IOWA ADMINISTRATIVE BULLETIN

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Pages 542 to 722 include **ARC 2740C** to **ARC 2777C**

PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355
Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making
2016

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

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
10	**Wednesday, October 19, 2016**	**November 9, 2016**
11	**Wednesday, November 2, 2016**	**November 23, 2016**
12	**Wednesday, November 16, 2016**	**December 7, 2016**

PLEASE NOTE:

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

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

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

BANKING DIVISION[187]

Appraisal management companies, ch 25 IAB 10/12/16 **ARC 2773C**	Conference Room, Suite 300 200 East Grand Ave. Des Moines, Iowa	November 1, 2016 9 a.m.

EDUCATION DEPARTMENT[281]

Iowa learning online (ILO) coursework—waivers, 15.11 IAB 10/12/16 **ARC 2760C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 1, 2016 10 to 11 a.m.
Iowa vocational rehabilitation services, amendments to ch 56 IAB 10/12/16 **ARC 2763C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 1, 2016 11 a.m. to 12 noon
State standards for progression in reading, amendments to ch 62 IAB 10/12/16 **ARC 2762C**	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 1, 2016 2 to 3 p.m.
Standards for practitioner and administrator preparation programs, 79.13(4), 79.15 IAB 10/12/16 **ARC 2761C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 1, 2016 9 to 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Water quality—criteria for copper, 61.3 IAB 10/12/16 **ARC 2757C**	Nicola-Stoufer Room Washington Public Library 115 W. Washington St. Washington, Iowa	November 1, 2016 4 to 6 p.m.
	Meeting Room B Urbandale Public Library 3520 86th St. Urbandale, Iowa	November 2, 2016 4 to 6 p.m.
	Council Chambers City Hall 620 Erie St. Storm Lake, Iowa	November 3, 2016 4 to 6 p.m.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Enhanced 911 telephone systems, 10.2, 10.9(3) IAB 10/12/16 **ARC 2740C** (See also **ARC 2741C** herein)	Cyclones Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	November 1, 2016 11 a.m.

INSURANCE DIVISION[191]

Iowa retirement facilities, rescind ch 24; adopt ch 102 IAB 9/28/16 **ARC 2724C**	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	October 18, 2016 10 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Marital and family therapists and mental health counselors—licensure, continuing education, amendments to chs 31, 32 IAB 9/28/16 **ARC 2738C**	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	October 18, 2016 8 to 8:30 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Backflow prevention assembly tester registration, 26.2, 26.4 to 26.8 IAB 9/28/16 **ARC 2734C**	Rooms 517 and 518, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa *To participate by conference call:* Dial 1-866-685-1580 Conference code: 0009991863	October 18, 2016 1 to 3 p.m.
Local boards of health—district board formation, city board dissolution, Iowa public health standards, 77.2, 77.3(2), 77.4 to 77.12 IAB 9/28/16 **ARC 2725C**	Room 415, Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	October 18, 2016 3 to 4 p.m.

TRANSPORTATION DEPARTMENT[761]

Surface transportation block grant program, ch 162 IAB 10/12/16 **ARC 2750C** (See also **ARC 2745C** herein)	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	November 3, 2016 10 a.m. (If requested)
Highway-railroad grade crossing surface repair fund, amendments to ch 821 IAB 10/12/16 **ARC 2751C**	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	November 3, 2016 1 p.m. (If requested)

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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FEMA DR-4281-IA

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
Iowa Homeland Security and Emergency Management Department (HSEMD)	**Hazard Mitigation Grant Program (HMGP)** Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)	• State Agencies and Local Governments. • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations. • Private Non Profit (PNP) Organizations or institutions which operate a PNP facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221(e). • All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP. • All applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan. **Application Process:** - Potential **project & planning** applicants must complete a Notice of Interest (NOI) Form located on the HSEMD website at: http://www.iowahomelandsecurity.org/grants/HMA.html - NOI Form must be emailed to hsemd.mitigation@iowa.gov - NOI's will be selected for full application development based on funding availability, the State's priority, and an initial eligibility review. - NOI's will be accepted on a continuous basis or until otherwise notified. **For additional information, please contact:** **Dan Schmitz 515-725-9369** **Aimee Bartlett 515-725-9364** **Iowa Homeland Security and Emergency Management Department** **7900 Hickman Road** **Windsor Heights, Iowa 50324**	**Eligible Project Types** Projects may be of any nature that will result in protection to public or private property, including but not limited to: • Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity • Construction of safe rooms (tornado and severe wind shelters) • Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, flood-proofing, storm shutters, hurricane clips) • Minor structural hazard control or protection projects that may include vegetation management, storm water management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system • Development of multi-jurisdictional hazard mitigation plans and plan updates **Planning Application** The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.

ARC 2769C

AGING, DEPARTMENT ON[17]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 231.14, the Department on Aging hereby gives Notice of Intended Action to rescind Chapter 29, "Reduction of Area Agencies on Aging," Iowa Administrative Code.

This amendment proposes to rescind Chapter 29, which pertains to the reduction of the area agencies on aging. The Department was mandated, pursuant to 2012 Iowa Acts, House File 2320, to reduce the number of area agencies on aging, effective July 1, 2013. Chapter 29 was put in place to give guidance to the area agencies on aging related to the reduction. The rules in Chapter 29 terminated on July 1, 2014.

Any interested person may make written comments on the proposed amendment on or before November 1, 2016. Comments should be directed to Brian Majeski, Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319. Comments may also be sent by e-mail to Brian.Majeski@iowa.gov.

The proposed amendment is subject to the Department's general waiver provision.

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

This amendment is intended to implement 2012 Iowa Acts, House File 2320.

The following amendment is proposed.

Rescind and reserve **17—Chapter 29**.

ARC 2773C

BANKING DIVISION[187]

Notice of Intended Action

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

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

Pursuant to the authority of 2016 Iowa Acts, House File 2436, section 20, the Iowa Division of Banking (IDOB) hereby gives Notice of Intended Action to adopt Chapter 25, "Appraisal Management Companies," Iowa Administrative Code.

The adoption of Chapter 25 is related to the superintendent of banking's role as administrator of the Iowa Appraisal Management Company Registration and Supervision Act ("the Act"), which was enacted by 2016 Iowa Acts, House File 2436, division I, and which passed unanimously in both chambers during the 2016 Legislative Session. The Act gives the superintendent the authority to promulgate rules to administer the Act. Appraisal management companies (AMCs) assist banks and other mortgage lenders with satisfying the independent appraisal requirements of the Dodd-Frank Act by contracting with independent appraisers, and many Iowa banks already use AMCs. Federal regulations state that an AMC will not be able to perform services for a federally related residential mortgage transaction in Iowa after August 10, 2018, unless the AMC is registered with the state. The Act is intended to ensure that Iowa mortgage lenders may continue to use AMCs and closely follow the federal minimum standards for AMC regulation.

BANKING DIVISION[187](cont'd)

Proposed Chapter 25 is intended to implement the Act and ensure that AMCs are able to register and operate in Iowa without interruption. Enabling registration and ensuring continuous operation are especially important because the Act requires AMCs to be registered with the state as of January 1, 2017. The proposed rules define the procedures for an application for registration as an AMC in Iowa, enumerate the fees applicable to AMCs, and set out other elements of AMC regulation. In the interest of making state government more efficient and transparent, the structure of these rules is very similar to the structure of other rules applicable to nondepository financial institutions. The proposed rules have been reviewed by interested parties, including AMCs, the AMC trade association, Iowa bankers, Iowa credit unions, and Iowa appraisers, and these stakeholders have been supportive of the proposed rules.

Consideration will be given to all written comments or suggestions on the proposed rules received no later than 5 p.m. on November 1, 2016. Comments should be addressed to Zachary Hingst, Iowa Division of Banking, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. E-mail may be sent to zak.hingst@idob.state.ia.us.

A public hearing will be held on November 1, 2016, at 9 a.m. in the Iowa Division of Banking Conference Room, 200 East Grand Avenue, Suite 300, Des Moines, Iowa, at which time persons may present their views on the proposed rules either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person's name and address for the record and to confine remarks to the subject of the proposed rules.

The IDOB, mindful of the potential impact that these rules and the associated fees may have on the cost of state government and on Iowa jobs, has worked to keep these fees as low as possible. The fees are set below the national average and at a level designed only to cover the costs the IDOB incurs in administering the statute. The IDOB believes setting fees at this level will enable the industry to continue operating in Iowa and will ensure efficient regulation while minimizing the impact of fees and avoiding burdensome costs to regulated entities. The IDOB also acknowledges that the $500 annual registration fee will likely have some effect on jobs, but anticipates that the effect will be minimal and notes that, without these rules, Iowa would likely suffer a greater adverse effect on jobs due to the inability of AMCs to operate in the state.

These rules are subject to waiver or variance pursuant to 187—Chapter 12.

These rules are intended to implement Iowa Code chapter 17A and 2016 Iowa Acts, House File 2436, division I.

The following amendment is proposed.

Adopt the following **new** 187—Chapter 25:

CHAPTER 25
APPRAISAL MANAGEMENT COMPANIES

187—25.1(17A,543E) Definitions. For the purposes of this chapter, the definitions in 2016 Iowa Acts, House File 2436, division I, shall apply. In addition, unless the context otherwise requires, the following definitions shall apply:

"Nationwide multistate licensing system" or *"NMLS"* means a mortgage licensing system owned and operated by the State Regulatory Registry, LLC, a wholly owned subsidiary of the Conference of State Bank Supervisors.

"Owner" means a person who owns or has the power to vote more than 10 percent of the shares of an appraisal management company.

"Ownership" means being an owner or otherwise having the power to vote more than 10 percent of the shares of an appraisal management company.

"Registrant" means a person who is registered as an appraisal management company in this state.

187—25.2(17A,543E) Application for registration.

25.2(1) An application for registration to operate an appraisal management company in Iowa shall be submitted to the administrator through the NMLS or as otherwise prescribed by the administrator. All information requested in the application shall be provided on or with the application form, including

but not limited to any and all information required by 2016 Iowa Acts, House File 2436, section 8. The administrator may consider an application withdrawn if the application does not contain all of the information required and the missing information is not submitted to the administrator within 30 days after the administrator requests the missing information.

25.2(2) Appraiser panel. The application shall include a list of all certified and licensed appraisers who are independent contractors and are currently on the applicant's appraiser panel and shall also include any additional certified and licensed appraisers who are independent contractors and who in the 12 months immediately preceding submission of the application have performed appraisals, for the applicant or for persons that have ordered appraisals through the applicant, for covered transactions or for secondary mortgage market participants in connection with covered transactions in which the dwelling is located in this state. The application shall include the name, the certification or license number, the date the appraiser joined the panel, and the date the appraiser left the panel, if applicable, for each appraiser included on the applicant's appraiser panel. The applicant's appraiser panel shall include all appraisers the applicant has engaged to perform one or more appraisals for or in connection with a covered transaction or for a secondary mortgage market participant in connection with a covered transaction in this state and all appraisers the applicant has accepted for future consideration for such appraisal assignments.

25.2(3) All owners and controlling persons of the applicant must authorize a fingerprint background check through the NMLS for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. This requirement applies to all owners and controlling persons, regardless of whether the individual has previously applied as an owner or controlling person of an appraisal management company under 2016 Iowa Acts, House File 2436, division I.

25.2(4) The applicant shall submit an application fee, initial registration fee, and background investigation fee in the amounts provided in subrule 25.8(5), as well as the fee required for registration on the appraisal management company national registry maintained by the appraisal subcommittee as specified in subrule 25.8(5). The applicant shall also pay any additional fees required by the NMLS, including but not limited to, the following: system processing fees and background check fees. The applicant will be refunded the initial registration fee and the appraisal management company national registry fee if the application is denied.

25.2(5) If any information material to the application changes after the applicant files the initial application but before the administrator approves or denies the application, the applicant shall provide updated information to the administrator in writing within 10 calendar days of the change. The administrator may deny the application when such a material change in information has occurred and the applicant has failed to provide updated information within the prescribed time frame.

25.2(6) An applicant for registration to operate an appraisal management company in Iowa must file with the administrator a $25,000 surety bond in compliance with the provisions of 2016 Iowa Acts, House File 2436, section 19.

25.2(7) A registration shall lapse on the next succeeding December 31 after it is issued, but a registration granted on or after November 1 and before December 31 shall not lapse until December 31 of the following year. For example, a registration granted on November 17, 2017, would not expire until December 31, 2018. An applicant whose registration is granted on or after November 1 and before December 31 may be required, as determined by the appraisal subcommittee, to pay the fee for registration on the appraisal management company national registry in full for both calendar years. For example, while a registration granted on November 17, 2017, would not lapse until December 31, 2018, the registrant may be required to pay the national registry fee in full for 2017 and 2018.

187—25.3(17A,543E) Grounds for denial of a registration. The administrator may deny an application for registration to operate an appraisal management company, or issue a registration subject to restriction, for any of the reasons that follow.

25.3(1) This state or another state or jurisdiction has canceled, revoked, denied, suspended, or refused to renew the applicant's registration to operate an appraisal management company or has denied, suspended, or refused to renew a similar registration under this state's or the other state's or

jurisdiction's law. An agreement made between a person and this state or another state or jurisdiction not to operate as an appraisal management company may be considered a denial of that person's registration to operate an appraisal management company in this state or the other state or jurisdiction.

25.3(2) An owner or controlling person of the applicant has been barred, removed, or prohibited from owning or serving as the controlling person of an appraisal management company, or from serving in any capacity in a financial institution by any state or federal regulatory agency, including but not limited to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, or the U.S. Department of Housing and Urban Development.

25.3(3) An owner or controlling person of the applicant is or was the owner or controlling person of another appraisal management company in another state or jurisdiction, if such other state or jurisdiction has canceled, revoked, denied, suspended, or refused to renew the registration or application for registration of such other appraisal management company under this state's or the other state's or jurisdiction's law. An agreement made between a person and this state or another state or jurisdiction not to operate as the owner or controlling person of an appraisal management company may be considered a denial of that person's application to serve as the owner or controlling person of an appraisal management company in this state or the other state or jurisdiction.

25.3(4) An owner or controlling person of the applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, tax evasion, or another similar offense, in a court of competent jurisdiction in this state or in any other state, territory, or district of the United States or in any foreign jurisdiction. For the purposes of this subrule, "convicted of" includes a guilty plea, deferred judgment, deferred sentence, or other similar finding of guilt by a court of competent jurisdiction.

25.3(5) The applicant, or an owner or controlling person of the applicant, has made a false submission of material fact on an application for registration or has been otherwise implicated in the submission of a false application.

25.3(6) An owner or controlling person of the applicant has demonstrated a lack of moral character in a manner that the administrator reasonably believes will impair the ability of the owner or controlling person to operate an appraisal management company in full compliance with the public interest and state policies described in 2016 Iowa Acts, House File 2436, division I.

25.3(7) For any reason listed in 2016 Iowa Acts, House File 2436, section 17.

25.3(8) The applicant has failed to include all of the information required in the application or has failed to pay any fee required under 2016 Iowa Acts, House File 2436, division I, or this chapter.

187—25.4(17A,543E) Renewal of registration.

25.4(1) To remain registered to operate an appraisal management company in Iowa, a registrant must renew a registration before the date the registration lapses. A registrant who holds a lapsed registration shall not directly or indirectly engage in or attempt to engage in business as an appraisal management company or advertise or hold itself out as engaging in or conducting business as an appraisal management company in Iowa until the administrator has reinstated the lapsed registration or has approved a new registration.

25.4(2) An application to renew a registration shall be submitted to the administrator, through the NMLS or as otherwise prescribed by the administrator, no earlier than November 1 and no later than December 1 of the year for which the registration is valid. For example, for a registration that will lapse on December 31, 2017, an application for renewal shall be submitted by December 1, 2017. All requested information, including any material change to information contained in the original application, shall be provided to the administrator as directed by the NMLS or as otherwise prescribed by the administrator. Applications for renewal of a registration must be accompanied by a fee as specified in subrule 25.8(5). The administrator may also assess late fees as specified in subrule 25.8(5) for applications submitted after December 1.

25.4(3) The administrator shall grant an application to renew a registration if:

a. The administrator receives the application and the appropriate renewal fee by December 1, or the administrator receives the application after December 1 but before January 1 and it is accompanied by the appropriate renewal fee and the appropriate late fee;

b. The application is fully completed and includes all necessary information; and

c. The application does not reveal grounds that would be sufficient to deny initial registration, or issue a registration subject to restriction, pursuant to rule 187—25.4(17A,543E).

187—25.5(17A,543E) Reinstatement of lapsed registration.

25.5(1) The registration of an appraisal management company that has lapsed for failure to satisfy the minimum standards for renewal may be reinstated if the registrant meets the following requirements:

a. The application for reinstatement is submitted between January 1 and February 28 of the year immediately following the year the registration lapsed.

b. All minimum requirements for renewal of registration for the year in which the registration lapsed are satisfied prior to submission of the application for reinstatement. The registrant seeking to reinstate a registration must submit all information required to renew a registration pursuant to rule 187—25.4(17A,543E).

c. The registrant pays a reinstatement fee as specified in subrule 25.8(5), in addition to the renewal fee, and any late charges.

25.5(2) An appraisal management company whose registration has lapsed and who fails to meet the requirements for reinstatement specified in this rule must apply for a new registration and meet the requirements in effect at that time for a new registration.

187—25.6(17A,543E) Changes in the registrant's name, location, or ownership.

25.6(1) A registrant wishing to change the principal location of an appraisal management company shall notify the administrator through the NMLS, or as otherwise prescribed by the administrator, within 10 days of making the change. The notice shall include proof that the registrant has either obtained a new bond or amended the existing mandatory bond to reflect the new location. The registrant shall submit a fee as specified in subrule 25.8(5) in association with the change.

25.6(2) Registrants must notify the administrator no later than 15 days following a change in name and must submit to the administrator a fee as specified in subrule 25.8(5).

25.6(3) The prior written approval of the administrator is required whenever a change in ownership of a registrant is proposed. When a change in ownership of a registrant is proposed, the party that will assume ownership of the registrant shall give notice to the administrator through the NMLS, or as otherwise prescribed by the administrator, at least 30 days before the proposed change will take effect. The party that will assume ownership of the registrant shall furnish the administrator through the NMLS, or as otherwise prescribed by the administrator, with the same information required of initial applicants for registration, along with a fee as specified in subrule 25.8(5). The administrator shall approve or deny the request in accordance with the provisions of rule 187—25.3(17A,543E).

25.6(4) The prior written approval of the administrator is required whenever a change of the designated controlling person of a registrant is proposed. When change of the designated controlling person of a registrant is proposed, the party that will become the designated controlling person of the registrant shall give notice to the administrator through the NMLS, or as otherwise prescribed by the administrator, at least 30 days before the proposed change will take effect. The party that will become the designated controlling person of the registrant shall furnish the administrator through the NMLS, or as otherwise prescribed by the administrator, with the same information required of initial applicants for designation as a controlling person, along with the appropriate fee. The administrator shall approve or deny the request in accordance with the provisions of rule 187—25.3(17A,543E).

25.6(5) Failure to notify the administrator within the prescribed time as required by this rule may subject the registrant to disciplinary action. However, in the event the death, incapacity, or unexpected resignation of a designated controlling person, or a similar circumstance, makes it impossible for a registrant to provide 30 days' advance notice, no disciplinary action shall be taken if the party that will become the designated controlling person of the registrant provides the notice described in subrule

25.6(4) promptly and no later than 10 days after learning that a new controlling person must be designated.

187—25.7(17A,543E) Notice of significant events. A registrant shall notify the administrator immediately and in writing within 15 calendar days of the occurrence of any of the following events.

25.7(1) The registrant or any of the registrant's officers, directors, owners, or affiliates file for bankruptcy protection or commence reorganization proceedings.

25.7(2) A prosecuting authority files criminal charges against the registrant or any of a registrant's officers, directors, owners, or affiliates.

25.7(3) Another state or jurisdiction institutes registration denial, cease and desist, suspension or revocation procedures, or other formal regulatory action against the registrant or any of the registrant's officers, directors, owners, or affiliates.

187—25.8(17A,543E) Fees.

25.8(1) *Examination or investigation fees.* A registrant shall pay an investigation or examination fee as determined by the administrator based on the actual cost of the operation of the finance bureau of the banking division, as described in 2016 Iowa Acts, House File 2436, section 10.

25.8(2) *Examination or investigation late fees.* A registrant shall pay the administrator the total charge for an examination or investigation within 30 days after the administrator has requested payment. If a registrant fails to pay an examination or investigation fee by the due date, the administrator may assess an additional penalty as identified in subrule 25.8(5) for each day the fee is overdue.

25.8(3) *Late fees for failing to respond.* In the process of administrating this chapter, the administrator may require a person to provide responses to formal orders, examinations, or complaint inquiries. If a person fails to respond within 30 days of the request, the administrator may assess a fee as specified in subrule 25.8(5).

25.8(4) *NMLS system processing fees.* In addition to the fees set forth in this chapter, the applicant or registrant shall pay any fee assessed by the NMLS attributed to the registrant's record in the NMLS system including but not limited to the initial set-up fee, an annual processing fee, and any fees associated with changing or updating the registrant's record.

25.8(5) *Required fees.* The following fee schedule applies to appraisal management companies seeking registration or preregistration:

Application for registration fee	$250
Registration fee (initial) (not applicable to preregistration)	$500
Registration fee (annual renewal)	$500
Background investigation fee	$51
Appraisal management company national registry fee (not applicable to preregistration)	As determined by the appraisal subcommittee
NMLS fees	As determined by the NMLS
Fee for late submission of application for renewal	$50
Fee to reinstate a lapsed registration	$250
Reissuance or replacement of a lost, destroyed, or stolen registration	$25
Fee for change of principal location	$25
Fee for change of name	$25
Fee for change of ownership	$250
Fee for change of controlling person	$250

BANKING DIVISION[187](cont'd)

Fee for late payment of examination or investigation fees	5 percent of amount due per day beyond 30 days past due
Fee for late response to examination request	$10 per day beyond 30 days past due
Conversion fee for preregistered persons (applicable only when converting a preregistration to a registration)	$125
Dishonored check fee	$30
Examination fee	$100 per hour
Mailing list fee	$30

187—25.9(17A,543E) Registrant records.

25.9(1) *General record requirements.* The following requirements apply to all records a registrant is required to keep pursuant to 2016 Iowa Acts, House File 2436, section 13, and this chapter:

a. The registrant may keep records as a hard copy or in an electronic equivalent.

b. The registrant shall maintain all books and records in good order and shall produce books and records for the administrator upon request. Failure to produce such books and records within 30 days of the administrator's request may be grounds for disciplinary action against the registrant.

c. The obligation to maintain required records continues even after the registrant ceases business operations in Iowa and turns in or surrenders its registration. The owners and directors of the registrant are responsible for ensuring that this requirement is met for the period required under 2016 Iowa Acts, House File 2436, section 13, and this chapter.

d. The registrant shall keep all required records for at least five years from the date the record was created, unless a longer retention period is required by statute.

25.9(2) *Required records.* A registrant operating an appraisal management company shall keep, and be able to retrieve or access from its principal place of business, an appraisal request and assignment log, a true and complete copy of each appraisal performed, a payment log, applications for registration, a dispute resolution policy, and certain corporate records.

a. Appraisal request and assignment log. A registrant shall maintain a log of all appraisal services requested, including those requests for service that the registrant does not fulfill. A record shall also be kept of the appraiser assigned to each request for appraisal services accepted by the registrant that includes a description of the assignment, the certification or registration number of the assigned appraiser, the certification possessed by the assigned appraiser, and the expiration date of the appraiser's certification.

b. Appraisal files. For each appraisal service assigned by a registrant to an appraiser, the registrant shall keep a record of the award or engagement letter giving the appraisal assignment to the appraiser; the assigned appraiser's acceptance of the assignment; all material communications between the registrant, the assigned appraiser, and the service requestor regarding a consumer credit transaction secured by the principal dwelling of an Iowa consumer, or the securitization thereof; and the appraisal report created by the assigned appraiser.

c. Payment log. A record shall be kept of all payments made by a registrant in association with the provision of appraisal services and shall include the date the payment was made, the amount paid, the appraisal services for which payment was made, and the date on which the appraiser provided the results of the completed appraisal service to the registrant.

d. Dispute resolution policy. A registrant shall maintain a copy of a dispute resolution policy for appraisers who request a review of a decision made by the registrant. The dispute resolution policy shall provide for a written response to the appraiser's request for review, a written statement of the outcome of the dispute resolution process, and a copy of all relevant documents to the appraiser upon request. The dispute resolution policy shall provide for external review of the decision in question or internal review of the decision in question by an officer or employee of a registrant who holds a higher position than the individual who made the decision in question.

e. *Corporate records.* A registrant shall maintain lists of all owners, directors, officers, and employees, as well as the minutes from meetings of the registrant's board of directors if the registrant's corporate structure includes a board of directors.

25.9(3) *General business records.* In addition to the required records, a registrant must keep the following general business records for at least five years from the date the record was created:

a. All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and canceled checks (or copies thereof) relating to the registrant's operation of an appraisal management company.

b. Complete records (including invoices and supporting documentation) for all expenses and fees paid in connection with each appraisal, including a record of the date and amount of all such payments actually made in connection with each appraisal.

c. Copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors, and others compensated by a registrant in connection with the operation of an appraisal management company.

d. All correspondence and other records relating to the maintenance of any surety bond required by 2016 Iowa Acts, House File 2436, division I.

e. Copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar functions performed by any third party, including but not limited to the administrator or any other regulatory or supervisory authority.

25.9(4) *Disposal of records.* If a registrant or former registrant disposes of records at the end of the retention period, the registrant or former registrant shall dispose of the records in a reasonable manner that safeguards any identification information, as defined in Iowa Code section 715A.8(1)*"a."* The owners and directors of registrants and former registrants are responsible for ensuring that this requirement is met.

187—25.10(17A,543E) Complaints and investigations.

25.10(1) The administrator may, at any time and as often as the administrator deems necessary, investigate a registrant and examine the registrant's books, accounts, records, and files.

25.10(2) The administrator may investigate complaints about, or alleged violations committed by, any registrant.

25.10(3) The following shall constitute a complaint or alleged violation:

a. A written complaint received from a consumer, member of the public, employee, business affiliate, or other governmental agency.

b. Notice to the administrator from any source that the registrant, or any owner or controlling person thereof, has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the administrator from any source that any owner or controlling person of the registrant has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other similar offense, in a court of competent jurisdiction in this state or in any other state, territory, or district of the United States, or in any foreign jurisdiction.

187—25.11(17A,543E) Disciplinary action.

25.11(1) The administrator has authority pursuant to 2016 Iowa Acts, House File 2436, division I, and Iowa Code chapter 17A to impose discipline for violations of 2016 Iowa Acts, House File 2436, division I, and this chapter.

25.11(2) Grounds for discipline. The administrator may impose any of the disciplinary sanctions set out in 2016 Iowa Acts, House File 2436, section 17, when the administrator finds any of the following:

a. The registrant, or an owner or controlling person thereof, has violated a provision of 2016 Iowa Acts, House File 2436, division I, or this chapter.

b. The registrant, or an owner or controlling person thereof, fails to fully cooperate with an examination or investigation, including failing to respond to an inquiry from the administrator within 30 calendar days of the date the administrator mails a written communication directed to the registrant's last-known address on file with the administrator.

c. The registrant, or an owner or controlling person thereof, has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the administrator.

d. The registrant continues to operate an appraisal management company without an active and current registration.

e. The registrant fails to timely notify the administrator of the occurrence of any of the significant events set forth in rule 187—25.7(17A,543E).

f. The registrant fails to notify the administrator of a change in ownership, controlling person, name, or principal place of business.

g. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the registrant's registration or authorization to operate an appraisal management company under the other state's or jurisdiction's law.

h. The registrant fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

i. The registrant, or an owner or controlling person thereof, has violated an order of the administrator.

j. The registrant has abandoned its place of business for 60 or more days.

k. The registrant fails to pay any fee required by 2016 Iowa Acts, House File 2436, division I, or this chapter or to maintain a bond required by 2016 Iowa Acts, House File 2436, division I.

l. A fact or condition exists which, had it existed at the time of the original application for registration, would have warranted the administrator to refuse to issue the original registration.

25.11(3) A registrant may surrender a registration by delivering to the administrator a written notice of surrender.

187—25.12(17A,543E) Appraisal management company national registry maintained by the appraisal subcommittee. The administrator shall transmit to the appraisal subcommittee information and fees as necessary for inclusion on the appraisal management company national registry.

25.12(1) *Registered appraisal management companies.* The administrator shall transmit to the appraisal subcommittee all information regarding registered appraisal management companies required for inclusion on the appraisal management company national registry, including but not limited to a roster of appraisal management companies registered in this state and records relating to any disciplinary action taken against a registrant.

25.12(2) *Federally regulated appraisal management companies.* The administrator shall collect from a federally regulated appraisal management company all fees required for registration on the appraisal management company national registry maintained by the appraisal subcommittee. A federally regulated appraisal management company shall also pay all fees associated with the administration of this rule, including but not limited to fees required by the NMLS. The administrator shall collect from a federally regulated appraisal management company the following information necessary for the fulfillment of this obligation: the name, address, and telephone number of the company; the national registry identification number and tax identification number of the company; the start date of the company's registration on the appraisal management company national registry; the name of and contact information for a contact person for the company; and any other information as required by the administrator.

187—25.13(17A,543E) Preregistration.

25.13(1) A person who is not required to register as an appraisal management company because its appraiser panel does not meet or exceed the size requirements specified in 2016 Iowa Acts, House File 2436, section 3, may apply to the administrator for preregistration as an appraisal management company. If the administrator approves the application, the applicant will receive a preliminary notice indicating that the administrator intends to approve the applicant for registration as an appraisal management company, based on the information submitted, as soon as the appraiser panel that the applicant oversees meets or exceeds the statutory size requirements. The administrator's preliminary

intent to approve registration will remain subject to change in the event that the administrator receives additional information indicating that registration should be denied.

25.13(2) An applicant seeking preregistration as an appraisal management company must follow the application procedures prescribed in rule 187—25.2(17A,543E), including providing all required information. The applicant shall indicate that the applicant is applying for preregistration as an appraisal management company. The applicant shall submit the application fee required by rule 187—25.2(17A,543E), but an applicant under this provision need not submit the initial registration fee or the fee required by the appraisal management company national registry. The administrator shall approve or deny the application for preregistration based on the criteria enumerated in rule 187—25.3(17A,543E). If the administrator approves the application for preregistration, the applicant will not be registered on the appraisal management company national registry.

25.13(3) A person who has received preregistration as an appraisal management company must apply for registration as an appraisal management company at least 30 days before the appraisal panel that the preregistered person oversees meets or exceeds the size requirements specified in 2016 Iowa Acts, House File 2436, section 3. The applicant shall submit a conversion application to the administrator, through the NMLS or as otherwise prescribed by the administrator, specifying the new size of the applicant's appraiser panel as required by subrule 25.2(2), updating all required information as necessary, and including any other information as prescribed by the administrator. The applicant shall also submit a conversion fee and the fee required by the appraisal management company national registry as specified in subrule 25.8(5).

25.13(4) The administrator shall approve the application for registration unless additional information submitted by the applicant, or otherwise received by the administrator, indicates that the applicant is ineligible for registration based on the criteria enumerated in rule 187—25.3(17A,543E). After the administrator approves registration, the applicant will be registered on the appraisal management company national registry and must comply with the provisions of 2016 Iowa Acts, House File 2436, division I, and this chapter.

These rules are intended to implement Iowa Code chapter 17A and 2016 Iowa Acts, House File 2436, division I.

ARC 2774C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 15.106A and section 404A.6 as amended by 2016 Iowa Acts, House File 2443, section 32, the Economic Development Authority gives Notice of Intended Action to adopt a new Chapter 49, "Historic Preservation and Cultural and Entertainment District Tax Credits," Iowa Administrative Code.

The proposed rules govern the administration of the Historic Preservation and Cultural and Entertainment District Tax Credit program. The program was previously administered by the Department of Cultural Affairs (DCA) and the Department of Revenue. 2016 Iowa Acts, House File 2443, division V, passed by the General Assembly, brought the program under the administration of the Iowa Economic Development Authority (IEDA) in consultation with DCA, effective August 15, 2016. IEDA will administer the tax credit portion of the program, while DCA will review the historic components of the project applications. The proposed new rules are based on DCA's existing rules, but with several changes, including: (1) changes required by 2016 Iowa Acts, House File 2443; (2) limits

to developer fees that qualify for the credit; and (3) expansion of rules governing the CPA examination required for projects with final qualified rehabilitation expenditures over $100,000.

The Economic Development Authority Board approved these rules at its meeting held on August 19, 2016.

Interested persons may submit comments on or before November 14, 2016. Comments may be submitted to Jennifer Klein, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3124; e-mail Jennifer.Klein@iowa.gov.

This rule making does not have any fiscal impact to the state of Iowa.

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

These rules are intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, division V.

The following amendment is proposed.

Adopt the following **new** 261—Chapter 49:

CHAPTER 49
HISTORIC PRESERVATION AND CULTURAL AND ENTERTAINMENT DISTRICT TAX CREDITS

FOR PROJECTS REGISTERED ON OR AFTER AUGUST 15, 2016

261—49.1(303,404A) Purpose. A historic preservation and cultural and entertainment district tax credit may be applied against the income tax imposed under Iowa Code chapter 422, division II, III, or V, or Iowa Code chapter 432 for qualified rehabilitation projects that have entered into and complied with an agreement with the economic development authority (hereinafter referred to as "the authority") and complied with all applicable terms, laws, and rules. The program is administered by the authority with the assistance of the department of cultural affairs and the department of revenue. The general assembly has mandated that the authority, the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs reviews historic preservation issues and evaluates whether projects comply with the prescribed historic standards for rehabilitation. Once the historical significance and description of rehabilitation have been approved, the authority enters into an agreement with the eligible taxpayer and issues a tax credit upon completion of all program requirements and verification of qualified rehabilitation expenditures. The department of revenue is responsible for administering tax credit transfers and processing tax credit claims. This chapter sets forth the administration of the program by the authority. The administrative rules for the department of cultural affairs' administration of the program can be found in rules 223—48.22(404A) through 223—48.37(303,404A). The administrative rules for the department of revenue's administration of the program, when adopted, will be found in 701—Chapters 42, 52 and 58.

261—49.2(404A) Program transition. The 2016 general assembly made several changes to the historic tax credit program, including transferring the primary responsibility for the program's administration to the authority in consultation with the department of cultural affairs. For projects registered prior to August 15, 2016, the program is administered by the department of cultural affairs and the department of revenue pursuant to the statutes and rules that apply to projects registered prior to August 15, 2016. On or after August 15, 2016, the program is administered by the economic development authority in consultation with the department of cultural affairs pursuant to Iowa Code chapter 404A. Chapter 49 applies to projects that are registered on or after August 15, 2016.

261—49.3(404A) Definitions. The definitions listed in rules 223—1.2(17A,303) and 223—35.2(303) shall apply to terms as they are used throughout this chapter. In addition, for purposes of this chapter, unless the context otherwise requires:

"Agreement" means an agreement between an eligible taxpayer and the authority concerning a qualified rehabilitation project as provided in Iowa Code section 404A.3(3) and rule 261—49.14(404A).

"Applicant" means an eligible taxpayer described in rule 261—49.9(404A).

"Assessed value" means the value of the eligible property on the most current property tax assessment at the time that the relevant application or agreement is submitted or the agreement is signed, as applicable.

"Authority" means the economic development authority.

"Barn" means an agricultural building or structure, in whatever shape or design, which was originally used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

"Certificate" means a historic preservation and cultural and entertainment district tax credit certificate issued pursuant to Iowa Code section 404A.3(5).

"Commencement date" means the date set forth in the agreement, which date shall not be later than the end of the fiscal year in which the agreement is entered into.

"Commercial property" means property classified as commercial, industrial, railroad, utility, or multiresidential for property tax purposes under rules 701—71.1(405,427A,428,441,499B), 701—76.1(434), and 701—77.1(428,433,437,438).

"Completion date" means the date on which property that is the subject of a qualified rehabilitation project is placed in service, as that term is used in Section 47 of the Internal Revenue Code.

"Department" means the department of cultural affairs.

"Director" means the director of the economic development authority.

"Eligible taxpayer" means the fee simple owner of the property that is the subject of a qualified rehabilitation project, or another person who will qualify for the federal rehabilitation credit allowed under Section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project.

"Federal rehabilitation credit" or *"federal credit"* means the tax credit allowed under Section 47 of the Internal Revenue Code.

"Federal standards" means the U.S. Secretary of the Interior's standards for rehabilitation set forth in 36 CFR Section 67.7.

"Government funding" or *"funding originating from a government"* includes but is not limited to:

1. Any funding the applicant received from a government; or
2. Funding from a third party or a series of third parties where those funds originally came from a government or were derived from a government payment, grant, loan, tax credit or rebate or other government incentive; or
3. Funding from a third party or a series of third parties where those funds are derived from, secured by, or otherwise received in anticipation of a government payment, grant, loan, tax credit or rebate or other government incentive.

"Historically significant" means a property that is at least one of the following:

1. Property listed on the National Register of Historic Places or eligible for such listing.
2. Property designated as contributing to a district listed in the National Register of Historic Places or eligible for such designation.
3. Property or district designated a local landmark by a city or county ordinance.
4. A barn constructed prior to 1937.

"Large project" means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than $750,000.

"Noncommercial property" means property other than "commercial property" as defined in this rule. "Noncommercial property" includes barns constructed prior to 1937.

"Nonprofit organization" means an organization described in Section 501 of the Internal Revenue Code unless the exemption is denied under Section 501, 502, 503, or 504 of the Internal Revenue Code. "Nonprofit organization" does not include a governmental body, as that term is defined in Iowa Code section 362.2.

"Placed in service" means the same as used in Section 47 of the Internal Revenue Code.

"Program" means the historic preservation and cultural and entertainment district tax credit program set forth in this chapter.

"Property" means the real property that is the subject of a "qualified rehabilitation project" or that is the subject of an application to become a qualified rehabilitation project.

"Qualified rehabilitation expenditures" or *"QREs"* means expenditures that meet the definition of "qualified rehabilitation expenditures" in Section 47 of the Internal Revenue Code and as described in rule 261—49.4(404A).

"Qualified rehabilitation project" or *"project"* means a project for the rehabilitation of property in this state that meets all of the following criteria:

1. The property is historically significant as defined in this rule.
2. The property meets the federal standards as defined in this rule.
3. The project is a substantial rehabilitation as defined in this rule.

"Related entities" means any entity owned or controlled in whole or in part by the applicant; any person or entity that owns or controls in whole or in part the applicant; or any entity owned or controlled in whole or in part by any current or prospective officer, principal, director, or owner of the applicant.

"Related persons" means any current or prospective officer, principal, director, member, shareholder, partner, or owner of the applicant.

"SHPO" means the state historic preservation office at the department of cultural affairs.

"Small project" means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of $750,000 or less.

"Substantial rehabilitation" means qualified rehabilitation costs that meet or exceed the following:

1. In the case of commercial property, costs totaling at least 50 percent of the assessed value of the property, excluding the land, prior to the rehabilitation or at least $50,000, whichever is less; or
2. In the case of noncommercial property, costs totaling at least $25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

"Tax credit" or *"historic tax credit"* means the historic preservation and cultural and entertainment district tax credit established in Iowa Code chapter 404A.

261—49.4(404A) Qualified rehabilitation expenditures.

49.4(1) *Definition. "Qualified rehabilitation expenditures"* or *"QREs"* means expenditures that meet the definition of "qualified rehabilitation expenditures" in Section 47 of the Internal Revenue Code and are specified in the agreement.

49.4(2) *Expenditures incurred by nonprofit organizations.* Notwithstanding the foregoing subrule, expenditures incurred by an eligible taxpayer that is a nonprofit organization shall be considered "qualified rehabilitation expenditures" if they are any of the following:

a. Expenditures made for structural components, as that term is defined in Treasury Regulation §1.48-1(e)(2).

b. Expenditures made for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, and development fees.

49.4(3) *What expenditures qualify.* "Qualified rehabilitation expenditures" may include:

a. Expenditures incurred prior to the date an agreement is entered into under Iowa Code section 404A.3(3). The amount of the historic tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the authority following project completion, up to the amount specified in the agreement between the eligible taxpayer and the authority.

b. Reasonable developer fees. The authority may establish limits on developer fees and may adjust those limits. Any adjustment made to the established limit shall take effect 24 months after the adjustment is published on the authority's Web site. Developer fees that are qualified rehabilitation expenditures and that meet the limits effective at the time the registration application is submitted shall be deemed reasonable by the authority.

49.4(4) *Government financing.* "Qualified rehabilitation expenditures" does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code. For an eligible taxpayer that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

261—49.5(404A) Historic preservation and cultural and entertainment district tax credit.

49.5(1) *Tax credit.* An eligible taxpayer who has entered into and complied with an agreement under Iowa Code section 404A.3(3) and has complied with the program statutes and rules is eligible to claim a historic tax credit of 25 percent of the qualified rehabilitation expenditures of a qualified rehabilitation project that are specified in the agreement. Notwithstanding any other provision in Iowa Code chapter 404A, this chapter, or any provision in the agreement to the contrary, the amount of the tax credit shall not exceed 25 percent of the final qualified rehabilitation expenditures verified by the authority pursuant to Iowa Code section 404A.3(5)*"c."*

49.5(2) *Who may claim the credit.* The tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432. An individual may claim a tax credit under this rule of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust. For an individual claiming a tax credit of a partnership, limited liability company, or S corporation, the amount claimed by the partner, member, or shareholder, respectively, shall be based upon the amounts designated by the eligible partnership, S corporation, or limited liability company, as applicable.

