitted as an attachment to a tax return except as provided by these rules. A power of attorney form or representative certification form must be submitted separately to the department in accordance with the submission instructions on the form(s).

b. Original or electronic forms accepted. The department may accept either ~~the an original form,~~ an electronically scanned and transmitted ~~IDR power of attorney form or representative certification form,~~ or a copy of a form. A copy received by facsimile transmission (fax) or email may be accepted. All copies, facsimiles, and electronically scanned and transmitted forms must include a valid signature meeting the requirements of rule 701—8.2(17A,421) of the taxpayer to be represented.

c. Timely submission. The form must be submitted within six months of the date of signature, or it will be considered invalid.

d. Appointment of a representative via another form. The department designates certain returns or other departmental forms on which a taxpayer may appoint a representative.

7.6(4) Communications with represented taxpayers. Any notice or other written communication (or copy thereof) from the department provided to the representative, where required or permitted to be given to the taxpayer in any matter before the department, will be given to the taxpayer.

7.6(5) Powers of attorney. Individuals appointed by a taxpayer to represent the taxpayer must file an IDR power of attorney form.

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a. Individuals who may execute an IDR power of attorney form. The individual who must execute an IDR power of attorney form is as follows:

(1) Individual. In matters involving an individual taxpayer, an IDR power of attorney form must be signed by the individual or an authorized representative.

(2) Joint or combined returns. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return, each taxpayer must complete and submit the taxpayer's own IDR power of attorney form, even if the taxpayers are represented by the same appointee(s). In any matter concerning a joint return or married taxpayers who have elected to file separately on a combined return, in which the two taxpayers are not to be represented by the same representative(s), the ~~recognized~~ authorized representative of such spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

~~(3) Individuals who have filed a valid representative certification form. The IDR power of attorney form must be signed by an individual who has filed a valid representative certification form authorized by the department as described in subrule 7.6(6).~~

b. Contents of the IDR power of attorney form. An IDR power of attorney form must contain the following information to be valid:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or any federal- or Iowa-issued tax identification number);

(3) Name, mailing address, and identification number of the representative (i.e., preparer's tax identification number (PTIN), FEIN, SSN, individual taxpayer identification number (ITIN), Iowa department of revenue-issued account number (IAN) of the representative, or any federal- or Iowa-issued tax identification number) or an indication that an IAN issued account number (IAN) is being requested;

(4) Description of the matter(s) for which representation is authorized, which may include:

1. The type of tax(es) involved or an indication that all tax types are within the scope of authority;

2. The specific year(s) or period(s) involved, or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date) and Iowa tax permit number, or an indication that all tax types are within the scope of authority;

(5) A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 7.6(2).

(6) A valid signature meeting the requirements of rule 701—8.2(17A,421) of an individual listed in paragraph 7.6(5)“a.”

(7) Any other information required by the department.

c. Authorization period for an IDR power of attorney form.

(1) An IDR power of attorney form may not be used to authorize representation for tax periods that end more than three years after the date on which the IDR power of attorney form is signed by the taxpayer. The authority granted may concern an unlimited number of tax periods which have ended prior to the date on which the IDR power of attorney form is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax period section is left blank, all tax periods, including those ending up to three years in the future, are included.

(2) The authority granted by an IDR power of attorney form ceases to be effective for tax periods as defined in subparagraph 7.6(5)“c”(1) upon revocation by the taxpayer, incapacity of the taxpayer, death of the taxpayer, or withdrawal, death, or incapacity of the individual granted power of attorney authority.

d. Evaluation of documentation provided. The department will evaluate the IDR power of attorney form and any additional documentation to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

e. Revocation and withdrawal.

(1) Revocation by the taxpayer.

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1. By written statement. By filing a statement of revocation with the department, a taxpayer may revoke authority granted by an IDR power of attorney form without authorizing a new representative. The statement of revocation must indicate that the authority of the previous representative is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the prior IDR power of attorney form must be attached). If the writing indicates that authorization should be revoked from “all” authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or an entity representative form.

2. By filing a new IDR power of attorney form. Filing a new IDR power of attorney form for a particular tax type(s) and tax period(s) automatically revokes a previously granted power of attorney authority for that tax type(s) and tax period(s). For a previously designated authorized representative to remain as the taxpayer’s authorized representative when a subsequent IDR power of attorney form is filed, the taxpayer must include the representative on the newly submitted IDR power of attorney form. This rule applies regardless of whether the power of attorney authority is authorized by an IDR power of attorney form or on a return as described in subrule 7.6(7). This subrule does not apply to entities appointed as representatives under subrule 7.6(9).

(2) Withdrawal by the representative. By filing a statement with the department, a representative may withdraw from representation in a matter in which an IDR power of attorney form has been filed. The statement must be signed by the representative and must identify the name, identification number, and address of the taxpayer(s); the name, address and identification number of the representative withdrawing; and the matter(s) from which the representative is withdrawing. A representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired.

(3) Administrative revocation by the department. The department may administratively revoke a power of attorney or representative certification authority.

7.6(6) Representative certification; durable and general powers of attorney.

a. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file with the department a representative certification form prior to utilizing that authority with the department. Individuals authorized by an IDR power of attorney form are not required to file a representative certification form for themselves.

b. *Contents of the representative certification form.* The representative certification form must include the following information:

- (1) Legal name and address of the taxpayer;
- (2) Identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number relative to matters covered by the IDR power of attorney form);
- (3) Name, mailing address, and ~~PTIN, FEIN, or SSN, ITIN, or IAN~~ identification number (i.e., SSN or any federal- or Iowa-issued tax identification number) of the representative. If the identification number is left blank, a new IAN will be assigned to the representative;
- (4) Proof of authority must be included with the form as follows:
 1. Durable power of attorney or general power of attorney other than an IDR power of attorney form: a copy of the power of attorney document;
 2. Guardian, conservator, or custodian appointed by a court: documentation as required in Iowa Code section 421.59(2)“a”;
 3. Receiver appointed pursuant to Iowa Code chapter 680: a copy of the relevant court order(s);
 4. Individual holding one of the following titles within a corporation, association, partnership, or other entity:
 - ~~President/CEO~~ Officer/employee of corporation/association: ~~in the case of a president or CEO,~~ affirmation of authority to act on behalf of the corporation or association on the form designated by the department;
 - ~~Any officer of a corporation/association other than a president or CEO:~~ authorization from the ~~president or CEO;~~

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- Designated partner authorized to act on behalf of a partnership: affirmation of authority to act on behalf of the partnership on the form designated by the department;
 - Individual authorized to act on behalf of a limited liability company in tax matters: affirmation of authority to act on behalf of the limited liability company on the form designated by the department;
5. Licensed attorney appearing on behalf of the taxpayer or the taxpayer's estate in a court proceeding: a copy of the filed notice of appearance in the relevant court proceeding;
 6. Parent or guardian of minor taxpayer for whom the parent or guardian has signed the minor's tax return: a copy of the return signed by the parent or guardian;
 7. Governmental representative: affirmation of authority to act on behalf of the government entity on the form designated by the department;
 8. Executor or personal representative: a copy of the will or court order appointing the individual;
 9. Trustee: a copy of the certificate of trust, trust document, or court order appointing the representative;
 10. Successor of a very small estate under Iowa Code section 633.356(2): affirmation of authority to act on behalf of the estate on the form designated by the department;
 - (5) A valid signature meeting the requirements of rule 701—8.2(17A,421) of the representative;
 - (6) Any other information required by the department.
- c. Evaluation of documentation provided.* The department will evaluate documentation submitted in support of a representative certification to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.
- d. Revocation.* A representative certification may be revoked in the following ways:
- (1) By the representative being withdrawn, following procedures in subparagraph 7.6(5) "e"(2).
 - (2) By the taxpayer, following procedures in subparagraph 7.6(5) "e"(1).
 - (3) By another representative. A An authorized representative properly appointed by a representative certification or an IDR power of attorney form may notify the department that a an authorized representative no longer has authority to act on behalf of the taxpayer by filing a statement of revocation with the department. The notification statement must indicate the taxpayer's name, address, and identification, and that the authority of the former representative has ceased and must be signed by a current authorized representative. Also, the name and address of each representative who no longer has authority must be listed (or a copy of the prior representative certification form must be attached).
 - (4) Administrative revocation by the department, following procedures in paragraph 7.6(5) "e."
- 7.6(7) Returns that may be used to grant power of attorney authority.** An IDR power of attorney form is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450.
- 7.6(8) Individuals authorized to represent themselves or others in a contested case proceeding.** The right to represent oneself or others in connection with any contested case proceeding before the department or administrative hearings division shall be limited to the following classes of individuals, so long as such representation is not barred by another provision of law. Representatives must have a valid IDR power of attorney form or valid representative certification form on file with the department to represent others in a contested case proceeding. The right to represent a taxpayer before the department or the administrative hearings division does not confer the right to represent the taxpayer in a judicial proceeding.
- a.* Taxpayers who are natural persons representing themselves. One spouse may not represent the other in contested case proceedings, unless the spouse is acting in a capacity described in paragraphs 7.6(8) "b" to "j";
 - b.* Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;
 - c.* Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with the requirements for admission to practice before the courts of the state of Iowa pro hac vice;
 - d.* Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542;