49.5(3) *Transferability.* Tax credit certificates issued under Iowa Code section 404A.3 may be transferred to any person. For information on transfer of tax credits under this program, see department of revenue 701—Chapters 42, 52 and 58.

49.5(4) *Refundability and carryforward.* An eligible taxpayer or a transferee may elect to receive either a refundable or a nonrefundable tax credit. For information on refundable and nonrefundable tax credits, including the carryforward of nonrefundable tax credits, see department of revenue 701—Chapters 42, 52 and 58.

49.5(5) *How to claim the tax credit.* For information on how to claim the tax credit, see department of revenue 701—Chapters 42, 52 and 58.

261—49.6(404A) Management of annual aggregate tax credit award limit. The authority shall not register, as described in rule 261—49.13(404A), more projects in a given fiscal year for tentative awards than there are tax credits available for that fiscal year under Iowa Code section 404A.4. The authority will determine the projects for which sufficient tax credits are available based on the estimated qualified rehabilitation expenditures identified in the registration application, plus allowable cost overruns as described in paragraph 49.14(1)*"c."*

49.6(1) *Registration scoring.* If applicants' total tax credit requests from a fiscal year allocation exceed the tax credit allocation for that fiscal year, the authority will prioritize its determinations based on the applicants' registration scores. All registered projects must meet the minimum score as described in rule 261—49.13(404A). If there are no more projects that meet the minimum score as described in rule 261—49.13(404A), the authority may make the remaining tax credits available for small projects or allow the remaining tax credits for the fiscal year to carry forward to the succeeding fiscal year to the extent permitted by Iowa Code section 404A.4.

49.6(2) *Registrations for future tax credit allocations.* Registrations for future tax credit allocations require a new application. When registering projects for a particular fiscal year, the authority shall not award, reserve, or register tax credits from future fiscal years' tax credit allocations. An applicant whose project is not registered due to an insufficient score or noncompliance with the application or the program statute or rules may submit future applications for future fiscal year tax credit allocations.

49.6(3) *Reallocation or rollover of available tax credit awards.* Tax credits may be reallocated or rolled over into future fiscal years to the extent permitted by Iowa Code section 404A.4.

261—49.7(404A) Application and agreement process, generally.

49.7(1) All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program

and a link to the online application and instructions may be obtained by contacting the authority or by visiting the authority's Web site:

Iowa Economic Development Authority
Community Development Division
200 East Grand Avenue, Des Moines, Iowa 50309
(515)725-3000
http://iowaeconomicdevelopment.com/

49.7(2) An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

49.7(3) The application and agreement process consists of six steps:

a. The applicant submits a Part 1 application to the authority, which is used to evaluate the property's integrity and significance. The authority will consult with SHPO when reviewing the Part 1 application.

b. Unless the Part 1 application is denied by the authority, the applicant participates in a preapplication meeting with SHPO and the authority to discuss what to expect for the remainder of the application process.

c. If the Part 1 application is approved and the preapplication meeting is completed, the applicant submits a Part 2 application to the authority, which is used to evaluate the proposed rehabilitation work. The authority will consult with SHPO when reviewing the Part 2 application.

d. If the Part 2 application is approved, the applicant submits a registration application to the authority, which is used to score the applicant's rehabilitation plan and financial readiness. If the project is awarded a sufficient registration score, satisfies other requirements of the application and program, and sufficient tax credits are available, the authority may register the project.

e. If the project is registered, the applicant may enter into an agreement with the authority that establishes the maximum amount of the tax credit award and the terms and conditions that must be met to receive the tax credits. An applicant must enter into and comply with an agreement in order to participate in the program and claim any tax credits.

f. Once the project is completed and the property is placed in service, the applicant submits a Part 3 application to the authority, which is used to evaluate whether the completed work meets the federal standards and the other requirements of the agreement, laws, and regulations of the program. The authority will consult with SHPO when reviewing the Part 3 application.

A more detailed description of each step is provided in rules 261—49.10(404A) through 261—49.15(404A).

261—49.8(404A) Small projects. Projects with anticipated final qualified rehabilitation expenditures of more than $750,000 will be evaluated as large projects. Projects with $750,000 or less in anticipated final rehabilitation expenditures will be evaluated as small projects. If an applicant anticipates that the final qualified rehabilitation expenditures will exceed $750,000, the applicant may only submit its application as a large project. The authority will not permit a small project applicant to submit additional or amended applications that would cause the final qualified expenditures to exceed $750,000.

49.8(1) *Small project fund.* The authority shall allocate at least 5 percent of its annual fiscal year tax credit award limit to small projects.

49.8(2) *Aggregate award limit.* For applicants that receive credits from the small project allocation, the cumulative total award for multiple applications for a single property shall not exceed $750,000 in qualified rehabilitation expenditures plus any allowable cost overruns as described in paragraph 49.14(1)*"c,"* regardless of the final qualified rehabilitation expenditures. The authority will not accept an application by the same owner for a property for which credits were previously received through the small project fund if the application causes the cumulative total to exceed $750,000, plus any allowable cost overruns as described in paragraph 49.14(1)*"c."*

49.8(3) *Application and agreement process.* The Part 1, Part 2, and Part 3 application process and the agreement requirements are the same for small projects as for large projects. The registration process

for small projects differs from that for large projects. See subrule 49.13(8) for more information on the registration process for small projects.

261—49.9(404A) Who may apply for the tax credit. Only an eligible taxpayer may apply for the tax credit. To be an eligible taxpayer, the applicant must be either (1) the fee simple owner or (2) a person that will ultimately qualify for the federal rehabilitation credit with respect to the qualified rehabilitation project. A nonprofit organization as defined in rule 261—49.3(404A) may apply for the tax credit if the nonprofit organization is the fee simple owner of the property.

49.9(1) *Applicants that are fee simple owners.* If the applicant qualifies as an eligible taxpayer on the basis that the applicant is the fee simple owner of the property, the applicant will be expected to provide proof of title as described in subrule 49.10(2).

49.9(2) *Applicants that will qualify for the federal credit.* If the applicant qualifies as an eligible taxpayer on the basis that the applicant will qualify for the federal rehabilitation credit with regard to the property, the applicant will be asked to provide increasingly substantial evidence as described in subrules 49.10(2) and 49.12(1) that the applicant will qualify for the federal credit, culminating with proof of actual fee simple ownership or a long-term lease that meets the requirements of the federal rehabilitation credit before the agreement is entered into with the authority. Applicants that are eligible to apply under this subrule must obtain from the fee simple owner of the property a written statement which indicates that the owner is aware of the application and has no objection and include the statement with the application.

49.9(3) *Who may not apply.* Government bodies as defined in Iowa Code section 362.2 may not apply. Additionally, an applicant may not initiate the application process to apply for tax credits by submitting a Part 1 application on a project if all of the work has been completed and the qualified rehabilitation project has already been placed in service.

261—49.10(404A) Part 1 application—evaluation of significance. The Part 1 application is used to determine whether the property is eligible to be a qualified rehabilitation project.

49.10(1) *Types of property that are eligible.* The property must meet the federal standards for historical significance.

49.10(2) *Proof of status as eligible taxpayer.* The Part 1 application may be submitted to the authority by an eligible taxpayer as described in rule 261—49.9(404A).

a. To prove the applicant is the fee simple owner, the applicant will be expected to provide title documentation. If the title is held in the name of an entity, the application must be accompanied by documentation which indicates that the signatory is the authorized representative of the entity.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the approved federal Part 1 application, unless the property is individually listed on the National Register of Historic Places. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit, and the applicant must provide proof of permission from the fee simple owner as described in subrule 49.9(2).

49.10(3) *Submission period.* Part 1 applications may be submitted year-round.

49.10(4) *Required information.* Applicants must provide the authority a site plan, pre-rehabilitation photographs of the property, a copy of the county assessor's statement for the property, and such other information as the authority may require.

49.10(5) *Review process.* The authority, in consultation with SHPO, will evaluate the appearance and condition of the building and verify the information provided by the applicant. The authority will notify the applicant if the Part 1 application is incomplete. Generally, the authority will review fully completed Part 1 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the authority must request additional information, the 90-day review period will restart when the requested information is received by the authority. The application may be rejected if any requested information is not provided.

49.10(6) *Response from the authority.* Upon completion of the review, the authority shall issue a determination regarding whether the property meets the requirements to be considered historically significant.

49.10(7) *Period of validity.* A determination that the property meets the requirements to be considered historically significant shall be valid for five years from the issuance of the determination, provided that the property is maintained in a manner consistent with the federal standards and that the fee simple owner of the property remains the same during such period. Changes to the property that are not approved by the authority shall automatically invalidate the determination of historical significance, and reestablishment of the historical significance of the property as well as submittal of a new Part 1 application for a determination that the property is eligible shall be required.

49.10(8) *Amendments.* An applicant shall amend an approved Part 1 application if the property changes ownership or if the applicant's name or address changes prior to submission of a Part 2 application.

261—49.11(404A) Preapplication meeting. The purpose of the preapplication meeting is to provide feedback to the applicant and other interested parties that will enable the applicant to better plan and prepare for submission of the Part 2 and registration applications.

49.11(1) *Meeting requests.* Once the completed Part 1 application is submitted, the applicant may request a preapplication meeting by using the preapplication form, which may be obtained by contacting the authority or by visiting the authority's Web site.

49.11(2) *Timing of the preapplication meeting.* The meeting must take place no fewer than 30 days after the submission of the Part 1 application and prior to submission of the Part 2 application. Meetings may be held by telephone at the authority's discretion.

49.11(3) *Required information.* The applicant must bring at least the following items to the meeting: preliminary drawings, photographs of the exterior (all elevations) and interior, a preliminary list of character-defining features and treatments or a draft Part 2 application, and a list of questions for which specific guidance is needed. The authority may request additional information. If the preapplication meeting will be held by telephone, the required documents must be submitted electronically at least one week prior to the meeting date.

261—49.12(404A) Part 2 application—description of rehabilitation. The purpose of the Part 2 application is to determine whether the proposed rehabilitation work meets the federal standards. The applicant must describe the rehabilitation work to be undertaken on the property. The review of the Part 2 application is a preliminary determination only and is not binding upon the authority. A formal certification of rehabilitation shall be issued only after the rehabilitation work is completed.

49.12(1) *Proof of status as eligible taxpayer.* The Part 2 application must be submitted by an eligible taxpayer as described in rule 261—49.9(404A).

a. An applicant that is the fee simple owner does not need to provide any additional information regarding ownership unless there has been a change in ownership since the Part 1 application was approved.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the signature page of the approved federal Part 2 application signed by the National Park Service. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit and must provide proof of permission from the fee simple owner as described in subrule 49.9(2).

49.12(2) *Submission period.* Part 2 applications may be submitted at any time after the project has received an approved Part 1 and the applicant has participated in the preapplication meeting.

49.12(3) *Required information.*

a. The applicant must provide any information requested by the authority, including but not limited to:

(1) A detailed description of the rehabilitation;

(2) An estimate of the total costs related to the rehabilitation and other work to be completed on the property, regardless of whether the costs will ultimately be qualified rehabilitation costs;

(3) An estimate of the qualified rehabilitation expenditures; and

(4) Photographs.

b. The applicant must also identify whether the applicant plans to submit a registration application as a small project or a large project. For more information on the differences in the registration application process for large projects and small projects, see rule 261—49.8(404A).

49.12(4) *Review process.* The authority, in consultation with SHPO, will evaluate the proposed work to determine whether the proposed project, including any new construction, is consistent with the federal standards, the historic character of the property and, where applicable, the registered or potential district in which the property is located. The authority will notify the applicant if the Part 2 application is incomplete. Generally, the authority will review fully completed Part 2 applications within 60 calendar days of receipt. The 60-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the authority must request additional information, the 60-day review period will restart when the requested information is received by the authority. The application may be rejected if any requested information is not provided.

49.12(5) *Response from the authority.* The review of the complete Part 2 application shall result in one of three responses:

a. *Approval.* The project is eligible to submit a registration application because the proposed rehabilitation described in the application is consistent with the historic character of the property or of the district in which the property is located and the project, as proposed, appears to meet the federal standards;

b. *Approval with conditions.* The project is eligible to submit a registration application because the proposed rehabilitation described in the application will likely meet the federal standards if the stipulated conditions are met; or

c. *Denial.* The rehabilitation described in Part 2 of the application is not consistent with the historic character of the property or of the district in which the property is located and the project does not meet the federal standards. The project is ineligible for registration. The project may amend its Part 2 application or submit a new Part 2 application for the property.

49.12(6) *Amendments.* Deviation from the original rehabilitation proposal could result in the denial of final project approval and revocation of the tax credit award. An applicant shall amend an approved Part 2 application to notify the authority of, and to request review of, modifications to or deviations from the original rehabilitation proposal. Applicants that undertake any work not in the original approved Part 2 application without approval of the authority do so at their own risk. Amendments to the Part 2 application shall not result in the awarding of additional tax credits for the project and may result in a reduction in the tax credit award specified in the agreement if the authority determines that the work is not consistent with the federal standards or does not otherwise comply with the requirements of the agreement. Amendments to the Part 2 application will not be accepted after the authority has approved the Part 3 application pursuant to rule 261—49.15(404A). Amendments must be submitted on forms approved by the authority and may be obtained by contacting the authority or by visiting the authority's Web site.

261—49.13(404A) Registration application. If the authority has approved Part 1 and Part 2 applications for a project, the applicant may submit a historic tax credit registration application to the authority during the applicable registration period. The registration application is used to determine whether the project is ready to proceed both financially and logistically. The registration application is also used to confirm whether the proposed work will meet the substantial rehabilitation test and whether the project is a small project or a large project. The registration application is also used to obtain background information, including information that may disqualify an applicant from participating in the program, as well as other information about the applicant, related persons, and related entities. Though the application process is largely the same for small projects as it is for large projects, there are some differences. For details on those differences, see rule 261—49.8(404A).

49.13(1) *Proof of status as eligible taxpayer.* An eligible taxpayer as defined in rule 261—49.3(404A) may submit a registration application.

a. An applicant that is the fee simple owner must notify the authority of any changes in ownership status since the Part 2 application was filed.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant's application will be scored based on the steps taken toward ownership as described in subrule 49.13(6). The applicant must certify that the applicant understands that the applicant will not qualify for any state historic tax credit if the applicant is not the fee simple owner or not otherwise an eligible taxpayer. The applicant must also provide proof of permission from the fee simple owner as described in subrule 49.9(2).

49.13(2) *Submission period.* In general, applications for registration will only be accepted during the established application period, or periods, as identified by the authority on its Web site. However, applications for small project registration will be accepted year-round.

49.13(3) *Required information.* The registration application must include the following information as well as any additional information the authority may request: total project cost, an estimated schedule of qualified rehabilitation expenditures and a schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 261—49.3(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

49.13(4) *Certification and release of information.* The applicant must identify and list all related persons and related entities, as those terms are defined in rule 261—49.3(404A). The applicant must release information requested by the authority regarding the applicant, related persons, and related entities. The applicant must also certify that all representations, warranties, documents, or statements made or furnished in connection with the registration application are true and accurate. The certification and release of information are intended to identify information that will disqualify an applicant from participating in the program or that may have an adverse impact on the project. The certification and release of information are also intended to provide the authority with information regarding the economic, ownership, and management realities related to the project by providing information about the actual persons and businesses affiliated with the applicant, the actual persons and businesses that will derive financial benefits from the project, and other businesses affiliated with the individuals involved with the project.

a. The authority shall reject an application for registration if any of the following occurs or exists:

(1) The applicant fails to answer the questions and provide all requested information and documents in a timely manner as required by the rules or the application or in a timely manner as otherwise requested by the authority.

(2) The applicant provides false or inaccurate information or documents to the authority.

(3) The applicant, a related person, or a related entity has not filed any local, state, or federal tax returns that are due. This provision shall not apply to an applicant, related person, or related entity that has timely filed an extension to file a local, state or federal tax return.

(4) The applicant, a related person, or a related entity has any overdue local, state, or federal tax liability, including any tax, interest, or penalty.

(5) The applicant, a related person, or a related entity is currently in default, has an uncured breach, or is otherwise not in compliance with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(6) The applicant, a related person, or a related entity has any overdue amounts owed to the state of Iowa, any agency of the state of Iowa, any other entity or instrumentality of the state of Iowa, or any person or entity that is eligible to submit claims to the state offset system under Iowa Code section 8A.504.

(7) The authority determines that registering the project, entering into an agreement with the authority, or permitting the applicant's tax credit claim would cause the applicant or another person to

default on, breach, or otherwise not comply with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(8) The authority determines that the applicant will not be able to provide representations, warranties, conditions, or other terms of an agreement that would be acceptable to the authority.

(9) Information is disclosed to the authority that would cause the authority to decline to enter into an agreement with the applicant.

b. Scope of inquiry. The authority may ask the applicant to disclose information and documents about other entities affiliated with the applicant, a related person, or a related entity if the authority determines that the information regarding the applicant, related persons, and related entities does not adequately disclose to the authority the economic, ownership, and management structure and realities related to a project.

49.13(5) *Review period.* In general, the authority will review fully completed registration applications within 30 calendar days of receipt. The 30-day review period will be adhered to as closely as possible; however, it is not mandatory. If any answers, responses, explanations, documents, or other information submitted in connection with the certification and release of information changes after the applicant has submitted this information to the authority, the applicant must supplement its response to the certification and release of information in writing within 10 business days of the change. If the application is incomplete when submitted or if for any other reason the authority must request additional information, the 30-day review period will restart when the requested information is received by the authority. The authority may reject an application if any requested information is not provided.

49.13(6) *Scoring process.* All completed applications will be reviewed and scored. In order for a project to be considered for registration, the application must meet a minimum score as established by the authority and set forth in the current registration application. Scoring of the application will take into account readiness criteria, which may include the following:

a. Rehabilitation planning and project readiness. Projects will be scored based on whether the Part 2 application was approved with or without conditions.

b. Secured financing. Weighted preference will be given to projects that have financing or equity or both in place.

c. Steps taken towards ownership. Weighted preference will be given to the projects of applicants that are currently fee simple owners of the property.

d. Local government support. Weighted preference will be given to projects that have received support from their local jurisdiction.

e. Rehabilitation timeline. Weighted preference will be given to projects that will be completed in the shortest amount of time.

f. Zoning and code review. Weighted preference will be given to the projects of applicants that can demonstrate a determination by the authority having jurisdiction that the project complies with the guidelines for construction permitting.

g. Such other information as the authority may find relevant and request on the registration application.

49.13(7) *Registration.* Upon reviewing and scoring all applications that are part of the application period, the authority may register the qualified rehabilitation projects to the extent sufficient tax credits are available based on the estimated qualified rehabilitation costs identified in the registration applications. Only projects that meet the minimum score established by the authority may be registered. As described in rule 261—49.6(404A), in the case of insufficient funding, preference will be given to the projects with the highest registration score based on the criteria in subrule 49.13(6). At the time the project is registered, the authority shall make a preliminary determination as to the amount of tax credits for which the project qualifies. The authority shall make best efforts to notify the applicant within 45 calendar days after the close of the registration period as to whether the applicant's project has been registered. The registration notice shall include the amount of the applicant's tentative tax credit award, along with a notice that the amount is a preliminary, nonbinding determination only. The authority will notify applicants whose projects were not registered and state whether the failure to register the project

was due to the failure of the project to meet the minimum score, the lack of available tax credits, or another reason. A list of registered applicants will be posted by the authority on the authority's Web site.

49.13(8) *Small project registration application.* The authority may establish for small projects a registration application form and process that differ from the application form and process used for large projects. Small project application forms may be obtained by contacting the authority or by visiting the authority's Web site. Small projects may submit registration applications year-round; however, the registration application must be submitted no later than 180 calendar days after receipt of approval of the Part 2 application from the authority. Small project registration applications will be evaluated on a first-come, first-served basis, subject to the availability of tax credits.

261—49.14(404A) Agreement. Upon successful registration of the project as described in subrule 49.13(7) or 49.13(8), the eligible taxpayer shall have 120 calendar days or until the end of the fiscal year, whichever is less, to purchase or lease the property, if applicable, and enter into an agreement with the authority. Nothing in these rules shall affect the authority's ability to comply with the annual award limitations described in Iowa Code section 404A.4. A condition precedent to any agreement will be proof that the eligible taxpayer is the actual fee simple owner or has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit. An eligible taxpayer shall not be eligible for historic tax credits unless the eligible taxpayer enters into an agreement with the authority concerning the qualifying rehabilitation project and satisfies the terms and conditions that must be met to receive the tax credit award.

49.14(1) *Terms and conditions.* The agreement shall contain mutually agreeable terms and conditions, which shall, at a minimum, provide for the following:

a. The maximum amount of the tax credit award. Notwithstanding anything in this chapter to the contrary, no tax credit certificate shall be issued until the authority verifies the amount of final qualified rehabilitation expenditures and compliance with all other requirements of the agreement, Iowa Code chapter 404A, and the applicable rules.

b. The rehabilitation work to be performed. An eligible taxpayer shall perform the rehabilitation work consistent with the U.S. Secretary of the Interior's standards for rehabilitation, as determined by the department.

c. The budget of the qualified rehabilitation project, including the projected qualified rehabilitation expenditures, and those expenditures not qualified, and allowable cost overruns. The amount of allowable cost overruns provided for in the agreement shall not exceed the following amounts:

(1) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of not more than $750,000, 15 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(2) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than $750,000 but not more than $6 million, 10 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(3) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than $6 million, 5 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

d. A schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 261—49.3(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

e. The commencement date.

f. The completion date.

g. The agreement termination date, which shall not be earlier than five years from the date on which the tax credit certificate is issued.

h. Such other terms, conditions, representations, and warranties as the authority may determine are necessary or desirable to protect the interests of the state.

49.14(2) *Amendments.* The authority may for good cause amend an agreement. However, the authority may not amend an agreement to allow cost overruns in excess of the amount described in paragraph 49.14(1)*"c."* In addition, the commencement date, completion date, and agreement termination date may not be amended if such an amendment would violate the statutorily prescribed time limits as described in Iowa Code section 404A.3(3). Any amendment approved by the authority shall be signed by both parties.

49.14(3) *Authority.* Only the director or chief operating officer may enter into agreements on behalf of the authority. Any agreement entered into on behalf of the authority by a person other than the director or chief operating officer shall be void.

261—49.15(404A) Part 3 application—request for certification of completed work and verification of qualified rehabilitation expenditures. Part 3 of the application is used to determine whether the project has complied with the terms of the agreement as well as with applicable laws, rules and regulations.

49.15(1) *Submission period.* The fully completed Part 3 application must be submitted no more than 180 calendar days after the project completion date as defined in the agreement.

49.15(2) *Required information.* The Part 3 application must include the following information:

a. Certification that the eligible taxpayer is the fee simple owner or is qualified for the federal rehabilitation credit and has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit.

b. Using the qualified rehabilitation expenditures schedule form provided by the authority, a schedule of total expenditures for the project, which shall identify in detail the final qualified rehabilitation expenditures and those expenditures that are not qualified. The qualified rehabilitation expenditures schedules form may be obtained by contacting the authority or by visiting the authority's Web site.

c. A schedule of all funding sources used to finance the project, including those funding sources used to finance or reimburse both qualified rehabilitation expenditures and expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 261—49.3(404A), including any funding that originated from any government, whether federal, state, or local.

d. CPA examination.

(1) An eligible taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the project in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements. The attestation applicable to this examination is SSAE No.10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. Upon completion of the qualified rehabilitation project, the eligible taxpayer shall submit the examination to the authority, along with a statement of the amount of final qualified rehabilitation expenditures and any other information deemed necessary by the authority in order to verify that all requirements of the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A have been satisfied.

(2) The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA's professional judgment, the qualified rehabilitation expenditures claimed are eligible pursuant to the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A. The documents reviewed by the CPA should be readily available to the authority upon request. The applicant should generally be able to provide the requested documents within 10 business days of a request from the authority.

(3) The examination requirement is waived for an eligible taxpayer if the final qualified rehabilitation expenditures of the qualified rehabilitation project, as verified by the authority, do not exceed $100,000 and the qualified rehabilitation project is funded exclusively by private funding sources. The authority reserves the right to request any additional information necessary to verify the

final qualified rehabilitation expenditures and, if deemed necessary by the authority, to require that such an eligible taxpayer engage a CPA to conduct an examination of the project pursuant to 49.15(23)*"d."*

e. Any other information deemed necessary by the authority in order to verify that all requirements of the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A have been satisfied.

f. Election to receive either a refundable or a nonrefundable tax credit. The taxpayer's election does not impact a transferee's ability to make its own election upon transfer. For information on transferring tax credits, see department of revenue 701—Chapters 42 and 52.

g. Any information the authority may require for program evaluation.

49.15(3) *Review period.* The authority will make best efforts to review Part 3 applications within 60 calendar days after the application is filed. However, this time frame is not binding upon the authority. The authority shall review the information submitted by the eligible taxpayer and determine whether a tax credit certificate may be issued. See rule 261—49.17(404A) for more information on certificate issuance.

261—49.16(404A) Fees. Applicants must pay a nonrefundable fee for the processing of Parts 2 and 3 of an application. The review fee for Part 2 will be due with the filing of the Part 2 application and will be based on the estimated qualified rehabilitation costs. The fee for review of Part 3 will be due with the filing of the Part 3 application and will be based on the final qualified rehabilitation expenditures. The fee schedule is as follows:

For projects with qualified rehabilitation expenditures of:	Part 2 Processing Fee	Part 3 Processing Fee
$50,000 or less	No cost	No cost
$50,001 to $100,000	$250	$250
$100,001 to $750,000	$500	$500
$750,001 to $6,000,000	$1,000	0.5 percent of final qualified rehabilitation expenditures
Over $6,000,000	$1,500	$30,000

261—49.17(404A) Compliance.

49.17(1) *Annual reports.* The eligible taxpayer shall, for the length of the agreement, annually certify to the authority compliance with the requirements of the agreement. The certification shall be due each year on the anniversary of the date upon which the agreement was entered into. Instructions and forms may be obtained by contacting the authority or by visiting the authority's Web site.

49.17(2) *Burden of proof.* The eligible taxpayer shall have the burden of proof to demonstrate to the authority that all requirements of the agreement, Iowa Code chapter 404A, and the applicable rules are satisfied. The taxpayer shall notify the authority in a timely manner of any changes in the qualification of the rehabilitation project or in the eligibility of the taxpayer to claim the tax credit provided under this chapter, or of any other change that may have a negative impact on the eligible taxpayer's ability to successfully complete any requirement under the agreement.

49.17(3) *Events of default, revocation, recapture.* If, after entering into the agreement but before a tax credit certificate is issued, the eligible taxpayer or the qualified rehabilitation project no longer meets the requirements of the agreement, Iowa Code chapter 404A, and the applicable rules, the authority may find the taxpayer in default and may revoke the tax credit award.

a. *Voluntary abandonment.* An applicant may choose to irrevocably decline the tax credit that is the subject of the agreement at any time after the agreement is entered into. To irrevocably decline the tax credit, the applicant shall send a letter to the authority stating the applicant's decision to irrevocably decline the tax credit. The authority shall notify the applicant by certified U.S. mail or courier that the tax credit has been irrevocably declined. The tax credit shall be reallocated to the extent permitted by Iowa

Code section 404A.4. If the applicant wishes to apply for a tax credit on the same qualified rehabilitation project at a later date, the applicant must complete the application process as though the project is a new project.

b. Revocation and recapture for prohibited activity; liability of certain transferees. If an eligible taxpayer obtains a tax credit certificate from the authority by way of a prohibited activity, the eligible taxpayer and any transferee shall be jointly and severally liable to the state for the amount of the tax credits so issued, interest and penalties allowed under Iowa Code chapter 422, and reasonable attorney fees and litigation costs, except that the liability of the transferee shall not exceed an amount equal to the amount of the tax credits acquired by the transferee. The department of revenue, upon notification or discovery that a tax credit certificate was issued to an eligible taxpayer by way of a prohibited activity, shall revoke any outstanding tax credit and seek repayment of the value of any tax credit already claimed, and the failure to make such a repayment may be treated by the department of revenue in the same manner as a failure to pay the tax shown due or required to be shown due with the filing of a return or deposit form. A qualifying transferee is not subject to the liability, revocation, and repayment imposed under this paragraph. For purposes of this paragraph:

(1) *"Control"* means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

1. Owns, controls, or has the power to vote 50 percent or more of any class of voting securities or voting membership interests of another person.

2. Controls, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of another person.

3. Has the power to exercise a controlling influence over the management or policies of another person.

(2) *"Prohibited activity"* means a breach or default under the agreement with the authority, the violation of any warranty provided by the eligible taxpayer to SHPO or the authority, the claiming of a tax credit issued under this chapter for expenditures that are not qualified rehabilitation expenditures, the violation of any requirements of Iowa Code chapter 404A or rules adopted pursuant to Iowa Code chapter 404A, misrepresentation, fraud, or any other unlawful act or omission.

(3) *"Qualifying transferee"* means a transferee who acquires a tax credit certificate issued under this chapter for value, in good faith, without express or implied notice of a prohibited activity of the eligible taxpayer who was originally issued the tax credit, and without express or implied notice of any other claim to or defense against the tax credit, and which transferee is not associated with the eligible taxpayer by being one or more of the following:

1. An owner, member, shareholder, or partner of the eligible taxpayer who directly or indirectly owns and controls, in whole or in part, the eligible taxpayer.

2. A director, officer, or employee of the eligible taxpayer.

3. A relative of the eligible taxpayer or a person listed in paragraph "1" or "2" of this subparagraph or, if the eligible taxpayer or an owner, member, shareholder, or partner of the eligible taxpayer is a legal entity, the natural persons who ultimately own such legal entity.

4. A person who is owned or controlled, in whole or in part, by a person listed in paragraph "1" or "2" of this subparagraph.

(4) *"Relative"* means an individual related by consanguinity within the second degree as determined by common law, a spouse, or an individual related to a spouse within the second degree as so determined, and includes an individual in an adoptive relationship within the second degree.

261—49.18(404A) Certificate issuance; claiming the tax credit. After determining whether the terms of the agreement, Iowa Code chapter 404A, and the applicable rules have been met, the authority shall issue a tax credit certificate to the eligible taxpayer stating the amount of tax credit under Iowa Code section 404A.2 the eligible taxpayer may claim, or the authority shall issue a notice that the eligible taxpayer is not eligible to receive a tax credit certificate. The authority shall issue the tax credit certificate or the notice not later than 60 days following the completion of the examination review, if applicable, and the verifications required under this rule. Notwithstanding the foregoing, the eligibility of the tax

credit remains subject to audit by the department of revenue in accordance with Iowa Code chapters 421 and 422. For information on how to claim the tax credit, see department of revenue 701—Chapters 42, 52 and 58.

261—49.19(303,404A) Appeals. Any person wishing to contest an application denial, the amount of the tax credit award, award revocation, or any authority action that entitles the person to a contested case proceeding shall file an appeal, in writing, within 30 days of the action giving rise to the appeal. Any person who does not seek an appeal within 30 days of the action that gives rise to a right to a contested case proceeding shall be precluded from challenging the action. Appeals will be governed by the procedures set forth in this rule, together with the process set out in Iowa Code sections 17A.10 to 17A.19. Challenges to an action by the department of revenue related to tax credit transfers, claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to department of revenue 701—Chapter 7.

49.19(1) *Contents.* The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the authority action giving rise to the appeal.

b. The date of the authority action giving rise to the appeal.

c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to the particular statutes, rules, or agreement terms involved, if known.

e. A statement setting forth the relief sought.

f. The signature of the person or that person's representative and the mailing addresses, telephone numbers, and e-mail addresses of the person and the person's representative.

49.19(2) *Contested case proceedings.* The presiding officer in any contested case proceeding shall be an administrative law judge who specializes in tax matters.

These rules are intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, division V.

ARC 2760C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 15, "Use of Online Learning and Telecommunications for Instruction by Schools," Iowa Administrative Code.

Chapter 15 was promulgated to implement Iowa Code section 256.42, Iowa learning online initiative, and became effective January 16, 2013. Iowa Code section 256.42(7) was amended by 2016 Iowa Acts, Senate File 2200, during the 2016 session of the General Assembly. This amendment implements the changes to Iowa Code section 256.42(7).

2016 Iowa Acts, Senate File 2200, permits a school district or school to seek from the Department of Education a one-year waiver from the educational standards for high school programs in order for the school district or school to provide instruction for an offer-and-teach subject through an online course that is not available through the Iowa learning online (ILO) initiative pursuant to Iowa Code section 256.42. To qualify for such a waiver, the course content must be provided through an online learning platform by an Iowa licensed teacher with online learning experience and must be aligned with Iowa

content standards. The course must be the sole course provided by the school district or school per semester under such a waiver.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendment on or before November 1, 2016, at 4:30 p.m. Comments on the proposed amendment should be directed to Phil Wise, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on November 1, 2016, from 10 to 11 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of their specific needs by calling (515)281-5295.

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

This amendment is intended to implement Iowa Code section 256.42(7) as amended by 2016 Iowa Acts, Senate File 2200.

The following amendment is proposed.

Amend rule 281—15.11(256) as follows:

281—15.11(256) Inappropriate applications of ILO coursework; criteria for ~~waiver~~ waivers.

15.11(1) *General.* ILO courses are not to be used by a participating school district or accredited nonpublic school as a long-term substitute for any course required to be offered and taught under 281—Chapter 12.

15.11(2) *Waiver of subrule 15.11(1): ILO coursework.* The department may grant for one year a waiver from the requirement to offer and teach a specific subject if the school district or accredited nonpublic school documents all of the following:

~~1.~~ *a.* The subject and grading period or periods for which waiver is requested.

~~2.~~ *b.* Reasons why the school district or accredited nonpublic school does not have a teacher employed who is appropriately licensed and endorsed for the educational level and content area being taught.

~~3.~~ *c.* The steps taken by the school district or accredited nonpublic school to employ a teacher who is appropriately licensed and endorsed for the educational level and content area being taught.

~~4.~~ *d.* Approval of the request by the local school board.

15.11(3) *Additional waiver of subrule 15.11(1): Coursework not available through ILO.* In addition to the requirements of rule 281—15.7(256), the specified subject may alternatively be provided by the school district or school if all of the following requirements are met:

a. The course content is provided through an online learning platform by an Iowa licensed teacher with online learning experience.

b. The course content provided is aligned with school district or school standards and satisfies the requirements of rule 281—15.13(256).

c. The course is not offered by ILO pursuant to this chapter, or the course offered by ILO lacks the capacity to accommodate additional students.

d. The course is the sole course per semester that the school district or school is providing instead of ILO pursuant to this rule.

ARC 2763C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 56, "Iowa Vocational Rehabilitation Services," Iowa Administrative Code.

Chapter 56 provides for the services leading to employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259 and relevant federal statutes and regulations.

The primary reason for this rule making is passage of the Workforce Innovation and Opportunity Act of 2014, which necessitates these changes. The proposed amendments of substance are as follows:

Item 1 clarifies the type of employment sought.

Item 3 adds definitions of "Applicant," "Appropriate modes of communication," "Assessment for determining eligibility or in the development of an IPE," "Benefits planning," "Comparable services and benefits," "Competitive integrated work setting," "Community rehabilitation program," "Designated state unit," "Extended services," "Family," "Institution of higher education," "Intensive services," "Job retention eligible candidate," "Personal assistance services," "Plan for natural supports," "Post-employment services," "Potentially eligible," "Preemployment transition services," "Self-employment services," "Student with a disability," "Transportation," "Vocational rehabilitation services," "Waiting list," "Workforce investment activities," and "Youth with a disability." Other definitions are amended.

Items 6 through 35 rescind and adopt new rules related to vocational rehabilitation services.

Item 36 rescinds rules 281—56.36(259) through 281—56.42(259).

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments until 4:30 p.m. on November 1, 2016. Comments on the proposed amendments should be directed to Kelley Rice, Iowa Vocational Rehabilitation Services, 510 East 12th Street, Des Moines, Iowa 50319; telephone (515)281-4146; e-mail kelley.rice@iowa.gov; or fax (515)281-4703.

A public hearing will be held on November 1, 2016, from 11 a.m. to 12 noon at the State Board Room, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise the Department of Education of their specific needs by calling (515)281-5295.

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

These amendments are intended to implement Iowa Code chapter 259.

The following amendments are proposed.

ITEM 1. Amend rule 281—56.1(259) as follows:

281—56.1(259) Responsibility of division. The division is responsible for providing services leading to competitive integrated employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301, et seq.), and the corresponding federal regulations.

ITEM 2. Amend rule 281—56.2(259) as follows:

281—56.2(259) Nondiscrimination. The division shall not discriminate on the basis of age, race, creed, color, ~~sex~~ gender, sexual orientation, gender identity, national origin, religion, duration of residency, or

disability in the determination of a person's eligibility for rehabilitation services and in the provision of necessary rehabilitation services.

ITEM 3. Amend rule 281—56.3(259) as follows:

281—56.3(259) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

"Act" means the federal Rehabilitation Act of 1973~~,~~ as amended and codified at 29 U.S.C. Section 701, et seq.

"Aggregate data" means information about one or more aspects of division job candidates, or from some specific subgroup of division job candidates, but from which personally identifiable information on any individual cannot be discerned.

"Applicant" means an individual who submits an application for vocational rehabilitation services; has completed a common intake application through a one-stop center requesting vocational rehabilitation services; has otherwise requested services from the designated state unit; or has provided information necessary to initiate an assessment to determine eligibility and priority for services; and is available to complete the assessment process.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated.

"Assessment for determining eligibility or in the development of an IPE" means a review of existing data and, to the extent necessary, the provision of appropriate assessment activities to obtain additional information to make a determination and to assign the priority for services assignment or development of an IPE.

"Assistive technology device" has the meaning given such term in Section 3 of the Assistive Technology Act of 1998 and means any item, piece of equipment or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" has the meaning given such term in Section 3 of the Assistive Technology Act of 1998 and means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

1. Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
2. Aiding an individual with a disability in purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Providing training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with disabilities.

"Benefits planning" means those counseling and planning services and supports needed for individuals who, due to their disabilities, are beneficiaries of social security or supplemental security income to enhance the financial ability of the individual to participate in work, plan for or avoid an overpayment, and address their unique disability needs on a job producing a product such as an impairment-related work expense (IRWE) or a program for achieving self-support (PASS).

"Case record" means the file of personally identifiable information, whether written or electronic in form, on an individual that is collected to carry out the purposes of the division as defined in the Act and the Social Security Act. This information remains a part of the case record and is subject to these rules

even when temporarily physically removed, either in whole or in part, from the file folder in which it is normally kept.

"Community rehabilitation program" means any program or service, be it private for profit or nonprofit, that is an approved vendor of the Iowa department of human services' rehabilitation Medicaid providers and that demonstrates certification of quality services from nationally recognized bodies of oversight.

"Comparable services and benefits" means services and benefits that are provided or paid for in whole or in part by other federal, state, or local public agencies, by health insurance or by employee benefits; are available to the individual at the time needed to ensure the individual's progress toward achieving an employment outcome in accordance with the individual's IPE; and commensurate to the services that the individual would otherwise receive from the DSU. For purposes of this definition, comparable benefits do not include educational awards and scholarships based on merit.

"Competitive integrated employment" means work in the competitive labor market that ~~is~~:

1. Is performed on a full-time or part-time basis, including self-employment, in an integrated setting and for which the job candidate is compensated at ~~or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.~~ a rate that:

- Shall not be less than the higher of the rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938 or the rate specified in the applicable state or local minimum wage law;
- Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and
- Is eligible for the level of benefits provided to other employees;

2. Is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

3. As appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities who have similar positions.

"Competitive integrated work setting," with respect to the provision of services, means a setting, typically found in the community, in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, and said interaction is consistent with the quality of interaction that would normally occur in the performance of work by the nondisabled coworkers.

"Customized employment" means ~~a flexible process designed to personalize the employment relationship between a job candidate and an employer in a way that meets the needs of both~~ competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability; is designed to meet the specific abilities of the individual with a disability and the business needs of the employer; and is carried out through flexible strategies. ~~Customized employment is based on an individualized match between the strengths, conditions, and interests of a job candidate and the identified business needs of an employer. Customized employment utilizes an individualized approach to employment planning and job development, one person at a time, one employer at a time.~~

"Department" means the department of education.

"Designated representative" means anyone the job candidate designates to represent the job candidate's interests before and within the division. The term does not necessarily mean a legal representative. The designated representative may be a parent, guardian, friend, attorney, or other designated person.

"Designated state unit" or *"DSU"* means the division of vocational rehabilitation services.

"Division" means the division of vocational rehabilitation services of the department of education.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment;

or any other type of employment, including self-employment, telecommuting, ~~homemaking, other unpaid work within the individual's family,~~ or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including satisfying the vocational outcome of customized employment.

"Extended services" means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are:

1. Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment;
2. Organized or made available singly or in combination with other services for job maintenance;
3. Based on a determination of the needs of an eligible individual, as specified in the IPE;
4. Provided by an appropriate source after an individual has made the transition from support provided by the DSU; and
5. Provided to a youth with a most significant disability for no more than 48 months by the DSU when no other resource is available and not beyond the graduation date when the agreement with the department of human services applies, and until such time that the long-term funding is available.

"Family" means any individual who lives with the individual with a disability and has a vested interest in the welfare of that individual whether by marriage, birth, or choice. A family member is an individual who either (1) is a relative or guardian of an applicant or job candidate; or (2) lives in the same household as an applicant or job candidate and has a substantial interest in the well-being of the applicant or job candidate.

"Home modification" means the alteration of an already existing living unit to make it accessible or more accessible by a person with a disability who is involved with the independent living program or as necessary to achieve stable employment as part of an ~~individual~~ individualized plan for employment. The structural integrity and maintenance of the home is the responsibility of the owner. Home modifications are not provided to homes that are not structurally sound.

"Impartial hearing officer" or *"IHO"* means a person who is not an employee of the division; is not a member of the state rehabilitation advisory council; has not been involved previously in the vocational rehabilitation of the applicant or job candidate; has knowledge of the delivery of vocational rehabilitation services, the state plan and the federal and state rules and regulations governing the provision of such services; has received training in the performance of the duties of a hearing officer; and has no personal or financial interest that would be in conflict with the person's objectivity.

"Independent living services" or *"IL services"* means those items and services provided to individuals who have a significant physical, mental, or cognitive impairment and whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited, and for whom the delivery of IL services will improve their ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

"~~Individual~~ Individualized plan for employment" or *"IPE"* means a plan that specifies the services needed by an eligible individual and the ~~involvement of~~ responsibilities of the individual with a disability and other payers and must include the financial obligation of the individual with a disability, the progress measurements, the expected employment outcome and the timeline for achievement of the expected employment outcome and all provisions required by federal regulations.

"Individual with a most significant disability" means an individual who is seriously limited in three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome ~~and includes an individual who, because of a disability, has been separated from employment or is in danger of becoming separated from employment~~.

"Individual with a significant disability" means an individual who has a significant physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome or who is a recipient of SSD/SSI due to the individual's disability.

EDUCATION DEPARTMENT[281](cont'd)

"Institution of higher education" has the meaning given the term in Section 102(a) of the Higher Education Act of 1965.

~~*"Integrated work setting,"* with respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals.~~

~~With respect to an employment outcome, "integrated work setting" means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.~~

"Intensive services" means services only available and provided under an IPE. Intensive services do not include ancillary services, such as maintenance, transportation, benefits planning, reader, interpretation taker services, etc.

"Job candidate" means an applicant or eligible individual applying for or receiving benefits or services from any part of the division and shall include former job candidates of the division whose files or records are retained by the division.

"Job retention eligible candidate" means an individual who is at immediate risk of losing the individual's job and requires vocational rehabilitation services in order to maintain employment and thereby move directly into active status and bypass the waiting list only for those services that will allow the individual to maintain employment. After having received said service(s) or good(s), the job retention eligible individual will return to the waiting list until that point where the individual's priority of service is being served.

"Maintenance" means monetary support provided to a job candidate for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the job candidate and that are necessitated by the job candidate's participation in the program.

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

"Menu of services" means the services provided by community partners to assist an individual with a disability in achieving an employment outcome. The services are selected and jointly agreed to by the counselor and job candidate of the division. Payments for services are made based on a fee structure that is published and updated annually, and there is no financial assessment toward the costs of these purchased services from a community rehabilitation program. ~~and includes~~ The services include the following:

1. Assessment through discovery, community work-site assessment, comprehensive vocational evaluation, ~~facility work-site assessment,~~ career exploration, or job shadowing assessment to identify a realistic vocational goal that is compatible with the individual's needs, preferences, abilities, disability, and informed choice;

2. Placement services selected by the counselor, job candidate and interested partners to prepare for and obtain employment. Placement services include the following:

- Vocational preparation, performed in a competitive integrated work environment, that enhances and improves the job candidate's ability to perform specific work, learn the necessary skills to do a specific job, minimize negative work habits and behaviors that have impeded job retention, develop skills in finding a job, and learn how to navigate transportation systems to and from work;
- Work adjustment training, performed in a competitive integrated work environment, that remedies negative work habits and behaviors, improves work tolerance, and develops strategies to improve a job candidate's ability to maintain employment;
- Job-seeking skills training that teaches the job candidate strategies necessary to find employment at the level required by the job candidate's needs;
- Job development and job follow-up that places the job candidate on a job in the community working for a business, maintains contact with the employer on the job candidate's progress, is jointly funded through the Medicaid waiver program when appropriate, and is purchased only when used in conjunction with another required service;

- Employer development that, through a job analysis, identifies for businesses the job tasks and customized training plan for the job for which the job candidate will be trained, is authorized only as a stand-alone service when the Medicaid waiver funds the job development and is purchased only when used in conjunction with another required service;
- Supported job coaching that assists the job candidate in learning job-specific skills and work habits and behaviors while employed on the job and that continues as needed after the division file is closed;
- Selected job coaching that assists the job candidate in learning job-specific skills and work habits and behaviors while employed on the job and that is purchased only when approved by the area office supervisor.

"Ongoing support services" means services that are written in the IPE; are needed to support and maintain individuals with the most significant disabilities in supported employment; are provided, at a minimum, twice monthly to make an assessment regarding the employment situation at the worksite and coordinate provision of specific intensive services needed to maintain stability; are provided by skilled job trainers who accompany the individual for intensive job skill training at the work site; include social skills training, assessment and evaluation of progress, job development and retention, placement services, and follow-up services with the business and the individual's representatives; and facilitate development of natural supports or any other service(s) needed to maintain employment. ~~Such services shall be specified in the IPE and include, at a minimum, twice-monthly monitoring at the work site to assess employment stability, unless it is determined in the IPE that off-site monitoring is more appropriate.~~

"Personal assistance services" means a range of services provided by one or more persons and designed to assist an individual with a disability to perform, on or off the job, daily living activities that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

"Physical or mental impairment" means an impairment for which services are paid according to the department of human services' Medicaid or Medicare fee schedule and includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine; or
2. Any mental or psychological disorder such as an intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities~~.~~; or
3. Any impairment for which an individual has a documented history of receiving special education services in both elementary and secondary school.

"Physical or mental restoration services" means:

1. Corrective surgery or therapeutic treatment that is allowed under Medicaid or Medicare and is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;
2. Diagnosis ~~of~~ and treatment ~~for mental or emotional disorders~~ of a physical, mental, or cognitive disorder by qualified personnel in accordance with state licensure laws~~;~~ and Medicaid requirements to include:

~~3.~~ • Dentistry;

~~4.~~ • Nursing services;

~~5.~~ • Necessary hospitalization (either inpatient or outpatient) in connection with surgery or treatment and clinical services;

~~6.~~ • Drugs and supplies;

~~7.~~ • Prosthetic and orthotic devices;

~~8.~~ • Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic

lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws;

~~9.~~ • Podiatry;

~~10.~~ • Physical therapy;

~~11.~~ • Occupational therapy;

~~12.~~ • Speech and hearing therapy;

~~13.~~ • Mental health services;

~~14. Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;~~

~~15.~~ • Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

~~16.~~ • Other medical or medically related rehabilitation services.

"Plan for natural supports" means a plan, designed prior to the implementation of the supported employment program, that describes the natural supports to be used on the job; the training provided to the supervisor and mentor on the job site; the technology used in the performance of the work; the rehabilitation strategies and trainings that will be taught to the mentor in order to support and direct the job candidate on the job; the supports to be provided outside of work for the job candidate to be successful; and the methods by which the employer can connect with the job candidate's job coach and training program when the need arises.

"Postemployment services" means services that are intended to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet the rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, are limited in scope and duration.

"Potentially eligible" means students who may be in special education served under an individual education plan (IEP) or are considered to have a disability according to Section 504 of the Rehabilitation Act of 1998 and the Americans with Disabilities Act of 1992. These individuals may receive preemployment transition services but are not considered eligible for intensive services nor have they applied for services when they are potentially eligible.

"Preemployment transition services" means services provided in accordance with Section 113 of the Workforce Innovation and Opportunity Act to all students with disabilities who are in need of services and are eligible or potentially eligible for services. Preemployment transition services include the following:

1. Job exploration counseling;
2. Work-based learning experiences, which may include in-school or after-school opportunities, or experience outside the traditional school setting (including internships) that is provided in an integrated environment to the maximum extent possible;
3. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
4. Workplace-readiness training to develop social skills and independent living;
5. Instruction in self-advocacy, which may include peer mentoring;
6. Authorized activities to improve transition from secondary to postsecondary activities and employment outcomes; and
7. Coordinated and authorized activities to work with teachers, employers, and others interested in the transition of the student to enhance effective transition of the student with a disability from secondary to postsecondary activities and employment.

"Progressive employment" means ~~a coordinated set of experiences that may begin with volunteering and gradually progress to competitive employment for individuals for whom employment has not otherwise occurred~~ that there is something for every job candidate on the employment services continuum. Progressive employment combines a number of placement strategies (examples include job shadow, informational interviews, short-term training assignments, on-the-job training, volunteer work,

temporary employment, part-time employment) which are used as stepping-stones for the individual with a disability to access competitive integrated employment.

~~*"Rehabilitation engineering"* means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.~~

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services. For purposes of the rehabilitation services bureau of the DSU, the purposeful inclusion of rehabilitation technology in an IPE is for the purposes of preparing for, obtaining, maintaining, or advancing in employment.

"Residency requirement" ~~is a condition of eligibility and~~ is met by an individual who resides in the state of Iowa and is present and available for participation in a rehabilitation plan leading to competitive integrated employment.

"Satisfactory employment" means stable employment consistent with an individual's IPE and acceptable to both the individual and the employer.

"Self-employment services" means services specifically for the eligible individual who has an idea for ownership of a for-profit business, and includes technical assistance in developing proprietary skills and knowledge as well as financial assistance for business start-up that does not exceed $10,000 and requires a dollar-for-dollar match from the job candidate seeking self-employment.

"Status" means the existing condition or position of a case. The specific case statuses are as follows:

02-0 Referral/Applicant (individual requests services and signs the rights and responsibilities form);

04-0 Accepted for services (eligible), but does not meet waiting list categories being served;

~~06-0 Trial work experiences/extended evaluation (individual's abilities, capabilities, and capacities are explored);~~

08-0 Closed before acceptance (eligibility criteria cannot be met or case is closed for some other reason);

10-__ Accepted for services (eligible); substatus:

~~10-0~~ 10-1 Eligible individuals in secondary education;

12-0 IPE developed, awaiting start of services;

14-0 Counseling and guidance only (counselor works with job candidate directly to reach goals through counseling and placement);

16-0 Physical and mental restoration (when such services are the most significant services called for on the IPE);

18-__ Training (when training is the most significant service called for on the IPE); substatuses are:

18-1 Training in a workshop/facility;

18-2 On-the-job training;

18-3 Vocational-technical training;

18-4 Academic training;

18-5 Correspondence training;

18-6 Supported employment;

18-7 Other types of training not covered above (including nonsupported employment job coaching);

20-0 Ready for employment (IPE has been completed to extent possible);

22-0 Employed;

24-0 Service interrupted (IPE can no longer be continued for some reason, and no new IPE is readily obvious);

26-0 Closed rehabilitated (can only occur from Status 22-0 when job candidate has been employed in the job of closure for a minimum of 90 days);

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28-0 Closed after IPE initiated (suitable employment cannot be achieved, or employment resulted without benefit of services from the division);

30-0 Closed before IPE initiated (can only occur from either Status 10-__ or 12-0 when a suitable ~~individual~~ individualized plan for employment cannot be developed or achieved or when employment resulted without benefit of services from the division);

32-0 Postemployment services;

33-__ Closed after postemployment services; substatuses are:

33-1 Individual is returned to suitable employment, or employment is otherwise stabilized;

33-2 Case reopened for comprehensive vocational rehabilitation services;

33-3 Situation has deteriorated to the point that further services would be of no benefit to individual;

38-0 Closed from Status 04-0 (individual does not meet one of the waiting list categories, and the individual no longer wants to remain on the waiting list or fails to respond when contacted because individual's name is at top of waiting list).

"Student with a disability" means an individual with a disability who is not younger than the age of 14 and is not older than the age of 21; and is eligible for, and receiving, special education or related services under the Individuals with Disabilities Education Act; or is an individual with a disability for purposes of Section 504 and meets the age requirements.

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining competitive integrated employment consistent with the individual's abilities and capacities.

"Supported employment" means~~:~~

~~1. Competitive~~ competitive integrated employment, including customized employment, or employment in an integrated work setting~~, or employment in integrated work settings in which individuals are working toward competitive employment,~~ in which individuals are working on a short-term basis toward competitive integrated employment. Such employment is individualized and customized consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the ~~individuals, with~~ individual for whom ongoing support services for individuals with the most significant disabilities~~:~~ is necessary.

~~● For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and~~

~~● Who, because of the nature and severity of their disabilities, need intensive supported employment services from the division and extended services after transition to perform this work; or~~

~~2. Transitional employment, as defined herein, for individuals with the most significant disabilities due to mental illness.~~

"Supported employment services" means ongoing support services, ~~and other appropriate services~~ including customized employment, that are needed to support and maintain an individual with a most significant disability in supported employment, ~~that~~ are provided by the division and documented~~:~~ for no more than 24 months, except that period may be extended if necessary in order to achieve the employment outcome as identified in the IPE, are provided singly or in combination with other services, and are organized and made available in such a way as to assist an eligible individual to achieve an employment outcome within a 24-month period of time, which may be extended based on the needs of the individual.

~~1. For a period of time consistent with federal regulations unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and~~

~~2. Following successful case closure, as postemployment services that are unavailable from an extended service provider and that are necessary for the individual to maintain or regain the job placement or to advance in employment.~~

~~*"Transitional employment,"* as used in the definition of supported employment, means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment,~~

~~the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.~~

"Transition services" means a coordinated set of activities provided to a student and designed within an outcome-oriented process that promotes movement from school to postschool activities. Postschool activities include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's IPE.

"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service.

~~*"Trial work experiences"* means an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations in an integrated work setting in order to determine whether there is clear and convincing evidence that the individual is too severely disabled to benefit from the division's services.~~

"Vocational rehabilitation services" means those services identified under an IPE and provided to individuals who have applied for and been determined eligible for services by the DSU to enable individuals with disabilities, including individuals with the most significant disabilities, to pursue meaningful careers by securing gainful competitive integrated employment commensurate with their abilities and capabilities.

"Waiting list" means the listings of eligible individuals for vocational rehabilitation services who are not in a category being served, otherwise known as "order of selection" under the Workforce Innovation and Opportunity Act of 2014.

"Workforce investment activities" means the provision of workforce development activities that creates linkages and systemic improvements so that individuals with disabilities are ensured an effective and meaningful participation in workforce innovation and opportunity activities.

"Youth with a disability" means an individual with a disability who is not younger than 14 years of age and not older than 24 years of age.

ITEM 4. Amend rule 281—56.4(259) as follows:

281—56.4(259) Individuals who are recipients of SSD/SSI. Recipients of social security disability payments or supplemental security income payments are presumed eligible as being significantly disabled and are eligible for vocational rehabilitation services if such recipients demonstrate eligibility under ~~rules~~ subrule 56.6(6) and rule 281—56.8(259) ~~and 281—56.13(259)~~. Recipients who demonstrate eligibility under ~~rules~~ subrule 56.6(6) and rule 281—56.8(259) ~~and 281—56.13(259)~~ must also demonstrate need in the employment plan under rule ~~281—56.14(259)~~ 281—56.9(259). Nothing in this rule automatically entitles a recipient of social security disability payments or supplemental security income payments to any good or service provided by the division. Qualified division personnel will identify and document the individual as a recipient of social security benefits based on disability, and the determination of impediments to employment and need for services will be documented by the qualified rehabilitation counselor.

ITEM 5. Amend rule 281—56.5(259) as follows:

281—56.5(259) Eligibility for vocational rehabilitation services.

56.5(1) Eligibility for vocational rehabilitation services shall be determined upon the basis of the following:

~~**56.5(1)**~~ *a.* A determination by a qualified ~~personnel~~ rehabilitation counselor that the applicant has a physical or mental impairment;

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~~**56.5(2)**~~ *b.* A determination by a qualified ~~personnel~~ rehabilitation counselor that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;

~~**56.5(3)**~~ *c.* A determination by a qualified vocational rehabilitation counselor that the applicant requires vocational rehabilitation services due to the applicant's disability to prepare for, secure, retain, ~~or~~ regain, or advance in employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

56.5(2) A presumption exists that the applicant can benefit, in terms of an employment outcome, from the provision of vocational rehabilitation services. ~~This presumption may be overcome by the division if, based on clear and convincing evidence, the division determines that the applicant is incapable of benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the severity of the applicant's disability;~~

~~**56.5(4)** A determination that the individual meets the residency requirement at the time of application.~~

56.5(3) Standards for ineligibility. If the DSU determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an IPE is no longer eligible for services, the DSU must:

a. Make the determination only after full consultation with the individual impacted, or as appropriate, the individual's representative;

b. Inform the individual in writing, supplemented with appropriate modes of communication;

c. Provide to the individual the individual's appeal or mediation rights;

d. Provide the individual information on the Iowa client assistance program (ICAP);

e. Refer the individual to other appropriate programs; and

f. Review the decision semiannually the first year, and annually thereafter, when the decision to close the file is based on findings that the individual who received services under an IPE is incapable of achieving an employment outcome at the time of closure.

ITEM 6. Rescind rule 281—56.6(259) and adopt the following **new** rule in lieu thereof:

281—56.6(259) Other eligibility and service determinations.

56.6(1) *Achievement of an employment outcome.* Any eligible individual, including an individual who is presumed eligible, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The DSU is responsible for informing individuals, through the application process for services, that individuals who receive services from the DSU must intend to achieve an employment outcome. The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome.

56.6(2) *Options for IPE development.*

a. The DSU will provide information on the available options for developing the individualized plan for employment (IPE), including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the IPE:

(1) Without assistance from the DSU or any other entity; or

(2) With assistance from:

1. A qualified vocational rehabilitation counselor employed by the DSU;
2. A qualified vocational rehabilitation counselor not employed by the DSU;
3. A representative of DSU under the guidance of a DSU vocational rehabilitation counselor;
4. A disability advocacy organization, such as the Iowa client assistance program (ICAP) or Disability Rights Iowa, or any other advocacy organization of the individual's choosing; or
5. A representative through another source that is already working with the individual, such as the individual's case manager.

b. The IPE is not approved or put into practice until it is discussed and reviewed with, revised if applicable, and approved by the vocational rehabilitation counselor employed by DSU.

c. The IPE implementation date begins on the date of the DSU counselor's signature.

d. There is no compensation for any expenses incurred while the IPE is developed with any entity not employed by the DSU.

e. If the job candidate is not on the DSU waiting list and requires some assessment services to develop the IPE, the job candidate must discuss the needs in advance with the DSU counselor and obtain prior approval if financial assistance is needed from the DSU to pay for the assessment service.

f. If the job candidate requires information from a benefits planner, the DSU can provide or arrange that assistance at any time during the development or implementation of the plan, when the job candidate is off the waiting list.

56.6(3) *Scope of services.* Vocational services for eligible individuals not on a waiting list are services described in an individualized plan for employment and are necessary to assist the eligible individual in preparing for, obtaining, retaining, regaining, or advancing in employment if the failure to advance is due to the disability, consistent with informed choice. The services include:

a. Assessment for determining eligibility and services needed for an eligible individual to achieve competitive integrated employment including, if necessary, an assessment in rehabilitation technology;

b. Counseling and guidance, which is career counseling to provide information and support services to assist the eligible individual in making informed choices about the individual's future work or career goals;

c. Referral and other services to secure needed services from other agencies and through agreements with other organizations and agencies;

d. Job-related services to facilitate the preparation for, obtaining of, and retaining of employment to include job search, job development, job placement assistance, job retention services, follow-up services and follow-along if necessary and required under the IPE;

e. Vocational and other training services that assist the eligible individual in preparing for work or an occupation identified on the IPE and include the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services may be paid for with funds by the DSU unless maximum efforts have been made by the DSU and the individual to secure grant assistance, in whole or in part, or assistance from other sources to pay for such training;

f. Training and training materials as provided according to the fee schedule:

(1) The training and books and supplies are necessary for the job candidate's satisfactory occupational adjustment.

(2) The job candidate has the mental and physical capacity to acquire a skill that the job candidate can perform in an occupation commensurate with the job candidate's abilities and limitations.

(3) The job candidate is not otherwise precluded by law from employment in the job candidate's field of training.

(4) If the costs exceed the fee schedule established for in-state training, individuals deciding to attend a training program outside the state of Iowa may do so at their own expense;

g. Physical and mental treatment may be provided to the extent that financial support is not readily available from another source, such as health insurance of the individual or a comparable service or benefit, and said treatment is essential to the progression of the individual to achieve the competitive integrated employment outcome:

(1) The service is necessary for the job candidate's satisfactory occupational adjustment.

(2) The condition causing disability is relatively stable or slowly progressive.

(3) The condition is of a nature that treatment may be expected to remove, arrest, or substantially reduce the disability within a reasonable length of time.

(4) The prognosis for life and employability is favorable.

56.6(4) *Specific services requiring financial assessment.* Financial need must be established prior to provision of certain services at the division's expense and is evidenced by documents of financial income. Applicants are eligible for physical restoration, occupational licenses, customary occupational tools and equipment, training materials, maintenance and transportation (except transportation for diagnosis, guidance or placement) only on the basis of financial need and when services are not otherwise immediately available or comparable benefits and services are not available. The following services require an establishment of financial need:

a. Physical restoration.

b. Training and training materials.

c. Occupational licenses and occupational tools and equipment. The division may pay for occupational licenses and customary occupational tools and equipment when they are necessary for the job candidate's entrance into, and successful performance in, a selected occupation.

d. Transportation. A job candidate may be provided transportation in connection with securing medical or psychological examinations, physical restoration, training or placement if such transportation is part of the job candidate's IPE. A companion may be provided transportation at the division's expense if the job candidate cannot travel alone.

e. Maintenance, which shall be provided in concert with documentation of the expenditure and appropriate receipts. A job candidate is eligible for maintenance when it is necessary to the job candidate's vocational rehabilitation and is an extra expense incurred due to the IPE.

f. Self-employment services. These services are specifically for the eligible individual who has an idea for ownership of a for-profit-making business and include technical assistance in developing proprietary skills and knowledge as well as financial assistance for business start-up that does not exceed $10,000 and requires a dollar-for-dollar match from the job candidate seeking self-employment.

g. Preemployment transition services. These services focus students and youth with disabilities on preparing for, securing, and retaining competitive integrated employment by using a variety of work-based learning strategies and work-readiness strategies combined with counseling and guidance as well as self-advocacy development.

56.6(5) *Areas in which exceptions shall not be granted.* Pursuant to federal law, an exception shall not be granted for any of the following requirements:

a. The eligibility requirements in rule 281—56.5(259) (i.e., presence of disability, substantial impediment to employment, need for vocational rehabilitation services).

b. The required contents of the IPE and plan of natural supports.

c. Identification of a long-term follow-up provider in supported employment cases.

d. Being in employment and in Status 22-0 consistent with federal regulations prior to Status 26-0 closure.

e. Time frames, such as the federal requirement that eligibility be determined within 60 days of an individual's application for services unless the individual has agreed to an extension.

f. Intensive services may be provided only to eligible individuals who are not on a waiting list, except for assessments which will help the division appropriately determine on which waiting list an individual belongs.

56.6(6) *Waiting list.* As required by the Act and 34 CFR Section 361.36, if the division cannot serve all eligible individuals who apply, the division shall develop and maintain a waiting list for services based on significance of disability.

a. The three categories of waiting lists are as follows, listed in order of priority to be served:

(1) Individuals with most significant disabilities;

(2) Individuals with significant disabilities; and

(3) Other individuals.

b. An individual's order of selection is determined by the waiting list and the date on which the individual applied for services from the division. All waiting lists are statewide in scope; no regional lists are to be maintained.

c. Assessment of the significance of an applicant's disability is done during the process of determining eligibility but may continue after the individual has been placed on a waiting list.

56.6(7) *Individuals who are blind.* Pursuant to rule 111—10.4(216B), individuals who meet the department for the blind's definition of "blind" are to be served primarily by the department for the blind. Individuals with multiple disabilities who also are blind may receive technical assistance and consultation services while the department for the blind provides their rehabilitation plan. Joint cases are served in the Iowa self-employment program and other contracts developed by the DSU.

56.6(8) *Students in high school.* The division may serve students in high school who may legally work in competitive integrated environments. If an applicant is in high school and is determined to be

eligible for vocational rehabilitation services, such services begin before the student exits the secondary school system. The services shall not supplant services for which the secondary school is responsible and are delivered according to the memorandum of understanding in effect with the department of education.

a. When the DSU determines that a student is eligible for services, the student's place on the waiting list under subrule 56.6(6) shall be determined. If the waiting list category appropriate for the student is a category currently being served, the case record moves to a planning status and the student will work with a counselor, or other DSU representative, to develop an IPE. The student may also work with other representatives of the student's choosing to assist with the development of the IPE; however, said plan is not in effect until approved and signed by the rehabilitation counselor of record. Otherwise, the case is placed in Status 04-0, and the student's name is added to the waiting list for that category, based on the student's date of application. The IPE must be in place as required by federal regulations, unless the student has agreed to an extension or is on a waiting list. The IPE shall be developed in accordance with the standard established by the division and within the time frames established by federal regulations.

b. The counselor assigned by the division to work with the student may participate in the student's individualized education program meetings to provide consultation and technical assistance if the student is on the waiting list for services, as well as preemployment transition services that are not intensive services. Once a student is removed from the waiting list, the counselor may also provide vocational counseling and planning for the student and coordinate services with transition planning teams. When such services do not supplant services for which the secondary school is responsible, the division may begin to provide services specifically related to employment, such as supported employment. As needed for the student's progression toward employment, a student who is in high school or in an alternative high school and has not yet met high school graduation requirements after four years of secondary enrollment may continue to receive services that do not supplant the responsibilities of the high school. A student who is in the student's final year of high school and has made satisfactory progress and has demonstrated job-specific skills to work in the student's trained profession may receive assistance in purchasing tools to be used on the job for which the student studied.

56.6(9) *Establishment of financial need.* The division establishes the job candidate's financial need prior to providing physical restoration, including prostheses; transportation (for other than diagnostic, guidance or placement purposes); maintenance; and occupational licenses, tools and equipment. Recipients of SSD/SSI due to their disability who are independent are not subject to a financial needs test for any services but must demonstrate eligibility under subrule 56.6(6) and rule 281—56.8(259), as well as demonstrate need in the IPE under rule 281—56.9(259).

a. For the determination of financial need, the job candidate or, in the case of a minor, the minor's parent or guardian, or family in which the individual resides, is required to provide documentation regarding all family income from any source that may be applied toward the cost of rehabilitation services, except the rehabilitation services of diagnosis, counseling, training and placement, which are provided without regard to financial need; however, the division shall not pay for more than the balance of the cost of the service minus comparable services and benefits and the individual's documented contribution. A comparable services and benefits search is required for some services. When an individual refuses to supply documentation of family income, the individual assumes 100 percent of the responsibility for the costs of rehabilitation.

b. The division shall observe the following policies in making a determination of financial need based upon the findings:

(1) All services requiring the determination of financial need are provided on the basis of supplementing the resources of the job candidate or of those responsible for the job candidate.

(2) A supervisor may grant an exception in cases where the applicant's disability caused or is directly related to financial need and where all other sources of money have been exhausted by the applicant or the parents or guardians of a minor applicant.

(3) Consideration shall be given to the job candidate's responsibility for the immediate needs and maintenance of the job candidate's dependents, and the job candidate shall be expected to reserve

sufficient funds to meet the job candidate's family obligations and to provide for the family's future care, education and medical expenses.

(4) Income up to a reasonable amount should be considered and determined based on the federal poverty guidelines associated with family size, income, and exclusions.

(5) General assistance from state or federal sources is disregarded as a resource unless the assistance is a grant award for postsecondary training.

(6) Grants and scholarships based on merit, while not required to be searched for as a comparable benefit, may be considered as part of the determination of financial support of a plan when a request beyond the basic support for college is requested. Public grants and institutional grants or scholarships not based on merit are considered a comparable benefit.

ITEM 7. Rescind rule 281—56.7(259) and adopt the following **new** rule in lieu thereof:

DIVISION IV
CASE MANAGEMENT

281—56.7(259) Case finding and intake. The DSU seeks to locate all disabled individuals of employable age who desire to be employed full- or part-time and may be eligible for vocational rehabilitation services. To that end, referrals are accepted from all sources, and the DSU has established working relationships with public and private agencies in the areas of health, welfare, compensation, education, employment, rehabilitation, and other related services.

56.7(1) All new cases, whether referred to a local worker or to the division, are checked for previous information and are acknowledged promptly by letter or a personal call. Individuals with the most significant disabilities who are working at subminimum wage in a non-integrated setting are provided information about competitive integrated employment and support from the DSU, once known to the DSU, by qualified personnel and partners with the goal of assisting said individuals to pursue competitive integrated employment.

56.7(2) Referral for services from other programs. The DSU will refer applicants or eligible individuals to appropriate programs and service providers best suited to address the specific rehabilitation, independent living and employment needs of the individual with a disability. The DSU will also inform individuals with disabilities concerning the availability of employment options and vocational rehabilitation services to assist the individuals to achieve an appropriate employment outcome. The DSU will inform individuals who are in an extended employment setting that vocational rehabilitation services may be provided to them for purposes of training or to otherwise prepare them for employment using appropriate services to achieve employment in an integrated setting. The DSU will inform those who decide against pursuit of employment that services may be requested at a later date if, at that time, they choose to pursue an employment outcome. The DSU will refer the individual to a benefits planner in order that the individual will learn about work incentives. An appropriate referral is generally to federal or state programs, and to other programs carried out by other workforce development systems, that are best suited to address the specific employment needs. The DSU will provide the individual:

a. A notice of the referral;

b. Information identifying a specific point of contact at the agency to which the individual is referred;

c. Information and advice on the referral regarding the most suitable services to assist the individual.

ITEM 8. Rescind rule 281—56.8(259) and adopt the following **new** rule in lieu thereof:

281—56.8(259) Case diagnosis used in case recording. The diagnosis of an individual with a disability is conducted by qualified personnel under state licensure laws, and the division personnel use that information as part of the eligibility requirements. The eligibility of the individual constitutes a comprehensive study of the individual, including medical as well as a vocational impediment of the individual. Each case diagnosis is based on pertinent information, including the individual's health

and physical status, intelligence, educational background and achievements, vocational aptitudes and interests, employment experience and opportunities, and personal and social adjustments. This information then is used to assess the significant impediments posed by the diagnosis toward employment to determine and identify the comprehensive services needed to prepare for, obtain, maintain, or advance in competitive integrated employment.

56.8(1) *Medical diagnosis.* As a basis for determination of eligibility and formulation of the individual's rehabilitation plan, the division secures competent medical diagnosis. When necessary, the diagnosis is, if at all practicable and appropriate, secured from recognized specialists in specific fields indicated by the general medical diagnosis. Whenever possible, the diagnosis is accompanied by recommendations as to the means and methods of restoration and by a statement of any physical or mental limitations that may exist.

56.8(2) *Current medical reports.* The division accepts a medical report in lieu of securing a new examination when the report can be relied upon to provide a sound basis for diagnosis of the physical or mental condition of the individual; is from providers or sources as listed in the case service manual; and is from an accredited or certified medical or treatment institution recognized by the state of Iowa or licensed by the department of public health or department of human services in any other state.

56.8(3) *Current health assessment.* The division requires that a current health assessment questionnaire is completed and placed in the record at the time of application if the individual with a disability does not have medical records within the last three years.

56.8(4) *Vocational impediment.* The methods of determining vocational impediments include counseling interviews with the job candidate; reports from medical, psychological, or psychiatric providers; and reports from schools, employers, social agencies, and others.

56.8(5) *Recording case data.* The division maintains a record for each case. The case record contains pertinent case information including, as a minimum, the basis for determination of eligibility, the basis justifying the plan of services and the reason for closing the case, together with a justification of the closure. A case record may not be destroyed until four years after the case has been closed. A case record documenting participation in a transitional alliance program shall be maintained until the job candidate reaches age 25 or later.

56.8(6) *Achievement of an employment outcome.* Any eligible individual, including an individual who is presumed eligible, must intend to achieve an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The DSU is responsible for informing individuals, through the application process for services, that individuals who receive services from the DSU must intend to achieve an employment outcome. The individual's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome.

ITEM 9. Rescind rule 281—56.9(259) and adopt the following **new** rule in lieu thereof:

281—56.9(259) Individualized plan for employment (IPE).

56.9(1) *Content.* The IPE contains the job candidate's expected competitive integrated employment goal, the specific vocational rehabilitation services needed to reach that goal, the entity or entities that will provide those services, the method by which satisfactory progress will be evaluated, and the methods available for procuring the services. The IPE shall be developed consistent with federal regulations. The IPE must contain the specific employment outcome that is chosen by the eligible individual, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. In the case of an eligible individual who is a student in transition, the description may be a description of the student's projected postschool employment outcome in the most competitive integrated setting and the vocational rehabilitation services needed to achieve it including, as appropriate, assistive technology, personal assistance services, and the specific transition services and supports needed to achieve the projected postschool employment outcome. The IPE must contain the financial responsibility of the eligible individual as well as the methods used to evaluate progress and all corresponding responsibilities of those involved. The IPE also must contain

information on how the eligible individual may access services from the Iowa client assistance program (ICAP), as well as appeal and mediation rights.

56.9(2) *Job candidate's participation and approval.* The IPE is formulated with the job candidate's participation and approval and provides for all rehabilitation services that are recognized to be necessary to fully accomplish the job candidate's vocational rehabilitation whether or not services are at the expense of the division. The IPE and progress are developed and monitored with the individual and as such must be conducted with the eligible individual. Family members may represent the individual when the individual is hospitalized and the case is interrupted until discharge, at which time the case will resume and participation requirements apply.

56.9(3) *Conditions for development of the IPE.* The basic conditions to be considered during the development of the IPE are:

a. The belief of the division that when concluded the IPE shall satisfactorily aid in the individual's achievement of competitive integrated employment; and

b. That all services are provided, unless amended and determined unnecessary. The division exercises its discretion in relation to the termination or revision of the individual's IPE when, for any reason, it becomes evident that the IPE cannot be completed.

56.9(4) *Cooperation by the job candidate.* The division requires good conduct, regular attendance and cooperation of all individuals engaged in the IPE's implementation. The division makes the following provisions for ensuring trainee cooperation: instruction through communication in the job candidate's preferred method of communication; at the beginning of the program, advising each trainee about what is expected of the trainee and that services shall continue only if the trainee's progress, attitude and conduct are satisfactory; requiring periodic progress, grade and attendance reports from the training agency; calling the trainee's attention to evidence of unsatisfactory progress or attendance before such conditions become serious; providing encouragement to the trainee to promote good work habits; and maintaining good relationships with the training agency; and other methods agreed to and determined appropriate by the qualified rehabilitation counselor, the job candidate, and representative, if applicable.

56.9(5) *Ticket to work.* The job candidate's signature on the IPE verifies the ticket assignment to the division unless otherwise directed by the job candidate.

56.9(6) *Amending the IPE.* Amendment of the IPE may be done by the individual with a disability in collaboration with a representative of the division or a qualified rehabilitation counselor or other options as described in the definition. If there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the service providers of the services, the changes shall not take effect until the amendment is signed by the individual with a disability, or as appropriate the individual's representative, and by a qualified rehabilitation counselor employed by the division.

ITEM 10. Rescind rule 281—56.10(259) and adopt the following **new** rule in lieu thereof:

DIVISION V

SERVICES

281—56.10(259) Scope of services. All necessary vocational rehabilitation services, including counseling, physical restoration, training, and placement, are made available to eligible individuals to the extent necessary to achieve their goal to be competitively employed in an integrated work setting and must be included in the IPE and agreed to by the eligible individual's counselor before the service is delivered. The division cooperates with federal and other state agencies providing vocational rehabilitation or similar services, and written agreements providing for interagency cooperation may be entered into as required by the Act at the discretion of the division. In selected instances, the division assumes responsibility for providing short periods of medical care for acute conditions arising in the course of the job candidate's rehabilitation, which if not cared for would constitute a hazard to the achievement of the rehabilitation objective unless comparable services or benefits are available to the individual. The DSU assumes all medical expenses for adult job candidates that are the direct result of an injury while participating in an unpaid work experience developed by division staff and implemented

under an IPE. Such injuries of students are the responsibility of the local education agency when provided under an individual education plan.

ITEM 11. Rescind rule 281—56.11(259) and adopt the following **new** rule in lieu thereof:

281—56.11(259) Training.

56.11(1) *Duration of training.* Rehabilitation training is provided according to the actual needs of the individual. It is designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

56.11(2) *Types of training.* The types of training programs available are as follows:

a. Postsecondary training, which is training in the arts and sciences for which postsecondary credit is given and which is generally considered to be applicable toward an associate's degree, bachelor's degree, or advanced degree.

b. Vocational training, which includes any organized form of instruction that provides the knowledge and skills essential for performing in a vocational-technical area. Such knowledge and skills may be acquired through training in an institution, on the job, by correspondence, by tutors, through a selection from the menu of services, by apprenticeship, or through a combination of any or all of these methods.

c. Work adjustment training, which includes any training given for any one or a combination of the following reasons:

(1) To assist individuals with disabilities, if needed, to acquire personal habits, attitudes and skills that will enable them to function effectively.

(2) To develop or increase work tolerance prior to engaging in vocational training or in employment.

(3) To develop work habits and to orient the individual to the world of work.

(4) To provide skills or techniques for the specific purpose of enabling the individual to compensate, through assistive technology, assistive technology devices, or prosthetics, for the loss of the use of a member of the body or the loss of a functional capacity.

d. Job coaching, which includes, but is not limited to, intensive work site training necessary to teach a job candidate both the job duties and job-related responsibilities.

e. Supported employment, which means competitive work in an integrated work setting with ongoing support services for individuals with the most significant disabilities for whom competitive integrated employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment is limited in accordance with federal regulations.

f. OJT, which means training on the job either as an employee or trainee of the business.

56.11(3) *Scope of training.* The division may provide training services as long as those services are part of a job candidate's IPE. Training facilities shall be selected to meet the job candidate's health, disability, and program needs. Training facilities within the state are preferred when they are comparable; those outside Iowa shall not be used unless approved for use by the vocational rehabilitation agency in the state in which the facility is located. The rate that is paid for a program outside the state remains the same as if the individual studied in the state and is in accordance with the appropriate fee schedule.

56.11(4) *Financial assistance for postsecondary training.* Calculations of financial assistance for postsecondary training are determined annually. In order for the division to continue to assist the greatest practical number of eligible job candidates, assistance shall be no less than 40 percent and no more than 70 percent of the cost of attending the least expensive in-state public institution for a course of instruction leading to an undergraduate degree. In all cases, the postsecondary institution in which the student is enrolled must be accredited by an entity recognized by the federal Department of Education as having authority to accredit postsecondary institutions.

a. Tuition and fee-based general assistance.

(1) Second year or less status. A student is considered to be in second year or less status when the student has earned fewer than 60 semester or 90 quarter credit hours in the student's present area of study or discipline; when the student is enrolled in a community college or other two-year postsecondary

institution; or when the student is enrolled in a program whose terminal degree is an associate's degree but the student has not yet attained the associate's degree. For an eligible student in second year or less status, the division shall develop the fee schedule based on the least expensive per-credit-hour tuition charged by an Iowa community college. An eligible individual who changes the individual's goal after studying more than two years, but the new goal is a technical degree, is considered to be at the less-than-two-year status.

(2) Third or fourth year status. A student is considered to be in third or fourth year status if the student has earned at least 60 semester or 90 quarter credit hours or has achieved an associate's degree in the student's present area of study or discipline but has not yet earned a postsecondary baccalaureate degree. For an eligible student in third or fourth year status, the division will develop the fee schedule based on the least expensive Iowa regents institution. Students in third or fourth year status who take graduate courses are only eligible to receive the established assistance rate for third or fourth year status.

(3) Medical school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a medical doctor (MD) or doctor of osteopathy (DO) degree is eligible for assistance under this paragraph. For a student who is an MD or DO candidate, the division shall pay according to the fee schedule based on the college of medicine of the University of Iowa. Students pursuing any other graduate degree in a medical arts program may be eligible for assistance under subparagraph 56.11(4)*"a"*(5). Chiropractic school is covered under subparagraph 56.11(4)*"a"*(5).

(4) Law school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a doctor of jurisprudence (JD) degree is eligible for assistance under this paragraph. For a student who is a JD candidate, the division shall pay according to the fee schedule based on the college of law of the University of Iowa. Students pursuing any other graduate degree from a law school may be eligible for assistance under subparagraph 56.11(4)*"a"*(5).

(5) Graduate or postgraduate school. Notwithstanding subparagraphs 56.11(4)*"a"*(3) and (4), for a student enrolled in a graduate or postgraduate school, the division shall pay according to the fee schedule established by the division based on the least expensive comparable graduate school at an Iowa regents institution.

(6) Distance learning (online courses). For a student enrolled in a distance learning course, the division shall pay the lesser of one of the following:

1. The actual cost of the course if the cost is less than the two-year rate on the DSU fee schedule; or

2. The rate established for a student at the student's academic level.

(7) Continuing education and non-financial aid supported programs and courses. The division shall pay the lesser of one of the following:

1. For continuing education students or a student at the four-year level attending classes at a two-year college, the actual cost of the course if the cost is less than the two-year rate on the DSU fee schedule, or

2. The rate established for a student in second year or less status if the cost of the program or course is more than the two-year rate.

(8) Out-of-state postsecondary institutions. For an eligible student who attends a postsecondary institution located outside Iowa, the division shall pay at the same rates set in this subrule.

b. Support services for postsecondary training. Unless approved as an exception by the supervisor, the amounts authorized for the items listed herein cannot exceed the amounts that would otherwise be spent on tuition and fees.

(1) Transportation shall be provided only when and to the extent that the cost is caused by participation in a program of vocational rehabilitation services.

(2) Maintenance shall be provided only to support participation in a program of vocational rehabilitation services when the job candidate has an extra expense beyond the job candidate's living expenses.

(3) Books, computers, and supplies may be provided in lieu of tuition and fees, but the amount provided therefor shall be based on the established rate on tuition and fees.