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e. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer. Attorneys who are acting in the capacity of a director or officer of a corporation must meet the requirements of paragraph 7.6(8)“*b*” or “*c*”;

f. Partners representing their partnership. Attorneys who are acting in the capacity of a partner must meet the requirements of paragraph 7.6(8)“*b*” or “*c*”;

g. Fiduciaries. Fiduciaries include trustees, receivers, guardians, personal representatives, administrators, and executors. For purposes of this rule, a fiduciary is considered to be the taxpayer and not a representative of the taxpayer;

h. Government officials authorized by law;

i. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II of Iowa Code chapter 422; and

j. Conservators, guardians, or durable powers of attorney appointed to handle tax matters.

7.6(9) *Entities as authorized representatives.*

a. Appointment. A taxpayer may authorize an entity to act on its behalf in tax-related matters by following the procedures described in this subrule in a manner approved by the department. By appointing an authorized entity representative, the taxpayer consents to the authorized entity representative, and any individuals submitted to the department by the authorized entity representative, as described in paragraph 7.6(9)“*c*,” sending and receiving the taxpayer’s information to and from the department and taking any other action described in these rules. By appointing an authorized entity representative, the taxpayer understands that the authorized entity representative is solely responsible for maintaining an accurate list of individuals allowed to act on the taxpayer’s behalf. The taxpayer agrees that any improper disclosure or use of the taxpayer’s information by the entity or entity’s current or former employees, agents, or contractors shall solely be the responsibility of the entity and the entity’s employees, agents, or contractors. The department shall not be liable for any acts or omissions of the entity or the entity’s employees, agents, or contractors.

b. Department approval of authorized entity representatives.

(1) The department will review authorized entity representative appointments.

(2) The department has the authority to approve, deny, or remove third-party access to any entity or individual employee upon review.

c. Duties of the authorized entity representative.

(1) The authorized entity representative shall be responsible for managing access for individual employees that it authorizes to act on behalf of the taxpayer in a manner defined by the department. The authorized entity representative shall provide the department a single point of contact for matters involving the entity’s status as an approved entity representative.

(2) The authorized entity representative single point of contact must have a valid IA 2848 or representative certification form on file on behalf of the authorized entity representative.

(3) The authorized entity representative will provide information regarding each individual employee authorized to act on behalf of the taxpayer as determined by the department. This information shall be used to identify the individual employee when contacting the department. The authorized entity representative shall maintain with the department an accurate and up-to-date list of individual employees that the authorized entity representative has authorized to act on a taxpayer’s behalf under this rule. The authorized entity representative shall remove any individuals from its list with the department as soon as an individual is no longer employed by the entity or is no longer authorized by the entity to act on behalf of a taxpayer. The authorized entity representative shall submit all information and changes to information to the department via GovConnectIowa.

(4) The authorized entity representative shall be responsible for the actions taken by its employees, agents, and contractors on behalf of the taxpayer.

(5) The authorized entity representative shall remain in good standing with the department.

d. Powers authorized. An authorized entity representative may be granted any or all of the powers described in subrule 7.6(2). The taxpayer may restrict the authorized entity representative as described therein.

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e. Contents of form. A valid IDR authorized entity representative form must contain the information specified in paragraph 7.6(5) "b."

f. Authorization period.

(1) An authorized entity representative may be used to authorize representation for an unlimited number of tax periods prior to or following the date on which the form is received by the department. If the tax period is left blank, all tax periods are included.

(2) At any time while the taxpayer has an effective authorized entity representative appointment filed with the department, the taxpayer consents to allowing the authorized entity representative and any individuals listed by the authorized entity representative, as described in paragraph 7.6(9) "c," to send and receive the taxpayer's information to and from the department and take any other action described in these rules.

(3) The authority granted by an IDR power of attorney form ceases to be effective upon revocation by the taxpayer, or withdrawal or dissolution of the authorized entity representative. It is the sole responsibility of the taxpayer to revoke an authorized entity representative.

g. Revocation and withdrawal.

(1) Revocation by the taxpayer. Such appointment may be revoked by the taxpayer at any time, via GovConnectIowa or in writing to the department. The revocation must include the name and identification number of the taxpayer, the name of the representative entity, an indication of the wish to withdraw, and the taxpayer's dated signature. If the revocation indicates that authorization should be revoked from "all" authorized representatives, this will apply to all representatives appointed via an IA 2848 or entity representative form.

(2) Withdrawal by the authorized entity representative. By filing a statement with the department, an authorized entity representative may withdraw from representation appointed under this subrule. The statement must be signed by the authorized entity representative single point of contact and must identify the name and address of the taxpayer(s) and the matter(s) from which the authorized entity representative is withdrawing. An authorized entity representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired. Such statement shall be signed by the authorized entity representative single point of contact.

(3) Administrative revocation by the department. The department may administratively revoke any entity representative authority.

ITEM 2. Amend subrule 7.9(6) as follows:

7.9(6) Form and content of the appeal.

a. *Department forms.* Appeals may be filed using the form available on GovConnectIowa or the form available on the department's website, tax.iowa.gov/forms.

b. *Manually created appeals.* Persons who do not use GovConnectIowa or the form available on the department's website shall use the following format:

(1) The appeal shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name and address and	*	APPEAL
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	(filled in by Department)

(2) The appeal shall substantially state in separate numbered paragraphs the following:

1. Proper allegations showing:

- Date of department action, such as the notice of assessment, refund denial, etc.;

REVENUE DEPARTMENT[701](cont'd)

- Whether the taxpayer failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
 - Whether the appeal involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;
 - Copies of the documented department action, such as the notice of assessment, refund claim, and refund denial letter;
 - Other items that the taxpayer wishes to bring to the attention of the department; and
 - A request for attorney fees, if applicable.
2. The type of tax, the taxable period or periods involved, and the amount in controversy.
 3. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
 4. Reference to any particular statute or statutes and any rule or rules involved, if known.
 5. Description of records or documents that were not available or were not presented to department personnel prior to the filing of the appeal, if any. Copies of any records or documents that were not previously presented to the department shall be provided.
 6. Any other matters deemed relevant and not covered in the above paragraphs.
 7. The desire of the taxpayer to expedite proceedings. ~~See rule~~ Rule 701—7.13(17A,421) ~~for~~ contains more details on expedited proceedings.
 8. A statement setting forth the relief sought by the taxpayer.
 9. The signature of the taxpayer or that of the ~~taxpayer's~~ authorized representative. If ~~it~~ the ~~appeal~~ is signed by the taxpayer, include the address and telephone number of the taxpayer in the signature block. If ~~it~~ the ~~appeal~~ is signed by a ~~taxpayer~~ an authorized representative, include the address and telephone number of the ~~taxpayer~~ authorized representative in the signature block. Appeals submitted by a ~~taxpayer's~~ an authorized representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department, or one should be included with the appeal.
- c. Spouses.* If an appeal involves an assessment or a refund denial to a married couple and both spouses intend to appeal, both spouses must sign the document as drafted under paragraph 7.9(6) "a" or "b." Appeals submitted by an authorized representative must include an executed IA 2848 power of attorney form or representative certification form, as applicable, for each spouse, unless an IA 2848 power of attorney form or representative certification form is on file with the department.

[Filed 9/16/22, effective 11/9/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6550C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to personal service and paperless delivery of notices, correspondence, and other communication

The Revenue Department hereby amends Chapter 7, "Appeals, Taxpayer Representation, and Other Administrative Procedures," and Chapter 8, "Forms and Communications," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 421.14 and 421.60(11).

REVENUE DEPARTMENT[701](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 421.60 as amended by 2022 Iowa Acts, House File 2552, section 18.

Purpose and Summary

This rule making amends rules on personal service and paperless delivery of notices, correspondence, and other communication from the Department to taxpayers and their authorized representatives. These amendments are necessary to reflect changes made to the implementing statute as a result of 2022 Iowa Acts, House File 2552, section 18, and to describe the functionality of the Department's e-services portal, GovConnectIowa, regarding paperless delivery, which will be available at the time this rule making becomes effective.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6446C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 14, 2022.

Fiscal Impact

This rule making has no known fiscal impact to the State of Iowa at this time.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 14, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—7.33(421) as follows:

701—7.33(421) Mailing to the last-known address or personal delivery of notices of assessment and refund denial letters. Taxpayers must update their address with the department in order to receive notices of refunds of tax, notices of assessment, and notices of refund claim denials. When such a notice is sent to a taxpayer's last-known address, the notice is legally effective even if the taxpayer never receives it. A taxpayer's authorized representative is responsible for keeping the representative's address

REVENUE DEPARTMENT[701](cont'd)

updated with the department. When such a notice is sent to a representative's last-known address, the notice is legally effective even if the representative never receives it.

7.33(1) No change.

7.33(2) *Determination of last-known address.*

a. A taxpayer's last-known address for a particular tax type shall be the one of the following most recently provided by the taxpayer and with which the department has updated its updated in the department's records:

(1) to (3) No change.

(4) The address provided by the taxpayer in GovConnectIowa;

(5) The address provided by the taxpayer in any correspondence to the department;

(6) The address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

b. No change.

7.33(3) *Personal Mail or personal delivery to a taxpayer.* The following shall constitute personal delivery to a taxpayer:

a. and b. No change.

c. With respect to a taxpayer who has not provided a last-known address for a particular tax type within the prior two years, mailing Mailing to an address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

d. No change.

7.33(4) *Personal Mail or personal delivery to authorized representatives.* The department may mail or personally deliver a copy of a notice to an authorized representative by one of the following methods:

a. Mailing to the address used on the most recently filed and processed written authorization as described in rule 701—7.6(17A) for the taxpayer the authorized representative is representing;

b. No change.

c. With respect to an authorized representative who has elected to receive notices electronically, by By providing the notice electronically through GovConnectIowa or similar method of electronic service;

d. and e. No change.

This rule is intended to implement Iowa Code section 421.60.

ITEM 2. Amend rule 701—8.6(421) as follows:

701—8.6(421) Electing to receive communications in electronic format in lieu of paper. A taxpayer or taxpayer representative that is a registered account holder in GovConnectIowa may elect to receive notices, correspondence, or other communication electronically through GovConnectIowa in lieu of receiving them by regular mail. ~~With respect to any notice, correspondence, or communication served electronically, response deadlines shall be calculated from the date the taxpayer is notified electronically of the correspondence or the item is mailed, whichever is earlier. For each account a taxpayer representative represents, if the taxpayer representative is registered in GovConnectIowa, the taxpayer representative will receive electronic notifications even if the taxpayer does not have an account. However, if the taxpayer has elected to continue to receive paper mail, the representative will continue to receive paper mail. If the taxpayer representative is not registered in GovConnectIowa, notifications will be provided by regular mail.~~

8.6(1) *How to make the election.* The election must be made by selecting the appropriate setting on GovConnectIowa.

8.6(2) *Limitations.*

a. This election only exists for persons registered in GovConnectIowa.

b. Unless specified elsewhere in rule, this option is limited to notices, correspondence, or other communications on tax types managed in GovConnectIowa.

e.—This election is not available for mail required to be sent by means other than regular mail.

REVENUE DEPARTMENT[701](cont'd)

~~d. c.~~ Where the department finds it beneficial to continue to send items by regular mail, the department may continue to send regular mail even if an electronic copy is also provided and even if the person elects to receive electronic mail.

8.6(3) *When service occurs.* If the department sends a notice, correspondence, or other communication by both mail and electronic communication, service occurs upon the earlier of when the communication is posted to GovConnectIowa or mailed.

8.6(4) *Taxpayer authorized representatives.* Authorized representatives as described in rule 701—7.6(17A,22,421,422) cannot opt out of paper mail for the taxpayers they represent. For each account an authorized representative represents, the authorized representative will receive paper copies of notices, correspondence, or other communication sent to the represented taxpayer. If the authorized representative creates a login and requests and is granted account access for the represented taxpayer, the authorized representative will be able to view electronic versions of the notices, correspondence, or other communication the represented taxpayer receives, but the authorized representative will still receive paper copies of those notices, correspondence, or other communication.

This rule is intended to implement Iowa Code section 421.60(11).

[Filed 9/14/22, effective 11/14/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6567C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to use of whole dollars on tax returns

The Revenue Department hereby amends Chapter 8, "Forms and Communications," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 421.14 and 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 422.21.

Purpose and Summary

For tax years beginning on or after January 1, 2022, certain business income and franchise tax returns will no longer require taxpayers to use whole dollars. This rule making removes the requirement that whole dollars be used on returns. Some taxpayers, including individuals and fiduciaries, may still be required to report whole dollars on the returns. Forms that require the use of whole dollars will state that requirement on the face of the form or in the instructions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6448C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 15, 2022.

REVENUE DEPARTMENT[701](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making action is adopted:

Amend paragraph **8.5(2)“a”** as follows:

a. ~~All monetary amounts on the prepared return must be in whole dollars.~~ The electronic submission must match the prepared return. The taxpayer(s) must declare the authenticity of the electronic return before it is transmitted. If the ERO makes changes to the electronic return after the Declaration for e-File Return form has been signed by the taxpayer(s), a new Declaration for e-File Return form must be completed and signed by the taxpayer(s) before the return is transmitted.

[Filed 9/15/22, effective 11/9/22]

[Published 10/5/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6566C

REVENUE DEPARTMENT[701]

Adopted and Filed

**Rule making related to penalty for failure to file a tax
return after receiving a written notice**

The Revenue Department hereby amends Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 421.27 as amended by 2021 Iowa Acts, Senate File 608, section 2.

REVENUE DEPARTMENT[701](cont'd)

Purpose and Summary

This rule making implements statutory changes to the penalty imposed on taxpayers for failure to file a tax return within 90 days of written notice from the Department. Those changes require the Department to send a written demand to a taxpayer instructing the taxpayer to file a tax return. If the taxpayer fails to file within 90 days of a demand letter, a \$1,000 penalty will be added to the amount of tax shown due. This rule making describes the demand letter that will be sent to the taxpayer to start the 90-day period. It also articulates what constitutes a showing of “good reason” for which this penalty may be waived by the Department. This penalty generally applies to all taxpayers for all tax types.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6453C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 15, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it implements. The final Fiscal Note for 2021 Iowa Acts, Senate File 608, did not indicate any fiscal impact.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making action is adopted:

Adopt the following **new** rule 701—10.9(421):

701—10.9(421) Failure to file penalty. A penalty may be assessed for failure to file a return if a taxpayer is subject to a return filing requirement. This penalty may be assessed on any person required to file a return for any tax type administered by the department. This penalty shall be assessed 90 days after the department has issued a demand letter if a return has not been filed. This penalty will be equal to \$1,000 for each failure to file. This penalty is in addition to any other penalty provided by law.

10.9(1) Demand letter.

REVENUE DEPARTMENT[701](cont'd)

a. The department may send a demand letter to a taxpayer at any time after the taxpayer has failed to file a return, as defined in Iowa Code section 421.6, by the due date. Once this letter has been issued, the taxpayer has 90 days from the date on the letter to file all returns referenced in the letter or show proof that all returns referenced in the letter have already been filed before a penalty will be assessed.

b. The letter shall contain the following title and heading:

FAILURE TO FILE DEMAND LETTER

The Iowa Department of Revenue has determined you have not filed one or more required returns. Under Iowa Code section 421.27(8), failure to file your return(s) as described in this letter within 90 days of the date of this letter will result in a \$1,000 penalty for each return that is not filed. Penalties under Iowa Code section 421.27(8) are in addition to other penalties under Iowa law.

c. The letter shall also contain the following:

- (1) Date of demand letter.
- (2) Tax period(s) involved.
- (3) Return(s) to be filed.
- (4) Date by which the return(s) must be filed to avoid incurring a penalty under Iowa Code section 421.27(8).
- (5) Total penalty under Iowa Code section 421.27(8) that will be assessed if the return(s) are not filed within 90 days.