(4) Tutoring shall be provided only for courses that are part of the actual degree requirements and only when this service is not available or the legal responsibility of the training institution attended by the job candidate. Tutoring for program entrance examinations, such as the GRE, LSAT, or MCAT, is not allowed without an exception approved by the supervisor and are time limited and must be taught by qualified organizations.

(5) Unless approved as an exception, tools and equipment required for participation in a training program shall be provided in lieu of the tuition and fee amount, not to exceed the established fee rate.

(6) Unless approved as an exception, supplies for a course without which the course cannot be successfully completed shall be provided in lieu of the tuition and fee amount, not to exceed the established fee rate.

(7) Fees for certification tests that are part of a course shall be paid according to the tuition and fees standard. For certifications and licensure fees that are not part of a course, the DSU shall use the financial needs assessment form to determine the level of DSU participation, but the tests must be required by the occupation in which the job candidate plans to work as documented in the IPE.

56.11(5) *Guidance for postsecondary training.* General guidance regarding postsecondary training is available from the division's policy manual.

ITEM 12. Rescind rule 281—56.12(259) and adopt the following **new** rule in lieu thereof:

281—56.12(259) Maintenance. The costs of maintenance shall not exceed the amount of increased expenses that the rehabilitation causes for the job candidate or the job candidate's family. Maintenance is not intended to provide relief from poverty or abject living conditions. Guidance regarding the financial support of maintenance is available from the division's policy manual.

ITEM 13. Rescind rule 281—56.13(259) and adopt the following **new** rule in lieu thereof:

281—56.13(259) Transportation. When necessary to enable an applicant or a job candidate to participate in or receive the benefits of other vocational rehabilitation services, travel and related expenses, including expenses for training in the use of public transportation vehicles and systems, may be provided by the division. Transportation services may include the use of private or commercial conveyances (such as private automobile or van, public taxi, bus, ambulance, train, or plane) or the use of public transportation and coordination with a regional transit agency. The division shall not purchase a vehicle for a job candidate unless it is needed for self-employment, and there is no other option available to the individual. The division shall not rent a vehicle unless it is necessary for a job candidate's relocation. The division shall not pay for maintenance or repair of vehicles unless written approval of the supervisor allows for an exception.

ITEM 14. Rescind rule 281—56.14(259) and adopt the following **new** rule in lieu thereof:

281—56.14(259) Rehabilitation technology.

56.14(1) Rehabilitation technology services are available at any point in the rehabilitation process, except to those job candidates on the waiting list. Such services include, as appropriate, an evaluation of the ability of the individual to benefit from rehabilitation technology services. Areas in which rehabilitation technology services may be of assistance include seating and positioning, augmentative communication, computer access, environmental controls, mobility equipment, and modification of the job site or home. The rehabilitation technology is that which is required by the disability. It is not considered to be a device, such as a computer, that is required to work by any individual regardless of disability as that is the responsibility of the individual or the business. The software to make the computer accessible is the rehabilitation technology, and the computer is the conduit used in all occupations.

56.14(2) Unless a written exception is approved by a supervisor, the following division contribution limits apply:

a. The division shall pay for no more than the established rate in division policy.

b. The division shall not pay anything toward the modification of a second living unit.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 15. Rescind rule 281—56.15(259) and adopt the following **new** rule in lieu thereof:

281—56.15(259) Placement. The division not only prepares individuals with disabilities for jobs and trains them in techniques in securing their own jobs, but also accomplishes the actual placement, directly or indirectly through a service from the menu of services, of all eligible individuals with disabilities who receive rehabilitation services. Placement activities are based upon adequate evaluation and preparation of the job candidate and ordinarily include some combination of the following: evaluation of the job candidate's job readiness; development and execution of a plan for job-seeking activities; instruction in making job applications; conduct and appearance during interviews; employer contacts; registration with the state workforce development center; job analysis and modification; job coaching; employer or supervisor consultation, advisement and training; time-limited job coaching; postplacement follow-up; and relocation costs. Satisfactory employment is the objective of all division services of preparation, and placement services are an important, integral part of the overall vocational rehabilitation program. As such, in addition to the services listed herein, placement services may include the need for transportation and subsistence allowances and the purchase and acquisition of appropriate clothing, tools, equipment, and occupational licenses.

ITEM 16. Rescind rule 281—56.16(259) and adopt the following **new** rule in lieu thereof:

281—56.16(259) Miscellaneous or auxiliary services.

56.16(1) *Family member services.* If necessary to enable an applicant or job candidate to achieve an employment outcome as defined in these rules, the division may provide any service to a family member that the division is legally able to provide to a job candidate, as long as the purpose of the service is to assess the ability of the job candidate to benefit from a program of vocational rehabilitation, prepare for, enter, and be successful in employment, or participate in a program of independent living services. Excluded are programs designed to prepare a family member to enter employment that will allow the family member to make money to support the applicant or job candidate.

56.16(2) *Interpreter and note taker services.* If deemed necessary by the division to enable a job candidate to engage in all parts of the vocational rehabilitation or independent living program process, interpreter services or note taker services shall be provided to the job candidate, unless provision of such services is the statutory responsibility of an institution or organization.

a. Interpreter services are those special communications services provided by persons qualified by training and experience to facilitate communication between division personnel and persons who are deaf or hard of hearing. Persons receiving services include deaf and hard-of-hearing persons who communicate using signs and finger spelling, as well as lip reading, writing, gestures, pictures, and other methods. Persons not fluent in the English language who could benefit from having any part of the vocational rehabilitation process translated into their major language are included. The division shall purchase sign language interpreter services, including transliterating services, from appropriately licensed interpreters only.

b. Note taker services are services provided to make written notes and summaries of orally presented material. The notes may be made from a live presentation, such as a classroom lecture, or from materials that have been taped. These services are only purchased when the law states that the presenter or institution is not statutorily responsible.

56.16(3) *Other goods and services.* Other goods and services include anything that is legal and necessary to the completion of the job candidate's IPE or independent living (IL) services plan. Under no circumstances may real estate be purchased or built with division funds. Services designed to decrease the need for future IL services can only be provided directly to IL job candidates.

ITEM 17. Rescind rule 281—56.17(259) and adopt the following **new** rule in lieu thereof:

281—56.17(259) Facilities.

56.17(1) *Types of facilities.* It is the policy of the division to utilize any type of public or private facility that is equipped to render the required services from the menu of services of diagnosis, physical restoration, training, and placement. Facilities include public and private schools; colleges and

universities; correspondence schools; agencies for personal adjustment training; business and industrial establishments for employment training; psychometric service agencies; physicians' and dentists' offices; hospitals; sanatoria and clinics; audiometric service centers; rehabilitation centers; the offices of occupational, physical and work therapists or agencies providing these services; convalescent homes; prosthetic appliance dealerships; and other similar facilities that are adequately equipped to contribute to the rehabilitation of individuals with disabilities.

56.17(2) *Standards for facilities providing specialized training or other services.* The division selects its training agencies on the basis of their ability to supply the quality of training desired. The general practice of the division is to utilize the facilities of accredited or approved colleges, universities, community rehabilitation programs, and trade and commercial schools for residence and correspondence training. The general practice of the division is to utilize community partners to deliver items from the menu of services based on the partners' ability to supply the quality of training desired and to achieve expected outcomes resulting in job placements for job candidates of the division.

56.17(3) *Facilities providing training.* Facilities selected as locations for employment training must have personnel qualified with respect to personality, knowledge and skills in the technique of instruction, have adequate equipment and instructional materials, and be willing to make definite provisions for a plan of graduated progress in the job to be learned according to an efficiently organized and supervised instructional schedule.

56.17(4) *Facilities providing personal adjustment training.* In addition to other standards set for tutorial and customized training, an important basis for selection of facilities for personal adjustment training is a sympathetic understanding of the personal adjustment needs of the individual and their importance to the job candidate's total rehabilitation.

ITEM 18. Rescind rule 281—56.18(259) and adopt the following **new** rule in lieu thereof:

281—56.18(259) Exceptions to payment for services. As required by the Act and 34 CFR Section 361.50(c), the division shall have a method of allowing for exceptions to its rules regarding payment for services.

56.18(1) *Prohibitions.* Pursuant to federal law, the division is subject to the following prohibitions:

a. The fee schedule shall not be designed in a way that effectively denies an individual a necessary service.

b. An absolute limit on what may be provided to an individual may not be established, whether a dollar limit on specific service categories or on the total services provided to an individual may not be established.

56.18(2) *Exception process.* A request for an exception shall originate with the job candidate with assistance from qualified personnel of the division, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

ITEM 19. Rescind rule 281—56.19(259) and adopt the following **new** rule in lieu thereof:

281—56.19(259) Exceptions to duration of services. As required by the Act and 34 CFR Section 361.50(d), the division shall have a method of allowing for exceptions to its rules regarding the duration of services. In order to exceed the duration of service as defined in the IPE, a job candidate must follow through on the agreed-upon IPE and related activities and keep the division informed of the job candidate's progress.

ITEM 20. Adopt the following **new** rule 281—56.20(259):

281—56.20(259) Maximum rates of payment to training facilities. In no case shall the amount paid a training facility exceed the rate published, and in the case of facilities not having published rates, the amount paid the facility shall not exceed the amount paid to the facility by other public agencies for

similar services. The division will maintain information necessary to justify the rates of payment made to training facilities.

ITEM 21. Rescind rule 281—56.21(259) and adopt the following **new** rule in lieu thereof:

DIVISION VI
PURCHASING PRINCIPLES

281—56.21(259) Purchasing principles for job candidate-specific purchases.

56.21(1) The division shall follow the administrative rules for purchasing goods and services promulgated by the department of administrative services.

56.21(2) The division shall purchase only those items or models that allow a job candidate to meet the job candidate's vocational objective. The division shall not pay for additional features that exceed the requirements to meet a job candidate's vocational objective or that serve primarily to enhance the job candidate's personal life.

56.21(3) The division shall seek out and purchase the most economical item or model that meets the job candidate's vocational needs.

56.21(4) The division shall encourage all job candidates to develop strategies and savings programs to pay for replacement items/models or upgrades.

56.21(5) Items purchased for a job candidate become the property of the job candidate but may be repossessed by the division, subject to reimbursement to the job candidate for the job candidate's share of the purchase price, if the job candidate does not attain employment prior to case closure.

56.21(6) The division shall inform the job candidate that any change to planned purchases must be discussed and approved jointly before a purchase is made.

56.21(7) The division will not participate in the modification to property not owned by the job candidate or the job candidate's family.

56.21(8) When considering what item or model to purchase for a specific job candidate, the division shall in all cases consider the following factors:

a. Whether the item or model is required for the job candidate to be able to perform the essential functions of the job candidate's job.

b. Whether other parties or entities may be responsible for providing or contributing to the costs of an item.

ITEM 22. Rescind rule 281—56.22(259) and adopt the following **new** rule in lieu thereof:

DIVISION VII
SUPERVISOR REVIEW, MEDIATION, HEARINGS, AND APPEALS

281—56.22(259) Review process. At the time of making application for rehabilitation services, and at other times throughout the rehabilitation process, all applicants and job candidates shall be informed of the right to appeal or mediation and the procedures by which to file. If an applicant or job candidate is dissatisfied with any agency decision that directly affects the applicant or job candidate, the applicant, job candidate, or designated representative may appeal that decision or request mediation. The term "appellant" shall be used to indicate the applicant, job candidate, or designated representative who initiates an appeal. The appellant may initiate the appeal process either by calling a counselor or supervisor or by filing the appropriate division appeal form, available from any counselor or supervisor of the division. If the appeal process or mediation is initiated by telephone, the counselor or supervisor who received the call must complete the appeal form to the best of that person's ability with information from the appellant. The division shall accept as an appeal or request for mediation a written letter, facsimile, or electronic mail that indicates that the applicant or job candidate desires to appeal or seek mediation. An appeal or mediation request must be filed within 90 days of notification of the disputed decision. Once the appeal form or request for mediation has been filed with the division administrator, a hearing shall be held before an impartial hearing officer (IHO) or mediator within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension or one of the parties declines mediation. The appellant may request that the appeal go

directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation. The appellant may request assistance with an appeal or mediation from the Iowa client assistance program (ICAP).

ITEM 23. Rescind rule 281—56.23(259) and adopt the following **new** rule in lieu thereof:

281—56.23(259) Supervisor review. As a first step, the appellant shall be advised that a supervisor review of the counselor's decision may be requested by notifying the counselor or supervisor in person, by telephone or by letter of the decision to appeal. If the supervisor has been involved in decisions in the case to the extent that the supervisor cannot render a fair and impartial decision or if the supervisor is not available to complete the review in a timely manner, the appeal and case file shall be forwarded to the bureau chief for review. The appellant is not required to request supervisor review as a prerequisite for appeal before an IHO; however, if a supervisor review is requested, the following steps shall be observed:

56.23(1) Upon receipt of a request for supervisor review, the supervisor shall notify all appropriate parties of the date and nature of the appeal; examine case file documentation; discuss the issues and reasons for the decision with the immediate counselor and other counselors who may have been previously involved with the case or issue; and, if necessary, meet with any or all parties to discuss the dispute.

56.23(2) The supervisor shall have ten working days from receipt of the request for supervisor review to decide the issue and notify the appellant in writing. A copy of the supervisor's decision shall be sent to all appropriate parties.

56.23(3) If the supervisor's decision is adverse to the appellant, the copy of the written decision given to the appellant shall include further appeal procedures, including notification that the appellant has ten days from the date of the letter to file further appeal. Also included shall be notice of the Iowa client assistance program (ICAP), a program within the department of human rights, commission of persons with disabilities. If ICAP determines it appropriate, ICAP provides assistance in the preparation and presentation of the appellant's case.

56.23(4) As an alternative to, but not to the exclusion of, filing for further appeal, the appellant may request mediation of the supervisor's decision, or review by the chief of the rehabilitation services bureau.

ITEM 24. Rescind rule 281—56.24(259) and adopt the following **new** rule in lieu thereof:

281—56.24(259) Mediation. Regardless of whether a supervisor review is requested, an appellant may request resolution of the dispute through the mediation process. Mediation is also available if the appellant is dissatisfied with the supervisor's decision. If mediation is requested by the appellant and agreed to by the division, the following steps shall be observed:

56.24(1) Mediation shall be conducted by a qualified and impartial mediator, as defined in 34 CFR Section 361.5(c)(43), trained in effective mediation techniques and selected randomly by the division from a list maintained by the division.

56.24(2) The mediation shall be conducted in a timely manner at a location convenient to the parties.

56.24(3) Mediation shall not be used to delay the appellant's right to a hearing.

56.24(4) Mediation must be voluntary on the part of the appellant and the division.

56.24(5) Mediation is at no cost to the appellant.

56.24(6) All discussions and other communications that occur during the mediation process are confidential. Any offers of settlement made by either party during the mediation process are inadmissible if further appeal is sought by the appellant.

56.24(7) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the mediator, unless so requested by the appellant.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 25. Rescind rule 281—56.25(259) and adopt the following **new** rule in lieu thereof:

281—56.25(259) Hearing before impartial hearing officer. Regardless of whether the appellant has used supervisor review or mediation or both, if the appellant requests a hearing before an IHO, the following provisions apply:

56.25(1) The division shall appoint the IHO from the pool of impartial hearing officers with whom the division has contracts. The IHO shall be assigned on a random basis or by agreement between the administrator of the division and the appellant.

56.25(2) The hearing shall be held within 20 days of the receipt of the appointment of the IHO. A written decision shall be rendered and given to the parties by the IHO within 30 days after completion of the hearing. Either or both of these time frames may be extended by mutual agreement of the parties or by a showing of good cause by one party.

56.25(3) The appellant shall be informed that the filing of an appeal confers consent for the release of the case file information to the IHO. The IHO shall have access to the case file or a copy thereof at any time following acceptance of the appointment to hear the case.

56.25(4) Within five working days after appointment, the IHO shall notify both parties in writing of the following:

a. The role of the IHO;

b. The IHO's understanding of the reasons for the appeal and the requested resolution;

c. The date, time, and place for the hearing, which shall be accessible and located as advantageously as possible for both parties but more so for the appellant;

d. The availability of the case file for review and copying in a vocational rehabilitation office prior to the hearing and how to arrange for the same (see also rule 281—56.22(259));

e. That the hearing shall be closed to the public unless the appellant specifically requests an open hearing;

f. That the appellant may present evidence and information personally, may call witnesses, may be represented by counsel or other appropriate advocate at the appellant's expense, and may examine all witnesses and other relevant sources of information and evidence;

g. The availability to the appellant of the Iowa client assistance program (ICAP) for possible assistance;

h. Information about the amount of time it will take to complete the hearing process;

i. The possibility of reimbursement of necessary travel and related expenses; and

j. The availability of interpreter and reader services for appellants not familiar with the English language and those who are deaf and the availability of transportation or attendant services for those appellants requiring such assistance.

56.25(5) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the IHO, unless so requested by the appellant.

56.25(6) The IHO shall provide a full written decision, including the findings of fact and grounds for the decision. The appellant or the division may request administrative review, and the IHO decision is submitted to the administrator of the division. Both parties may provide additional evidence not heard at the hearing for consideration for the administrative review. If no additional evidence is presented, the IHO decision stands. The division reserves the right to submit the IHO decision for administrative review whenever the IHO decision places the division in the position of violating federal law. Unless either party chooses to seek judicial review pursuant to Iowa Code chapter 17A, the decision of the IHO is final. If judicial review is sought after administrative review, the IHO's decision shall be implemented pending outcome of the judicial review.

ITEM 26. Rescind rule 281—56.26(259) and adopt the following **new** rule in lieu thereof:

DIVISION VIII

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

281—56.26(259) Collection and maintenance of records. The division has the authority to collect and maintain records on individuals under the Act, the state plan for vocational rehabilitation services, and the

Social Security Act. The acceptance of the provisions and benefits of the Rehabilitation Act, under Iowa Code section 259.1, is conditioned on the requirement that the division maintain the confidentiality of personally identifiable information and its release under certain circumstances as provided by applicable federal laws. These laws include, but are not limited to, the following:

1. The Freedom of Information Act (5 U.S.C. 552, added by P.L. 90-23 and amended by P.L. 93-502 and P.L. 94-409).
2. The Privacy Act of 1974 (5 U.S.C. 552a, added by P.L. 93-579).
3. The Drug Abuse Office and Treatment Act (21 U.S.C. 1175, added by P.L. 92-255) as amended by the Comprehensive Alcohol and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendment of 1974 (42 U.S.C. 4582, added by P.L. 93-282).
4. Section 6103 of the Internal Revenue Code (26 U.S.C. 6103) as amended by the Tax Reform Act of 1976 (P.L. 94-455).
5. The Government in the Sunshine Act (P.L. 94-409).
6. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, added by P.L. 93-568).

Pursuant to Iowa Code section 259.9, the state of Iowa accepts the social security system rules for the disability determination program of the division. Failure to follow the provisions of the Act can result in the loss of federal funds. The state plan provides that all personally identifiable information is confidential and may be released only with the informed written consent of the job candidate or the job candidate's representative, except as permitted by federal law. Any contrary provision in Iowa Code chapter 22 must be waived in order for the state to receive federal funds, services, and essential information for the administration of vocational rehabilitation services.

ITEM 27. Rescind rule 281—56.27(259) and adopt the following **new** rule in lieu thereof:

281—56.27(259) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information collected, maintained, and retrieved by the agency by personal identifier in record systems as defined herein. The record systems maintained by the division include the following:

56.27(1) *Personnel records.* These records contain information relating to initial application, job performance and evaluation, reprimands, grievances, notes from and reports of investigations of allegations related to improper employee behavior, and reports of hearings and outcomes of reprimands and grievances. Pursuant to Iowa Code section 22.7(11), some of the information in personnel records may be confidential.

56.27(2) *Job candidate case records.* An individual file is maintained for each person who has been referred to or has applied for the services of the division. The file contains a variety of personal information about the job candidate, which is used in the establishment of eligibility and the provision of agency services. All information is personally identifiable and is confidential.

56.27(3) *Job candidate service record computer database.* This database contains personal data items about individual job candidates. Data identifying the job candidate is confidential. Data in the aggregate is not personally identifiable and thus is not confidential.

56.27(4) *Vendor purchase records.* These are records of purchases of goods or services made for the benefit of job candidates. If the record contains the job candidate's name or other personal identifiers, the record is confidential. Lists of non-job candidate vendors, services purchased, and the costs of those services are not confidential when retrieved from a data processing system without personally identifiable information.

56.27(5) *Records and transcripts of hearings or client appeals.* These records contain personally identifiable information about a client's case, appeal from or for some action, and the decision that has been rendered. The personally identifiable information is confidential. Some of the information is maintained in an index provided for in Iowa Code section 17A.3(1)*"d."* Information is available after confidential personally identifiable information is deleted.

56.27(6) *All computer databases of client and applicant names and other identifiers.* The data processing system contains client status records organized by a variety of personal identifiers. These records are confidential as long as any personally identifiable information is present.

56.27(7) *All computer-generated reports that contain personally identifiable information.* The division may choose to draw or generate from a data processing system reports that contain information or an identifier which would allow the identification of an individual client or clients. This material is for internal division use only and is confidential.

ITEM 28. Rescind rule 281—56.28(259) and adopt the following **new** rule in lieu thereof:

281—56.28(259) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the division other than record systems. These records are routinely available to the public, with the exception of parts of the records that contain confidential information. This rule generally describes the nature of the records, the type of information contained therein, and whether the records are confidential in whole or in part.

56.28(1) Rule making. Rule-making records, including public comments on proposed rules, are not confidential.

56.28(2) Council and commission records. Agendas, minutes, and materials presented to any council or commission required under the Act are available to the public with the exception of those records that are exempt from disclosure under Iowa Code section 21.5. Council and commission records are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319.

56.28(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa, 50319. Brochures describing various division programs are also available at local offices of the division.

56.28(4) Statistical reports. Periodic reports of statistical information on expenditures, numbers and types of case closures, and aggregate data on various client characteristics are compiled as needed for agency administration or as required by the federal funding source and are available to the public.

56.28(5) Grants. Records of persons receiving grants from division services are available through the main office of the division. Grant records contain information about grantees and may contain information about employees of a grantee that has been collected pursuant to federal requirements.

56.28(6) Published materials. The division uses many legal and technical publications, which may be inspected by the public upon request. Some of these materials may be protected by copyright law.

56.28(7) Policy manuals. Manuals containing the policies and procedures for programs administered by the division are available in every office of the division. Subscriptions to all or some of the manuals are available at the cost of production and handling. Requests for subscription information should be addressed to Vocational Rehabilitation Services Division, 510 E. 12th Street, Des Moines, Iowa 50319.

56.28(8) Operating expense records. The division maintains records of the expense of operation of the division, including records related to office rent, employee travel expenses, and costs of supplies and postage, all of which are available to the public.

56.28(9) Training records. Lists of training programs, the persons approved to attend, and associated costs are maintained in these records, which are available to the public.

56.28(10) Facility surveys. Records of division reviews of facilities providing services to the division are maintained and used to determine the current acceptable fee schedule. Information about individuals may be included in these records; therefore, parts of the records may be confidential.

56.28(11) All other records that are not exempted from disclosure by law.

ITEM 29. Rescind rule 281—56.29(259) and adopt the following **new** rule in lieu thereof:

DIVISION IX

STATE REHABILITATION COUNCIL

281—56.29(259) State rehabilitation council.

56.29(1) *Composition.* The state rehabilitation council shall be composed of at least 15 members, appointed by the governor. A majority of the council members must be individuals with disabilities

who are not employed by the division. The appointing authority must select members of the council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the council. A majority of members must be individuals with disabilities who meet the requirements of 34 CFR Section 361.5(c)(28) and are not employed by the designated state unit. The council members shall include the following:

a. At least one representative of the statewide independent living council, who must be the chairperson or other designee of the statewide independent living council;

b. At least one representative of a parent training and information center established pursuant to Section 682(a) of the Individuals with Disabilities Education Act;

c. At least one representative of the client assistance program established under 34 CFR Part 370, who must be the director or other individual recommended by the client assistance program;

d. At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the council if employed by the division;

e. At least one representative of community rehabilitation program service providers;

f. Four representatives of business, industry, and labor;

g. Representatives of disability groups that include a cross section of:

(1) Individuals with physical, cognitive, sensory, and mental disabilities; and

(2) Representatives of individuals with disabilities who have difficulty representing themselves or are unable, due to their disabilities, to represent themselves;

h. Current or former applicants for, or recipients of, vocational rehabilitation services;

i. At least one representative of the state educational agency responsible for the public education of students with disabilities who are eligible to receive services under the Rehabilitation Act of 1973, as amended, and Part B of the Individuals with Disabilities Education Act;

j. At least one representative of the Iowa workforce development board; and

k. The director of the division, who serves as an ex officio, nonvoting member of the council.

56.29(2) *Chairperson.* The chairperson must be selected by the members of the council from among the voting members of the council.

56.29(3) *Terms.* Each member of the council shall be appointed for a term of no more than three years. Each member of the council, other than the representative of the client assistance program, shall serve for no more than two consecutive full terms. A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed must be appointed for the remainder of the predecessor's term and may serve one additional three-year term. The terms of service of the members initially appointed must be for a varied number of years to ensure that terms expire on a staggered basis.

56.29(4) *Vacancies.* The governor shall fill a vacancy in council membership.

56.29(5) *Functions.* The council must, after consulting with the state workforce development board:

a. Review, analyze, and advise the designated state unit regarding the designated state unit's responsibilities, particularly responsibilities related to:

(1) Eligibility, including order of selection;

(2) The extend, scope, and effectiveness of services provided; and

(3) Functions performed by state agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment outcomes;

b. In partnership with the designated state unit:

(1) Develop, agree to, and review state goals and priorities in accordance with 34 CFR Section 361.29(c); and

(2) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary of Education in accordance with 34 CFR Section 361.29(e);

c. Advise the designated state agency and the designated state unit regarding activities carried out under this part and assist in the preparation of the vocational rehabilitation services portion of the

unified or combined state plan and amendments to the plan, applications, reports, needs assessments, and evaluations;

d. To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with:

(1) The functions performed by the designated state agency;

(2) The vocational rehabilitation services provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Rehabilitation Act of 1973, as amended; and

(3) The employment outcomes achieved by eligible individuals receiving services under 34 CFR Part 361, including the availability of health and other employment benefits in connection with those employment outcomes;

e. Prepare and submit to the governor and to the Secretary of Education no later than 90 days after the end of the federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the state and make the report available to the public through appropriate modes of communication;

f. To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the state, including the statewide independent living council, the advisory panel established under Section 612(a)(21) of the Individuals with Disabilities Education Act, the state developmental disabilities planning council, the state mental health planning council, and the state workforce development board, and with the activities of entities carrying out programs under the Assistive Technology Act of 1998;

g. Provide for coordination and the establishment of working relationships between the designated state agency and the statewide independent living council and centers for independent living within the state; and

h. Perform other comparable functions, consistent with the purpose of 34 CFR Part 361, as the council determines to be appropriate, that are comparable to the other functions performed by the council.

56.29(6) *Meetings.* The council must convene at least four meetings a year. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session. The council's meetings are subject to Iowa Code chapter 21, the open meetings law.

56.29(7) *Forums or hearings.* The council shall conduct forums or hearings, as appropriate, that are publicly announced, open, and accessible to the public, including individuals with disabilities.

56.29(8) *Conflict of interest.* No member of the council may cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under state law.

Rule 281—56.29(259) is intended to implement 34 CFR Sections 361.16 and 361.17.

ITEM 30. Rescind rule 281—56.30(259) and adopt the following **new** rule in lieu thereof:

DIVISION X
IOWA SELF-EMPLOYMENT PROGRAM
(A/K/A ENTREPRENEURS WITH DISABILITIES PROGRAM)

281—56.30(259) Purpose. The division of vocational rehabilitation services works in collaboration with the Iowa department for the blind to administer the Iowa self-employment (ISE) program. The purpose of the program is to provide business development funds in the form of technical assistance (up to $10,000) and financial assistance (up to $10,000) to qualified Iowans with disabilities who start, expand, or acquire a business within the state of Iowa. Actual assistance is based on the requirements of the business, not to exceed the technical assistance and financial assistance limits.

ITEM 31. Rescind rule 281—56.31(259) and adopt the following **new** rule in lieu thereof:

281—56.31(259) Program requirements. Clients of the division or the department for the blind may apply for the program. All of the following conditions are also applicable:

1. The division may limit or deny ISE assistance to an applicant who has previously received educational or training equipment from the division through another rehabilitation program when such equipment could be used in the applicant's proposed business.

2. Any equipment purchased for the applicant under this program that is no longer used by the applicant may be returned to the division, at the discretion of the division.

3. An applicant must demonstrate that the applicant has at least 51 percent ownership in a for-profit business that is actively owned, operated, and managed in Iowa.

4. Recommendation for and approval of financial assistance is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.

5. In order to receive financial support from the ISE program, the applicant's business plan feasibility study must result in self-sufficiency for the applicant as measured by earnings that equal or exceed 80 percent of substantial gainful activity.

6. The division cannot support the purchase of real estate or improvements to real estate.

7. The division cannot provide funding to be used as a cash infusion, for personal or business loan repayments, or for personal or business credit card debt.

8. The division may deny ISE assistance to an applicant who desires to start, expand, or acquire any of the following types of businesses:

- A hobby or similar activity that does not produce income at the level required for self-sufficiency;
- A business venture that is speculative in nature or considered high risk by the Better Business Bureau or similar organization;
- A business registered with the federal Internal Revenue Service as a Section 501(c)(3) entity or other entity set up deliberately to be not for profit;
- A business that is not fully compliant with all local, state, and federal zoning requirements and all other applicable local, state, and federal requirements;
- A multitiered marketing business.

ITEM 32. Rescind rule 281—56.32(259) and adopt the following **new** rule in lieu thereof:

281—56.32(259) Application procedure.

56.32(1) *Application.* Application materials for the program are available from the division and the department for the blind.

56.32(2) *Submittal.* Completed applications shall be submitted to a counselor employed by the division or the department for the blind.

56.32(3) *Review.* Applications will be forwarded to a business development specialist employed by the division for review. Approval of technical assistance funding is based upon the results of a business plan feasibility study. If the application is for financial assistance only, a business plan feasibility study will be required at the time of submission of the application. Approval of financial assistance funding is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.

56.32(4) *Funding.* Before the division will provide funding for a small business, the job candidate must complete an in-depth study about the business the job candidate intends to start and must demonstrate that the business is feasible.

56.32(5) *Appeal.* If an application is denied, an applicant may appeal the decision to the division or the department for the blind. An appeal shall be consistent with the appeal processes of the division or the department for the blind.

ITEM 33. Rescind rule 281—56.33(259) and adopt the following **new** rule in lieu thereof:

281—56.33(259) Award of technical assistance funds.

56.33(1) *Awards.* Technical assistance funds may be used for specialized consulting services as determined necessary by the counselor, the business development specialist, and the job candidate.

Technical assistance funds may be awarded, based on need, up to a maximum of $10,000 per applicant. Specialized technical assistance may include, but is not limited to, engineering, legal, accounting, and computer services and other consulting services that require specialized education and training.

56.33(2) *Technical assistance.* When technical assistance is needed for specialized services beyond the expertise of the business development specialist, technical assistance will be provided to assist the job candidate.

56.33(3) *Technical assistance contracts.* The division shall negotiate contracts with qualified consultants for delivery of services to an applicant if specialized services are deemed necessary. The contracts shall state hourly fees for services, the type of service to be provided, and a timeline for delivery of services. Authorization of payment will be made by a counselor employed by the division or the department for the blind based upon the negotiated rate as noted in the contract. A copy of each contract shall be filed with the division.

56.33(4) *Consultants.* Applicants will be provided a list of qualified business consultants by the business development specialist if specialized consultation services are necessary. The selection of the consultant(s) shall be the responsibility of the applicant.

56.33(5) *Case management.* The business development specialist or counselor will be available as needed for direct consultation to each applicant to ensure that quality services for business planning are provided in a timely manner.

ITEM 34. Rescind rule 281—56.34(259) and adopt the following **new** rule in lieu thereof:

281—56.34(259) Business plan feasibility study procedure. Information and materials are available from the division and the department for the blind. The job candidate shall submit the job candidate's business plan feasibility study to the job candidate's counselor if the study is completed at the time application is made or to the business development specialist if the business plan feasibility study is completed after application approval. The business development specialist is available to guide and assist in the analysis of the feasibility study.

ITEM 35. Rescind rule 281—56.35(259) and adopt the following **new** rule in lieu thereof:

281—56.35(259) Award of financial assistance funds.

56.35(1) *Awards.* Following the business development specialist's review of the business plan feasibility study, the business development specialist will issue a recommendation to support or not to support the proposed business venture. The counselor shall make a decision regarding approval or denial of the recommendation. If the plan is approved, the job candidate and counselor will review conditions of the financial assistance award and sign the appropriate forms of acknowledgment.

a. Financial assistance funds may be awarded, based on need, up to $10,000 after approval of a business plan feasibility study and evidence of business need or evidence of business progression. Before receiving financial assistance, the job candidate must demonstrate a dollar-for-dollar match based on the amount of funding needed. The match may be provided through approved existing business assets, cash, conventional financing or other approved sources.

b. Financial assistance funds may be approved for, but are not limited to: equipment, tools, printing of marketing materials, advertising, rent (up to six months), direct-mail postage, raw materials, inventory, insurance (up to six months), and other approved start-up, expansion, or acquisition costs.

56.35(2) *Award process.* The amount that may be recommended by the business development specialist and approved by the counselor shall be provided when there is a need. Recipients of financial assistance must demonstrate ongoing cooperation by providing the business development specialist with financial information needed to assess business progress before additional funds are expended.

56.35(3) *Financial assistance contracts.* Contracts for financial assistance funds shall be the responsibility of the division and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy.

56.35(4) *Vendors.* Procurement of goods or services shall follow procedures established by the department of administrative services. The type of goods or services to be obtained, as well as a timeline

for delivery of such, shall be stated by the vendor and agreed upon by the division. Authorization for goods or services shall be made by a counselor employed by the division or the department for the blind based upon the negotiated rate and terms as noted in the contract. A copy of each contract shall be filed with the division. Approval for payment of authorized goods or services shall be made by authorized division personnel.

ITEM 36. Rescind rules **281—56.36(259)** to **281—56.42(259)**.

ARC 2762C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 62, "State Standards for Progression in Reading," Iowa Administrative Code.

Item 1 through Item 9 of the proposed amendments replace the term "have a substantial deficiency in reading" with "being persistently at risk in reading" and define that term, consistent with amendments to Iowa Code section 279.68, as well as make conforming changes in grammar and terminology. Item 1 also includes a requirement that results on an annual standard-based assessment be considered. Item 3 also describes changes to services provided to students who are persistently at risk in reading, as required by recent legislation, as well as define when a student is "at risk in reading." Item 4 also makes conforming changes to the rule on intensive summer literacy programs, including the one-year delay in their required date. Item 5 also defines "dyslexia" and specifically indicates that services shall formally address dyslexia, pursuant to legislative action, as well as codifies department guidance on monitoring and services for students who are at risk in reading. Item 10 updates the implementation sentence for Chapter 62.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested persons may submit comments orally or in writing by November 1, 2016, at 4:30 p.m. Comments on the proposed amendments should be directed to Phil Wise, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on November 1, 2016, from 2 to 3 p.m. in the ICN Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of specific needs by calling (515)281-5295.

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

These amendments are intended to implement Iowa Code section 256.7(31) as amended by 2016 Iowa Acts, chapter 1123, and Iowa Code section 279.68 as amended by 2014 Iowa Acts, chapter 1077, and by 2016 Iowa Acts, chapter 1123.

The following amendments are proposed.

ITEM 1. Amend subrules 62.2(3) and 62.2(4) as follows:

62.2(3) *Progress-monitoring instruments.* For students identified as ~~having a substantial deficiency~~ being persistently at risk in reading, as well as students who are ~~at risk of a substantial deficiency~~ becoming persistently at risk in reading, a school district shall monitor the students' progress in reading

with instruments that meet the standards in subrule 62.2(5), in at least a frequency required by the department.

62.2(4) *Statewide or locally determined assessments.* Assessments may be locally determined or statewide, including an annual standard-based assessment, provided that all assessments for purposes of implementing this chapter meet the standards described in subrule 62.2(5).

ITEM 2. Amend subrules 62.3(1) and 62.3(4) as follows:

62.3(1) *Locally determined or statewide assessments.* In evaluating and reevaluating students who are or may be ~~deficient~~ at risk or persistently at risk in reading, school districts shall use assessments that meet the standards referenced in subrule 62.2(5).

62.3(4) *Teacher observation.* A student may initially be identified as ~~having a substantial deficiency~~ being persistently at risk in reading proficiency based on teacher observation. A teacher observation under this subrule shall be based on department-approved observation criteria. Teacher observation shall not be used to determine that a student continues to ~~have a substantial deficiency~~ be persistently at risk in reading.

ITEM 3. Amend rule 281—62.4(256,279) as follows:

281—62.4(256,279) Identification of a student as ~~having a substantial deficiency~~ being persistently at risk in reading. A school district shall follow this rule in determining whether a student in kindergarten through grade three ~~has a substantial deficiency~~ is persistently at risk in reading.

62.4(1) *Definition of "~~substantial deficiency~~ persistently at risk in reading."* A school district shall determine that a student ~~has a "substantial deficiency in reading"~~ is "persistently at risk in reading" if, based on the requirements of this chapter, the ~~student's reading is below a standard set on an approved assessment pursuant to subrule 62.2(6) and the student's progress on a measure that meets the requirements of this chapter is minimal~~ student has not met the grade-level benchmarks on two consecutive screening assessments administered pursuant to this chapter. A student is "at risk in reading" if the student did not meet the grade-level benchmark for one of the two most recent screening assessments administered pursuant to this chapter.

62.4(2) *Determination of a ~~substantial deficiency~~ persistent risk in reading.*

a. In initially determining whether a student ~~has a substantial deficiency~~ is persistently at risk in reading as defined in subrule 62.4(1), the school district shall consider assessments referred to in rule 281—62.2(256,279) and subrule 62.3(1) or teacher observations that meet the criteria referenced in subrule 62.3(4).

b. In determining whether a student continues to ~~have a substantial deficiency~~ be persistently at risk in reading, a school district shall consider assessments referred to in rule 281—62.2(256,279) and subrule 62.3(1), with specific attention given to progress-monitoring results under subrule 62.2(3).

62.4(3) *Services offered to all students ~~with a substantial deficiency~~ who are persistently at risk in reading.* A school district shall provide intensive reading instruction to any student who ~~exhibits a substantial deficiency~~ is persistently at risk in reading, as defined in subrule 62.4(1). A school district shall continue to provide the student with intensive reading instruction until the student is reading ~~deficiency is remediated~~ at grade level, as determined by the student's consistently proficient performance on valid and reliable measures of reading ability that meet the requirements of rule 281—62.2(256,279). All services provided under this subrule shall comply with rule 281—62.6(256,279).

62.4(4) *Notice to parents.* The parent or guardian of any student in kindergarten through grade three ~~identified as having a substantial deficiency~~ who is persistently at risk in reading, as defined in subrule 62.4(1), shall be notified ~~at least annually~~ regularly in writing and shall be provided all of the following:

~~*a.* That the child has been identified as having a substantial deficiency in reading;~~

~~*b.*~~ *a.* A description of the services currently provided to the child;

~~*c.*~~ *b.* A description of the proposed supplemental instructional services and supports that the school district will provide to the child that are designed to remediate the identified area ~~of~~ or areas in which the student is persistently at risk in reading ~~deficiency~~; ~~and~~

~~*d.*~~ *c.* Strategies for parents and guardians to use in helping the ~~child succeed in reading proficiency~~ student read proficiently, including but not limited to the promotion of parent-guided home reading~~.~~; and

d. Regular updates regarding the student's progress toward reaching or exceeding the targeted level of reading proficiency.

ITEM 4. Amend subrules 62.5(1), 62.5(3) and 62.5(5) as follows:

62.5(1) *General.* Beginning May 1, ~~2017~~ 2018, unless the school district is granted a waiver pursuant to subrule 62.5(5), if a ~~student's reading deficiency is not remediated~~ student is persistently at risk in reading by the end of grade three~~, as demonstrated by scores on a locally determined or statewide assessment as provided in subrule 62.4(2)~~ and is not proficient in reading on a statewide assessment of reading administered pursuant to Iowa Code section 256.7(21), the school district shall notify the student's parent or guardian that the parent or guardian may enroll the student in an intensive summer reading program offered in accordance with this rule.

62.5(3) *Student exempt from or completes program and is not reading ~~proficient~~ proficiently.* If the student is exempt from participating in an intensive summer reading program for good cause pursuant to rule 281—62.8(256,279) or completes the intensive summer reading program but is not reading ~~proficient~~ proficiently upon completion of the program as determined under subrule 62.4(2), the student may be promoted to grade four, but the school district shall continue to provide the student with intensive reading instruction pursuant to subrule 62.4(3) until the student is ~~proficient in reading~~ reading proficiently, as demonstrated by scores on locally determined or statewide assessments pursuant to subrule 62.4(2).

62.5(5) *Waiver of intensive summer reading program.* The department may grant a school district a waiver of the requirement to offer an intensive summer reading program for the summer of ~~2017~~ 2018 only. A school district must demonstrate good cause and that the requested waiver is in keeping with the objectives of Iowa Code section 279.68 and these rules.

ITEM 5. Amend rule 281—62.6(256,279) as follows:

281—62.6(256,279) Successful progression for early readers. Each school district shall provide the following.