10.9(2) Waiver of penalty.

a. *Documentation.* Unless otherwise indicated, written documentation from the taxpayer is required to support the waiver of this penalty.

b. *Good reason.* This penalty can be waived if the taxpayer proves by a preponderance of the evidence that the taxpayer did not file a return within 90 days of the date of the demand letter due to a “good reason” as defined in this rule. “Good reason” can only be shown by proving one of the following circumstances:

(1) Destruction of records by fire, flood, or act of God when the destruction interferes with the filing of a return within 90 days of the date of demand letter. “Act of God” means the same as defined in subrule 10.7(1).

(2) The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer’s immediate family, or the person directly responsible for filing the return when such illness or hospitalization interferes with the filing of a return within 90 days of the date of the demand letter.

(3) The return is filed but erroneously mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

(4) A timely appeal of a department action, other than the demand letter, contesting the filing requirement of the return(s) stated in the demand letter was filed before the date stated in the letter pursuant to subparagraph 10.9(1) “c”(4).

(5) Other good reason within the discretion of the department, if the taxpayer has mutually agreed, in writing, with the department to file the required return(s) within a reasonable period of time beyond the date stated in the letter pursuant to subparagraph 10.9(1) “c”(4).

c. *Subsequent issuance.* The department may issue a new demand letter for the same filing obligation if the taxpayer continues to fail to file after the waiver is granted.

EXAMPLE 1: X fails to file a return. The department sends X a failure to file demand letter pursuant to subrule 10.9(1). X fails to file the return within 90 days of the date of the demand letter. X is assessed a \$1,000 penalty. X is still required to file the return.

EXAMPLE 2: Y fails to file a return. The department sends Y a failure to file demand letter under subrule 10.9(1). Y fails to file the return within 90 days of the date of the demand letter. Y is assessed a \$1,000 penalty. Y demonstrates to the department that Y was in the hospital and that the hospitalization interfered with Y’s filing of the return within 90 days of the demand letter. The department waives the \$1,000 penalty. Y is still required to file the return.

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 3: Same facts as Example 2. After receiving the good reason waiver, Y does not file the return. The department issues a new failure to file demand letter under subrule 10.9(1) for the same return that the department sought to be filed in Example 2. Y fails to file the return within 90 days of the date of the second demand letter. Y is assessed a \$1,000 penalty. Y is no longer hospitalized and has no other good reason pursuant to paragraph 10.9(2)“b.” The \$1,000 penalty is not waived. A good reason waiver for the first demand letter does not permanently relieve Y from filing the return. Granting the waiver for a good reason for the first demand letter does not prevent the department from issuing a new demand letter for the same filing obligation.

10.9(3) Rescission. The department may rescind the demand letter in writing any time before the penalty is assessed under Iowa Code section 421.27(8) if the taxpayer demonstrates to the department’s satisfaction that the taxpayer has no Iowa return filing requirement or that the filing requirement has been met. The taxpayer shall have the burden to prove by a preponderance of the evidence that no filing obligation exists. The department may also rescind the demand letter if the taxpayer proves a good reason exists as described in paragraph 10.9(2)“b” that prevents the taxpayer from filing the return and the taxpayer has mutually agreed, in writing, with the department to file the required return within a reasonable period of time. The department may issue a new demand letter for the same filing obligation if the taxpayer continues to fail to file after the reasonable period of time mutually agreed to by the taxpayer and the department due to proof of a good reason has expired or if, after the department previously determined the taxpayer had no filing requirement, the department obtains additional information that shows the taxpayer does have a filing requirement.

EXAMPLE 4: Z fails to file a return and receives a demand letter. Z presents proof to the department that Z has no filing requirement. In response to this information, the department rescinds the demand letter. Z does not need to file the return within 90 days, and the department does not impose a \$1,000 penalty on Z.

EXAMPLE 5: Same facts as Example 4. After the department rescinds the demand letter, the department receives new information showing Z is required to file a return. The department can send Z a new demand letter for the same return.

This rule is intended to implement Iowa Code section 421.27 as amended by 2021 Iowa Acts, Senate File 608, section 2.

[Filed 9/15/22, effective 11/9/22]

[Published 10/5/22]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6570C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to corporate income tax rate adjustments

The Revenue Department hereby amends Chapter 51, “Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 422.33 as amended by 2022 Iowa Acts, House File 2317, section 56.

REVENUE DEPARTMENT[701](cont'd)

Purpose and Summary

This rule making implements the statutory changes to the corporate income tax rates contained in 2022 Iowa Acts, House File 2317. In the event that net corporate income tax receipts for the preceding fiscal year exceed \$700 million, the statute requires the Department to calculate the corporate tax rates that would have generated \$700 million in net corporate income tax receipts in the preceding fiscal year. This rule making describes the method the Department will use to determine the rates.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 10, 2022, as **ARC 6451C**. The Department received one comment, which concurred that the rule was consistent with the statute it is intended to implement.

The Legislative Services Agency (LSA) found that “[t]he proposed rules contain a provision that allows the Department to base the tax rate change calculation on an amount that is in a range that is 3.0% above or below the \$700 million target that is contained in the new law.” While this was not the Department’s intention in including the language in question, the Department recognizes the possibility that the provision, as written, could be abused in the manner described by the LSA. Therefore, the language in question (formerly paragraph 51.10(1)“d”) has been removed from the rule. Additionally, Administrative Rules Review Committee (ARRC) members expressed confusion about the meaning of the introductory paragraph of subrule 51.10(1). In response to these concerns, a portion of that paragraph was moved to new lettered paragraph 51.10(1)“a,” and both the introductory paragraph and new paragraph 51.10(1)“a” were reworded slightly to provide clarity. The paragraphs of subrule 51.10(1) have been relettered due to the deletion of former paragraph 51.10(1)“d” and the addition of new paragraph 51.10(1)“a.”

Adoption of Rule Making

This rule making was adopted by the Department on September 14, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it implements. The Fiscal Note for 2022 Iowa Acts, House File 2317, section 56, projected that State General Fund revenue will decrease by \$19.6 million in fiscal year 2023, \$79.6 million in fiscal year 2024, \$109.8 million in fiscal year 2025, \$135.3 million in fiscal year 2026, \$182.1 million in fiscal year 2027, and \$229.4 million in fiscal year 2028.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

REVENUE DEPARTMENT[701](cont'd)

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making action is adopted:

Adopt the following **new** rule 701—51.10(422):

701—51.10(422) Corporate income tax rate adjustments. By November 1, 2022, and by November 1 of each subsequent year, the department of management shall determine the net corporate income tax receipts for the preceding fiscal year and provide the amount determined to the department of revenue. If the net corporate income tax receipts for the preceding fiscal year exceed \$700 million, the department of revenue will adjust the corporate income tax rates to the rates that would have generated \$700 million in net corporate income tax receipts in the preceding fiscal year.

51.10(1) Method for determination of the tax rates. When the net corporate income tax receipts in the preceding fiscal year are sufficient to trigger a rate reduction, the department of revenue will adjust the corporate income tax rates according to the following method.

a. The department will use data from corporate tax returns for the most recent tax years for which the department has sufficient data available to calculate corporate income tax receipts for the applicable fiscal year as described in paragraphs 51.10(1) “*b*” and “*c*.”

b. The department will first estimate what the corporate tax revenue would be for the current tax year and the two preceding tax years corresponding to the fiscal year in question using the applicable corporate income tax rates.

c. The department will then apply lower marginal tax rates for those tax years to determine what marginal tax rates would have generated \$700 million in net corporate income tax receipts in the preceding fiscal year.

d. In reducing the marginal tax rates, the department will first reduce the highest marginal rate until it is equal to the next highest rate, then reduce the two highest rates by equal amounts, until there is a single rate of 5.5 percent.

e. The tax rates will be rounded down to the nearest one-tenth of 1 percent.

51.10(2) Effective date of tax rates. The tax rates determined by the calculation in subrule 51.10(1) will apply for tax years beginning on or after the next January 1 following the determination date. The department will publish the new corporate income tax rates in the Iowa Administrative Bulletin and on the department’s website by the first December 31 following the determination date.

51.10(3) Automatic repeal. This rule is repealed effective January 1 of the first year in which the corporate income tax rate is reduced to a single rate of 5.5 percent.

This rule is intended to implement Iowa Code section 422.33.

[Filed 9/16/22, effective 11/9/22]

[Published 10/5/22]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/5/22.