62.6(1) *Intensive instructional services.* A school district shall provide students who are ~~identified as having a substantial deficiency~~ persistently at risk in reading under subrule 62.4(2) with intensive instructional services and supports, free of charge, to remediate the ~~identified~~ areas ~~of reading deficiency~~ in which students are not proficient in reading. The intensive instructional services are further described in subrule 62.6(2).

a. Intensive instructional services under this subrule shall include a minimum of 90 minutes daily of scientific research-based reading instruction, which shall be core instruction.

b. In addition to the instruction described in paragraph 62.6(1)*"a,"* a school district shall prescribe other strategies, which may include but are not limited to the following:

(1) Small group instruction.
(2) Reduced teacher-student ratios.
(3) More frequent progress monitoring.
(4) Tutoring or mentoring.
(5) Extended school day, week, or year.
(6) Summer reading programs.

62.6(2) *Reading enhancement and acceleration development initiative.* The intensive instructional services described in subrule 62.6(1) shall be provided to all students in kindergarten through grade three who are identified as ~~having a substantial deficiency~~ being persistently at risk in reading, as determined pursuant to subrule 62.4(2). The services shall meet the following requirements:

a. A school district shall provide intensive instructional services during regular school hours, in addition to the regular reading instruction.

b. A school district shall provide a reading curriculum that meets the standards of subrule 62.6(3).

62.6(3) *Reading curriculum for students ~~with substantial deficiencies~~ who are persistently at risk in reading.* A curriculum that does not meet the standards of this subrule shall not be used to implement this

chapter. To implement this subrule, a school district shall provide a curriculum that meets the following guidelines and specifications:

a. Assists students assessed as ~~exhibiting a substantial deficiency~~ persistently at risk in reading to develop the skills to read at grade level. Assistance shall include but not be limited to strategies that formally address dyslexia, when appropriate. For purposes of this paragraph, "dyslexia" means a specific and significant impairment in the development of reading, including but not limited to phonemic awareness, phonics, fluency, vocabulary, and comprehension, that is not solely accounted for by intellectual disability, sensory disability or impairment, or lack of appropriate instruction.

b. Provides skill development in phonemic awareness, phonics, fluency, vocabulary, and comprehension.

c. Is supported by scientifically based research in reading.

d. Is implemented by certified instructional staff with appropriate training and professional development. Such training and professional development shall meet the requirements of rule 281—83.6(284).

e. Is implemented by certified instructional staff with fidelity, which shall meet such standards for fidelity of implementation that the department may adopt.

f. Includes a scientifically based and reliable assessment, which shall meet the requirements of rule 281—62.1(256,279).

g. Provides initial and ongoing analysis of each student's reading progress, which shall meet the requirements of rule 281—62.1(256,279), with notice provided to parents pursuant to subrule 62.6(4).

h. Is implemented during regular school hours.

i. Provides a curriculum in core academic subjects to assist the student in maintaining or meeting proficiency levels for the appropriate grade in all academic subjects.

62.6(4) *Parent notice, involvement and support.* At a minimum and in addition to other requirements of this chapter, school districts shall provide the following to all parents or guardians of students who ~~have been identified as having a substantial deficiency~~ are persistently at risk in reading:

a. At regular intervals, a school district shall apprise the parent or guardian of academic and other progress being made by the student and give the parent or guardian other useful information.

b. In addition to required reading enhancement and acceleration strategies provided to students, a school district shall provide parents or guardians of students who are ~~identified as having a substantial deficiency~~ persistently at risk in reading under subrule 62.4(2) with a plan outlined in a parental contract, including participation in regular parent-guided home reading.

62.6(5) *Report to the department.* Each school district shall report to the department the specific intensive reading interventions and supports implemented by the school district pursuant to this chapter. The department shall annually prescribe the components of required or requested reports.

62.6(6) *Rule of construction: students who are at risk in reading.* Subject to paragraphs 62.6(6)*"a"* and *"b,"* school districts may voluntarily provide additional services and interventions to students who are "at risk in reading" as defined in subrule 62.4(1).

a. School districts must provide progress monitoring to students who are "at risk in reading."

b. If a student who was previously "persistently at risk" and is currently identified as "at risk" and falls below the grade-level benchmark on a locally determined number of progress monitoring probes, the student must be provided services under this rule until the next screening assessment administered pursuant to this chapter.

ITEM 6. Amend subrules 62.7(1) and 62.7(5) as follows:

62.7(1) *General.* In determining whether to promote a student in grade three to grade four, a school district shall place significant weight on any area that is not yet remediated in which the student is persistently at risk in reading ~~deficiency~~, as identified pursuant to subrule 62.4(2) ~~that is not yet remediated~~.

62.7(5) *Plan of action required.* A decision to retain a student in grade three shall be made only after the formulation of a specific plan of action to ~~remedy~~ address the student's reading ~~deficiency~~ skills until the student is reading at grade level.

ITEM 7. Amend rule 281—62.8(256,279) as follows:

281—62.8(256,279) Good-cause exemption. A school district shall exempt students from the retention requirements of rule 281—62.7(256,279) and intensive summer reading program requirements of rule 281—62.5(256,279) for good cause.

62.8(1) *"Good cause" defined.* Good-cause exemptions shall be limited to the following:

a. Limited English proficient students who have had less than two years of instruction in an English language learners program.

b. Students requiring special education whose individualized education program indicates that participation in a locally determined or statewide assessment required by this chapter is not appropriate, consistent with the requirements of rules adopted by the state board of education for the administration of Iowa Code chapter 256B.

c. Students who demonstrate an acceptable level of performance on an alternative performance measure approved pursuant to subrule 62.3(2).

d. Students who demonstrate mastery through a student portfolio under alternative performance measures approved pursuant to subrule 62.3(3).

e. Students who have received intensive remediation in reading for two or more years but who are still ~~demonstrate a deficiency~~ persistently at risk in reading and who were previously retained in kindergarten, grade one, grade two, or grade three. Intensive reading instruction for students so promoted must include an altered instructional day that includes specialized diagnostic information and specific reading strategies for each student. The school district shall assist attendance centers and teachers to implement reading strategies that research has shown to be successful in improving reading among low-performing readers.

62.8(2) *Additional documentation required.* ~~Requests~~ For students described in paragraphs 62.8(1)*"c"* and *"d,"* requests for good-cause exemptions from the retention requirement of subrule 62.5(2) and rule 281—62.7(256,279) ~~for a student described in paragraphs 62.8(1)*"c"* and *"d"*~~ shall include documentation from the student's teacher to the school principal that indicates that the promotion of the student is appropriate and is based upon the student's academic record. Such documentation shall include but not be limited to the individualized education program, if applicable, report card, or student portfolio.

ITEM 8. Amend subrules 62.9(1) and 62.9(3) as follows:

62.9(1) *Reading proficiency addressed in comprehensive school improvement plan.* To ensure all children are reading proficiently by the end of third grade, each school district shall address reading proficiency as part of its comprehensive school improvement plan, drawing upon information about ~~children~~ students from assessments and reassessment conducted pursuant to this chapter and the prevalence of ~~deficiencies~~ areas in which students are persistently at risk in reading, identified by classroom, elementary school, and other student characteristics.

62.9(3) *Attendance centers with lower levels of reading proficiency.* If more than 15 percent of an attendance center's students are not ~~proficient in~~ reading proficiently by the end of third grade, the comprehensive school improvement plan shall include strategies to reduce that percentage, including school and community strategies to raise the percentage of students who are ~~proficient in~~ reading at grade level. Strategies adopted under this subrule shall meet the requirements of this chapter.

ITEM 9. Amend subrule 62.10(1) as follows:

62.10(1) *Services beyond third grade.* Students who are identified as ~~having a substantial deficiency~~ persistently at risk in reading ~~that is not remediated~~ at the end of third grade remain entitled to intensive reading instruction. Nothing in this chapter shall be construed to prevent a school district from offering scientific research-based instruction in reading to students above third grade. Nothing in this chapter shall be construed to prohibit a school district from determining a student above third grade ~~as having a substantial deficiency~~ is persistently at risk in reading or from providing services to a student so identified.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 10. Amend **281—Chapter 62**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~sections~~ section 256.7(31) as amended by 2016 Iowa Acts, chapter 1123, and section 279.68 as amended by 2014 Iowa Acts, chapter 1077, and 2016 Iowa Acts, chapter 1123.

ARC 2761C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 79, "Standards for Practitioner and Administrator Preparation Programs," Iowa Administrative Code.

Chapter 79 outlines the standards and program requirements that all traditional educator preparation programs must meet in order to be accredited to prepare educators in Iowa. Compliance with these standards is required and evaluated during each educator preparation program's accreditation review. The standards are also applied in an annual reporting system. The proposed amendments will update the current standards because of pertinent changes to the Iowa Code made during the 2016 Legislative Session and will keep the rules current with national standards for educator preparation.

Pursuant to Iowa Code section 256.7(3), no waiver of these rules is permitted.

Interested individuals may make written comments on the proposed amendments until 4:30 p.m. on November 1, 2016. Comments on the proposed amendments should be directed to Nicole Proesch, Administrative Rules Co-Coordinator, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; e-mail nicole.proesch@iowa.gov; or fax (515)242-5988.

A public hearing will be held on November 1, 2016, from 9 to 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of their specific needs by calling (515)281-5295.

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

These amendments are intended to implement Iowa Code chapter 256 as amended by 2016 Iowa Acts, Senate File 2196.

The following amendments are proposed.

ITEM 1. Amend subrule 79.13(4) as follows:

79.13(4) Candidate assessment includes clear criteria for:

a. Entrance into the program (for teacher education, this includes ~~testing described in Iowa Code section 256.16)~~ a preprofessional skills test offered by a nationally recognized testing service. Institutions must deny admission to any candidate who does not successfully meet the institution's passing score requirement).

b. Continuation in the program with clearly defined checkpoints/gates.

c. Admission to clinical experiences (for teacher education, this includes specific criteria for admission to student teaching).

d. Program completion (for teacher education, this includes testing described in Iowa Code section 256.16; see subrule 79.15(5) for required teacher candidate assessment).

EDUCATION DEPARTMENT[281](cont'd)

ITEM 2. Amend subrule 79.15(2) as follows:

79.15(2) Each teacher candidate receives dedicated coursework related to the study of human relations, cultural competency, and diverse learners, such that the candidate is prepared to work with students from diverse groups, as defined in rule 281—79.2(256). The unit shall provide evidence that teacher candidates develop the ability to meet the needs of all learners, including:

a. Students from diverse ethnic, racial and socioeconomic backgrounds.

b. Students with disabilities.

c. Students who are gifted and talented.

d. English language learners.

e. Students who may be at risk of not succeeding in school. This preparation will include classroom management addressing high-risk behaviors including, but not limited to, behaviors related to substance abuse.

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

79.15(3) ~~Each teacher candidate demonstrates knowledge about literacy and receives preparation in literacy. Each candidate also develops and demonstrates the ability to integrate reading strategies into content area coursework. Each teacher candidate in elementary education demonstrates knowledge related to the acquisition of literacy skills and receives preparation in a variety of instructional approaches to reading programs, including but not limited to reading recovery.~~ Each teacher candidate demonstrates competency in literacy, to include reading theory, knowledge, strategies, and approaches; and integrating literacy instruction into content areas. 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; and students with dyslexia, whether or not such students have been identified as children requiring special education under Iowa Code chapter 256B.

ITEM 4. Amend subrule 79.15(5) as follows:

79.15(5) Each teacher candidate ~~exhibits~~ demonstrates competency in all of the following professional core curricula:

~~*a. Content/subject matter specialization.* The teacher candidate demonstrates an understanding of the central concepts, tools of inquiry, and structure of the discipline(s) the candidate teaches and creates learning experiences that make these aspects of the subject matter meaningful for students. This specialization is evidenced by a completion of a 30-semester-hour teaching major which must minimally include the requirements for at least one of the basic endorsement areas, special education teaching endorsements, or secondary level occupational endorsements. The teacher candidate must either meet or exceed a score above the 25th percentile nationally on subject assessments designed by a nationally recognized testing service that measure pedagogy and knowledge of at least one subject area as approved by the director of the department of education, or the teacher candidate must meet or exceed the equivalent of a score above the 25th percentile nationally on an alternate assessment also approved by the director. The alternate assessment must be a valid and reliable subject-area-specific, performance-based assessment for preservice teacher candidates that is centered on student learning. Additionally, each elementary teacher candidate must also complete a field of specialization in a single discipline or a formal interdisciplinary program of at least 12 semester hours.~~

~~*b. Student learning.* The teacher candidate demonstrates an understanding of human growth and development and of how students learn and participates in learning opportunities that support intellectual, career, social and personal development.~~

~~*c. Diverse learners.* The teacher candidate demonstrates an understanding of how students differ in their approaches to learning and creates instructional opportunities that are equitable and adaptable to diverse learners.~~

~~*d. Instructional planning.* The teacher candidate plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.~~

EDUCATION DEPARTMENT[281](cont'd)

~~*e. Instructional strategies.* The teacher candidate demonstrates an understanding of and an ability to use a variety of instructional strategies to encourage student development of critical and creative thinking, problem-solving, and performance skills.~~

~~*f. Learning environment/classroom management.* The teacher candidate uses an understanding of individual and group motivation and behavior; creates a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation; maintains effective classroom management; and is prepared to address behaviors related to substance abuse and other high-risk behaviors.~~

~~*g. Communication.* The teacher candidate uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry and collaboration and to support interaction in the classroom.~~

~~*h. Assessment.* The teacher candidate understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the student, and effectively uses both formative and summative assessment of students, including student achievement data, to determine appropriate instruction.~~

~~*i. Foundations, reflective practice and professional development.* The teacher candidate develops knowledge of the social, historical, and philosophical foundations of education. The teacher candidate continually evaluates the effects of the candidate's choices and actions on students, parents, and other professionals in the learning community; actively seeks out opportunities to grow professionally; and demonstrates an understanding of teachers as consumers of research and as researchers in the classroom.~~

~~*j. Collaboration, ethics and relationships.* The teacher candidate fosters relationships with parents, school colleagues, and organizations in the larger community to support student learning and development; demonstrates an understanding of educational law and policy, ethics, and the profession of teaching, including the role of boards of education and education agencies; and demonstrates knowledge of and dispositions for cooperation with other educators, especially in collaborative/co-teaching as well as in other educational team situations.~~

a. Learner development. The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.

b. Learning differences. The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.

c. Learning environments. The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation.

d. Content knowledge. The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make the discipline accessible and meaningful for learners to assure mastery of the content.

e. Application of content. The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

f. Assessment. The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making.

g. Planning for instruction. The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

h. Instructional strategies. The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

i. Professional learning and ethical practice. The teacher engages in ongoing professional learning and uses evidence to continually evaluate his/her practice, particularly the effects of his/her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner.

j. Leadership and collaboration. The teacher seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession.

k. Technology. The teacher candidate effectively integrates technology into instruction to support student learning.

l. Methods of teaching. ~~Methods~~ The teacher candidate understands and uses methods of teaching that have an emphasis on the subject and grade-level endorsement desired.

ITEM 5. Rescind subrule 79.15(6) and adopt the following **new** subrule in lieu thereof:

79.15(6) Each teacher candidate must either meet or exceed a score above the 25th percentile nationally on subject assessments designed by a nationally recognized testing service that measure pedagogy and knowledge of at least one subject area as approved by the director of the department of education, or the teacher candidate must meet or exceed the equivalent of a score above the 25th percentile nationally on an alternate assessment also approved by the director. That alternate assessment must be a valid and reliable subject-area-specific, performance-based assessment for preservice teacher candidates that is centered on student learning.

ITEM 6. Rescind subrule 79.15(7) and adopt the following **new** subrule in lieu thereof:

79.15(7) Each teacher candidate must complete a 30-semester-hour teaching major which must minimally include the requirements for at least one of the basic endorsement areas, special education teaching endorsements, or secondary level occupational endorsements. Additionally, each elementary teacher candidate must also complete a field of specialization in a single discipline or a formal interdisciplinary program of at least 12 semester hours. Each teacher candidate meets all requirements established by the board of educational examiners for any endorsement for which the teacher candidate is recommended.

ITEM 7. Renumber subrule **79.15(8)** as **79.15(9)**.

ITEM 8. Adopt the following **new** subrule 79.15(8):

79.15(8) Each teacher candidate demonstrates competency in content coursework directly related to the Iowa Core.

ARC 2757C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.173(2), the Environmental Protection Commission (Commission) hereby gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The purpose of the proposed amendments is to create additional flexibility for wastewater dischargers by adding the option to use the Biotic Ligand Model (BLM) to determine water quality criteria for copper. The amendments will also add the option to use the Water-Effect Ratio (WER) to adjust the existing water quality criteria for copper. These options have the potential to significantly reduce costs for permit holders that are unable to comply with the existing criteria for copper. Of the 297 facilities in Iowa that

are subject to the existing criteria for copper, the Department of Natural Resources (DNR) estimates that 21 or 22 facilities are unable to comply. Of the 21 or 22 facilities unable to comply with the existing criteria, DNR estimates that 7 to 10 would be able to comply with the BLM- or WER-based criteria for copper proposed in this rule making. These 7 to 10 facilities could experience a significant cost savings by avoiding the need to install copper removal technology in order to comply with the existing criteria.

The accumulation of copper at the biotic ligand (i.e., the gill of a fish or other similar site for aquatic organisms) above a critical threshold concentration leads to toxicity. The amount of copper that will actually accumulate at the gill depends in large part on the water chemistry of the particular water body. The BLM accounts for several water chemistry parameters to predict the concentration of copper that would actually result in toxicity to an organism in a given water body. The United States Environmental Protection Agency (EPA) has developed a BLM-based approach for calculating water quality criteria for copper. The Commission seeks to adopt by reference the EPA document "Aquatic Life Ambient Freshwater Quality Criteria-Copper 2007 Revision (EPA-822-R-07-001), February 2007."

The WER method allows permittees to take into account the difference between the toxicity of a metal as measured in laboratory water versus the toxicity of the metal as measured in ambient water of the discharge site. The WER method allows facilities to calculate a ratio between the two measured toxicity levels and use the ratio to adjust the existing criteria for copper shown in subrule 61.3(3), Table 1. Permittees wishing to use this option will be required to conduct a WER study approved by the DNR. WER studies must be conducted in accordance with the EPA document "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals (EPA-823-B-94-001), February 22, 1994," or upon approval by the DNR, "Streamlined Water-Effect Ratio Procedure for Discharges of Copper (EPA-822-R-01-005), March 2001," both of which the Commission seeks to adopt by reference.

The proposed amendments will give National Pollutant Discharge Elimination System (NPDES) permit holders the ability to use the WER to adjust the existing criteria for copper, or the ability to use the BLM to generate criteria for copper that reflect the unique water chemistry characteristics of the receiving water body. The proposed amendments will create flexibility for NPDES permit holders seeking to comply with water quality standards while minimizing the need for expensive infrastructure upgrades.

Any person may submit written suggestions or comments on the proposed amendments on or before November 4, 2016. Such written material should be submitted to Connie Dou, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; fax (515)725-8202; or e-mail connie.dou@dnr.iowa.gov. Persons who have questions regarding the amendments may contact Connie Dou at (515)725-8400.

Persons are invited to present oral or written comments at a series of public hearings, which will be held throughout the state as follows:

Date	Time	Location
November 1, 2016	4 to 6 p.m.	Nicola-Stoufer Room Washington Public Library 115 W. Washington St. Washington, Iowa
November 2, 2016	4 to 6 p.m.	Meeting Room B Urbandale Public Library 3520 86th St. Urbandale, Iowa
November 3, 2016	4 to 6 p.m.	Council Chambers City Hall 620 Erie St. Storm Lake, Iowa

Persons attending a hearing will be asked to give their names and addresses for the record and to confine their remarks to the content of the proposed amendments. Any persons who plan to attend a

public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the DNR and advise of specific needs.

After analysis and review of this rule making, these amendments are expected to have a positive impact on jobs. The amendments are projected to result in a total cost savings for cities, industries, and semipublic entities ranging between $113 million and $215 million. This total savings is expected to be achieved by 7 to 10 facilities across the state that may be able to avoid the installation of copper removal technology by using the copper BLM or WER. These cost savings will likely lead to further investment in production and job growth.

Additional information regarding Iowa's Water Quality Standards, including the Fiscal Impact Statement, Job Impact Statement, and links to the BLM and WER documents, can be found on the Department's Web site at http://www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Standards.

These amendments are intended to implement Iowa Code section 455B.173(2).

The following amendments are proposed.

ITEM 1. Amend subrule **61.3(3)**, TABLE 1, Criteria for Chemical Constituents, parameter for copper, as follows:

Copper	Chronic[n]	20	—	16.9[i]	16.9[i]	16.9[i]	10	—	—
	Acute[n]	30	—	26.9[i]	26.9[i]	26.9[i]	20	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	1000[e]
	Human Health + — F & W	—	—	—	—	—	—	—	1300[f]

ITEM 2. Adopt the following **new** footnote (n) in subrule **61.3(3)**, TABLE 1, Criteria for Chemical Constituents:

(n) The copper criteria in Table 1 can be adjusted by a Water-Effect Ratio (WER). The WER factor is equal to 1.0 unless an approved WER study has been conducted by a permittee for a specific point source. The WER study shall be conducted in accordance with the "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals (EPA-823-B-94-001), February 22, 1994," or upon approval by the department, the "Streamlined Water-Effect Ratio Procedure for Discharges of Copper (EPA-822-R-01-005), March 2001," which are hereby adopted by reference.

The copper Biotic Ligand Model (BLM) may be used as an alternative to the copper criteria in Table 1. The copper BLM is found in the document "Aquatic Life Ambient Freshwater Quality Criteria - Copper 2007 Revision (EPA-822-R-07-001), February 2007," which is hereby adopted by reference.

ITEM 3. Reserve subrule **61.3(9)**.

ITEM 4. Adopt the following **new** subrule 61.3(10):

61.3(10) *Implementation procedure for biotic ligand model-based copper criteria.* The department hereby incorporates by reference "Implementation Procedure for Biotic Ligand Model-Based Copper Criteria," [effective date of this amendment]. This document may be obtained on the department's Web site.

ARC 2740C

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Department hereby gives Notice of Intended Action to amend Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The proposed amendments are intended to implement 2016 Iowa Acts, House File 2439 and Senate File 2326, which amend Iowa Code chapter 34A. These amendments primarily focus on the distribution of collected wireless E911 surcharge revenues. First, the amount of wireless E911 surcharge revenues passed to the local E911 services board is increased from 46 percent to 60 percent of revenues collected. The method by which these funds are disbursed remains unchanged from current practice. Funds are disbursed based on wireless 911 call volume and square miles of the E911 service area for the associated public safety answering point (PSAP). Second, a one-time payment of $4,383,000 is made to the Public Safety Department for payment of the 2017 state fiscal year financing agreement entered into by the Treasurer of State for the statewide interoperable communications system as described in Iowa Code section 29C.23 as amended by 2016 Iowa Acts, Senate File 2326. Last, any unspent funds, not to exceed $4,400,000, may be spent in the following order of priority: grants for PSAPs to consolidate physical facilities and technology, funding of public awareness and educational campaigns, and funding to PSAPs for communications equipment related to receiving and dispatching 911 calls as well as costs to access the statewide interoperable communications system.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before November 1, 2016. Such written materials should be sent to the Administrative Rules Coordinator, Department of Homeland Security and Emergency Management, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324; fax (515)725-3260; or e-mail to john.benson@iowa.gov.

Also, there will be a public hearing on November 1, 2016, at 11 a.m. in the Department of Homeland Security and Emergency Management Cyclones Conference Room at 7900 Hickman Road, Suite 500, Windsor Heights, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments will have a fiscal impact to local E911 service boards. The increase in the wireless E911 surcharge revenue pass-through from 46 percent to 60 percent is projected to increase the annual amount of revenue received by the E911 Service Board from $12,800,000 to $16,800,000. The funds made available to the service boards after all costs have been addressed are limited to $4,400,000 in state fiscal year 2017. In state fiscal year 2016, the fund provided $11,000,000 to local E911 service boards after all costs had been addressed. The $11,000,000 expenditure rate was not anticipated to be continued for an extended period of time as the rate was implemented to spend down the surplus balance.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2741C**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 34A as amended by 2016 Iowa Acts, House File 2439 and Senate File 2326.

ARC 2770C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 11, "Collection of Public Assistance Debts," Iowa Administrative Code.

The Department must establish a claim when Supplemental Nutrition Assistance Program (SNAP) benefits are overpaid or trafficked. When collection of a claim is delinquent, the claim must be referred for recovery by the federal Treasury Offset Program (TOP). This amendment implements a change to Section 3716(c)(6) of Title 31, United States Code (U.S.C.), that shortens the time frame for referring delinquent claims to TOP. Under the revised time frames, claims must be referred to TOP if they are delinquent over 120 days, instead of if they are delinquent over 180 days.

Persons who owe a SNAP claim and are delinquent in making repayment will be referred to TOP sooner to withhold the debt from federal payments eligible for offset, such as income tax refunds.

Any interested person may make written comments on the proposed amendment on or before November 1, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980, or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

This amendment is intended to implement Iowa Code section 234.6.

The following amendment is proposed.

Amend subparagraph **11.5(1)"a"(3)** as follows:

(3) Debtors are delinquent in repaying their food assistance debt if:

1. A repayment agreement has not been signed and ~~180~~ 120 days have elapsed since the due date of the demand letter as defined in 441—subrule 65.21(4) minus any days the claim was not subject to collection action because of an appeal.

2. A repayment agreement has been signed but the debtor has failed to make the agreed-upon payments and has failed to make up the missed payments. The debtor shall be referred to TOP when ~~180~~ 120 days have elapsed since the first of the month following the month that the debtor failed to make the agreed-upon payment and has not subsequently made up the missed payment.

ARC 2775C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 36, "Facility Assessments," and Chapter 82, "Intermediate Care Facilities for Persons with an Intellectual Disability," Iowa Administrative Code.

These amendments change the timing and calculation of an intermediate care facilities for persons with an intellectual disability (ICF/ID) assessment. The change is to collect quarterly from the facilities based on paid claims, rather than withhold from claims monthly based on the prior period's annual revenue.

In addition to the timing and calculation of the fee, penalty provisions for late payments are included. The penalties include a 1.5 percent fee for late submissions and include suspension of payments after three months of delinquency.

Provisions regarding Medicaid reimbursement to ICFs/ID for assessment fees paid are amended to reflect current practice, modified according to the change in the timing and calculation of the assessment. Fees assessed are not currently treated as an allowable cost, which would be subject to cost-based limits. Rather, ICF/ID reimbursement includes an add-on based on the assessments as currently calculated. The amendments provide for an add-on to the per diem reimbursement rate based on the annual assessments paid by a facility, divided by total annual patient days. Obsolete provisions regarding payments to state-operated facilities during the transition to the ICF/ID assessments are rescinded.

Any interested person may make written comments on the proposed amendments on or before November 1, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 249A.4 and Iowa Code section 249A.21 as amended by 2016 Iowa Acts, House File 2460, section 52.

The following amendments are proposed.

ITEM 1. Amend rule 441—36.1(249A) as follows:

441—36.1(249A) Assessment of fee. Intermediate care facilities for persons with an intellectual disability (ICFs/ID) licensed in Iowa under 481—Chapter 64, including facilities not certified to participate in the Medicaid program, shall pay a ~~monthly~~ quarterly fee to the department. Effective ~~January~~ July 1, ~~2008~~ 2016, the fee shall equal 5.5 percent of ~~the total revenue of the facility~~ actual paid claims, from all sources, for the facility's preceding ~~fiscal year divided by the number of months of facility operation during the preceding fiscal year~~ quarter.

ITEM 2. Amend rule 441—36.2(249A) as follows:

441—36.2(249A) Determination and payment of fee ~~for facilities certified to participate in the Medicaid program.~~ ~~For facilities certified to participate in the Medicaid program,~~ For all ICFs/ID

licensed in Iowa under 481—Chapter 64, including facilities not certified to participate in the Medicaid program, the fee shall be determined and paid as follows:

36.2(1) ~~The assessment for each facility fiscal year shall be based on the financial and statistical report for the facility's preceding fiscal year submitted pursuant to rule 441—82.5(249A), as adjusted pursuant to 441—subrules 82.5(10) and 82.17(1).~~ Each facility shall pay the assessment to the department on a quarterly basis. The facility shall:

a. Use Form 470-5422, Intermediate Care Facilities for Individuals with an Intellectual Disability Assessment Calculation Worksheet, to calculate the quarterly fee due.

b. Submit Form 470-5422 and the quarterly fee no later than 30 days following the end of each calendar quarter.

36.2(2) ~~The department shall notify each facility of the amount of the fee assessed for each fiscal year following submission of the financial and statistical report for the facility's preceding fiscal year. The fee is subject to adjustment based on adjustments to the financial and statistical report.~~ The facility shall calculate the amount of the quarterly fee due by multiplying 5.5 percent by the facility's total ICF/ID payments for services received from all sources during the preceding quarter, including but not limited to:

a. Medicaid managed care payments.

b. Client participation payments.

c. Medicaid fee-for-service payments.

d. Private pay/insurance payments.

e. Ancillary service payments.

36.2(3) ~~ICFs/ID shall pay the monthly amount due to the department.~~ If the department determines that an ICF/ID has underpaid or overpaid the fee, the department shall notify the ICF/ID of the amount of the unpaid fee or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

36.2(4) ~~Rescinded IAB 6/4/08, effective 5/15/08.~~ An ICF/ID that fails to pay the fee within the time frame specified in subrule 36.2(3) shall pay a penalty in the amount of 1.5 percent of the unpaid fee due for each month or portion of a month that the unpaid fee is overdue.

a. If the ICF/ID substantiates good cause beyond the facility's control for failure to make timely payment of the fee, the department shall waive the penalty or a portion of the penalty. For purposes of this subrule, "good cause" shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

b. Requests for a 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.

36.2(5) If a fee has not been received by the department by the last day of the third month after the fee is due, the department shall suspend payment due the ICF/ID under the medical assistance program, including payments made on behalf of the medical assistance program by a contracted managed care organization.

ITEM 3. Rescind and reserve rule **441—36.3(249A)**.

ITEM 4. Amend subrule 82.5(13) as follows:

82.5(13) *Assessed fee.* The fee assessed pursuant to 441—Chapter 36 shall not be an allowable cost for cost reporting and audit purposes. In lieu of treating the fee as an allowable cost, a per diem assessment amount is added to the reimbursement rate calculated under subrule 82.5(14), not subject to the maximum allowable base cost or maximum rate set at the eightieth percentile. The per diem assessment amount will be calculated by dividing the annual assessment paid by the reported total patient days.

~~*a.* For the purpose of implementing the assessment for facilities operated by the state, Medicaid reimbursement rates shall be recalculated effective October 1, 2003, as provided in paragraph *"b."*~~

~~*b.* For purposes of determining rates paid for services rendered after October 1, 2003, each state-operated facility's annual costs for periods before implementation of the assessment shall be increased by an amount equal to 6 percent of the facility's annual revenue for the preceding fiscal year.~~

ARC 2771C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 234.6 and 237.3, the Department of Human Services hereby gives Notice of Intended Action to rescind Chapter 150, "Purchase of Service"; to rescind Chapter 152, "Foster Group Care Contracting," and to adopt a new Chapter 152, "Foster Care Contracting"; and to amend Chapter 156, "Payments for Foster Care," Chapter 172, "Family-Centered Child Welfare Services," and Chapter 202, "Foster Care Placement and Services," Iowa Administrative Code.

These proposed amendments rescind and reserve Chapter 150 because the Department moved away from purchase of service contracts and is now contracting under performance-based contracts in accordance with the Accountable Government Act and the Department of Administrative Services' service contracting rules. Chapter 150 is no longer relevant and is inconsistent with current performance-based contracting.

These amendments also rescind Chapter 152 and replace it with a new Chapter 152 pertaining to foster care contracting. New Chapter 152 will continue to set forth the contracting process used for foster group care but will also set forth the contracting processes used for the other child welfare services, specifically, of child welfare emergency services (CWES) and supervised apartment living.

These amendments update Chapter 156 to reflect current rate and payment practices. The previous methodology of determining rates that once considered remedial services is no longer used. Chapter 156 as revised will now include the rate methodology for CWES shelter care as well as payment information for foster group care (FGCS), foster family care, CWES shelter care, and supervised apartment living.

These amendments correct a cross reference to Chapter 156 in Chapter 172. The correction was made necessary by the amendments to Chapter 156 in this rule making.

Finally, these amendments replace cross references to Chapter 150 in Chapter 202 with references to the provider's contract and to the new Chapter 152.

Any interested person may make written comments on the proposed amendments on or before November 1, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code sections 234.6 and 237.3.

The following amendments are proposed.

ITEM 1. Rescind and reserve **441—Chapter 150**.

ITEM 2. Rescind 441—Chapter 152 and adopt the following **new** chapter in lieu thereof:

CHAPTER 152
FOSTER CARE CONTRACTING

PREAMBLE

This chapter sets forth the contracting process used for providers of foster group care, child welfare emergency services shelter, and supervised apartment living, including standards for rate-setting,

payment mechanisms, and provider monitoring, audits, and sanctions. The terms of these contracts are limited to no more than six years pursuant to 11—Chapter 118. This chapter also establishes provider qualifications, service authorization procedures, documentation requirements, and service termination and appeal procedures associated with these foster care services. Refer to 441—Chapter 156 for additional program requirements.

441—152.1(234) Definitions.

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Authorized representative," within the context of rule 441—152.3(234), means that person appointed to carry out audit procedures, including an assigned auditor, fiscal consultant, or agent contracted for a specific audit or audit procedure.

"Bureau of service contract support" means the division of fiscal management bureau that is responsible for administering performance-based contracts.

"Child" means a person under 18 years of age or a person 18 or 19 years of age who meets the criteria in Iowa Code section 234.1.

"Claim" means each record the department receives that tells the amount of requested payment and the service rendered by a provider to a child and family.

"Client" means a child who has been found to be eligible for foster care services through the department of human services.

"Confidence level" means the probability that an overpayment or underpayment rate determined from a random sample of charges is less than or equal to the rate that exists in the universe from which the sample was drawn.

"Contract" means a formal written agreement between the department of human services and a provider of foster care services.

"Contract monitor" means a department employee who is assigned to assist in developing, monitoring, and evaluating a contract and to provide related technical assistance.

"Department" means the Iowa department of human services and includes the local offices of the department.

"Extrapolation" means using sample data meeting the confidence level requirement to estimate the total dollars of overpayment or underpayment.

"Family," for purposes of child welfare service delivery, shall include the following:

1. The natural or adoptive parents, stepparents, domestic partner of the natural or adoptive parent, and children who reside in the same household.

2. A child who lives with an adult related to the child within the fourth degree of consanguinity and the adult relatives within the fourth degree of consanguinity in the child's household who are responsible for the child's supervision. Relatives within the fourth degree of consanguinity include: full or half siblings, aunts, uncles, great-aunts, great-uncles, nieces, great-nieces, nephews, great-nephews, grandparents, great-grandparents, great-great-grandparents, and first cousins.

3. A child who lives alone or who resides with a person or persons not legally responsible for the child's support.

"Fiscal record" means a tangible and legible history that documents the criteria established for financial and statistical records as set forth in subrule 152.2(5).

"Grant" means an award of funds to develop specific programs or achieve specific outcomes.

"Juvenile court officer" means a person appointed as a juvenile court officer or chief juvenile court officer under Iowa Code chapter 602.

"Level of care" means a type of foster group care service that is differentiated by the ratio of staff to children. There are three levels of foster group care services:

1. Community-level group care (service code D1), which requires a minimum staff-to-client ratio of 1 to 8 during prime programming time.

2. Comprehensive-level group care (service code D2), which requires a minimum staff-to-client ratio of 1 to 5 during prime programming time.

3. Enhanced comprehensive-level group care (service code D3), which requires a minimum staff-to-client ratio during prime programming time as follows:

- 1 staff person for facilities serving up to 4 children.
- 2 staff persons for facilities serving 5 to 7 children.
- 3 staff persons for facilities serving 8 to 10 children.
- 4 staff persons for facilities serving 11 to 13 children.
- 5 staff persons for facilities serving 14 to 16 children.
- 6 staff persons for facilities serving 17 to 19 children.
- 1 staff person for every 3 children for facilities serving 20 or more children.

"Non-prime programming time" means any period of the day other than prime programming time and sleeping time.

"Overpayment" means any payment or portion of a payment made to a provider that is incorrect according to the laws and rules applicable to foster care services and results in a payment greater than that to which the provider is entitled.

"Prime programming time" means any period of the day when special attention, supervision, or treatment is necessary (for example, upon awakening of the clients in the morning until their departure for school, during meals, after school, during transition between activities, evenings and bedtime, and on nonschool days such as weekends, holidays, and school vacations).

"Probation" means a specified period of conditional participation in the provision of foster care services.

"Provider" means the entity that has executed a contract with the department to provide services.

"Random sample" means a systematic (or every "nth" unit) sample for which each item in the universe has an equal probability of being selected.

"Referral worker" means the department worker or juvenile court officer who refers the case to a provider and who is responsible for carrying out the follow-up activities of determining client eligibility and ensuring that the service authorization is completed.

"Service authorization" means the process of determining service necessity and the level of care and number of units of service to be provided to a child.

"Service record" means an individual, tangible, and legible file that records service-related activities set forth in subrule 152.2(4).

"Site" means each licensed location of the foster care provider.

"Sleeping time" means any period of the day during which clients are normally sleeping.

"Suspension of payments" means the withholding of all payments due a provider until resolution of the matter in dispute between the provider and the department.

"Underpayment" means any payment or portion of a payment not made to a provider for services delivered to eligible recipients according to the laws and rules applicable to the foster care services program and to which the provider is entitled.

"Unit of service" means one day for group care and child welfare emergency services shelter and one hour or any portion thereof for supervised apartment living as set forth in 441—paragraph 202.9(4)*"b."*

"Universe" means all items (claims) submitted by a specific provider for payment during a specific period, from which a random sample will be drawn.

"Withholding of payments" means a reduction or adjustment of the amounts paid to a provider on pending and subsequently submitted claims for purposes of offsetting overpayments previously made to the provider.

441—152.2(234) Conditions of participation.

152.2(1) *Provider licensure.* A provider facility shall obtain licensure prior to accepting placements from the department.

152.2(2) *Provider staffing.* At a minimum, all providers shall meet all licensure requirements for staff qualifications, training, and number of staff pursuant to 441—Chapter 105, Chapter 108, or Chapter 114.

152.2(3) *Provider charges.* A provider shall not charge departmental clients more than it receives for the same foster care services provided to nondepartmental clients. The provider shall agree not to require any fee from departmental clients unless a fee is required by the department and is consistent with federal regulation and state policy.

152.2(4) *Maintenance of service records.* A provider shall maintain complete and legible records as required in this subrule.

a. For foster group care and shelter care, the provider shall establish and maintain confidential, individual service records for each client receiving foster care services. The service records must adequately support the provision of child welfare services and group care maintenance as defined in rule 441—156.1(234). The service record shall include, at a minimum, those items identified in rule 441—114.11(237) and 441—Chapter 105 and shall also include all of the following:

(1) Additional reports, if requested by the referral worker.

(2) Form 470-3055, Referral and Authorization for Child Welfare Services.

(3) Daily documentation of billed per diem services. The documentation shall include:

1. The child's first and last name;

2. The month, day, and year service was provided;

3. The first and last names of the persons who provided the service;

4. A clear description of the specific service rendered, including interventions, actions, and activities performed which support the provision of child welfare services.

(4) Notes, which shall be entered no less than every seven calendar days, indicating the child's general progress in regard to the child's care plan.

(5) Any problem areas or unusual behavior for the child.

b. For supervised apartment living, the provider shall establish and maintain confidential, individual service records for each client receiving supervised apartment living services. The service records must adequately support the provision of services consistent with rules 441—108.10(238) and 441—202.9(234).

c. Failure to maintain records or failure to make records available to the department or to its authorized representatives upon request may result in a notice of violation and recoupment of payments pursuant to rules 441—152.3(234) and 441—152.4(234).

152.2(5) *Maintenance of financial and statistical records.* The provider shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department. The records shall be available for review at any time during normal business hours by department personnel, the department's fiscal consultant, and state or federal audit personnel.

a. At a minimum, financial and statistical records shall include all revenue and expenses supported by a provider's general ledger and documentation on file in the provider's office. These records include, but are not limited to:

(1) Payroll information.

(2) Capital asset schedules.

(3) All canceled checks, deposit slips, and invoices (paid and unpaid).

(4) Audit reports (if any).

(5) The board of directors' minutes (if applicable).

(6) Loan agreements and other contracts.

(7) Reviewable, legible census reports and documentation of units of service provided to departmental clients that identify the individual client and are kept on a daily basis and summarized in a monthly report.

(8) For nondepartmental clients, sufficient documentation of utilization to establish a complete unit of service count.

b. The provider shall maintain a list of all staff and supervisors providing foster care services and their qualifications for each program.

c. Independent audits. When a provider has an audit conducted, a firm not related to the provider shall conduct the audit. The provider shall submit a copy of the independent audit report to the department within 30 days of receipt of the report. The bureau of service contract support shall maintain the report.

152.2(6) *Cost report.* Providers shall complete Form 470-5421, Combined Cost Report, as required by contract. The instructions for the cost report are found in Comm. 502 (7/16), Instructions for the Combined Cost Report.

a. *Due date.* The cost report shall be submitted to the department no later than three months after the close of the provider's established fiscal year. The provider may request a one-month extension from the chief of the bureau of service contract support.

b. *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate noncompliance with reporting instructions.

c. *County reimbursement for child welfare services shelter costs.* If a shelter care provider's actual and allowable costs as set forth in 441—Chapter 156 for a child's shelter care placement exceed the amount the department is authorized to pay and the provider is reimbursed by the child's county of legal settlement for the difference between actual and allowable costs and the amount reimbursed by the department, the amount paid by the county shall not be included by the department in its reimbursement rate determination, as long as the amount paid is not greater than the provider's actual and allowable costs or the statewide average of actual and allowable costs as identified in annual appropriations, whichever is less.

441—152.3(234) Provider reviews. The department may, at its discretion, review any provider at any time. Records generated and maintained by the department or its fiscal agent may be used by reviewers and in all proceedings of the department.

152.3(1) *Review of provider records.* The department shall have the authority to conduct a scheduled or unannounced visit to evaluate the adequacy of service records in compliance with the policies and procedures for foster care services.

152.3(2) *Purpose.* Upon proper identification, authorized representatives of the department shall have the right to review the service and fiscal records of the provider to determine whether:

a. The department has accurately paid claims for services.

b. The provider has furnished the services.

c. The provider has retained service records and fiscal records that substantiate claims submitted for payment during the review period.

d. Expenses reported to the department have been handled as required under subrule 152.2(6).

152.3(3) *Method.* The department shall select the appropriate method of conducting a review and shall protect the confidential nature of the records being reviewed. The provider may be required to furnish records to the department. The provider may select the method of delivering any requested records to the department. Review procedures may include, but are not limited to, the following:

a. Comparing service and fiscal records with each claim.

b. Interviewing clients and employees of providers.

152.3(4) *Sampling.* The department's procedures for reviewing a provider's service records may include the use of random sampling and extrapolation. When these procedures are used, all sampling will be performed within acceptable statistical methods, yielding not less than a 95 percent confidence level.

a. *Findings.* The review findings generated through the review procedure shall constitute prima facie evidence in all department proceedings of the number and amount of requests for payment as submitted by the provider.

b. *Extrapolation.* Findings of the sample will be extrapolated to the universe for the review period. The total of the payments determined to be in error in the review sample shall be divided by the total payments in the reviewed sample to calculate the percentage of dollars paid in error. This percentage shall then be multiplied by the total payments in the review universe to determine the extrapolated overpayment.

c. *Disagreement with findings.* When the provider disagrees with the department's review findings and the findings have been generated through sampling and extrapolation, the provider may present evidence to show that the sample was invalid. The burden of proof of compliance rests with the provider. The evidence may include a 100 percent review of the universe of provider records used by the department in the drawing of the department's sample. This review shall:

(1) Be arranged and paid for by the provider.

(2) Be conducted by a certified public accountant.

(3) Demonstrate that bills and records not reviewed in the department's sample complied with program regulations and requirements.

(4) Be submitted to the department with all supporting documentation.

152.3(5) *Actions based on review findings.*

a. The department shall report the results of a review of provider records to concerned parties consistent with the provisions of 441—Chapter 9.

b. When an overpayment is found, the department may do one or more of the following:

(1) Request repayment in writing.

(2) Impose sanctions provided for in rule 441—152.4(234).

(3) Investigate and refer the matter to an agency empowered to prosecute.

441—152.4(234) Sanctions against providers. Failure to meet the requirements relevant to provider contracting, financial record keeping, billing and payment, and client record keeping may subject providers to sanctions.

152.4(1) *Grounds for sanction.* The department may impose sanctions against a provider for committing one or more of the following actions:

a. Failing to provide and maintain the quality of the services to children and families within established standards, including:

(1) Failing to meet standards required by state or federal law for licensure.

(2) Failing to correct deficiencies in provider operations after receiving notice of these deficiencies from the department.

(3) Engaging in a course of conduct or performing an act that is in violation of state or federal regulations or continuing that conduct following notification that it should cease.

(4) Violating any laws, regulations, or code of ethics governing the conduct of occupations or professions subject to this chapter.

(5) Receiving a formal reprimand or censure by an association of the provider's peers for unethical practices.

(6) Being suspended or terminated from participation in another governmental program.

(7) Committing a negligent practice resulting in client death or injury.

b. Failing to disclose or make available to the department or its authorized agent records of services provided to a child and family and records of payments made for those services.

c. Failing to provide accurate and auditable cost report information or engaging in deceptive billing practices, such as, but not limited to:

(1) Presenting or causing to be presented for payment any false or deceptive claim for services.

(2) Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

d. Submitting or causing to be submitted false information to meet service authorization requirements.

e. Inducing, furnishing or otherwise causing the child or family to receive foster care services that are not authorized (overutilization of services).

f. Rebating or accepting a fee or portion of a fee or a charge for referrals of a child or family.

g. Failing to repay or arrange for the repayment of identified overpayments or other erroneous payments.

h. Failing to submit the cost report on time or failing to submit complete responses to follow-up questions from the department or its fiscal consultant within 14 days of request without written approval from the chief of the bureau of service contract support.

152.4(2) *Notice of violation.* Should the department have information that indicates that a provider may have submitted bills or been practicing in a manner inconsistent with the program requirements, or may have received payment for which the provider may not be properly entitled, the department shall notify the provider of the discrepancies noted.

a. Notification shall set forth:

(1) The nature of the discrepancies or violations.

(2) The known dollar value of the discrepancies or violations.

(3) The method of computing the dollar value.

(4) Further actions to be taken or sanctions to be imposed by the department.

(5) Any actions required of the provider.

b. The provider shall have 15 days after the date of the notice to appeal to the contract owner.

152.4(3) *Sanctions.* The following sanctions may be imposed on providers based on the grounds specified in subrule 152.4(1):

a. A term of probation for provision of foster care services.

b. Termination from participation in the provision of foster care services.

c. Suspension from provision of foster care services.

d. Suspension or withholding of payments to the provider.

e. Review of 100 percent of the provider's claims before payment.

f. Referral to the appropriate state licensing board for investigation.

g. Referral of the matter to appropriate federal or state legal authorities for investigation and prosecution under applicable federal or state laws.

h. Suspension of foster care services licensure.

i. Termination of foster care services licensure.

j. Reduction of payment to 75 percent of the current rate for failure to submit the cost report or cost report clarifications timely.

k. Termination of the provider's contract for failure to submit the report within six months of the end of the fiscal year.

152.4(4) *Imposition and extent of sanction.* The department shall determine the sanction to impose. The following factors shall be considered in determining the sanction or sanctions to be imposed:

a. Seriousness of the offense.

b. Extent of violations.

c. History of prior violations.

d. Prior imposition of sanctions.

e. Prior provision of technical assistance.

f. Pattern of failure to follow program rules.

g. Whether a lesser sanction will be sufficient to remedy the problem.

h. Actions taken or recommended by peer review groups or licensing bodies.

152.4(5) *Scope of sanction.*

a. The sanction may be applied to all known affiliates of a provider. Each decision to include an affiliate shall be made on a case-by-case basis after giving due regard to all relevant factors and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the violator is affiliated when the conduct was committed in the course of official duty or was effectuated with the knowledge or approval of that person.

b. When there are grounds for sanction pursuant to subrule 152.4(1) against a provider facility, campus, or site, the department may suspend or terminate the provision of foster care services by:

(1) The provider; or

(2) The specific facility, campus, or site; or

(3) Any individual within the provider's organization who is responsible for the violation.

c. No provider shall submit claims for payments to the department for any services provided by any facility, campus, site, or person within the organization that has been suspended or terminated from provision of foster care services, except for those services provided before the suspension or termination.

d. Suspension or termination from provision of foster care services shall preclude the submission of claims to the department for payment for any services provided after suspension or termination, whether submitted personally or through the provider.

152.4(6) *Suspension or withholding of payments pending a final determination.* When the department has notified a provider of a violation pursuant to paragraph 152.3(5)*"b"* or subrule 152.4(2) and has demanded repayment of an identified overpayment, the department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question or may suspend payments pending a final determination. When the department intends to withhold or suspend payments, it shall notify the provider in writing.

152.4(7) *Notice of sanction.* When a provider has been sanctioned, the department shall notify, as appropriate, the applicable professional society, board of registration or licensure, and federal or state agencies of the findings made and the sanctions imposed.

441—152.5(234) Adverse actions. Notice of adverse actions and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—Chapter 7.

These rules are intended to implement Iowa Code section 234.6.

ITEM 3. Amend rule **441—156.1(234)**, definitions of "Department," "Director," "Escrow account," "Mental retardation professional," "Physician," "Service area manager," "Special needs child," and "Unearned income," as follows:

"Department" means the Iowa department of human services and includes the local offices of the department.

"Director" means the director of the ~~child support recovery unit of the~~ department of human services or the director's designee.

"Escrow account" means an interest bearing account in a bank or savings and loan association ~~which~~ that is maintained by the department in the name of a particular child.

"~~Mental retardation~~ Intellectual disability professional" means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and has at least one year of experience working with persons with ~~mental retardation~~ an intellectual disability.

"Physician" means a licensed medical or osteopathic doctor as defined in ~~rule 441—77.1(249A)~~ Iowa Code section 135.1(4).

"Service area manager" means the department employee or designee responsible for managing department offices and personnel within ~~a department~~ the service area and for implementing policies and procedures of the department.

"Special needs child" means a child with needs for emotional care, behavioral care, or physical and personal care ~~which~~ that require additional skill, knowledge, or responsibility on the part of the foster parents, as measured by Form 470-4401, Foster Child Behavioral Assessment. See subrule 156.6(4).

"Unearned income" means any income ~~which~~ that is not earned income and includes supplemental security income (SSI) and other funds available to a child residing in a foster care placement.

ITEM 4. Adopt the following **new** definitions of "Inflation factor," "Prevailing rate," and "Provider" in rule **441—156.1(234)**:

"Inflation factor" means the amount by which the consumer price index for all urban consumers increased during the calendar year ending December 31 that preceded the contractor's fiscal year end.

"Prevailing rate" means the maximum combined service and maintenance reimbursement rate the department pays to contracted shelter care providers as authorized by the legislature.

"Provider" means the entity that has executed a contract with the department to provide services.

ITEM 5. Amend subrule 156.6(3) as follows:

156.6(3) *Mother and child in foster care.* When the child in foster care is a mother whose young child is in placement with her, the rate paid to the foster family shall be based on the daily rate for the mother according to the rate schedule in subrules 156.6(1) and 156.6(4) and for the child according to the rate schedule in ~~subrule~~ subrules 156.6(1) and 156.6(4). The foster parents shall provide a portion of the young child's rate to the mother to meet the partial maintenance needs of the young child as defined in the case permanency plan.

ITEM 6. Amend paragraph **156.6(4)"e"** as follows:

e. Effective January 1, 2007, when a service area manager determines that as of October 31, 2006, a foster family was providing care for a child comparable to behavioral management services for children in therapeutic foster care, except that the placement is supervised by the department and the child's treatment plan is supervised by a physician, mental health professional, or ~~mental retardation~~ intellectual disability professional, the foster family shall be paid the basic maintenance rate plus $15 per day for that child. This rate shall continue for the duration of the placement.

ITEM 7. Amend paragraph **156.8(6)"b"** as follows:

b. Fees related to enrolling a child in preschool when a mental health professional or ~~a mental retardation~~ an intellectual disability professional has recommended school attendance.

ITEM 8. Amend subrule 156.9(1) as follows:

156.9(1) *In-state reimbursement.* Effective ~~November 1, 2006, public and private~~ July 1, 2014, contracted foster group care facilities licensed or approved in the state of Iowa shall be paid for group care maintenance and child welfare services in accordance with ~~the rate-setting methodology in this subrule~~ contracted terms.

~~*a.* A provider of group care services shall maintain at least the minimum staff-to-child ratio during prime programming time as established in the contract. Staff shall meet minimum qualifications as established in 441—Chapters 114 and 115. The actual number and qualifications of the staff will vary depending on the needs of the children.~~

~~*b.*~~ *a.* Additional payment for group care maintenance may be authorized if a facility provides care for a mother and her young child according to subrule 156.9(4).

~~*c.* Reimbursement rates shall be adjusted based on the provider's rate in effect on October 31, 2006, to reflect an estimate that group care providers will provide an average of one hour per day of group remedial services and one hour per week of individual remedial services. Subject to paragraph 156.9(1)*"e,"* the reimbursement rate shall be calculated as follows:~~

~~(1) Step 1. Annualize the provider's combined daily reimbursement rate for maintenance and service in effect on October 31, 2006, by multiplying that combined rate by 365 days.~~

~~(2) Step 2. Annualize the provider's remedial services reimbursement rate for one hour per day of remedial services code 96153 (health and behavioral interventions - group), as established by the Iowa Medicaid enterprise, by multiplying that rate by 365 days.~~

~~(3) Step 3. Annualize the provider's remedial services reimbursement rate for one hour per week of remedial services code 96152 (health and behavioral interventions - individual), as established by the Iowa Medicaid enterprise, by multiplying that rate by 52 weeks.~~

~~(4) Step 4. Add the amounts determined in Steps 2 and 3.~~

~~(5) Step 5. Subtract the amount determined in Step 4 from the amount determined in Step 1.~~

~~(6) Step 6. Divide the amount determined in Step 5 by 365 to compute the new combined maintenance and child welfare service per diem rate.~~

~~(7) Step 7. Determine the maintenance portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 85.62 percent.~~

~~(8) Step 8. Determine the child welfare service portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 14.38 percent.~~

~~EXAMPLE: Provider A has the following rates as of October 31, 2006:~~

- ~~A combined daily maintenance and service rate of $121.45;~~
- ~~A Medicaid rate for service code 96153 of $5.10 per 15 minutes, or $20.40 per hour;~~

~~● A Medicaid rate for service code 96152 of $19.92 per 15 minutes, or $79.68 per hour.~~

~~Step 1. $121.45 × 365 days = $44,329.25~~

~~Step 2. $20.40 × 365 days = $7,446.00~~

~~Step 3. $79.68 × 52 weeks = $4,143.36~~

~~Step 4. $7,446.00 + $4,143.36 = $11,589.36~~

~~Step 5. $44,329.25 - $11,589.36 = $32,739.89~~

~~Step 6. $32,739.89 ÷ 365 days = $89.70~~

~~Step 7. $89.70 × 0.8562 = $76.80 maintenance rate~~

~~Step 8. $89.70 × 0.1438 = $12.90 child welfare service rate~~

~~Subject to paragraph 156.9(1)~~*"e,"* ~~provider A's rates are $76.80 for maintenance and $12.90 for child welfare services.~~

~~*d.*~~ *b.* No less than annually, the department shall redetermine the allocation of the combined child welfare service per diem rate between the maintenance and service portions plus the inflation factor based on review of the verified ~~remedial services cost reports for foster group care services providers~~ Form 470-5421, Combined Cost Report. If the new allocation differs from the current allocation, the department shall:

(1) Reallocate the combined child welfare service per diem for foster group care between the maintenance and service portions plus the inflation factor of the combined rate; and

(2) Notify all providers of any change in the allocation between maintenance and service rates ~~and the effective date~~.

~~*e.* Effective July 1, 2014, the combined service and maintenance reimbursement rate for a service level under the department's reimbursement methodology shall be at least the amount below. If a group foster care provider's reimbursement rate for a service level as of June 30, 2014, is more than the amount below, the provider's reimbursement shall remain at the higher rate.~~

~~(1) For service level, community - D1, the daily rate shall be at least $87.60.~~

~~(2) For service level, comprehensive - D2, the daily rate shall be at least $119.09.~~

~~(3) For service level, enhanced - D3, the daily rate shall be at least $131.09.~~

ITEM 9. Amend subrule 156.9(2) as follows:

156.9(2) *Out-of-state group care payment rate.* ~~The payment rate for maintenance and child welfare services provided by public or private agency group care licensed or approved in another state shall be established using the same rate-setting methodology as that in subrule 156.9(1), unless the director~~ When the department determines that appropriate care is not available ~~within the state pursuant to the following criteria and procedures~~ in Iowa and a licensed or approved contractor outside Iowa is used, the payment rate for contracted foster group care services shall be the Iowa rate unless the director grants an exception. The rate shall not exceed the rate paid for clients from that state.

~~*a. Criteria.* When determining whether appropriate care is available within the state, the director shall consider each of the following:~~

~~(1) Whether the child's treatment needs are exceptional.~~

~~(2) Whether appropriate in-state alternatives are available.~~

~~(3) Whether an appropriate in-state alternative could be developed by using juvenile court-ordered service fund or wrap-around funds.~~

~~(4) Whether the placement and additional payment are expected to be time-limited with anticipated outcomes identified.~~

~~(5) If the placement has been approved by the service area manager or chief juvenile court officer.~~

~~*b. Procedure.* The service area manager or chief juvenile court officer shall submit the request for director's exception to the Appeals Section, Department of Human Services, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114. This request shall be made in advance of placing the child and should allow a minimum of two weeks for a response. The request shall contain documentation addressing the criteria for director's approval listed in 156.9(2)~~*"a."*

~~*c. Appeals.* The decision of the director regarding approval of an exception to the rate determination in rule 441—152.3(234) is not appealable.~~

ITEM 10. Adopt the following **new** subrule 156.9(3):

156.9(3) *Out-of-state placement determination.*

a. Placement. When determining whether appropriate care is available within the state, the director shall consider each of the following:

(1) Whether the child's treatment needs are exceptional.

(2) Whether appropriate in-state alternatives are available.

(3) Whether an appropriate in-state alternative could be developed by using juvenile court-ordered service funds or wrap-around funds.

(4) Whether the placement and additional payment are expected to be time-limited with anticipated outcomes identified.

(5) If the placement has been approved by the service area manager or chief juvenile court officer.

b. Procedure. The service area manager or chief juvenile court officer shall submit the request for director's exception to the Appeals Section, Department of Human Services, Hoover State Office Building, Fifth Floor, Des Moines, Iowa 50319-0114. This request shall be made in advance of placing the child and should allow a minimum of two weeks for a response. The request shall contain documentation addressing the criteria for director's approval listed in paragraph 156.9(3)*"a."*

c. Appeals. The decision of the director regarding approval of an exception to the rate determination in rule 441—156.9(234) is not appealable.

ITEM 11. Amend subrule 156.9(4) as follows:

156.9(4) *Mother-young child rate.* When a group foster care facility provides foster care for a mother and her young child, ~~the~~ an additional maintenance rate ~~for the mother~~ shall ~~include an additional amount to~~ cover the ~~actual and allowable~~ maintenance needs of the young child. No additional amount shall be allowed for service needs of the child.

a. The rate shall be ~~determined according to the policies in rule 441—152.3(234) and added to the maintenance rate for the mother~~ set in the provider contract. The young child ~~portion of the~~ maintenance rate shall be limited to the costs associated with food, clothing, shelter, personal incidentals, and supervision for each young child and shall not exceed the maintenance rate for the mother. Costs for day care shall not be included in the maintenance rate.

~~*b.* The additional amount included in the maintenance rate for the mother by this subrule to cover the maintenance needs of the young child shall be in addition to the minimum rate provided by paragraph 156.9(1)*"e."*~~

~~*c.*~~ *b.* Unless the court has transferred custody from the mother, the mother shall have primary responsibility for providing supervision and parenting for the young child. The facility shall provide services to the mother to assist her to meet her parenting responsibilities and shall monitor her care of the young child.

~~*d.*~~ *c.* The ~~facility~~ provider shall provide services to the mother to assist her to:

(1) Obtain a high school diploma or ~~general education equivalent (GED)~~ high school equivalency.

(2) to (4) No change.

~~*e.*~~ *d.* The ~~agency~~ provider shall maintain information in the mother's file on:

(1) to (3) No change.

(4) Plan for the minor's completion of high school or a ~~GED~~ high school equivalency program.

(5) to (8) No change.

~~*f.*~~ *e.* The ~~agency~~ provider shall designate $35 of the young child rate as an allowance to the mother to meet the maintenance needs of her young child, as defined in her case permanency plan.

ITEM 12. Amend subrule 156.10(1), introductory paragraph, as follows:

156.10(1) *Group care facilities.* The department shall provide payment for group care maintenance and child welfare services according to the following ~~policies~~ requirements.

ITEM 13. Rescind rule 441—156.11(234) and adopt the following **new** rule in lieu thereof:

441—156.11(234) Emergency juvenile shelter care payment. Contracted juvenile shelter care facilities approved or licensed in Iowa shall be paid according to the following rate-setting methodology.

156.11(1) The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the verified Form 470-5421, Combined Cost Report, submitted to the department, but shall not exceed the prevailing rate. The department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost, plus the inflation factor and the $3.99 allowance originated under the tobacco settlement fund, or to the prevailing rate, whichever is less, effective the first day of the month following the department's receipt from the fiscal consultant of the provider's verified cost for the most recently reviewed fiscal year.

156.11(2) Net allowable expenditures are limited to those costs that are considered reasonable, necessary, and related to the service provided to the client as set forth in Comm. 502 (7/16), Instructions for the Combined Cost Report.

156.11(3) The effective utilization level shall be 80 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program.

ITEM 14. Amend rule 441—156.15(234) as follows:

441—156.15(234) Child's earnings. Earned income of a child who is ~~not in a supervised apartment living arrangement and who is a full-time student or engaged in an educational or training program~~ in foster care shall be reported to the department, and ~~its~~ the earned income's use shall be ~~a~~ part of ~~a~~ the child's plan for service, but the income shall not be used towards the cost of the child's care as established by the department. ~~When the earned income of children in supervised apartment living arrangements or of other children exceeds the foster care standard, the income in excess of the standard shall be applied to meet the cost of the child's care. When the income of the child exceeds twice the cost of maintenance, the child shall be discontinued from foster care.~~

ITEM 15. Rescind and reserve rule **441—156.19(237)**.

ITEM 16. Amend paragraph **156.20(1)"a"** as follows:

a. Youth under the age of 18 shall be eligible based on legal status, subject to certain limitations.

(1) Legal status. The youth's placement shall be based on one of the following legal statuses:

1. The court has ordered foster care placement pursuant to Iowa Code section ~~232.52, subsection 2, paragraph *"d,"* Iowa Code section 232.102, subsection 1, Iowa Code section 232.117, or Iowa Code section 232.182, subsection 5~~ 232.52(2)*"d,"* 232.102(1), 232.117, or 232.182(5).

2. The child is placed in shelter care pursuant to Iowa Code section ~~232.20, subsection 1,~~ 232.20(1) or ~~Iowa Code section~~ 232.21.

3. The department has agreed to provide foster care under a voluntary placement agreement pursuant to rule 441—202.3(234).

(2) Limitations. Department payment for group care shall be limited to placements ~~which~~ that have been authorized by the department and ~~which~~ that conform to the service area group care plan developed pursuant to rule 441—202.17(232). Payment for an out-of-state group care placement shall be limited to placements approved pursuant to 441—subrule 202.8(2).

ITEM 17. Amend subparagraph **156.20(1)"b"(3)** as follows:

(3) Exceptions. An exception to subparagraphs (1) and (2) shall be granted for all unaccompanied refugee minors. The child's eligibility for the exception shall be documented in the case record. The service area manager or designee shall grant an exception for other children when the child meets all of the following criteria. ~~The child's eligibility for the exception shall be documented in the case record.~~

1. The child does not have ~~mental retardation~~ an intellectual disability. Funding for services for persons with ~~mental retardation~~ an intellectual disability is the responsibility of the county or state pursuant to Iowa Code section 222.60.

2. and 3. No change.

4. Funds are available in the service area's allocation. When the service area manager has approved payment for foster care pursuant to this subparagraph, funds ~~which~~ that may be necessary to provide payment for the time period of the exception, not to exceed the current fiscal year, shall be considered encumbered and no longer available. Each service area's funding allocation shall be based on the service area's portion of the total number of children in foster care on March 31 preceding the

beginning of the fiscal year, who would no longer be eligible for foster care during the fiscal year due to age, excluding unaccompanied refugee minors.

ITEM 18. Amend paragraph **156.20(1)"c,"** introductory paragraph, as follows:

c. A young mother shall be eligible for the extra payment for her young child living with her in care as set forth in ~~subrule 156.6(4),~~ paragraph ~~*"a,"*~~ 156.6(4)*"a"* and subrule 156.9(4) if all of the following apply:

ITEM 19. Rescind subrule 156.20(2) and adopt the following **new** subrule in lieu thereof:

156.20(2) *Provider eligibility for payment.* Providers of foster care services shall have a foster care services contract under 441—Chapter 152 in force.

ITEM 20. Amend paragraph **172.13(3)"e"** as follows:

e. Shelter care payment as provided in ~~441—subrule 156.11(3)~~ rule 441—156.11(234) if the child is placed in shelter care.

ITEM 21. Amend paragraph **202.9(3)"g"** as follows:

g. If services are purchased, compliance by the provider with all reporting requirements ~~in 441—paragraph 150.3(3)*"j,"*~~ as required by the provider's contract with the department, including requirements for the individual service plan, quarterly reports, and a termination summary.

ITEM 22. Amend paragraph **202.9(4)"d"** as follows:

d. Expenses of transporting the child, service management activities, and other administrative functions shall be allowable indirect costs subject to the restrictions set forth in ~~rule 441—150.3(234)~~ 441—subrule 152.2(6) and are not billable units of service.

ARC 2759C

IOWA PUBLIC INFORMATION BOARD[497]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 23.6, the Iowa Public Information Board hereby gives Notice of Intended Action to amend Chapter 2, "Complaint Investigation and Resolution Procedures," and to adopt new Chapter 10, "Injunction Request Procedure," Iowa Administrative Code.

Iowa Code section 23.5(3) permits a person to remove from district court to the Board a proceeding concerning an injunction to prevent inspection of a public record. These amendments implement the procedure for the Board when the proceeding has been removed from district court to the Board.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 1, 2016, by contacting Charlie Smithson, Executive Director, Iowa Public Information Board, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by e-mail to Charlie.Smithson@iowa.gov.

The proposed amendments do not contain specific waiver provisions, but are subject to requests for waiver under 497—Chapter 9.

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

These amendments are intended to implement Iowa Code section 23.5(3).

The following amendments are proposed.

ITEM 1. Amend subrule 2.1(1) as follows:

2.1(1) *Form.* A complaint shall be written and signed by the person filing the complaint on forms provided by the board or shall be submitted electronically via the board's Web site. The complaint shall allege a violation of Iowa Code chapter 21 or 22; provide specific facts in support of the allegation,

including the identification of persons and government entity involved in the alleged violation; and provide the specific relief sought. A complaint involving an injunction under Iowa Code section 23.5(3) shall be filed and conducted in accordance with the provisions set out in 497—Chapter 10.

ITEM 2. Adopt the following **new** 497—Chapter 10:

CHAPTER 10
INJUNCTION REQUEST PROCEDURE

497—10.1(23) Complaint. As provided in Iowa Code section 23.5(3), when a request for an injunction to enjoin the inspection of a public record has been filed in district court under Iowa Code section 22.8, the respondent or the person requesting access to the record may remove the proceeding from district court to the board by filing a complaint within 30 days of the commencement of the judicial proceeding. The complaint shall detail the parties involved, the records sought, and the district court in which the matter was originally filed. A copy of the original court filing seeking an injunction shall be filed with the complaint. A complaint filed under this chapter is not a "complaint" triggering the procedures under 497—Chapter 2.

497—10.2(23) Notice to court. Upon receipt of a complaint under this chapter, the board's staff shall file notice with the appropriate district court that the complaint has been filed with the board.

497—10.3(23) Staff review. If the court issues an order removing jurisdiction of the matter to the board, the board's staff shall conduct an initial review of the complaint and may request that the parties provide further information or documents.

497—10.4(23) Hearing. A hearing on the request for the injunction shall be heard before the board. The board may require briefs or the filing of other documents. The board shall work with the parties in establishing guidelines for the time of the hearing, the length of arguments, and any other procedural matters. A hearing under this rule is not a contested case under 497—Chapter 4.

497—10.5(23) Board determinations. The board shall make the following determinations after hearing:

1. Whether the requested records are public records or confidential public records.
2. If the records are public records, whether an injunction should be issued enjoining the inspection of the records under the criteria set out in Iowa Code sections 22.8(1) and 22.8(3).

497—10.6(23) Judicial review. The board's determinations under rule 497—10.5(23) are deemed final agency action for purposes of seeking judicial review under Iowa Code chapter 17A.

This chapter is intended to implement Iowa Code section 23.5(3).

ARC 2758C

IOWA PUBLIC INFORMATION BOARD[497]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 23.6, the Iowa Public Information Board hereby gives Notice of Intended Action to amend Chapter 2, "Complaint Investigation and Resolution Procedures," Iowa Administrative Code.

The proposed amendments assist the Board in resolving complaints in an informal and expeditious manner by providing that at any point in the complaint process, the Board may order administrative resolution and direct a person to take a specified remedial action. Administrative resolution is not considered discipline and does not require the finding of a violation of law.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 1, 2016, by contacting Charlie Smithson, Executive Director, Iowa Public Information Board, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by e-mail to Charlie.Smithson@iowa.gov.

The proposed amendments do not contain specific waiver provisions, but are subject to immediate judicial review as stated in the proposed amendments.

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

These amendments are intended to implement Iowa Code chapter 23.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 2.1(6):

2.1(6) *Administrative resolution.* To assist with resolving complaints in an informal and expeditious manner, the board may, at any time during the complaint process, order administrative resolution of a matter by directing that a person take specified remedial action. A board order directing remedial action shall constitute final agency action for purposes of judicial review under Iowa Code chapter 17A.

ITEM 2. Amend subrule 2.2(4) as follows:

2.2(4) *Board action.* Upon receipt and review of the staff investigative report and any recommendations, the board may:

a. and *b.* No change.

c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; ~~or~~

d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding~~.~~; or

e. Direct administrative resolution of the matter under subrule 2.1(6) without making a determination as to whether a violation occurred.

ARC 2776C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, "Adjustments to Computed Tax and Tax Credits," Iowa Administrative Code.

Currently, Iowa offers an individual income tax credit for certain geothermal heat pump property installed in the taxpayer's residence during the tax year. The credit is calculated as a percentage of the federal individual income tax credit available for the same type of property. As of the date of submission of this Notice of Intended Action, the federal credit is set to expire on December 31, 2016. In anticipation of the probable expiration of the federal credit, the 2016 Iowa legislature created a separate Iowa credit that will allow Iowa taxpayers a credit for 10 percent of the qualified costs of installing these same types of geothermal heat pump systems during years in which the federal credit is not available. This amendment is intended to incorporate this new credit into the existing rules and to clarify the relationship between the two Iowa credits for geothermal heat pump property and the corresponding federal credit.

Interested persons may make written comments on the proposed amendment on or before November 1, 2016. Written comments on the proposed amendment should be directed by mail to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457; or by e-mail to ben.clough@iowa.gov. Persons who wish to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, by telephone at (515)725-2176 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 1, 2016.

The new tax credit is expected to reduce both general fund revenue and the local option income surtax for schools beginning in fiscal year 2018.

Any person who believes that the application of the discretionary provisions of these rules 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).

After analysis and review of this rule making, the Department finds that this amendment is not likely to have a significant impact on jobs.

This amendment is intended to implement 2016 Iowa Acts, House File 2468.

The following amendment is proposed.

Amend rule 701—42.47(422) as follows:

701—42.47(422) Geothermal ~~heat pump~~ tax ~~credit~~ credits. ~~For tax years beginning on or after January 1, 2012, a geothermal heat pump tax credit is available for residential property located in Iowa.~~ There are two distinct Iowa geothermal heat pump tax credits. Each Iowa credit is described in detail below. The Iowa credit described in subrule 42.47(1) is only available for years in which the federal credit provided in Section 25D(a)(5) of the Internal Revenue Code is also available. The Iowa credit described in subrule 42.47(2) is only available for years in which the federal credit provided in Section 25D(a)(5) of the Internal Revenue Code is not available.

42.47(1) ~~*Calculation of credit*~~ *Geothermal heat pump tax credit for years in which the federal credit is available.*

REVENUE DEPARTMENT[701](cont'd)

a. Availability of the credit. For tax years beginning on or after January 1, 2012, in which the federal residential energy efficient property tax credit for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code is available, an Iowa geothermal heat pump tax credit, as described in this subrule, is also available for residential property located in Iowa.

b. Eligibility for the credit. To be eligible for the credit described in this subrule, all of the following requirements must be met:

1. The geothermal heat pump must be eligible for the federal residential energy efficient property tax credit provided in Section 25D(a)(5) of the Internal Revenue Code.

2. The taxpayer must claim the federal residential energy efficient property tax credit.

3. The geothermal heat pump must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a geothermal heat pump and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a $6,000 geothermal tax credit on the 2011 federal return due to an installation that was completed in 2011. The taxpayer applied $2,000 of the credit on the taxpayer's 2011 federal return since the federal tax liability was $2,000. The remaining $4,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was completed before January 1, 2012.

c. Calculation of the credit. The credit described in this subrule is equal to 20 percent of the federal residential energy efficient property tax credit allowed for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code. ~~The~~ As of the publication date of the Notice proposing to amend these rules, October 12, 2016, the federal residential energy efficient tax credit for geothermal heat pumps is ~~currently~~ allowed for installations that are completed on or before December 31, 2016. Therefore, the corresponding Iowa tax credit will be available for the 2012 to 2016 tax years. ~~The geothermal heat pump must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a geothermal heat pump and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.~~ If the federal residential energy efficient property tax credit for geothermal heat pumps is extended into additional tax years, absent action by the Iowa legislature to repeal the Iowa credit, the Iowa credit described in this subrule will continue to be available for each year in which the federal residential energy efficient property tax credit for geothermal heat pumps is available.

~~EXAMPLE: A taxpayer reported a $6,000 geothermal tax credit on the 2011 federal return due to an installation that was completed in 2011. The taxpayer applied $2,000 of the credit on the taxpayer's 2011 federal return since the federal tax liability was $2,000. The remaining $4,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was completed before January 1, 2012.~~

~~42.47(2)~~ *d. Claiming the tax credit.* The geothermal heat pump tax credit ~~will~~ must be claimed on Form IA 148, Tax Credit Schedule. The taxpayer must include a valid copy of the taxpayer's federal Form 5695, Residential Energy Credits, with ~~any~~ the Iowa tax return for the tax year in which the geothermal heat pump was installed claiming the geothermal heat pump credit described in this subrule.

e. Refundability. Any credit in excess of the taxpayer's tax liability is nonrefundable.

f. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until ~~used~~ depleted, whichever is ~~the~~ earlier.

g. Transferability. The credit may not be transferred to any other person.

42.47(2) *Geothermal tax credit for years in which the federal credit is not available.*

a. Availability of the credit. For tax years beginning on or after January 1, 2017, in which the federal residential energy efficient tax credit for geothermal heat pumps is not available, an Iowa geothermal tax credit is available for certain geothermal heat pump property installed in this state.

b. Definitions.

"Qualified geothermal heat pump property" means any equipment that meets the requirements of the federal Energy Star Program in effect at the time that the expenditure for such equipment is made and uses the ground or groundwater as either:

REVENUE DEPARTMENT[701](cont'd)

1. A thermal energy source to heat the dwelling unit of the taxpayer, or

2. A thermal energy sink to cool the dwelling unit of the taxpayer.

"Qualified geothermal heat pump property expenditure" means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit that is:

1. Located in Iowa, and

2. Used as a residence by the taxpayer.

c. Eligibility for the credit. To be eligible for the credit described in this subrule, the qualified expenditures must be incurred:

1. To install qualified geothermal heat pump property at a location in Iowa that is used as a residence by the taxpayer, and

2. During the tax year for which the credit is claimed. Qualified geothermal heat pump property expenditures are deemed to have been made on the date the installation is complete. In the case of new construction or reconstruction, the expenditures are deemed to have been made on the date the taxpayer first began to use the structure as the taxpayer's residence.

d. Calculation of the credit. The credit described in this subrule is equal to 10 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during the tax year. This credit is not available during any year in which the federal credit may be claimed, and no expenditure used to calculate the federal residential energy efficient property tax credit may be used to calculate the amount of the Iowa geothermal tax credit described in this subrule. For information on an Iowa tax credit that is available for years in which the federal residential energy efficient property tax credit for geothermal heat pump property is also available, see subrule 42.47(1).

e. Multiple housing cooperatives and horizontal property regimes. In the case of a taxpayer whose dwelling unit is part of a multiple housing cooperative organized under Iowa Code chapter 499A or a horizontal property regime under Iowa Code chapter 499B, the taxpayer shall be treated as having made the taxpayer's proportionate share of any qualified geothermal heat pump property expenditures made by the cooperative or the regime.

f. Claiming the credit. The geothermal credit described in this subrule must be claimed on Form IA 148, Tax Credit Schedule, and included with the tax return for the tax year in which the expenditures are deemed to have been made. In order to claim this credit, a taxpayer must also complete the form provided by the department to substantiate eligibility for the tax credit claimed and include any other information the department may require.

g. Refundability. Any credit in excess of the taxpayer's tax liability is nonrefundable.

h. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

i. Transferability. The credit may not be transferred to any other person.

This rule is intended to implement ~~2012 Iowa Acts, Senate File 2342, section 1~~ Iowa Code section 422.11I and 2016 Iowa Acts, House File 2468.

ARC 2750C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to adopt new Chapter 162, "Surface Transportation Block Grant Program," Iowa Administrative Code.

The federal Surface Transportation Program was renamed the Surface Transportation Block Grant Program under the Fixing America's Surface Transportation (FAST) Act. Because this program is now considered a federal block grant, Iowa Code section 8.41 requires that these funds be deposited into a

special fund in the state treasury and then appropriated by the General Assembly to the Department. Therefore, during the past legislative session, 2016 Iowa Acts, Senate File 2320, section 4, amended 2015 Iowa Acts, chapter 130, to appropriate $149,300,000 from the special fund in the state treasury to the Department for federal fiscal year (FFY) 2017. The dollar amount reflects the amount anticipated to be received from the federal government for FFY 2017 for the Surface Transportation Block Grant Program.

2016 Iowa Acts, Senate File 2320, section 4, requires the Department to expend the moneys appropriated as provided in 23 U.S.C. Section 133 and in conformance with rules adopted by the Department.

These rules do not provide for waivers. Any person who believes that the circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rules, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@dot.iowa.gov.

5. Be received by the Department's rules administrator no later than November 1, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, November 3, 2016, at 10 a.m. in the Administration Building, First Floor, South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

These rules were also Adopted and Filed Emergency and are published herein as **ARC 2745C**. The purpose of this Notice is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

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

These rules are intended to implement 2016 Iowa Acts, Senate File 2320, section 4.

ARC 2751C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 821, "Highway-Railroad Grade Crossing Surface Repair Fund," Iowa Administrative Code.

These amendments propose to change the way in which funds are distributed by the Department to assist railroads and highway authorities in repairing highway-railroad grade crossing surfaces. The repair of highway-railroad grade crossing surfaces restores a safe and smooth crossing for the motorist. The proposed amendments allow the Department to set aside an amount not to exceed 50 percent of the repair fund in any fiscal year for discretionary project selection and set out the criteria to take into consideration when utilizing that funding. Currently, applications are only funded in the order in which they are received. Funding applications in the order received leaves no discretion or process to advance projects based on need, safety or other considerations. Cost sharing between the Department, railroad, and highway authority remains unchanged.

Other proposed amendments update the contact information of the Department and the chapter implementation sentence.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@dot.iowa.gov.
5. Be received by the Department's rules administrator no later than November 1, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, November 3, 2016, at 1 p.m. at the Administration Building, First Floor, South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

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

These amendments are intended to implement Iowa Code section 327G.29.

The following amendments are proposed.

ITEM 1. Amend subrule 821.2(2) as follows:

821.2(2) ~~Information about the repair fund may be obtained by contacting the department at the following address:~~ Program information, applications and application instructions are available on the department's Web site at www.iowadot.gov. The program is administered by the Office of Rail Transportation, 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 be sent or delivered to this address.~~

ITEM 2. Amend rule 761—821.3(327G) as follows:

761—821.3(327G) Procedures for the use of grade crossing surface repair funds.

821.3(1) *Use of funds.* A portion of the repair fund, not to exceed 50 percent in any fiscal year, shall be set aside to meet critical or atypical needs. In identifying priorities for the set-aside funds, criteria including, but not limited to, the following shall be considered:

a. Condition of the crossing.

b. Safety concerns.

c. Utilization of the rail line.

d. Train and motor vehicle traffic density at the site. Special consideration may be given to heavy truck traffic.

e. Recent or planned development or construction in the vicinity of the crossing.

~~**821.3(1)**~~ **821.3(2)** *Notification to department.* If a railroad and a jurisdiction agree to use the repair fund for grade crossing surface repair, written notification of the action signed by both parties shall be sent to the department.

a. The notification shall include the American Association of Railroads—Department of Transportation (AAR-DOT) crossing number, the total estimated cost of the repair, and a statement that the railroad and the jurisdiction each agree to pay 20 percent of the cost of the repair.

b. Notification shall be accepted by the department in order of receipt.

~~**821.3(2)**~~ **821.3(3)** *Processing an agreement.*

TRANSPORTATION DEPARTMENT[761](cont'd)

a. The department shall determine if the agreed-upon work constitutes grade crossing surface repair and may consult with the jurisdiction or the railroad if further information is needed.

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 the jurisdiction with three copies of an agreement for grade crossing surface repair.

c. The railroad and the jurisdiction shall sign all three copies of the agreement and return them to the department.

d. The department shall:

(1) Approve the agreement and obligate from the repair fund an amount equal to 60 percent of the cost of the agreed-upon work.

(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.

~~821.3(3)~~ 821.3(4) *Preaudit.* Prior to approval of the agreement, the department may perform a preaudit evaluation of the railroad.

The preaudit evaluation may include an examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the surface repair project; an examination of the railroad's cost factors to ensure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

~~821.3(4)~~ 821.3(5) *Review of completed project.* Upon completion of the agreed-upon work, the department, the railroad and the jurisdiction shall review the project to determine satisfactory completion.

~~821.3(5)~~ 821.3(6) *Project billing and payment.*

a. The railroad shall submit to the jurisdiction and the department a final detailed billing covering the actual and necessary costs incurred by the railroad for the agreed-upon work.

b. The jurisdiction and the department shall review the billing for reasonable conformance with the agreement. The department may audit the billing to determine the allowability and propriety of the billing costs in accordance with the agreement.

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 cost of the agreed-upon work.

d. The jurisdiction shall pay to the railroad an amount equal to 20 percent of the actual cost of the agreed-upon work.