ARC 6562C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to primary highway access control

The Transportation Department hereby rescinds Chapter 112, “Primary Road Access Control,” adopts new Chapter 112, “Primary Highway Access Control,” and amends Chapter 150, “Improvements and Maintenance on Primary Road Extensions,” Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 306.19, 306A.1 to 306A.8, 307.12, 318.3, 318.5 and 318.8.

Purpose and Summary

This rule making rescinds and replaces Chapter 112 and makes a coordinating amendment within Chapter 150. This action is needed because the rescinded Chapter 112 was outdated with many of its key components, such as the priority system, entrance types and design criteria, being essentially unchanged since Iowa started building the interstate system. The Department's process to design and operate Iowa's highways has changed over the years to reflect better integration with communities, economic development, budgets and safety. The rules better define the Department's efforts to provide a first-class transportation system that maximizes safe and efficient travel while ensuring landowners and businesses the ability to access and utilize the transportation system.

Safety has played a major role in the creation of this updated chapter. Each new proposed access point (driveway) onto the primary highway system will be reviewed relative to its impact on the safety and operations of the highway. A research project was conducted by Iowa State University to document how Iowa crash rates vary relative to multiple access types under a variety of roadway conditions. The findings of this study were used to develop new processes that will allow the Department to quickly and easily approve new accesses on roadways where there are fewer safety concerns and to ensure safety and operations are maintained on roadways where conditions are at more critical levels.

Chapter 112 is rewritten using best practices from other states and engineering principles that factor in roadway geometrics and traffic volumes to "rightsize" the proposed new access. When the proposed access will add a small number of new trips to and from a location, such as a local residence or farm fields, the Department will be able to allow more options and fewer restrictions to the landowner. When the proposed access will add a high number of new trips to and from the location and will be located in an area where roadway conditions are near critical, then the Department may require additional safety features such as an added turn lane to ensure the roadway remains safe and efficient. The updated chapter benefits the traveling public and the landowner wanting a new access by allowing the Department to use real-world roadway conditions rather than blanket spacing or other requirements that provided little flexibility in the past.

Educational statements and descriptions or definitions that are unique to the current Chapter 112 are removed, and the new rules refer to Department standards. This has been done in part to ensure that a new access is built using the same requirements regardless of who builds the new access. These changes have helped condense Chapter 112 from approximately 26 pages down to 9. This simplification of rules also makes for an easier and clearer set of requirements.

The following explanation summarizes the major changes within Chapter 112:

Remove definitions. The following terms are removed because they are no longer needed or do not require being defined in order to understand the rules: "acquisition," "bridge," "built-up area," "clear zone," "concrete box culvert," "controlled access highway," "district representative," "entrance," "entrance type," "entrance width," "fringe area," "frontage," "frontage road," "fully controlled access highway," "interchange," "median," "normal peak hour traffic," "pavement," "predetermined access location," "ramp bifurcation," "recreational trail," "right-of-way line," "rural area," "rural-designed area," "shoulder," "sight distance," "special access connection," "turning lane" and "urban-designed area."

The following definitions are removed because the priority system is being amended to a category system that will better balance access control with the needs of the property: "Priority I highway,"

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“Priority II highway,” “Priority III highway,” “Priority IV highway,” “Priority V highway” and “Priority VI highway.”

Add new definitions. The term “access connection” is added because a term is needed for the physical portion of the entrance to have a clear understanding of Chapter 112 and is not otherwise defined.

The terms “average annual daily traffic,” “intersection,” “ramp” and “trip” are added because the definitions are needed for a clear understanding of Chapter 112.

The term “functional area” is added because it provides a consistent calculation method for determining the first access point from newly constructed intersections, interchanges and free-flowing movements. The intent of adding the term “functional area” is to improve safety and operations.

The term “necessity” is added because it helps with clarifying the access decision process and further defines what the applicant is required to provide. The intent is to better balance traffic operations, safety and the needs of the public.

Amend current definitions. The term “access” is amended to reflect that Chapter 112 applies only to highways.

The term “highway” is amended because this definition needs to be consistent with Iowa Code section 321.1(78), which provides a clearer understanding of how “highway” is used in the revised Chapter 112.

The term “primary highway” is amended because Chapter 112 needs a definition for highways under the Department’s jurisdiction.

The term “roadway” is amended because it needs to be consistent with Iowa Code section 321.1(65), which provides a clearer understanding of how “roadway” is used in the revised Chapter 112.

The term “traveled way” is amended by adding the word “gutter” to better define “traveled way.”

Subrule 112.3(2). This subrule requires the applicant to apply for a new permit when there is a change in use of the access. This subrule has been added to ensure that access usage and design align. The intent is to increase safety in conjunction with access.

Subrule 112.3(6). This subrule explains that no rights of access are conveyed. The Department issues permits for new access connections and modifications to an existing access connection. This subrule also clarifies that permits do not convey ownership and are considered licenses. The intent is to encourage better communication with property owners regarding their rights.

Rule 761—112.4(17A,306A,318). This rule is updated because of a new web-based permitting system the Department implemented.

Paragraph 112.4(1)“g.” This paragraph adds a traffic impact analysis for type A and type B access applications, which allows for a long-range review of high-volume accesses. The intent is to improve safety and operations of the highway.

Subrule 112.4(5). The current chapter includes a simplistic appeals process that would only work for the denial of a permit and has no established timelines. Chapter 112 needs to provide applicants an opportunity to contest any type of Department decision related to access, not just the denial of a permit, so the appeals process is amended.

Subrule 112.5(2). The changes determine the access type by using traffic volumes in the design year. A type D access, which is a low-volume access, is being introduced. The intent is to be more lenient on spacing requirements to allow more low-volume accesses per parcel.

Subrule 112.5(3). The changes replace a priority classification with a category classification. There are nine categories identified by function, design, volume, etc. The new categories will better balance access control with the needs of the property.

Paragraph 112.5(4)“a.” This paragraph introduces a report for category revisions and formalizes a process for making these revisions. The intent is to encourage more documentation of access decisions and procedures.

Subrule 112.5(6). The addition of access management plans and agreements acknowledges the need to handle access jointly with local agencies, allows for flexibility on highway segments that do not fit any categories, and addresses more complex and existing conditions in urban areas and growing areas.

Subrule 112.6(12). This subrule states that an access shall be designed to prevent queuing of vehicles on the roadway. This change will help improve the safety of roadways and minimize congestion.

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Removal of current rule 761—112.14(306A). This rule is not included within new Chapter 112 because recreational trail connections to the highway are different than vehicular connections and the new Chapter 112 addresses vehicular connections.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 27, 2022, as **ARC 6434C**. No public comments were received. There was a clerical error that omitted “20th” within paragraph 112.5(5)“c” when the Notice was published. This error is corrected within the Adopted and Filed rule making.

Adoption of Rule Making

This rule making was adopted by the Department on September 14, 2022.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on November 9, 2022.

The following rule-making actions are adopted:

ITEM 1. Rescind 761—Chapter 112 and adopt the following **new** chapter in lieu thereof:

CHAPTER 112
PRIMARY HIGHWAY ACCESS CONTROL

761—112.1(306A,318) Scope and contact information.

112.1(1) Statement of policy. All primary highways are controlled access facilities. The efficiency and safety of a highway depend to a large extent upon the amount and character of interruptions to the movement of traffic. The primary cause of these interruptions is vehicular movement to and from public roadways, businesses, residences, and other developments along the highway. Regulation and overall control of highway access are necessary to provide efficient and safe highway operation and to utilize the full potential of the highway investment. Each highway access connection should be located and designed to achieve the least adverse impact to traffic operations and public safety. Accordingly, the department hereby establishes rules for control of access for all primary highways.

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112.1(2) Contact information. Information regarding this chapter may be obtained from the department's website at: www.iowadot.gov; any of the department's six district offices; or the Traffic and Safety Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—112.2(306A,321) Definitions. The following terms, when used in this chapter, shall have the following meanings unless the context otherwise requires:

"Access" means a way or means of egress or ingress to a highway.

"Access connection" means any point of motor vehicle ingress or egress from or to a highway. It is the physical connection between the edge of the traveled way and the abutting property and is exclusive of the roadway and median.

"Average annual daily traffic" or *"AADT"* means the total volume of traffic passing a point or segment of a highway facility in both directions for one year divided by the number of days in the year.