ITEM 3. Amend **761—Chapter 821**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~312.2(5)~~ 312.2(2), 327G.29~~,~~ and 327G.30~~, and 327G.31~~.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 2015 — October 31, 2015	4.25%
November 1, 2015 — November 30, 2015	4.25%
December 1, 2015 — December 31, 2015	4.00%
January 1, 2016 — January 31, 2016	4.25%
February 1, 2016 — February 29, 2016	4.25%
March 1, 2016 — March 31, 2016	4.00%
April 1, 2016 — April 30, 2016	3.75%

USURY(cont'd)

May 1, 2016 — May 31, 2016	4.00%
June 1, 2016 — June 30, 2016	3.75%
July 1, 2016 — July 31, 2016	3.75%
August 1, 2016 — August 31, 2016	3.75%
September 1, 2016 — September 30, 2016	3.50%
October 1, 2016 — October 31, 2016	3.50%

ARC 2741C

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Department hereby amends Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The amendments are intended to implement 2016 Iowa Acts, House File 2439 and Senate File 2326, which amend Iowa Code chapter 34A. These amendments primarily focus on the distribution of collected wireless E911 surcharge revenues. First, the amount of wireless E911 surcharge revenues passed to the local E911 services board is increased from 46 percent to 60 percent of revenues collected. The method by which these funds are disbursed remains unchanged from current practice. Funds are disbursed based on wireless 911 call volume and square miles of the E911 service area for the associated public safety answering point (PSAP). Second, a one-time payment of $4,383,000 is made to the Public Safety Department for payment of the 2017 state fiscal year financing agreement entered into by the Treasurer of State for the statewide interoperable communications system described in Iowa Code section 29C.23 as amended by 2016 Iowa Acts, Senate File 2326. Last, any unspent funds, not to exceed $4,400,000, may be spent in the following order of priority: grants for PSAPs to consolidate physical facilities and technology, funding of public awareness and educational campaigns, and funding to PSAPs for communications equipment related to receiving and dispatching 911 calls as well as costs to access the statewide interoperable communications system. These funds must be spent within the 2017 state fiscal year.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because the enabling legislation requires funds to be expended within state fiscal year 2017 and because it is possible that projects approved for funding will need multiple months to be completed. Additionally, the Department will need a period of time at the end of the state fiscal year to ensure that funds expended do not exceed the defined limits.

In compliance with Iowa Code section 17A.4(3)"a," the Administrative Rules Review Committee at its September 13, 2016, meeting reviewed the Department's determination and the amendments and approved the emergency adoption.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department also finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective September 14, 2016, because the rapid implementation of the amendments will allow funding to flow to local PSAPs and allow for the timely completion of public safety-related projects. The E911 Communications Council, which functions as the primary advisory body to the Department on E911 issues, unanimously passed a resolution in support of the emergency filing at their July 14, 2016, meeting.

These amendments are also published herein under Notice of Intended Action as **ARC 2740C** to allow for public comment.

These amendments will have a fiscal impact to local E911 service boards. The increase in the wireless E911 surcharge revenue pass-through from 46 percent to 60 percent is projected to increase the annual amount of revenue received by the E911 Service Board from $12,800,000 to $16,800,000. The funds made available to the service boards after all costs have been addressed are limited to $4,400,000 in state fiscal year 2017. In state fiscal year 2016, the fund provided $11,000,000 to local E911 service boards after all costs had been addressed. The $11,000,000 expenditure rate was not anticipated to be continued for an extended period of time as the rate was implemented to spend down the surplus balance.

The Department adopted these amendments on September 13, 2016.

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

These amendments are intended to implement Iowa Code chapter 34A as amended by 2016 Iowa Acts, House File 2439 and Senate File 2326.

These amendments became effective September 14, 2016.

The following amendments are adopted.

ITEM 1. Amend rule **605—10.2(34A)**, definitions of "Nonrecurring costs" and "Recurring costs," as follows:

"Nonrecurring costs" means one-time charges incurred by a joint E911 service board or operating authority including, but not limited to, expenditures for E911 service plan preparation, ~~surcharge referendum,~~ capital outlay, communications equipment to receive and dispatch emergency calls, installation, and initial license to use subscriber names, addresses and telephone information.

"Recurring costs" means repetitive charges incurred by a joint E911 service board or operating authority including, but not limited to, personnel time directly associated with database management and personnel time directly associated with addressing, lease of access lines, lease of equipment, network access fees, communications equipment to receive and dispatch emergency calls, and applicable maintenance costs.

ITEM 2. Rescind subrule 10.9(3) and adopt the following **new** subrule in lieu thereof:

10.9(3) Moneys in the fund shall be expended and distributed in the following manner and order of priority:

a. An amount as appropriated by the general assembly to the department shall be allocated to the director and program manager for implementation, support, and maintenance of the functions of the director and program manager and to employ the auditor of state to perform an annual audit of the E911 emergency communications fund.

b. The program manager shall allocate to each joint E911 service board and to the department of public safety a minimum of $1,000 per calendar quarter for each public safety answering point (PSAP) within the service area of the department of public safety or joint E911 service board that has submitted an annual written request to the program manager. The written request shall be made with the Request for Wireless E911 Funds form contained in the Wireless NG911 Implementation and Operations Plan. The request is due to the program manager by May 15, or the next business day, of each year.

(1) The amount allocated under paragraph 10.9(3)*"b"* shall be 60 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 board shall be $1,000 per PSAP operated by the respective authority.

(2) Additional funds shall be allocated as follows:

1. Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the service area to the total square miles in this state.

2. Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls taken at the PSAP in the service area to the total number of wireless E911 calls originating in this state.

(3) The funds allocated in paragraph 10.9(3)*"b"* shall be used by the PSAPs for costs related to the receipt and disposition of 911 calls.

c. The program manager shall allocate 10 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC's letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under paragraph 10.9(3)*"c."* This allocation is for the period beginning July 1, 2013, and ending June 30, 2026.

d. The program manager shall reimburse communications service providers on a calendar quarter basis for carriers' eligible expenses for transport costs between the wireless selective router and the PSAPs related to the delivery of wireless E911 phase I services and the integration of an Internet

protocol-enabled next generation 911 network as specified in the Wireless NG911 Implementation and Operations Plan.

e. The program manager shall reimburse wire-line carriers and third-party E911 automatic location information database providers on a quarterly basis for the costs of maintaining and upgrading the E911 components and functionalities beyond the input to the E911 selective router, including the E911 selective router and the automatic location information database.

f. The program manager shall allocate $4,380,000 to the department of public safety in the fiscal year beginning July 1, 2016, and ending June 30, 2017, for payments and other costs due under the financing agreement entered into by the treasurer of state for building the statewide interoperable communications system pursuant to Iowa Code section 29C.23(2) as amended by 2016 Iowa Acts, Senate File 2326.

g. The department may, in a reserve account established within the E911 emergency communications fund, credit each fiscal year an amount of up to 12½ percent of the annual emergency communications service surcharge collected pursuant to rule 605—10.8(34A) and the prepaid wireless E911 surcharge collected pursuant to rule 605—10.17(34A). However, the moneys contained in such reserve account shall not exceed 12½ percent of the total surcharges collected for each fiscal year. Moneys credited to the reserve account shall only be used by the department for the purpose of repairing or replacing equipment in the event of a catastrophic equipment failure, as determined by the director.

h. If moneys remain in the fund after all obligations are fully paid under paragraphs 10.9(3)*"a," "b," "c," "d," "e," "f,"* and *"g,"* an amount of up to $4,400,000 shall, for the fiscal year beginning July 1, 2016, and ending June 30, 2017, be expended and distributed in the following priority order:

(1) The director, in consultation with the program manager and the E911 communications council, may provide grants for nonrecurring costs to the department of public safety or joint E911 service board operating a PSAP agreeing to consolidate. For purposes of this subparagraph, "consolidate" means either the consolidation of all PSAP systems, functions, enhanced 911 service areas, and physical facilities of two or more PSAPs, resulting in responsibility by the consolidated PSAP for all call answering and dispatch functions for the combined enhanced 911 service area, or the consolidation of two or more PSAPs utilizing shared services technology to combine PSAP systems, including but not limited to 911 call processing equipment, computer-aided dispatch, mapping, radio, and logging recorders. Such a grant to a PSAP shall not exceed one-half of the projected cost of consolidation, or $200,000, whichever is less. The department of public safety or joint E911 service board wishing to apply for such funds shall complete an Intent to Consolidate Application form prior to December 1, 2016. The form can be found on the department's Web site, www.homelandsecurity.iowa.gov. Such applications shall provide a detailed consolidation plan and demonstrate that the proposed project shall be completed prior to June 30, 2017.

(2) The program manager, in consultation with the E911 communications council, shall allocate an amount, not to exceed $100,000 per fiscal year, for development of public awareness and educational programs related to the use of 911 by the public; for educational programs for personnel responsible for the maintenance, operation, and upgrading of local E911 systems; and for the expenses of members of the E911 communications council for travel, monthly meetings, and training, provided, however, that the members have not received reimbursement funds for such expenses from another source.

(3) The program manager shall allocate an equal amount of moneys to each PSAP for the following costs:

1. Costs related to the receipt and disposition of 911 calls, including hardware and software for an Internet protocol-enabled next generation 911 network as specified in the Wireless NG911 Implementation and Operations Plan.

2. Local costs related to access the statewide interoperable communications system pursuant to Iowa Code section 29C.23 as amended by 2016 Iowa Acts, Senate File 2326.

(4) Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

[Filed Emergency 9/14/16, effective 9/14/16]
[Published 10/12/16]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2745C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation hereby adopts new Chapter 162, "Surface Transportation Block Grant Program," Iowa Administrative Code.

The federal Surface Transportation Program was renamed the Surface Transportation Block Grant Program under the Fixing America's Surface Transportation (FAST) Act. Because this program is now considered a federal block grant, Iowa Code section 8.41 requires that these funds be deposited into a special fund in the state treasury and then appropriated by the General Assembly to the Department. Therefore, during the past legislative session, 2016 Iowa Acts, Senate File 2320, section 4, amended 2015 Iowa Acts, chapter 130, to appropriate $149,300,000 from the special fund in the state treasury to the Department for federal fiscal year (FFY) 2017. The dollar amount reflects the amount anticipated to be received from the federal government for FFY 2017 for the Surface Transportation Block Grant Program.

2016 Iowa Acts, Senate File 2320, section 4, requires the Department to expend the moneys appropriated as provided in 23 U.S.C. Section 133 and in conformance with rules adopted by the Department.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and participation are unnecessary and impractical due to the immediate need to adopt this new chapter and to continue to timely obligate the funds. This new chapter implements the requirements of 2016 Iowa Acts, Senate File 2320, section 4, and allows the Department to administer the Surface Transportation Block Grant Program appropriations beginning on October 1, 2016.

In compliance with Iowa Code section 17A.4(3)"a," the Administrative Rules Review Committee at its September 13, 2016, meeting reviewed the Department's determination and the amendment and approved the emergency adoption.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department also finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective on October 1, 2016. This amendment confers a benefit on the public to ensure that moneys appropriated to the Department under the renamed Surface Transportation Block Grant Program are expended as provided in federal law and in compliance with 761—Chapter 162.

These rules are also published herein under Notice of Intended Action as **ARC 2750C** to allow for public comment.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These rules are intended to implement 2016 Iowa Acts, Senate File 2320, section 4.

These rules became effective October 1, 2016.

The following amendment is adopted.

TRANSPORTATION DEPARTMENT[761](cont'd)

Adopt the following **new** 761—Chapter 162:

CHAPTER 162
SURFACE TRANSPORTATION BLOCK GRANT PROGRAM

761—162.1(86GA,SF2320) Purpose. Federal authorization acts appropriate funds to states to support surface transportation investments. A portion of these funds are provided to the state of Iowa for the Surface Transportation Block Grant Program. The purpose of these rules is to establish requirements for the Surface Transportation Block Grant Program.

761—162.2(86GA,SF2320) Contact information. Information relating to this chapter may be obtained from the Office of Program Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1661.

761—162.3(86GA,SF2320) Source of funds. The Surface Transportation Block Grant Program established in 23 U.S.C. Section 133 provides for the use of federal funds to preserve and improve the condition and performance of any federal-aid highway, bridge or tunnel project on any public road. Surface Transportation Block Grant funds may also be used on pedestrian and bicycle infrastructure and transit capital projects including intercity bus terminals.

761—162.4(86GA,SF2320) Administration of funds. Surface Transportation Block Grant funds are administered by the department and shall be made available for obligation throughout the state on a fair and equitable basis. The department, in consultation with city, county and local planning agency officials, through their representative organizations, shall allocate these funds to Iowa's transportation management areas, metropolitan planning organizations, regional planning affiliations, incorporated cities, counties and the department. Allocation of these funds shall be based upon a distribution methodology approved by the commission. The commission shall review and approve the distribution methodology upon passage of each federal authorization act. Funds allocated to cities and counties to support the Federal-Aid Highway Bridge Program shall be made in accordance with 761—Chapter 161. All allocations of the Surface Transportation Block Grant funds shall be made in accordance with the Federal Highway Administration's regulations and include the allocations of the Surface Transportation Program (STP) Set-Aside for transportation alternatives as established in 23 U.S.C. Section 133(h).

These rules are intended to implement 2016 Iowa Acts, Senate File 2320, section 4.

[Filed Emergency 9/16/16, effective 10/1/16]
[Published 10/12/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2777C

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

Pursuant to the authority of Iowa Code section 123.10, the Alcoholic Beverages Division hereby amends Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code.

In June 2016, stakeholders approached the Alcoholic Beverages Division with concerns that rule 185—4.6(123) prevented class "C" beer permit holders from providing a taste of product to a consumer prior to the filling, sealing, and selling of a growler.

The amendment to paragraph 4.6(5)"a" allows class "C" beer permit holders to provide a taste of beer to consumers prior to the filling, sealing, and selling of a growler, as well as during a tasting conducted on the premises of a class "C" beer permit holder. All tastings on the premises of a class "C" beer permit holder must be in accordance with rule 185—16.7(123).

The amendment to paragraph 4.6(5)"h" allows an original container to be opened for the purpose of a tasting in addition to the purpose of filling or refilling a growler. The amendment also removes the restriction that only the permittee or the permittee's employees may open an original container, allowing an industry member conducting a tasting on the premises of a class "C" beer permit holder to also open original containers as part of the tasting.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2679C** on August 17, 2016. A meeting to hear requested oral presentations, scheduled for September 9, 2016, was canceled without notice because no request was made. The Division did not receive any written comments on this rule making. These amendments are identical to those published under Notice of Intended Action.

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

The Alcoholic Beverages Commission adopted these amendments on September 22, 2016.

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

These amendments are intended to implement Iowa Code chapter 123.

These amendments will become effective November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **4.6(5)"a"** as follows:

a. Beer shall ~~not~~ only be consumed on the premises of a class "C" beer permit holder for a tasting in accordance with rule 185—16.7(123).

ITEM 2. Amend paragraph **4.6(5)"h"** as follows:

h. An original container shall only be opened ~~by the permittee or the permittee's employees~~ on the licensed premises for the limited ~~purpose~~ purposes of filling or refilling a growler as provided in this rule, or for a tasting in accordance with rule 185—16.7(123).

[Filed 9/23/16, effective 11/16/16]
[Published 10/12/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2752C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby amends Chapter 12, "Iowa Tuition Grant Program," and Chapter 17, "Barber and Cosmetology Arts and Sciences Tuition Grant Program," Iowa Administrative Code.

The amendment to Chapter 12 changes the date by which a college or university must apply for participation in the Iowa Tuition Grant Program. The change is necessary due to the federal Department of Education's change in the release of the Free Application for Federal Student Aid (FAFSA) and the importance of information received from the FAFSA in projecting future awards under the state program.

The amendments to Chapter 17 update language with respect to the submission of employment information, change the date by which a college must apply for participation in the Barber and Cosmetology Arts and Sciences Tuition Grant Program due to the federal Department of Education's change in the release of the FAFSA, and ensure that the disbursement of funding is aligned with need.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 22, 2016, as **ARC 2582C**. No comments were received. These amendments are identical to those published under Notice of Intended Action.

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

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

These amendments are intended to implement Iowa Code chapter 261.

These amendments will become effective on November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 12.2(2) as follows:

12.2(2) *Processing college and university applications.* Application forms will be provided by the commission.

Applicant colleges and universities are required to provide the commission with documentation establishing eligibility as described in 12.2(1).

Colleges and universities seeking to participate in the Iowa tuition grant program must submit applications by ~~January 1~~ October 1 of the year prior to the beginning of the academic year for which they are applying for participation.

Applicant colleges and universities must submit written plans outlining academic programs that integrate summer attendance in accelerated programs prior to making summer awards. If the summer program is approved by the commission, an applicant's students may receive Iowa tuition grants beginning in the summer following approval. Academic programs, defined by colleges or universities, which allow students to complete four-year baccalaureate programs in less than the normal prescribed time period while taking the same courses as students completing the same degree during a traditional four-year time period will be approved. A summer academic program may be defined for a group of students or may be a self-directed program in which a student has received approval from appropriate officials of the college or university.

ITEM 2. Amend paragraph **17.2(1)"f"** as follows:

f. Submit an annual report which includes student and faculty information, enrollment and employment information, and other information required by the commission as described in Iowa Code ~~sections~~ section 261.9 ~~through 261.16~~; and

ITEM 3. Amend paragraph **17.2(2)"b"** as follows:

b. Colleges seeking to participate in the barber and cosmetology arts and sciences tuition grant program must submit applications by ~~January 1~~ October 1 of the year prior to the beginning of the academic year for which they are applying for participation.

ITEM 4. Adopt the following **new** paragraph **17.2(4)"c"**:

c. If a school does not expend its entire allocation, the unspent funds must be returned to the commission. The school's allocation for the following fiscal year will be reduced by the amount of the unspent allocation.

[Filed 9/19/16, effective 11/16/16]

[Published 10/12/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2753C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby amends Chapter 20, "Iowa National Guard Educational Assistance Program," Iowa Administrative Code.

The amendment to Chapter 20 allows students at colleges and universities that grant credit based on terms other than semesters to receive benefits equivalent to those received by students at colleges and universities that award credit based on semester terms. The amendment to Chapter 20 reflects changes to Iowa Code section 261.86 that were enacted in 2016 Iowa Acts, Senate File 2234.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 22, 2016, as **ARC 2583C**. No comments were received. This amendment is identical to that published under Notice of Intended Action.

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

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

This amendment is intended to implement Iowa Code chapter 261 as amended by 2016 Iowa Acts, Senate File 2234.

This amendment will become effective on November 16, 2016.

The following amendment is adopted.

Amend paragraph **20.1(6)"c"** as follows:

c. A qualified student may receive benefits for no more than 120 semester credit hours, or the equivalent, of undergraduate study. All credit hours within a term of enrollment to which educational assistance was applied must be reported to the commission within the state-defined payment period.

[Filed 9/19/16, effective 11/16/16]
[Published 10/12/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2748C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Pursuant to the authority of Iowa Code section 15.106A, the Economic Development Authority amends Chapter 39, "Iowa Main Street Program," Iowa Administrative Code.

The rules in Chapter 39 describe Iowa's Main Street program. Iowa's Main Street program is designed in accordance with the National Main Street Center's program. The amendments to Chapter 39 update the title of Iowa's program, add new program definitions, update the description of the application process, update the four strategies of the Main Street Iowa program and modify the selection criteria to align with recent programmatic changes made by the National Main Street Center program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2653C** on August 3, 2016. No comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments do not have any fiscal impact to the state of Iowa.

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

The Economic Development Authority Board adopted these amendments on September 16, 2016.

These amendments are intended to implement Iowa Code section 15.108.

These amendments will become effective November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend **261—Chapter 39**, title, as follows:

~~IOWA~~ MAIN STREET IOWA PROGRAM

ITEM 2. Amend rule 261—39.1(15) as follows:

261—39.1(15) Purpose. The purpose of the ~~Iowa~~ main street Iowa program is to stimulate economic development within the context of historic preservation and to establish a strong public/private partnership to revitalize traditional commercial districts in Iowa communities. The main street Iowa program emphasizes community self-reliance and the traditional assets of personal service, local ownership and unique architecture historically prevalent in traditional commercial districts. The main street Iowa program is based on four strategies which, when applied together, create a positive image and an improved economy in these districts. The strategies are organization, promotion, design and economic ~~restructuring~~ vitality.

Communities selected for participation in this ~~demonstration~~ program will receive technical assistance from the ~~department's~~ authority's main street Iowa staff, professional staff of the National ~~Trust~~ Main Street Center, and other professional consultants and may have professional services of other state agencies to draw upon in order to facilitate the communities' local main street ~~program~~ programs.

ITEM 3. Amend rule 261—39.2(15) as follows:

261—39.2(15) Definitions. The following definitions will apply to the ~~Iowa~~ main street Iowa program unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

~~*"Department"* means the Iowa department of economic development.~~

"Director" means the director of the ~~Iowa department of~~ economic development authority.

"Eligible activity" includes organization, promotion, design and economic ~~restructuring~~ vitality activities to create a positive image and an improved economy in a city's traditional commercial ~~districts~~ district.

"Eligible applicant" means a city in Iowa that files a joint application with a local nonprofit organization established by the community to govern the local main street program.

"National ~~Trust~~ Main Street Center" ~~refers to an entity within the National Trust for Historic Preservation, a nonprofit national organization chartered by Congress~~ means a nonprofit subsidiary of the National Trust for Historic Preservation, a nonprofit organization chartered by the United States Congress. The National Main Street Center owns the licensed, trademarked Main Street Four-Point Approach®.

"Program" means the main street Iowa program established in this chapter.

"Traditional commercial district" means a downtown or neighborhood area that is walkable and is dominated by historic or older commercial architecture and contiguous commercial uses. A traditional commercial district defines the target area of the local program efforts.

ITEM 4. Amend subrules 39.3(1) to 39.3(3) as follows:

39.3(1) *Administering agency.* The ~~Iowa main street~~ program is administered by the ~~Iowa department of~~ economic development authority.

39.3(2) *Subcontracting.* The ~~department~~ authority may contract with the National ~~Trust~~ Main Street Center ~~of the National Trust for Historic Preservation~~ for technical and professional services as well as with other appropriate consultants and organizations.

39.3(3) ~~*Request for applications (RFA)*~~ *Applications.* The ~~department~~ authority, upon availability of funds, will distribute ~~a request for~~ applications ~~which describes~~. The application will describe the ~~Iowa main street~~ program, ~~outlines~~ outline eligibility requirements, and ~~includes an application and a description of~~ describe the application ~~procedures~~ process. ~~Selection will be made on a competitive basis.~~

ITEM 5. Rescind subrule 39.3(4) and adopt the following **new** subrule in lieu thereof:

39.3(4) *Program agreement.* Each selected community shall enter into a standard program agreement with the authority. The program agreement will describe the obligations of the authority and the community.

ITEM 6. Rescind subrule **39.3(5)**.

ITEM 7. Renumber subrule **39.3(6)** as **39.3(5)**.

ITEM 8. Rescind and reserve rule **261—39.4(15)**.

ITEM 9. Amend rule 261—39.6(15) as follows:

261—39.6(15) ~~Selection~~ Application and selection process.

39.6(1) The authority will conduct application workshops around the state. Cities that wish to apply for selection as a main street community must attend one application workshop in order to receive an application form. The authority will send standard application forms to workshop attendees. A completed application shall be returned to the authority, be postmarked no later than the date specified by the authority in the application, and contain the information requested in the application.

~~39.6(1)~~ 39.6(2) The director will determine, contingent upon the availability of state funding, the number of cities to be selected for inclusion in the ~~main street~~ program.

~~39.6(2)~~ 39.6(3) Cities will be selected for participation in the program on a competitive basis as described in these rules.

~~39.6(3)~~ 39.6(4) Upon selection of the ~~demonstration projects~~ communities, the ~~department shall prepare an agreement which will include the terms and conditions of participation~~ authority will notify selected communities in writing.

ITEM 10. Rescind rule 261—39.7(15) and adopt the following **new** rule in lieu thereof:

261—39.7(15) Selection criteria. The following factors shall be considered in the selection of a city for participation in the program:

39.7(1) The applicant has a well-planned budget demonstrating sustainable funding for ongoing operations and evidence of adequate local sources of funding to support the traditional commercial district revitalization organization and its programming.

39.7(2) The applicant has garnered broad-based financial and philosophical community support for the local program including support from the city.

39.7(3) The applicant has provided evidence of willingness by local stakeholders to get involved in the effort.

39.7(4) The applicant has demonstrated its commitment to the main street approach and has hired or will be hiring an executive director to manage the local program.

39.7(5) The applicant is committed to historic preservation and preservation-based economic development and has demonstrated its commitment by a track record of preservation planning and a commitment to future preservation projects.

39.7(6) The applicant has provided evidence of traditional commercial district planning efforts and clearly defined goals for the future.

39.7(7) The applicant has defined an organizational structure to manage local program efforts.

39.7(8) The applicant demonstrates an eagerness to learn and implement traditional commercial district revitalization strategies and techniques.

39.7(9) The applicant has clearly defined the boundaries of the proposed traditional commercial district and has articulated the reasons behind the location of the boundaries.

39.7(10) The applicant has identified a traditional commercial district that has clear potential for success, as demonstrated by the presence of the following elements:

a. Existence of historic character of the traditional commercial district.

b. Plans for the traditional commercial district demonstrate a recognition of traditional commercial district trends and address the challenges unique to that district.

c. Present market capacity defined by a current business environment upon which the district can build its revitalization efforts.

d. Present physical capacity defined by building stock and built environment upon which the district can build its revitalization efforts.

ITEM 11. Amend rule 261—39.9(15) as follows:

261—39.9(15) ~~Performance reviews~~ Reports. Participating main street communities shall submit performance reports to the ~~department~~ authority as required. The reports shall document the progress of the program activities.

ITEM 12. Amend rule 261—39.10(15) as follows:

261—39.10(15) Noncompliance. If the ~~department~~ authority finds that a participating main street community is not in compliance with the requirements under this program or the terms of the program agreement, the ~~department~~ authority shall terminate the program agreement.

[Filed 9/16/16, effective 11/16/16]
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ARC 2746C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 17, "Open Enrollment," Iowa Administrative Code.

Items 1, 3, and 4 are technical and clarifying in nature or reflect previous actions of the General Assembly. The amendments in Items 1, 3, and 4 are consistent with Iowa Code section 17A.7(2), which requires that each agency conduct a comprehensive review of all of its rules each five-year period.

Item 2 incorporates an amendment to the Open Enrollment Program included in 2016 Iowa Acts, House File 2264, which was passed by the 2016 General Assembly and became effective on April 7, 2016. Changes that resulted from House File 2264 include modifying the delineation of reasons that a pupil participating in open enrollment during grades 9 through 12 is not subject to the restriction on eligibility to participate in varsity interscholastic athletic contests and athletic competitions during the pupil's first 90 school days of enrollment in the receiving district. In addition, a pupil is not subject to the restriction on eligibility for exercising open enrollment if the pupil had previously been the subject of a founded case of harassment or bullying in the district of residence.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the July 6, 2016, Iowa Administrative Bulletin as **ARC 2609C**. Public comments were allowed until 4:30 p.m. on July 26, 2016. A public hearing was held on that date. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code section 282.18 as amended by 2016 Iowa Acts, House File 2264.

These amendments will become effective November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend subrules 17.3(1) and 17.3(2) as follows:

17.3(1) *Parent/guardian responsibilities.* On or before March 1 of the school year preceding the school year for which open enrollment is requested, a parent/guardian shall formally notify both the district of residence and the receiving district of the request for open enrollment. The request for open

enrollment shall be made on forms provided by the department of education. Failure by the parent to send the form to the resident district and receiving district by the deadline may cause the application to be considered untimely. The parent/guardian is required to indicate on the form if the request is for a pupil requiring special education, as provided by Iowa Code chapter 256B. The forms for open enrollment application are available from each public school district~~,~~ and area education agency~~,~~ and from the state department of education.

17.3(2) *School district responsibilities.*

a. The board of the resident district shall take no action on an open enrollment request except for a request made under rule 281—17.5(282) or 281—17.14(282).

b. The board of the receiving district shall act on an open enrollment request no later than June 1 of the school year preceding the school year for which the request is made.

(1) The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within five days of board action.

(2) As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed on or before March 1. The board of directors of a receiving school district may adopt a policy granting the superintendent of the school district authority to approve open enrollment applications submitted after the March 1 deadline, but the board of the receiving district shall take action to approve the request if good cause exists. The board shall have the discretion to determine the scope of the authorization. The authorization may be for regular applications filed on or before March 1, good cause applications, and kindergarten applications ~~and continuation applications~~ filed on or before September 1, or any combination that the board determines. The same timelines for approval, forwarding, and notification shall apply.

c. The parent/guardian may withdraw an open enrollment request anytime prior to the first day of school in the resident district. After the first day of school, an open enrollment request can only be changed during the term of the approval by the procedures of subrules ~~17.8(3) and~~ 17.8(4), 17.8(5), 17.8(6), and 17.8(7).

d. The board of the receiving district shall comply with the provisions of rule 281—17.11(282) if the application for open enrollment is for a pupil requiring special education as provided by Iowa Code chapter 256B.

e. Notification to parents.

(1) By September 30 of each school year, all districts shall notify parents of the following:

~~*a.*~~ 1. Open enrollment deadlines;

~~*b.*~~ 2. Transportation assistance;

~~*c.*~~ 3. That within 30 days of a denial of an open enrollment request by a district board of education, the parent/guardian may file an appeal with the state board of education only if the open enrollment request was based on repeated acts of harassment or a serious health condition of the ~~student~~ pupil that the district cannot adequately address; and that all other denials must be appealed to the district court in the county in which the primary business office of the district is located; and

~~*d.*~~ 4. Possible loss of athletic eligibility for open enrollment pupils.

(2) This notification may be published in a school newsletter, a newspaper of general circulation, a Web site, or a parent handbook provided to all patrons of the district. This information shall also be provided to any parent/guardian of a pupil who enrolls in the district during the school year.

ITEM 2. Amend subrule 17.8(2) as follows:

17.8(2) *Restrictions on participation in interscholastic athletic contests and competitions.* A pupil who changes school districts under open enrollment in any of the grades 9 through 12 shall not be eligible to participate in varsity interscholastic athletic contests and competitions during the first 90 school days of enrollment. This restriction also shall apply to enrollments resulting from an approved petition filed by a parent/guardian to open enroll to an alternative receiving district and when the pupil returns to the district of residence using the process outlined in subrule 17.8(4). This 90-school-day restriction does not prohibit the pupil from practicing with an athletic team during the 90 school days of ineligibility. This 90-school-day restriction is not applicable to a pupil who:

a. Participates in an athletic activity in the receiving district that is not available in the district of residence.

b. Participates in an athletic activity for which the resident district and the receiving district have a "cooperative student participation agreement" in place as provided by rule 281—36.20(280).

c. Has paid tuition for one or more years to the receiving school district prior to making application and being approved for open enrollment.

d. Has attended the receiving district for one or more years, prior to making application and being approved for open enrollment, under a sharing or mutual agreement between the resident district and the receiving district.

e. Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise the option of maintaining the open enrollment agreement as provided in subrule 17.8(6) except that the period of 90 school days of ineligibility shall apply to a ~~student~~ pupil who open enrolls to another school district. If the pupil has established athletic eligibility under open enrollment, it is continued despite the parent's or guardian's change in residence.

f. Obtains open enrollment as provided in subrule 17.8(7) except that the period of 90 school days of ineligibility shall apply to a ~~student~~ pupil who open enrolls to another school district.

g. Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12).

h. Obtains open enrollment due to the pupil's district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the pupil would be enrolled at the start of the whole-grade sharing agreement.

i. Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services.

j. ~~Rescinded IAB 5/15/02, effective 6/19/02.~~ Open enrolls from a district of residence that has determined that the pupil was previously subject to a founded incident of harassment or bullying as defined in Iowa Code section 280.28 while attending school in the district of residence.

ITEM 3. Amend subrule 17.10(1) as follows:

17.10(1) *Full-time pupils.* Unless otherwise agreed to in the mediation under paragraph 17.4(6)*"b,"* for full-time pupils, the resident district shall pay each year to the receiving district an amount equal to the state cost per pupil for the previous year plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4 and the teacher leadership supplemental state cost per pupil for the previous year as provided in Iowa Code section 257.9. If the pupil participating in open enrollment is also an eligible pupil under Iowa Code section 261E.6 (postsecondary enrollment options program), the receiving district shall pay the tuition reimbursement amount to an eligible postsecondary institution as provided in Iowa Code section 261E.7.

ITEM 4. Rescind and reserve rule **281—17.12(282)**.

[Filed 9/16/16, effective 11/16/16]
[Published 10/12/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2747C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 36, "Extracurricular Interscholastic Competition," Iowa Administrative Code.

Item 1 incorporates an amendment to the Open Enrollment Program included in 2016 Iowa Acts, House File 2264, which was passed by the 2016 General Assembly and became effective on April 7, 2016. Changes that resulted from House File 2264 include modifying the delineation of reasons that

a pupil participating in open enrollment during grades 9 through 12 is not subject to the restriction on eligibility to participate in varsity interscholastic athletic contests and athletic competitions during the pupil's first 90 school days of enrollment in the receiving district. In addition, a pupil is not subject to the restriction on eligibility for exercising open enrollment if the pupil had previously been the subject of a founded case of harassment or bullying in the district of residence.

Item 2 provides that the eligibility of a pupil open enrolling due to a founded case of harassment or bullying as defined in Iowa Code section 280.28 while attending school in the district of residence is not subject to review by the executive board of the governing organization.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the July 6, 2016, Iowa Administrative Bulletin as **ARC 2608C**. Public comments were allowed until 4:30 p.m. on July 26, 2016. A public hearing was held on that date. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code section 282.18 as amended by 2016 Iowa Acts, House File 2264.

These amendments will become effective November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 36.15(4) as follows:

36.15(4) *Open enrollment transfer rule.* A student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer except that a student may participate immediately if the student is entering grade 9 for the first time and did not participate in an interscholastic athletic competition for another school during the summer immediately following eighth grade. The period of ineligibility applies only to varsity level contests and competitions. ("Varsity" means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.) This period of ineligibility does not apply if the student:

a. Participates in an athletic activity in the receiving district that is not available in the district of residence; or

b. Participates in an athletic activity for which the resident and receiving districts have a cooperative student participation agreement pursuant to rule 281—36.20(280); or

c. Has paid tuition for one or more years to the receiving school district prior to making application for and being granted open enrollment; or

d. Has attended in the receiving district for one or more years prior to making application for and being granted open enrollment under a sharing or mutual agreement between the resident and receiving districts; or

e. Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise either the option of remaining in the original open enrollment district or enrolling in the new district of residence. If the ~~pupil~~ student has established athletic eligibility under open enrollment, it is continued despite the parent's or guardian's change in residence; or

f. Has not been participating in open enrollment, but utilizes open enrollment to remain in the original district of residence following a change of residence of the student's parent(s). If the ~~pupil~~ student has established athletic eligibility, it is continued despite the parent's or guardian's change in residence; or

g. Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12); or

h. Obtains open enrollment due to the ~~pupil's~~ student's district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the ~~pupil~~ student would be enrolled at the start of the whole-grade sharing agreement; or

i. Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services~~.~~; or

j. Open enrolls from a district of residence that has determined that the student was previously subject to a founded incident of harassment or bullying as defined in Iowa Code section 280.28 while attending school in the district of residence.

ITEM 2. Amend rule 281—36.16(280) as follows:

281—36.16(280) Executive board review. A student, parent of a minor student, or school contesting the ruling of a student's eligibility based on these rules, other than subrule 36.15(1) or paragraph 36.15(2)*"c," "d," "f,"* or *"k~~,~~"* or paragraph 36.15(4)*"j"* or a school contesting a penalty imposed under paragraph 36.15(6)*"b,"* shall be required to state the basis of the objections in writing, addressed to the executive officer of the board of the governing organization. Upon request of a student, parent of a minor student, or a school, the executive officer shall schedule a hearing before the executive board on or before the next regularly scheduled meeting of the executive board but not later than 20 calendar days following the receipt of the objections unless a later time is mutually agreeable. The executive board shall give at least 5 business days' written notice of the hearing. The executive board shall consider the evidence presented and issue findings and conclusions in a written decision within 5 business days of the hearing and shall mail a copy to appellant.

[Filed 9/16/16, effective 11/16/16]
[Published 10/12/16]
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ARC 2749C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 256.7(5), 17A.4(3), and 17A.5(2) and 2016 Iowa Acts, House File 2392, section 8, the State Board of Education hereby adopts new Chapter 49, "Individual Career and Academic Plan," Iowa Administrative Code.

These rules establish that each student enrolled in grade eight shall have developed by the school district an individualized career and academic plan and that such a plan shall be reviewed and revised each succeeding year until the graduation of that student.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the July 20, 2016, Iowa Administrative Bulletin as **ARC 2627C**. These rules were also Adopted and Filed Emergency and published as **ARC 2620C** in the same July 20, 2016, Iowa Administrative Bulletin. Public comments were allowed until 4:30 p.m. on August 9, 2016, and a public hearing was held on that date. No one attended the public hearing. Two written comments were received during the comment period. Based upon those comments, the introductory paragraph and subrule 49.6(1) of rule 281—49.6(279) were revised to clarify the process by which a career information and decision-making system is determined to meet the minimum requirements established in subrule 49.6(3) by the State Board of Education.

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

These rules are intended to implement Iowa Code section 279.61 as amended by 2016 Iowa Acts, House File 2392.

These rules will become effective November 16, 2016, at which time the rules that were Adopted and Filed Emergency are hereby rescinded.

The following amendment is adopted.

Adopt the following **new** 281—Chapter 49:

CHAPTER 49
INDIVIDUAL CAREER AND ACADEMIC PLAN

281—49.1(279) Purpose. For the school year beginning July 1, 2016, and each succeeding school year, the board of directors of each school district shall ensure each student in grade 8 develops and, in each succeeding year until graduation, reviews and revises an individualized career and academic plan.

281—49.2(279) Definitions. For purposes of this chapter, the following definitions shall apply:

"Approved system" means a vendor-provided career information and decision-making system which meets the requirements of rule 281—49.6(279).

"Board" means the board of directors of a public school district.

"Career cluster" means a nationally recognized framework for organizing and classifying career and technical education programs.

"Comprehensive school improvement plan" means the plan required of a school or school district pursuant to Iowa Code section 256.7(21)*"a."*

"Department" means the Iowa department of education.

"Director" means the director of the Iowa department of education.

"District plan" means the career guidance plan developed by each school district detailing the delivery of career guidance in compliance with this chapter.

"Educational program" means the educational program as defined in rule 281—12.2(256).

"Plan" means the individualized career and academic plan established under this chapter which is created by each student of the school district in eighth grade and which, at a minimum, meets the requirements of rule 281—49.3(279).

"Postsecondary education and training options" means postsecondary programs and pathways related to career interests, including apprenticeships and on-the-job training; military training; and industry-based certification, licensure, and diploma and degree programs offered by accredited professional colleges, technical and community colleges, and public and private baccalaureate colleges and universities.

"School counseling program" means the school counseling program established by Iowa Code section 256.11(9A).

"Student" means an enrolled student as defined in rule 281—12.2(256).

281—49.3(279) Individualized career and academic plan.

49.3(1) *Requirements.* The plan shall, at a minimum, achieve all of the following:

a. Prepare the student for successful completion of the core curriculum developed by the state board of education pursuant to 281—Chapter 12 by the time the student graduates from high school.

b. Identify the student's postsecondary education and career options and goals.

c. Identify the coursework needed in grades 9 through 12 to support the student's postsecondary education and career options and goals.

d. Prepare the student to successfully complete, prior to graduation and following a timeline included in the plan, the essential components prescribed in rule 281—49.4(279).

49.3(2) *Progress report.* The school district shall report annually to each student enrolled in grades 9 through 12, and, if the student is under the age of 18, to each student's parent or guardian, the student's progress toward meeting the goal of successfully completing the core curriculum and high school graduation requirements adopted by the state board of education pursuant to 281—Chapter 12 and toward achieving the goals of the student's career and academic plan.

281—49.4(279) Essential components. The district shall engage each student in activities which support the following essential components of the plan:

49.4(1) Self-understanding. Students shall engage in developmentally appropriate inventories and assessments that promote self-understanding, the connection to work, and engage in meaningful reflective activities about the results. Inventories and assessments may include, but are not limited to, interest inventories; work values assessments; personal values inventories; abilities, strengths, and skills assessments; career cluster assessments; learning styles inventories; and noncognitive skills assessments.

49.4(2) Career information. Students shall research careers based on self-understanding results and engage in meaningful reflection about the findings. Career information shall include, but is not limited to, state and national wage, earning, and employment outlook data for a given occupation; job descriptions, including such information as essential duties, aptitudes, work conditions, and physical demands; and training and education requirements.

49.4(3) Career exploration. Students shall engage in activities that reveal connections among school-based instruction, career clusters, and the world of work and engage in meaningful reflection. Career exploration experiences may be face-to-face or virtual and may include, but are not limited to, job tours, career days or career fairs, and other work-based learning activities.

49.4(4) Postsecondary exploration. Students shall engage in activities to explore relevant postsecondary education and training options related to career interests and engage in meaningful reflection on the exploration experience. Postsecondary exploration activities may be face-to-face or virtual and may include, but are not limited to, site or campus visits; career, employment, or college fairs; and visits with recruiters and representatives of postsecondary education and training options.

49.4(5) Career and postsecondary decision. Students shall complete relevant activities to meet their postsecondary goals consistent with the plan and stated postsecondary intention. Relevant career and postsecondary decision activities may include, but are not limited to, completion of required college or university admission or placement examinations; completion of relevant entrance applications and documents or job applications, résumés, and cover letters; completion of financial aid and scholarship applications; and review and comparison of award letters and completion requirements for different postsecondary options, such as annual financial aid requirements, the role of remedial courses, course-of-study requirements, and the role of the academic advisory.