"Functional area" includes any area upstream or downstream of an intersection where intersection operation and conflicts significantly influence driver behavior and vehicle operations. The functional area of an intersection is a calculated value based on the intersection's geometrics, posted speed limit, traffic volume, type of traffic control used and perception-reaction-time values determined by the American Association of State Highway and Transportation Officials.

"Highway" means the same as "street" or "highway" as defined in Iowa Code section 321.1(78).

"Intersection" means the same as defined in Iowa Code section 321.1(33).

"Necessity" means the access is required or indispensable to the property because of circumstances that cannot be sufficiently mitigated by other means. Proof of necessity refers to documents, data, maps and other information submitted to illustrate and verify the claim of necessity.

"Primary highway" means a highway that is under department jurisdiction.

"Ramp" means a special lane, usually a short section of one-way roadway, which provides an access connection between two roads to enter or exit a major highway. The term "ramp" includes but is not limited to entrance ramps, roadway ramps, loop roads and collector-distributor roads.

"Roadway" means the same as defined in Iowa Code section 321.1(65). A divided highway has two or more roadways.

"Traveled way" means the portion of a roadway used for the through movement of vehicles, excluding shoulders, gutters and auxiliary turn lanes.

"Trip" means a single or one-directional vehicle movement. A vehicle leaving the highway and entering a property is one trip, and the vehicle leaving the property and entering the highway is a second trip.

761—112.3(306A) General provisions. The following provisions govern access encroachments onto a primary highway:

112.3(1) No access connection construction activity on a highway shall begin until an access permit has been issued by the department.

112.3(2) A new access permit is required when there is a change in use of the access connection. A change in access use includes a change in predominant vehicle types or an increase in traffic volumes or a situation when the use exceeds the design and engineering limitations of the existing access design. If the property owner desires to change from the historical access use or to a use not authorized by the terms and conditions of the existing access permit, a new permit is required.

112.3(3) No person shall excavate, fill or make any physical change to any part of the right-of-way without a permit issued by the department.

112.3(4) No person shall drive a motor vehicle to or from a highway at a location that is not an authorized access connection.

112.3(5) No new access rights shall accrue from, and no additional access shall be provided upon, the splitting or dividing of existing parcels of land or contiguous parcels under the same ownership or controlling interest unless the proposed access complies with access category and design requirements and is permitted. Adjacent properties under common ownership or control, consolidated

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for development, or part of a phased development plan shall be considered one unit, and a unified access and circulation plan shall be established for the site.

112.3(6) No rights of access are conveyed when the department provides a new access connection or modifies an existing access connection.

112.3(7) The terms and conditions of any permit are binding upon the applicant, the property owner and all assigns, successors-in-interest, heirs and occupants. Should an assign, successor-in-interest, heir or occupant not accept the terms and conditions of an existing permit, the assign, successor-in-interest, heir or occupant shall apply for a new access permit or a permit to close the access.

112.3(8) A property owner not wanting to assume responsibility for an access or its requirements may apply for access removal. Such removal shall be at the property owner's expense unless agreement is made for removal during a highway project.

112.3(9) A permit grants no property rights or interests in state right-of-way.

112.3(10) Where there are multiple accesses to the same parcel, the department may consolidate existing access connections during a highway project.

112.3(11) The department has the authority regarding operational modifications to the highway and all access connections.

761—112.4(17A,306A,318) Permitting process. An access permit is required for an encroachment onto public right-of-way for the construction, reconstruction or modification of an access connection or any of its related appurtenances.

112.4(1) Application for an access permit.

a. To obtain an access permit, applicants will use the web-based system found at www.iowadot.gov. If the applicant cannot use or connect to this electronic system, the applicant may contact the appropriate district office that is responsible for the area in which the proposed access is located. An applicant may be the property owner or the owner's authorized agent.

b. A separate access application and permit is required for each access connection.

c. The department will not act on an application it deems incomplete and shall notify the applicant if additional information is required.

d. Intentional misrepresentation of existing or future conditions or providing false information shall be considered sufficient grounds for denial or revocation of a permit.

e. The applicant is responsible for any location and design plans required to describe the access.

f. The applicant is responsible for providing an estimate of the traffic volume of the access and the property as a whole. The estimate will include the anticipated average daily or hourly use and the anticipated access use upon the full development of the property.

g. For access types A and B as defined in subrule 112.5(2) and public intersections, the department should require a traffic impact analysis from the applicant during the processing of a permit request. Such traffic impact analysis shall be prepared by a professional engineer licensed in Iowa at the cost of the applicant. The analysis will address a current and 20-year projection of traffic activity and impacts at and near the proposed access connection, including the full-development traffic volumes of the access connection.

h. It is the responsibility of the applicant to comply with local ordinances and obtain any other local permits, utility permits or agency approvals that may be required.

112.4(2) Processing an access application.

a. Upon receipt of an application, the department will begin processing the application using the electronic permitting system. The department will apply the criteria as required by this chapter, including access type, access category, location, design, public safety and traffic operations.

b. The department may issue an access permit with terms and conditions or deny the application if it fails to meet this chapter's requirements. The department representative shall notify the applicant of the determination.

c. The department will not act on an application it deems incomplete and shall notify the applicant if additional information is required.

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d. Upon mutual agreement by the department and applicant, the department may suspend or extend the process period.

e. The applicant may withdraw the application.

112.4(3) Permit terms and conditions.

a. An access permit shall include terms and conditions necessary to meet the requirements of this chapter and include consideration of the following:

- (1) Safety of the traveling public.
- (2) The access category pursuant to rule 761—112.5(306A).
- (3) The access location and design pursuant to rule 761—112.6(306A).
- (4) The traffic-carrying capacity of the highway.
- (5) Protection of the public investment in the highway.
- (6) Topography and geometric limitations and constraints.

b. The department may restrict turning movements as necessary to reduce adverse impacts. The department will consider the 20-year projection of traffic volumes on the roadway and the full-development traffic volumes of the access connection.

c. Upon issuance of an access permit, the permittee shall initiate construction within one year. An extension may be requested. If the permittee is unable to initiate construction within one year after the permit issue date and no extension is granted, the permit is deemed expired and no longer valid.

d. The property owner and the owner's authorized agent agree by accepting the permit to indemnify, defend and hold harmless the state of Iowa and its employees from all claims arising out of construction or use of the access.

e. The property owner and applicant assume liability for the construction and ongoing use of the access.

f. The permittee shall maintain the access in good repair at all times.

g. If the department has not received the signed copy of the permit within 60 days of the date of transmittal to the applicant, the permit shall be deemed withdrawn.

112.4(4) Permits where department owns access rights.

a. This subrule applies only where the department has determined there is no longer the necessity for the controlled access line at the proposed location. The department may issue an access permit if all design and location criteria are met.

b. If it becomes necessary to close the access, the property owner will be notified in advance and any permit will be revoked. The access application and permitting process do not include any rights of appeal where the department is the owner of the access rights.

112.4(5) Appeals.

a. An applicant or permittee who objects to any terms or conditions placed on an access permit, the denial of a permit, or the closure or revocation of an access may appeal the department's decision. If the department owns the access rights, this subrule does not apply.

(1) The appeal shall be submitted to the appropriate district engineer at the department.

(2) An appeal concerning the closure or revocation of an access or the denial of a permit must be submitted within 60 days of receipt of the department's notification.

(3) An appeal concerning the terms or conditions placed on an access permit must be submitted within 60 days of when the department sends the applicant the signed copy of the permit with terms or conditions for signature.

(4) The appeal shall include reasons for the request and may include changes, revisions or conditions that would be acceptable to the applicant or permittee.

b. The district engineer shall issue a written decision to the applicant or permittee within 60 days of receipt of the appeal or 60 days after receipt of requested additional information.

c. Upon receipt of the written decision, the applicant or permittee may appeal the district engineer's decision by submitting the appeal along with background information to the director of

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transportation. The director shall issue a written decision within 60 days of receipt of the appeal. The director's decision shall be the final agency action.

112.4(6) Waivers. The director of transportation may, in response to a written petition, waive provisions of this chapter in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the rules administrator, either by mail to Rules Administrator, Government and Community Relations, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator's email address listed on the department's website at iowadot.gov/administrativerules.

112.4(7) Waivers involving interstate highways. The director of transportation shall not waive these rules in access situations involving the interstate highway system, including its ramps, without the approval of the Federal Highway Administration.

761—112.5(306A) Access types and the primary highway category system. This rule manages access connections according to highway function, design, traffic volumes, speed and roadside conditions.

112.5(1) General.

a. The department will assign access categories to all highways according to the descriptions in subrule 112.5(3).

b. There are no minimum or maximum distance criteria for the length of a category assignment.

c. The department may assign a specific category to a segment of highway based on operational needs and to maintain consistency along a specific route.

d. The department will maintain an access category assignment schedule for the highway system.

e. Municipal access categories are for primary highway extensions within municipalities where concurrent jurisdiction applies pursuant to Iowa Code section 306.4(4).

f. For all access categories, access connections should be kept to the minimum necessary to provide reasonable access. A second access to a parcel may be provided only if it meets spacing criteria, internal circulation is not feasible, and there is a necessity for the access.

g. If the category allows type D access, an additional type D access may be granted to a parcel if the necessity due to topography problems or ongoing agricultural activities is demonstrated. A change in use of the parcel of land serviced by the type D access requires a new permit and may require the access be closed if the location will not meet access category requirements for another type.

h. A secondary access for emergency fire services when required by local fire safety regulations may be permitted on all categories except for the categories interstate and freeway (I/F), expressway (E), and municipal expressway (ME) and across controlled access lines. Such emergency access may be permitted only if it is not feasible to provide the emergency access to a secondary roadway. A written explanation with references to local standards from an appropriate government safety official shall be included with the application. The access shall not be open for nonemergency uses and shall be maintained by the permittee as a closed access except during emergencies. Hidden pavement structures are acceptable.

i. Access connections to government parcels will be treated the same as private access types based on volume with the exception of egress access connections used specifically for emergency response services such as fire stations.

112.5(2) Access types. Access connections are distinguished by the following four types of private access based on access connection traffic volume:

a. Type A is a private access connection with traffic volumes equal to or greater than 100 trips in a peak hour. Traffic volume estimates are to be based on a 20-year projection or the build-out of the development, whichever is greater.

b. Type B is a private access connection with traffic volumes between 11 and 99 trips in a peak hour. Traffic volume estimates are to be based on a 20-year projection or the build-out of the development, whichever is greater.

c. Type C is a private access connection with traffic volumes between 1 and 10 trips in a peak hour.

d. Type D is a private access connection with an AADT of less than one per day.

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112.5(3) Access categories for highways. Access categories are distinguished as follows:

a. The interstate and freeway (I/F) category applies to highways with full access control. Access to the roadway, when allowed, shall be provided by ramps. Direct access to the main roadway and all ramps is prohibited without exception.

b. The expressway (E) category applies to nonfreeway multilane highways outside municipal boundaries where the department has acquired the associated access rights. No access that has not already been authorized shall be permitted across existing access control lines. An access management plan is required to authorize a new public intersection. No new direct access connections will be permitted for utilities that have not been previously authorized.

c. The rural-600 (R-600) category applies to two-lane and multilane highways outside municipal boundaries that are on the Iowa commercial industrial network as most recently approved by the commission, or are where roadway traffic volume will be equal or greater than 3,000 AADT within 20 years. Access types A, B and C may be permitted where the applicant can prove necessity and the access has a minimum spacing distance of 600 feet from other connections. Access type D must meet sight distance requirements. Private access connections should not be permitted within the functional area of any public intersection. Public intersections should be located at survey section lines when feasible. Each full-movement access connection should serve as many properties and interests as possible to reduce the need for additional direct access to the highway. Preference shall be given to public intersections.

d. The rural safety and need (R-S/N) category applies to two-lane highways outside municipal boundaries that will not exceed 3,000 AADT within 20 years. This category includes frontage roads, service roads and access ways. All private access types may be permitted where the applicant can prove necessity and meet sight and spacing distance requirements. Private access connections should not be permitted within the functional area of any public intersection. Public intersections should be located at land survey section lines when feasible.

e. The municipal expressway (ME) category applies to nonfreeway multilane highways inside municipal boundaries where arterial performance is necessary to provide high mobility and through traffic capacity. In the absence of an access management plan, no private access shall be permitted that has not already been authorized. An access management plan is required to authorize a new public intersection and may only be allowed if the public roadway is adopted by the city. No access shall be permitted across a controlled access line.

f. The municipal-1000 (M-1000) category applies to important regional and intracity highways that are within a municipality. Designation of M-1000 shall include consideration of system continuity and preservation of a high level of mobility and through traffic capacity. The department recommends the installation of restrictive medians between full-movement intersections. Access to an M-1000 may be granted under the following conditions:

(1) All access types are eligible for a full-movement access connection at 1,320 feet (one-quarter mile) locations based on section lines where feasible, and these access connections may be restricted to right-in and right-out turns or directional left-in-only as access volumes increase. A minimum access spacing interval of 1,000 feet should only be permitted if there is a documented necessity. No access connection should be allowed within the functional area of a public intersection.

(2) Each full-movement location should serve as many properties and interests as possible to reduce the need for additional direct access to the highway. Preference shall be given to public intersections.

(3) All access types are eligible for limited movement connections at minimum spacing intervals of 600 feet if a restrictive median is present.

g. The municipal-600 (M-600) category applies to highways within municipalities that have been determined to have a need to maintain a moderate level of mobility and through traffic capacity. Minimum spacing for all access types is 600 feet.

h. The municipal-300 (M-300) category applies to highways within municipalities where a low level of mobility and through traffic capacity is acceptable. Minimum spacing for all access types is 300 feet.

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i. The municipal safety and need (M-S/N) category applies to highways within municipalities where motor vehicle mobility and through traffic capacity are low priorities. The granting of access and the determination of access connection locations shall be based only on safety and need.

112.5(4) Category revisions.

a. From time to time it may be necessary for the department to change an assigned access category because of changes in roadway conditions, traffic growth or highway reconstruction. Reassignment shall be consistent with subrule 112.5(3). A report shall be prepared presenting why the current category should not be used and the reasons for and benefits of making the category revision.

b. If the highway is identified as a future freeway or expressway, the department may suspend the issuance of new access permits.

c. If a highway utilizing at-grade intersections is intended to be improved to accommodate traffic growth or safety considerations, the access category of the future improvement shall be applied.

112.5(5) Interchange and intersection access control.

a. When it is necessary for an at-grade access connection to be near an interchange on an access category E or ME, the first access connection location will be determined by calculating the functional areas of the expressway ramp and the first at-grade access connection. The two functional areas shall not overlap. The functional area of the ramp shall be considered no less than 1,500 feet from the end of the taper. The first access should be a public intersection. Access turning movements may be restricted for operational reasons.

b. Access is prohibited without exception to all elevated structures and ramps on or connected to any highway.

c. When the interchange crossroad AADT will exceed 10,000 in the 20th year, the first full-movement access connection should be at least 1,320 feet as measured from the ramp bifurcation point. A minimum of 1,000 feet may be allowed for a full-movement intersection if there is a proven necessity and no reasonable alternative. A restrictive median may be required between the ramps and the full-movement intersection. If the first full-movement intersection is at least 1,200 feet from the ramp bifurcation and a restrictive median is present, a right-in and right-out access may be permitted at a minimum of 600 feet from the ramp bifurcation. The ramp functional area should not overlap with the functional area of any access connection.

d. When the interchange crossroad AADT will be between 3,000 and 10,000 within 20 years, the first full movement should be at least 1,000 feet away from the ramp. All access types may have a restricted right-in and right-out access at a minimum of 600 feet from the ramp bifurcation point.

e. When the interchange crossroad AADT will not exceed 3,000 within 20 years, access public intersections and private access types A and B should be at least 600 feet away from the ramp bifurcation point. Types C and D should be at least 300 feet from the bifurcation point and may be subject to operational restrictions.

f. For any new interchange or interchange reconstruction, access rights should be acquired and extend a minimum of 600 feet away from the ramp bifurcation point. If the AADT will exceed 10,000 within 20 years, a minimum of 1,000 feet of access rights should be acquired.

g. Where a free-flow turning movement from a roadway or ramp merges onto another roadway, an analysis shall be completed to determine the functional area and the preferred placement of the first access connection. The functional area of the merge lane of the roadway and the functional area of the first access connection shall not overlap. Access rights shall be acquired along the identified functional area length.

h. An at-grade intersection shall be defined by the determination of its functional area. Access should not be allowed within this functional area. Access beyond the functional area remains subject to the requirements of the access category location standards.

i. When acquiring access rights as part of a highway project, the department may acquire access rights along intersecting public roadways to protect the operation of the intersection at the highway. Acquisition of access rights should extend a distance of 150 feet from the near edge of the highway traveled way. If the intersecting public roadway AADT is predicted to exceed 3,000 within 20 years, the department should acquire access rights for a distance of 300 feet from the near edge of the highway

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traveled way. The department may lengthen or shorten the distance of access rights required after considering the intersection functional area, traffic volumes, traffic operations, acquisition costs and other factors.

112.5(6) Access management plans and agreements.

a. Access management plans may be developed to determine how access will be managed on select sections of high-priority corridors, around freeway interchanges, and within municipalities and high-growth corridors. Each plan will apply access management techniques, identify acceptable traffic control features, and establish the necessary operational restrictions to ensure the long-term functional performance and safety of the highway. The scope of each access plan may vary depending on what is determined necessary by the parties of the agreement to manage current and predicted future highway conditions and local land use.

b. To apply an access management plan within a municipality, it must be adopted by joint agreement in accordance with Iowa Code sections 306.4(4) and 306A.7.

c. Highway projects and corridor plans may include access management techniques and improvements to bring a section of highway into conformance with its current access category without adopting an access management plan and agreement.

761—112.6(306A) Location and design. This rule sets criteria for the location and design of access connections to primary highways.

112.6(1) Each access connection authorized must be located and designed in accordance with this rule. Terms and conditions for location, design, construction and use of the access connection shall be established by permit.

112.6(2) The priority of the primary highway system is to provide highway corridors with the goal of maintaining traffic capacity by limiting disruptions to through traffic. Direct access from abutting land is therefore subordinate. Where an adjacent lower traffic volume road is available, the access should connect to that roadway.

112.6(3) Private access connections may only be considered when there is a reasonable necessity for the access and should be separated from other private access connections at a minimum distance equal to the sight distance at the posted speed. The burden of proving necessity is on the applicant.

112.6(4) An access connection must be consistent with the requirements of the assigned access category.

112.6(5) Access location considerations shall include traffic operations, public safety, sight distance, distance to other access locations, traffic speed and volumes, the design vehicle for the access and the allowable turning movements.

112.6(6) Restrictive medians may be installed and access connection turning movements may be restricted to right turns or directional left turns for operational reasons when determined necessary and at the sole discretion of the department.

112.6(7) Minimum design criteria may be used only when there is a proven and documented necessity that higher standards are not feasible at the specific site.

112.6(8) When there are access connections on opposite sides of the highway and left turns are allowed from both directions, the access connections should be opposite each other or have sufficient offset distance so as to prevent overlapping left turn maneuvers.

112.6(9) If the access connection requires a turn lane, the access connection should be located so the turn lane can be installed and no other access connections occur along the turn lane. An access should not be installed along a turn lane or taper.

112.6(10) Private access connections should not be located within the functional area of a public intersection.

112.6(11) All access connections must meet sight distance.

112.6(12) The access shall be designed to facilitate the movement of vehicles from the highway to prevent the queuing of vehicles on the roadway.

112.6(13) If a proposed access location does not comply with this chapter, the access permit shall be denied.

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112.6(14) If the department determines that the literal application of these rules to a specific situation will create or result in an unsafe situation or an unreasonable design, the department shall use sound engineering practices to determine the appropriate location and design for the specific situation. The department shall include justification for the design in the permit or the highway project file, as applicable.

761—112.7(306A) Access construction. This rule sets criteria for the construction of access connections.

112.7(1) Overall stipulations.

a. Unless part of a public construction project, the construction of the access and its appurtenances as stated in the terms and conditions of the permit shall be completed at the expense of the permittee.

b. The access connection shall be constructed according to the department's standards and specifications. The applicant will be provided with the necessary standards and specifications with the issued permit.

c. The access shall be completed in an expeditious and safe manner and shall be finished within 30 days from initiation of construction within the highway right-of-way unless otherwise stated on the access permit.

d. The department may restrict work within the highway right-of-way, restrict lane closure periods and require preapproval of all aspects of construction phasing and traffic control. The permittee shall provide work zone traffic control at all times during access construction. Work in the highway right-of-way is not allowed on legal holidays, at night, during peak traffic hours or during adverse weather conditions without specific department permission.

e. Any damage to the primary highway, appurtenances or any utility or any permitted private encroachment shall be repaired immediately at the direction of the affected owner. All costs associated with repair or relocation will be borne by the permittee. If a survey monument is modified or damaged, repair and replacement shall be done at the direction of the owner of the monument.

f. The relocation, removal or modification of any traffic control device or public or private utilities shall be accomplished by the permittee without cost to the department or utility and at the direction of the department or utility owner. A department utility permit shall be obtained for utility work within highway right-of-way.

g. An access permit may require installation of traffic control features or devices, but such requirements do not create any type of private interest in such features. Traffic control features and devices in the right-of-way, such as traffic signals, channelizing islands, medians, median openings, and turn lanes are operational and safety characteristics of the highway and are not means of private access. The department may install, remove or modify any traffic control feature or device in the right-of-way to promote traffic safety or efficient traffic operations.

h. The department is not obligated to permit or approve any connection, traffic control feature or device or any other site-related improvement that has been specified in a development approval process separate from the permitting criteria and approval process described in this chapter.

i. If any construction element of the permitted access fails within three years following construction, the permittee shall be responsible for all repairs. Failure to make such repairs may result in suspension of the permit and closure of the access.

j. The property owner or occupants are responsible for maintaining the access. Where the access connection has a paved surface, the property owner or occupants are responsible for maintaining the access connection from the paved edge of the roadway to the right-of-way line. Where the access connection does not have a paved surface, the property owner or occupants are responsible for maintaining the access from the outer shoulder line of the roadway to the right-of-way line. The department is not responsible for the removal of debris, snow or ice on the access, including debris deposited by the department during maintenance operations.

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k. Drainage structures located along the highway are maintained by the department except for concrete box culverts and bridges constructed by the property owner for access to the property, which shall be maintained by the property owner or occupants.

112.7(2) Temporary access.

a. When an access is needed in temporary situations for a limited period of time, a temporary access connection may be allowed, but it is subject to special stipulations as determined by the department.

b. The location of the temporary access shall comply with all safety and sight distance requirements.

c. Temporary access shall be authorized only for a specified period of time. In no event shall the period of the permit extend beyond 24 consecutive months.

d. The permittee is responsible for all costs incurred, including removal of the access and restoration of the right-of-way at the end of the permit period.

e. An application for temporary access is not needed if the temporary access is for department purposes and has been approved in department internal documents and, when required, by the Federal Highway Administration.

761—112.8(306A) Drainage requirements for access connection approvals.

112.8(1) The permittee shall provide, at the permittee's expense, drainage structures for access connections that will become an integral part of the existing drainage system.

112.8(2) The type, size and condition of the drainage structures provided by the permittee shall meet the requirements of the department in unincorporated areas and the requirements of both the department and the municipality in incorporated areas. The design and construction of drainage structures for access shall not adversely impact the highway right-of-way, a storm sewer system or a drainage-way.

112.8(3) The construction of an access shall not impair the drainage or stability of the highway subgrade, nor shall it cause water to flow across the roadway pavement or pond on the shoulders or in the ditch or result in erosion within the highway right-of-way.

112.8(4) Drainage systems designed and constructed by the department within the highway right-of-way are designed to serve the drainage needs of the highway and adjoining properties based on the basin conditions at the time of the design of the highway.

761—112.9(306A,318) Violations at access connections.

112.9(1) It is the responsibility of the property owner and permittee to ensure that the access is not in violation of this chapter or the terms and conditions of the permit.

112.9(2) When an authorized access is constructed or used in violation of this chapter or the terms and conditions of the permit, the department may suspend the access permit and may order the immediate closure of the access. Notwithstanding the preceding sentence or any other provision of this chapter, the department may proceed as authorized under Iowa Code chapter 318 at any time.

These rules are intended to implement Iowa Code chapter 17A and sections 306.19, 306A.1 to 306A.8, 307.12, 318.3, 318.5 and 318.8.

ITEM 2. Amend rule **761—150.1(306)**, definition of "Freeway," as follows:

"Freeway" means a ~~primary highway constructed with Priority I~~ fully controlled access control primary highway. The rights of ingress and egress from abutting properties have been legally eliminated by the department. Permanent access to the freeway is allowed only at interchange locations. For the purpose of highway lighting, "freeway" means a ~~primary highway constructed with Priority I access control for a length of~~ a freeway is generally five miles or greater more miles in length.

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