281—49.5(279) District plan.

49.5(1) *Components of district plan.* The school district shall develop a written career guidance plan. The district plan shall include the following components:

a. The district shall, at a minimum, describe the following aspects of the district plan.

(1) The activities to be undertaken in each grade level to achieve the requirements of rule 281—49.3(279).

(2) Integration of the career guidance plan with the district's comprehensive school improvement plan and school guidance counseling program.

(3) At the district's discretion, any additional outcomes to be integrated into the career guidance system.

b. Designation of team. The superintendent of each school district shall designate a team of education practitioners to carry out the duties assigned to the school district under this rule. The district plan shall include a list, by job position, of the designated district team.

(1) Team composition. The team shall include, but not be limited to, a school administrator, a school counselor, teachers, including career and technical education teachers, and individuals responsible for coordinating work-based learning activities.

(2) Duties. The team shall be responsible for the following:

1. Implementation of the district plan.

2. Annually reviewing and, as necessary, proposing to the board of directors of the school district revisions to the district plan.

3. Coordination of activities which integrate essential components into classroom instruction and other facets of the school district's educational program.

4. Regularly consulting with representatives of employers, state and local workforce systems and centers, higher education institutions, and postsecondary training programs to ensure activities are relevant and align with the labor and workforce needs of the region and state.

49.5(2) *Maintenance of district plan.* The district plan shall regularly be reviewed and revised by the team and the board.

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

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

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

49.6(3) *Minimum functions of approved systems.* An approved system shall, at a minimum, support the requirements of rule 281—49.3(279) and meet the following minimum requirements:

a. Allow for the creation of student accounts, which allow a student to store and access the results and information gathered from the inventories, searches, and associated activities outlined in paragraphs *"b"* through *"d"* of this subrule.

b. Include developmentally appropriate inventories and assessments that promote self-understanding and the connection to work. Inventories and assessments shall include, but not be limited to, an interest inventory; a work values assessment; and an abilities, strengths, or skills assessment.

c. Include a search platform for career information. The platform shall allow a student to access and review career information related to the results of the inventories listed in paragraph *"b"* of this subrule. Career information shall include, but not be limited to, current and accurate state and national wage, earning, and employment outlook data for a given occupation; job descriptions, including such information as essential duties and aptitudes; and training and education requirements. The career information search platform shall, at a minimum, allow a student to sort information by wage and earning, career cluster, and training and education requirements.

d. Include a search platform for postsecondary information. Postsecondary information shall include, but not be limited to, a current, accurate, and comprehensive database of accredited professional colleges, technical and community colleges, and public and private baccalaureate colleges and universities; and include or provide links to apprenticeship and military opportunities. The postsecondary information search platform shall, at a minimum, allow a student to sort information by program and degree type, institution type, location, size of enrollment, and affiliation and appropriate institutional characteristics, such as designation as a historically black college and university or Hispanic-serving institution, and religious affiliation.

e. Track basic utilization for the functions outlined in paragraphs *"a"* through *"d"* of this subrule. Districts shall have the ability to generate and export a report on the utilization statistics.

f. Ensure compliance with applicable federal and state civil rights laws.

g. Disclose the source and age of, as well as frequency of updates to, all information and data.

h. Provide auxiliary services including, but not limited to:

(1) A process for districts to submit comments, feedback, and modification requests to the vendor.

(2) Technical assistance during regular school district operating hours.

(3) Appropriate training for users.

281—49.7(279) Compliance. The director shall monitor school districts for compliance with the provisions of this chapter through the accreditation process established for school districts under 281—Chapter 12.

49.7(1) *Maintenance of student records.* Each school district shall maintain evidence of student completion of the requirements of the plan established in rule 281—49.3(279) in the student's cumulative record as required by 281—subrule 12.3(4). Evidence shall consist of a copy of the student's plan developed in eighth grade which is signed by the student's parent or guardian.

49.7(2) *Reporting.* For the school year beginning July 1, 2016, and each succeeding school year, the board of directors of each school district shall submit to the local community, and to the department as a component of the school district's comprehensive school improvement plan required by 281—Chapter 12, an annual report on student utilization of the district's career information and decision-making system.

49.7(3) *Department report.* The department shall include in its annual condition of education report a review of school district and student performance required under this chapter.

49.7(4) *Corrective action.* If a school district is not in substantial compliance with the provisions of this chapter, the school district shall submit an action plan to the director for approval. The plan must outline the steps to be taken to ensure substantial compliance with the provisions of this chapter.

These rules are intended to implement Iowa Code section 279.61 as amended by 2016 Iowa Acts, House File 2392.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2764C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.263, the Environmental Protection Commission (Commission) hereby amends Chapter 70, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 71, "Flood Plain or Floodway Development—When Approval Is Required," and Chapter 72, "Criteria for Approval," Iowa Administrative Code.

These amendments change the criteria for the construction of bridges, road embankments, and culverts in a flood plain. Oftentimes, to construct bridges and other structures in a flood plain, the Iowa Department of Transportation (IDOT) and other contractors have had to apply for waivers or variances from the Commission's rules, a process which could be time-consuming and costly. In response to this concern, the Commission has reviewed its rules and determined that certain portions of existing rules are redundant or unnecessary, and changes could be made that would allow for a higher percentage of compliance with rules. These amendments will reduce the need for these contractors to seek waivers and variances. Equally important, the amendments will not sacrifice public safety.

These amendments add exemptions to the Commission's flood plain development permit requirements for certain activities, such as excavations installed for conservation practices, and for the installation of signs, utility poles and other similar structures. The exemptions were developed in cooperation with stakeholders such as electric utilities and the Natural Resources Conservation Service (NRCS).

These amendments modify the waiver and variance provision in the flood plain rules so that the provision is consistent with the Iowa Code. These amendments also make minor changes to Chapters 70, 71 and 72 to update definitions, references to Iowa Code sections, forms, and agency contact information.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2629C** on July 20, 2016. A public hearing was held on August 10, 2016, at 1 p.m. in Conference Room 2 North of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa, and written comments were accepted through August 10, 2016. Representatives from the Iowa Farm Bureau Federation and the Iowa Drainage District Association attended the public hearing. Public comments were submitted by MidAmerican Energy in support of the proposed amendments. The Iowa Farm Bureau Federation and

the Iowa Drainage District Association submitted comments recommending changes to the amendments. The comments and changes are summarized below.

The first comment related to the definitions of "high damage potential" and "low damage potential." The commenter requested clarification to the definition of "high damage potential" by using the term "significant" to distinguish it from the term "minimal damage" in the definition of "low damage potential." After review of the rule, a building and how it is used are considered to have high or low damage potential because of the "public damages" that would occur during a flood event. "Public damages," as defined in rule 567—70.2(455B,481A), means "costs resulting from damage to roads and streets, sewers, water mains, other public utilities and public buildings; expenditures for emergency flood protection, evacuation and relief, rehabilitation and cleanup; losses due to interruption of utilities and transportation routes, and interruption of commerce and employment."

Each building and its use, whether industrial, commercial, agricultural or recreational, have the potential for expenditures for emergency flood protection, evacuation of people, rehabilitation costs, cleanup costs and the costs related to interruption of commerce and employment. Therefore, the definitions for "high damage potential" and "low damage potential" in 567—70.2(455B,481A) are amended as follows.

The Commission is amending the definition of "high damage potential" by removing the descriptor "constructed of materials" and replacing it with "which, if inundated by flooding, would result in high public damages as determined by the department" to mirror the wording used in the third section of this definition regarding public buildings and building complexes.

In the definition of "low damage potential," the focus is on buildings and their uses that would not sustain high "public damages" if the buildings were inundated by flood waters. For example, a park shelter is a low damage potential building because of its open air design and because the building's use is such that damage to the shelter would not result in expenditures for emergency flood protection, costs to evacuate the shelter, rehabilitation and cleanup costs, or interruption of commerce and employment.

The Commission agrees that "structures used by livestock for temporary relief from the weather elements or that are used for short-term livestock management purposes" would be considered "low damage potential." Therefore, the Commission is amending the definition of "low damage potential" by changing the last part of the final sentence to "park shelters, buildings used for storage of equipment or crops that can be easily removed, and buildings used as temporary shelter for livestock."

Comments were received regarding Item 7. One commenter requested that a new exemption be added for the broader exclusion of conservation practices installed within 100 feet of a stream or river bank. After analysis of this comment, it was determined that adding a broader exclusion for all conservation practices would not be a logical outgrowth of the rule.

Iowa Code section 455B.275(9) states that "the commission shall establish, by rule, thresholds for dimensions and effects, and any structure, dam, obstruction, deposit, or excavation having smaller dimensions and effects than those established by the commission is not subject to regulation under this section. The thresholds shall be established so that only those structures, dams, obstructions, deposits, or excavations posing a significant threat to the well-being of the public and the environment are subject to regulation."

Because the term "conservation practice" is not defined in Chapter 70, the phrase "excavations for conservation practices installed to meet or exceed the standards of the USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide" was used in new paragraph 71.11(1)"e." This statement implies a defined set of conservation practices where a determination has been made that excavations for conservation practices that meet or exceed the NRCS technical guidance would not pose a significant threat to the well-being of the public and the environment. See Iowa Code section 455B.275(9) for more information.

The commenter requested an exemption for excavations for all conservation practices, not just those that meet or exceed the standards of the NRCS Field Office Technical Guide. Broadening this exemption to all conservation practices would introduce more ambiguity into the rule in that there is no definition for "all conservation practices." Therefore, the Commission is not adding an exemption for all conservation

practices since it may potentially exempt many undefined practices and would not be a logical outgrowth of this rule making.

Two comments were received stating that removal of soil from the excavation area should be allowed to qualify for the exemption stated in Item 7, paragraph 71.11(1)"e."

The thresholds for determining when a flood plain permit is required are laid out in 567—Chapter 71 by project type. Often, an application for a permit will contain a scope of work that utilizes more than one of the project types listed in 567—Chapter 71. For instance, most excavation projects that fall under 567—71.11(455B) also have a component of the project that falls under 567—71.12(455B), regarding miscellaneous structures, obstructions, or deposits not otherwise provided for in other rules. Therefore, in determining if the project needs a flood plain permit, the department looks at the thresholds in both rules: 567—71.11(455B) and 567—71.12(455B).

Excavation and fill of a flood plain are required to preserve the natural and traditional character of the land and waterway. The Commission agrees with the idea that potential applicants want to put the resulting spoil from an excavation on their adjoining land. Rule 567—71.12(455B) can be applied in this circumstance. If placement of the spoil or fill falls below the thresholds listed in 567—71.12(455B), a flood plain construction permit is not required. For that reason, 567—71.12(455B) already gives applicants the flexibility requested by the Iowa Farm Bureau Federation and the Iowa Drainage District Association to spread a limited amount of spoil on their property without needing to gain a flood plain construction permit. For that reason, the Commission is not changing the exemption in Item 7.

A public comment responsiveness summary addresses all comments and is available upon request.

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

On balance, the above-discussed amendments reduce the regulatory burden for the regulated community. This is done by rescinding or changing certain flood plain development criteria, providing more exemptions from flood plain development permit requirements, and clarifying how to properly obtain a waiver or variance from applicable rules.

The Commission adopted these amendments on September 20, 2016.

These amendments are intended to implement Iowa Code section 455B.264.

The amendments will become effective on November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **567—70.2(455B,481A)**:

"Animal feeding operation" means the same as defined in 567—65.1(~~455B~~ 459,459B).

"Animal feeding operation structure~~,~~" means the same as defined in 567—65.1(~~455B~~ 459,459B)~~, means a confinement building, manure storage structure, or egg washwater storage structure~~.

"Confinement feeding operation~~,~~" means the same as defined in 567—65.1(~~455B~~ 459,459B)~~, means an animal feeding operation in which animals are confined to areas which are totally roofed~~.

"Confinement feeding operation building" or *"confinement building~~,~~"* means the same as defined in 567—65.1(~~455B~~ 459,459B)~~, means a building used in conjunction with a confinement feeding operation to house animals~~.

"Confinement feeding operation structure~~,~~" means the same as defined in 567—65.1(~~455B~~ 459,459B)~~, means an animal feeding operation structure that is part of a confinement feeding operation~~.

"High damage potential" means the flood damage potential associated with ~~habitable residential buildings or industrial, commercial, or public buildings or building complexes of which flooding would result in high public damages as determined by the department.~~ the following:

1. Habitable residential buildings and building complexes which include seasonal residential buildings; or

2. Industrial, commercial, agricultural, recreational and other similar buildings or building complexes, which, if inundated by flooding, would result in high public damages as determined by the department or which contain high-value equipment or contents that are not easily removed; or

3. Public buildings or building complexes, which, if inundated by flooding, would result in high public damages as determined by the department.

"Low damage potential" means all buildings, building complexes or flood plain ~~use~~ uses not defined as maximum~~,~~ or high~~, or moderate~~ damage potential where such structures are designed in a manner that inundation by flood waters results in minimal damage to the structure and its contents. Such structures include but are not limited to the following: detached residential garages, sheds, park shelters, buildings used for storage of equipment or crops that can be easily removed, and buildings used as temporary shelter for livestock.

"Major water source~~,~~" means the same as defined in 567—65.1(~~455B~~ 459,459B)~~, means a water source that is a lake, reservoir, river or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Appendix B, Table 1 and Table 2 of 567—Chapter 65~~.

"Manure storage structure~~,~~" means the same as defined in 567—65.1(~~455B~~ 459,459B)~~, means a formed manure storage structure or an unformed manure storage structure, as defined in 567—65.1(455B)~~. ~~A manure storage structure does not include an egg washwater storage structure.~~

"Water source~~,~~" means the same as defined in 567—65.1(~~455B~~ 459,459B)~~, means any lake, river, creek, ditch or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes or ponds without outlet to which only one landowner is riparian~~.

ITEM 2. Rescind the definition of "Moderate damage potential" in rule **567—70.2(455B,481A)**.

ITEM 3. Rescind rule 567—70.3(17A,455B,481A) and adopt the following **new** rule in lieu thereof:

567—70.3(17A,455B,481A) Forms. Any private or public person or agency desiring to secure a permit under this chapter shall file a properly completed application, DNR Form 36. For application and supplemental forms, any private or public person or agency should see http://www.iowadnr.gov/Environmental-Protection/Land-Quality/Flood-Plain-Management. Application forms may also be obtained from:

Flood Plain and Dam Safety Section
Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319

ITEM 4. Amend subrule 70.4(2) as follows:

70.4(2) *Applying for a flood plain development permit.* Application for a flood plain development permit shall be made on DNR Form 36 or a reasonable facsimile thereof. The application shall be submitted by or on behalf of the person or persons who have or will have responsibility by reason of ownership, lease, or easement for the property on which the project site is located. The application must be signed by the applicant or a duly authorized agent. Completed applications along with supporting information shall be mailed or otherwise delivered to the Flood Plain ~~Management~~ and Dam Safety Section, Environmental ~~Protection~~ Services Division, Iowa Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319.

ITEM 5. Amend paragraph **70.4(3)"a"** as follows:

a. General requirement of certified plans. An application shall not be considered complete until sufficient engineering plans have been submitted to enable the department to determine whether the project as proposed satisfies applicable criteria. The engineering plans shall contain information, as specified by the department, which is needed for the department to conduct a technical review pursuant to paragraph 70.5(3)*"b."* The engineering plans shall include specifications, operation procedures and other information relating to environmental impacts. The engineering plans and other engineering information shall be certified by a ~~registered~~ licensed professional engineer or, if applicable, a ~~registered~~ licensed land surveyor, as required by Iowa Code chapter 542B. Duplicate copies of certified plans are required

so that one copy can be returned to the applicant upon approval or disapproval of the application. An additional copy of the certified plans shall be required if the plans are incorporated as part of an approval or disapproval order which is filed with a county recorder.

ITEM 6. Amend **567—Chapter 71**, preamble, as follows:

PREAMBLE: This chapter ~~of these rules~~ contains administrative thresholds which implement the statutory requirement that approval from the department be obtained for any development including construction, maintenance and use of a structure, dam, obstruction, deposit, excavation or "flood control work" on a flood plain or floodway. These administrative thresholds are organized into categories such as "channel changes," "levees or dikes," "buildings," etc. Any doubt concerning whether a project or activity requires approval under these thresholds should be resolved by ~~requesting~~ a request for advice from the department.

The department may delegate regulatory authority to a local government by approving local flood plain regulations (see 567—Chapter 75). To determine whether the department has delegated regulatory authority over a specific category of project at a specific location, an inquiry should be made to:

State Coordinator
National Flood Insurance Program
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50319
Telephone: (515)~~281-8690~~ 725-8200

ITEM 7. Adopt the following **new** paragraph **71.11(1)"e"**:

e. Excavations for conservation practices installed to meet or exceed the standards of the USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide are exempt if all of the following criteria are met:

(1) The resulting spoil is removed from the flood plain;

(2) The practices do not reduce the capacity of the flood plain; and

(3) The practices will not result in water being temporarily or permanently stored above the natural ground line.

These standards may be accessed through the electronic Field Office Technical Guide at https://efotg.sc.egov.usda.gov/. They are also available in hard copy at the USDA NRCS office that serves the area where the practice will be implemented.

ITEM 8. Adopt the following **new** subrule 71.12(3):

71.12(3) *Exemptions.* For purposes of this rule, the following project types do not require approval by the department:

a. Signs, navigational markers, and aids that have been placed by a public agency to serve the public;

b. In-kind replacement of existing utility poles, including H-frame structures that are installed as part of routine maintenance or an emergency;

c. New utility poles, including H-frame structures, that fall below the thresholds set forth in 71.12(1) and 71.12(2).

ITEM 9. Amend **567—Chapter 72**, preamble, as follows:

~~This division of these rules establishes~~ The rules within this chapter establish administrative criteria which implement certain statutory criteria, policies, and principles in Iowa Code sections 455B.262, 455B.264, 455B.275 and 455B.277. The specific requirements in these rules must be met for approval of a project or activity in a flood plain or floodway. Additionally, the project or activity must satisfy all of the statutory criteria which Iowa Code sections 455B.262, 455B.264, 455B.275 and 455B.277 require the department to consider. Where a project or activity will result in effects which the department must by statute consider but which are not governed specifically by these rules, the department shall review such effects on a case-by-case basis to determine whether the project or activity meets the statutory criteria.

ITEM 10. Amend rule 567—72.1(455B) as follows:

567—72.1(455B) Bridges and road embankments. The following criteria shall apply to the construction, operation, and maintenance of bridges and road embankments.

72.1(1) *Bridges and road embankments affecting low damage potential areas.* For bridges and road embankments affecting floodway or flood plain areas having a low flood damage potential, the following criteria will apply:

~~*a. Backwater Q50.* The maximum allowable backwater for Q50 and lesser floods is limited to 0.75 foot.~~

~~*b.*~~ *a. Backwater Q100.* The maximum allowable backwater for Q100 is ~~limited to~~ 1.5 feet.

~~*c.*~~ *b. Freeboard.* The minimum freeboard for low superstructure horizontal bridge members above Q50 is 3 feet unless a licensed engineer provides certification that the bridge is designed to withstand the applicable effects of ice and the horizontal stream loads and uplift forces associated with the Q100.

~~**72.1(2)** *Bridges and road embankments affecting moderate damage potential areas.* For bridges and road embankments affecting floodway or flood plain areas occupied by buildings or building complexes having a moderate flood damage potential, the following criteria will apply:~~

~~*a.* The maximum allowable backwater for Q100 is limited to 1.0 foot.~~

~~*b.* The criteria specified in 72.1(1)*"a"* and *"c."*~~

~~**72.1(3)**~~ **72.1(2)** *Bridges and road embankments affecting high or maximum damage potential development.* For bridges and road embankments affecting floodway or flood plain areas occupied by buildings or building complexes having a high or maximum flood damage potential, the following criteria will apply:

a. Backwater Q100. ~~Backwater effects are to be minimized for all stages which affect maximum or high flood damage potential buildings or building complexes or for all stages which would tend to reduce the level of protection of certain flood control works, unless acceptable remedial measures are provided or such buildings are removed or the uses relating to human occupancy are prohibited.~~

(1) The maximum allowable Q100 backwater for new bridges and road embankments is 1.0 foot.

(2) The maximum allowable Q100 backwater for replacement bridges and roadway embankments is the lesser of the following: Q100 backwater for the existing bridge and road embankment or 1.0 foot.

(3) For a new bridge and road embankment located within a stream reach for which the Federal Emergency Management Agency has published a detailed Flood Insurance Study which includes a floodway, the backwater for Q100 shall not exceed the surcharge associated with the delineation for the floodway at that location.

(4) In no case shall the Q100 backwater effects of a bridge or road embankment reduce the existing level of protection provided by certain flood control works, unless equivalent remedial measures are provided.

b. Freeboard. ~~In no case shall the criteria specified in 72.1(1)*"a"* and *"c"* and 72.1(2)*"a"* be exceeded.~~ The minimum freeboard for low superstructure horizontal bridge members above Q50 is 3 feet unless a licensed engineer provides certification that the bridge is designed to withstand the applicable effects of ice and the horizontal stream loads and uplift forces associated with the Q100.

~~**72.1(4)**~~ **72.1(3)** *Bridge and channel change.* For bridges and culverts involving channel changes on the floodway of any stream draining at the location of the channel change between 10 and 100 square miles whereby either (i) more than a 500-foot length of the existing channel is being altered or (ii) the length of existing channel being altered is reduced by more than 25 percent, the maximum allowable backwater shall correspond to the limits permitted in 72.1(1), 72.1(2)~~, 72.1(3)~~ or ~~72.1(5)~~ 72.1(4) depending upon the associated damage potential.

~~**72.1(5)**~~ **72.1(4)** *Culverts.* The maximum allowable backwater at culvert inlets shall correspond to the limits permitted in 72.1(1)~~,~~ or 72.1(2)~~, or 72.1(3)~~ depending upon the damage potential associated with the affected area. In the case of replacement culverts, the backwater shall not exceed that created by the culvert or waterway crossing being replaced or that specified in 72.1(1)~~,~~ or 72.1(2)~~, or 72.1(3)~~ depending upon the associated damage potential, whichever is greater.

~~**72.1(6)**~~ **72.1(5)** *Road embankments.* The criteria listed in 567—72.11(455B) for miscellaneous flood plain construction projects shall apply to road embankments located on the flood plain but not crossing any stream or river channel.

~~**72.1(7)**~~ **72.1(6)** *Temporary channel obstructions.* Temporary stream crossings and other temporary obstructions usually constructed, operated, and maintained during the construction phase of another flood plain construction project shall meet the following criteria:

a. *Low flow.* Said structures will provide for the passage of the prevailing flow in the stream or river.

b. *Flood flow.* Said structure shall be designed to fail or otherwise operate in the event of flooding so as to prevent premature overbank flow, or meet the backwater criteria indicated in 72.1(1)~~,~~ or 72.1(2)~~, or 72.1(3)~~.

~~**72.1(8)**~~ **72.1(7)** *Emergency.* Repairs or temporary construction required to maintain the operation of a bridge, roadgrade or culverts in time of emergency need not be submitted for prior department approval. Plans of such emergency or temporary construction shall be submitted to the department for review after the event causing the emergency has passed.

ITEM 11. Amend subrule 72.5(1) as follows:

72.5(1) *Minimum protection levels.* The minimum level of flood protection for a building depends on the damage potential of the building and contents. "Maximum~~,~~" and "high" ~~and "moderate"~~ damage potential classifications are defined in 567—Chapter 70. Criteria for determining minimum levels of protection are as follows:

a. Buildings with maximum damage potential shall be protected to the level of a flood equivalent to Q500 plus 1 foot. Determination of the elevation of the department regional flood is recommended as an alternative to establish an appropriate level of protection for a building which has maximum damage potential (see discussion of flood frequencies and magnitudes in 567—subrule 75.2(1)).

b. Buildings with high damage potential shall be protected to the level of a flood equivalent to Q100 plus 1 foot.

~~*c.* Buildings with moderate damage potential shall be protected to the level of a flood equivalent to Q50.~~

~~*d.*~~ *c.* Buildings adjacent to an impoundment shall be protected to the elevation of the top of the dam unless the dam has adequate spillway capacity to discharge the flood corresponding to the damage potential of the building at an elevation below the top of the dam.

~~*e.*~~ *d.* Buildings downstream from a dam shall be protected to a level established by the department after due consideration of the hazards posed by the dam for buildings downstream.

ITEM 12. Rescind rule 567—72.31(455B) and adopt the following **new** rule in lieu thereof:

567—72.31(455B) Variance. A request for a waiver or variance to this chapter shall be submitted in writing pursuant to 561—Chapter 10. The contents of a petition for waiver or variance shall include information pursuant to 561—10.9(17A,455A).

[Filed 9/21/16, effective 11/16/16]
[Published 10/12/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2756C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.304(1) and 455D.7, the Environmental Protection Commission (Commission) hereby amends Chapter 100, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 101, "Solid Waste Comprehensive Planning

Requirements," and Chapter 111, "Annual Reports of Solid Waste Environmental Management Systems," Iowa Administrative Code.

This rule making reflects legislative changes to the Iowa Code and encompasses the comprehensive five-year review of rules that the Department of Natural Resources (Department) is currently conducting pursuant to Iowa Code section 17A.7(2). The rule making eliminates inconsistencies with the Iowa Code, removes redundant reporting requirements, eliminates unnecessary and obsolete language and makes corrections to Iowa Code references, thus simplifying the rules of the Commission and making them easier to use and understand.

These amendments:

- Move certain definitions from Chapter 101 to Chapter 100.
- Make minor corrections to Chapter 101 for consistency with the applicable state statutes.
- Rescind rule 567—101.3(455B,455D) pertaining to the state's waste management hierarchy and replace all references to rule 567—101.3(455B,455D) with references to Iowa Code section 455B.301A.
- Amend rules 567—101.6(455B,455D) and 567—101.7(455B,455D) and rescind subrule 101.13(8) to reflect recent legislative changes to Iowa Code section 455D.3 regarding required solid waste management techniques for planning areas that fall below the 25 percent waste volume reduction goal. See 2013 Iowa Acts, House File 225, signed by Governor Branstad on March 28, 2013.
- Remove the waiver in subrule 101.7(3) that exempts from the state tonnage fee waste generated during a declared disaster. The Iowa Code does not give the Department the authority to issue this waiver.
- Rescind rules 567—101.10(455B,455D) and 567—101.11(455B,455D), which, in effect, will remove the requirement for local governments to complete the Municipal Solid Waste and Recycling Survey and accompanying forms.
- Adopt new paragraph 101.13(2)"k" in order to recognize that annual reporting efforts of planning areas and service areas that are designated as Environmental Management Systems (EMS) under Iowa Code chapter 455J meet the comprehensive plan update requirements in subrule 101.13(2).
- Adopt an updated definition of "comprehensive plan update" to reflect the 2009 amendments to Chapter 101, such that in the definition of "planning cycle," the length of time between the due date of each comprehensive plan was extended from three years to five years. The current definition of "comprehensive plan update" requires planning agencies to incorporate a proposed course of action for the "next two planning cycles" (10 years), which has proven to be too long to allow for accurate planning. As such, the new definition requires the "comprehensive plan update" to address only the next planning cycle (5 years). Additional revisions have been incorporated throughout the proposed amendments to meet this objective.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2630C** on July 20, 2016. A public hearing was held on August 9, 2016, in the Wallace State Office Building. The Department also accepted written comments through August 9, 2016. No public comments were received during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Commission adopted these amendments on September 20, 2016.

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

These amendments are intended to implement Iowa Code sections 455B.301A, 455B.302, 455B.306, 455B.310 and 455D.3.

These amendments will become effective on November 16, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **567—100.2(455B,455D)**:

"Comprehensive plan" means a course of action developed and established cooperatively between cities, counties and municipal solid waste sanitary disposal projects regarding their chosen integrated solid waste management system, its participants, waste reduction strategies, and disposal methods.

"Comprehensive plan amendment" means a notification, filed between comprehensive plan updates, that the planning agency seeks to change the participation or change the designated disposal project(s) as set out in the most recent approved comprehensive plan submittal.

"Comprehensive plan update" means a planning document that provides status reports on the integrated solid waste management system and that describes revision to the information and evaluation of the integrated solid waste management system and the proposed course of action for the next planning cycle.

"Consumer price index" means the measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. For the purpose of this title, consumer price index refers to All Urban Consumers (CPI-U), All Items, as published by the U.S. Bureau of Labor Statistics.

"Contaminated soil" means soil that contains any harmful constituent in a concentration that may harm human health.

"Fiscal year" means the state fiscal year from July 1 through June 30.

"Initial comprehensive plan" means a first or new comprehensive plan filed with the department pursuant to the provisions of Iowa Code section 455B.306.

"Integrated solid waste management" means any solid waste management system which is focused on planned development of programs and facilities that reduce waste volume and toxicity, recycle marketable materials and provide for safe disposal of any residuals.

"Municipal solid waste sanitary disposal project" means all facilities and appurtenances, including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of household waste without creating a significant hazard to the public health or safety. A municipal solid waste sanitary disposal project also may receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes, such as construction and demolition debris and commercial and industrial solid waste.

"Planning agency" means the designated contact agency on file with the department.

"Planning cycle" means the length of time between the due date for each comprehensive plan update submittal as approved by the department, which shall be five years effective March 1, 2011.

"Plan participants" means any individual, group, government or private entity that has direct involvement in an integrated solid waste management system.

"Service area" means an area served by a specific municipal solid waste sanitary disposal project defined in terms of the jurisdictions of the local governments using the facility. A planning area may include more than one service area. This definition does not apply to 567—Chapter 111.

ITEM 2. Amend rule **567—100.2(455B,455D)**, definitions of "Planning area" and "Solid waste," as follows:

"Planning area" means ~~the localities and facilities involved in any aspect of the sanitary disposal project(s) management of waste, including out-of-state localities and facilities, if applicable~~ the combined jurisdiction of the local governments and the designated municipal solid waste sanitary disposal project(s) involved in a comprehensive plan. A planning area may include one or more municipal solid waste sanitary disposal projects.

"Solid waste" ~~is defined~~ has the same meaning as found in Iowa Code section 455B.301. Pursuant to Iowa Code section 455B.301(23)*"b,"* the commission has determined that solid waste includes those wastes exempted from federal hazardous waste regulation pursuant to 40 CFR 261.4(b) as amended through November 16, 2016, except to the extent that any such exempted substances are liquid wastes or wastewater. This definition applies to all chapters within Title VIII. To the extent that there is a conflict, this definition controls.

ITEM 3. Rescind rule 567—101.2(455B,455D) and adopt the following **new** rule in lieu thereof:

567—101.2(455B,455D) Definitions. For the purposes of this chapter, the definitions found in 567—100.2(455B,455D) shall apply.

ITEM 4. Rescind and reserve rule **567—101.3(455B,455D)**.

ITEM 5. Amend rule 567—101.4(455B,455D) as follows:

567—101.4(455B,455D) Duties of cities and counties. Every city and county of this state shall, for the solid waste generated within the jurisdiction of its political subdivision, provide for the establishment and operation of an integrated solid waste management system consistent with the waste management hierarchy under ~~rule 567—101.3(455B,455D)~~ Iowa Code section 455B.301A and designed to meet the state's waste reduction and recycling goals. Integrated systems and municipal solid waste sanitary disposal projects may be established separately or through cooperative efforts, including Iowa Code chapter 28E agreements as provided by law.

101.4(1) To meet these responsibilities, cities and counties may execute, with public and private agencies, contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law for the implementation of waste management programs, collection of solid waste, establishment and operation of municipal solid waste sanitary disposal projects, and general administration of the same.

101.4(2) If a ~~city or county facility~~ planning agency refuses any particular solid waste type for management or disposal, the ~~city or county facility~~ planning agency must identify another ~~waste management facility~~ municipal solid waste sanitary disposal project for that waste within the planning area. ~~In the case of special waste, if~~ If no other ~~waste management facility for that waste type~~ municipal solid waste sanitary disposal project exists within the planning area, the ~~city or county~~ planning agency must, in cooperation with the waste generator, establish or arrange for access to another ~~waste management facility~~ municipal solid waste sanitary disposal project. Municipal solid waste sanitary disposal projects are required to maintain written approval from both the department and the planning agency in the planning area of origin in order to accept any Iowa-generated waste from outside the planning area.

101.4(3) All cities and counties or Iowa Code chapter 28E agencies established for the purpose of managing solid waste or implementing integrated solid waste management systems, or both, on behalf of cities and counties shall demonstrate compliance with the provisions of this chapter by their participation in a comprehensive plan approved by the department.

ITEM 6. Amend rule 567—101.6(455B,455D) as follows:

567—101.6(455B,455D) State volume reduction and recycling goals. The goal of the state is to reduce the amount of materials in the waste stream, existing as of ~~the~~ July 1, 1988, ~~baseline, 25 percent by July 1, 1994, and 50 percent by July 1, 2000~~ by an intermediate goal of 25 percent, and by a final goal of at least 50 percent, through the practice of waste volume reduction at the source and through recycling. The updated goal progress calculations provided by the department for each planning area shall be used by the department in reporting to the general assembly on the state's progress toward meeting the 25 and 50 percent goals. ~~If at any time the department notifies the planning agency in writing that the planning area has failed to meet the 25 percent waste volume reduction and recycling goal, at a minimum, the solid waste management techniques listed in Iowa Code section 455D.3(4) and subrule 101.13(8) must be implemented throughout the planning area.~~ The specific methodology for determining goal progress is outlined in rule 567—101.7(455B,455D).

ITEM 7. Amend rule 567—101.7(455B,455D), introductory paragraph, as follows:

567—101.7(455B,455D) Base year adjustment method. Planning agencies may request that the department complete a goal progress recalculation once per fiscal year to resolve any discrepancies and to further evaluate progress toward the state's waste volume reduction and recycling goals. At the time of approval of a comprehensive plan or comprehensive plan update, the department will use the most current complete fiscal year data set available to complete goal progress calculations, which will be used to meet the requirements outlined in ~~subrule 101.13(8) and~~ rule 567—101.14(455B,455D).

ITEM 8. Amend subrule 101.7(3) as follows:

101.7(3) Waste generated as part of an exceptional event or contaminated soils removed as part of a brownfield or contaminated site cleanup should not negatively affect a planning area's goal progress calculation.

a. Exceptional events include, but are not limited to, such unforeseen disasters as storms, fires, floods, tornadoes, or train wrecks. Exceptional events do not include economic development, derelict housing removal, or other planned activities/demolitions. Written requests to exempt exceptional event debris from goal progress calculations shall be made to the department on the required Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276.

Requests for goal progress calculation exemptions must be made within six months after initial disposal of the debris. The determination to exempt ~~exceptional event~~ exceptional-event debris from goal progress calculations shall be made solely by the department and shall not be made independently by individual municipal solid waste sanitary disposal projects or planning agencies. ~~Municipal solid waste sanitary disposal projects required to remit tonnage fees shall continue to pay solid waste tonnage fees until written notification of fee exemption is received, at which time any applicable fee credit shall be granted by the department.~~ Upon review of the request, the department will notify the municipal solid waste sanitary disposal project and planning agency of the determination in writing or request further documentation.

(1) No change.

(2) Additional documentation to verify the exceptional event and the debris it generated may be requested by the department. Failure to submit requested documentation may result in denial of the goal progress calculation ~~or solid waste tonnage fee~~ exemption request~~(s), including any fee credits authorized by the department~~. Documentation may include:

1. to 7. No change.

~~*b.* If the governor of the state of Iowa declares a city or county a disaster area as a result of an exceptional event, the municipal solid waste sanitary disposal project or planning agency may request that the debris be exempt from solid waste tonnage fees. A request to waive tonnage fees must be submitted in writing on the facility's or planning agency's letterhead prior to or in the same submittal as the Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276. Requests to waive tonnage fees, as provided for in this rule, must be made within 6 months after the initial disposal of the debris. A copy of the proclamation of disaster emergency declared by the governor of the state of Iowa is required in order for approval of tonnage fee exemptions. Any continuing documentation shall be submitted with each Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276, within the length of time authorized by the department. Solid waste disposed of outside the window of time authorized by the department shall not be eligible for exemption. To be eligible for an exemption, all exceptional event waste must be disposed of within the following time lines:~~

~~(1) For debris clearance and emergency protective measures, as defined by FEMA guidelines, 6 months from the end of the exceptional event.~~

~~(2) For permanent repair work, as defined by FEMA guidelines, 18 months from the end of the exceptional event.~~

~~Upon written request, with supporting rationale, extensions to these time lines may be granted solely by the department on a case-by-case basis.~~

~~*c.*~~ *b.* Contaminated soils removed as part of a brownfield or contaminated site cleanup should not negatively affect a planning area's goal progress calculation. If the contaminated soil is to be disposed of in a municipal solid waste sanitary disposal project, the municipal solid waste sanitary disposal project or planning agency must request the goal progress exemption in writing, in accordance with the procedures outlined in this rule. Written requests to exempt contaminated soil from goal progress calculations shall be made to the department on the Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276. Requests for goal progress exemptions must be made within ~~6~~ six months after initial disposal of the contaminated soil.

The determination to exempt contaminated soil from goal progress calculations shall be made solely by the department and shall not be made independently by individual municipal solid waste sanitary

disposal projects or planning agencies. The department shall notify the municipal solid waste sanitary disposal project or planning agency in writing of the determination or shall request further clarification to make an exemption decision. Failure to submit additional information requested by the department regarding the request to exempt contaminated soil may result in a denial of the goal progress calculation exemption request. Contaminated soil occurrences not eligible for goal progress exemption include, but are not limited to, illegal municipal solid waste disposal sites and contaminated soils formed for the sole purpose of requesting goal progress exemption. Exemption requests shall include, at a minimum, the following:

(1) to (10) No change.

ITEM 9. Amend rule 567—101.8(455B,455D) as follows:

567—101.8(455B,455D) Submittal of initial comprehensive plans and comprehensive plan updates. Initial comprehensive plans and comprehensive plan updates filed with the department must include a signed electronic submission certificate~~, which can be printed when all online forms have been submitted to the department for review. When hard-copy portions of the initial comprehensive plan or comprehensive plan update are submitted to the department, only one original copy is necessary. Initial comprehensive plans and comprehensive plan updates are required to be double-sided and cannot be submitted in three-ring binders~~. Comprehensive plan updates shall be submitted in accordance with the schedule~~, as~~ and instructions provided by the department 12 months prior to the due date of the first comprehensive plan update for each planning cycle. ~~Planning agencies are not required to submit hard copies of the online forms for comprehensive plan updates.~~

ITEM 10. Rescind and reserve rule **567—101.10(455B,455D)**.

ITEM 11. Rescind and reserve rule **567—101.11(455B,455D)**.

ITEM 12. Amend paragraph **101.13(1)"g"** as follows:

g. A description of the current waste composition and waste generation rates and a projection of waste composition and waste generation rates ~~spanning two planning cycles~~ during the next planning cycle. This description should include the effects of anticipated planning area modifications on waste generation and composition in the future. These factors may include economic changes, population changes, loss or addition of communities to the planning area, and any other modification expected to affect the amount of waste generated.

ITEM 13. Amend subparagraph **101.13(1)"h"(3)** as follows:

(3) A detailed narrative of all other existing waste management programs in the planning area that addresses all components of the state's waste management hierarchy. This narrative must include specific methodologies for the separation of glass, paper, plastic and metal. For each specific waste management program, the following shall be included:

1. to 5. No change.

6. The anticipated impact on the waste stream and diversion ~~over at least two planning cycles~~ during the next planning cycle.

ITEM 14. Amend paragraph **101.13(1)"k,"** introductory paragraph, as follows:

k. A specific plan and schedule ~~spanning two planning cycles~~ for implementing the initial comprehensive plan during the next planning cycle. Items that shall be addressed include:

ITEM 15. Amend subparagraph **101.13(2)"g"(3)** as follows:

(3) A detailed narrative of all waste management programs implemented since the last approved comprehensive plan or comprehensive plan update that addresses all components of the state's waste management hierarchy. For each specific waste management program implemented since the last approved comprehensive plan or comprehensive plan update, the following shall be included:

1. to 4. No change.

5. The anticipated impact on the waste stream and diversion ~~over at least two planning cycles~~ during the next planning cycle.

ITEM 16. Amend paragraph **101.13(2)"h,"** introductory paragraph, as follows:

h. An evaluation of progress toward meeting the state's waste volume reduction and recycling goals using the goal progress calculation provided by the department 12 months prior to the due date of the comprehensive plan update, if requested by the planning agency. This analysis may use any combination of the following methodologies:

ITEM 17. Amend paragraph **101.13(2)"j,"** introductory paragraph, as follows:

j. A specific plan and schedule ~~spanning two planning cycles~~ for implementing the comprehensive plan during the next planning cycle. Items that shall be addressed include:

ITEM 18. Adopt the following **new** paragraph **101.13(2)"k"**:

k. Annual reports submitted by planning agencies designated as environmental management systems, pursuant to Iowa Code section 455J.7, which satisfy the comprehensive plan update submittal requirements of this subrule.

ITEM 19. Rescind and reserve subrule **101.13(8)**.

ITEM 20. Amend **567—Chapter 101**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 455B.301A, 455B.302, 455B.306, 455B.310 and 455D.3.

ITEM 21. Amend rule **567—111.4(455J)**, definition of "Planning area," as follows:

"Planning area" means the same as defined in rule ~~567—101.2(455B,455D)~~ 567—100.2(455B,455D).

[Filed 9/20/16, effective 11/16/16]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2743C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6 and 2016 Iowa Acts, Senate File 2258, the Department of Human Services hereby amends Chapter 105, "Juvenile Detention and Shelter Care Homes," Chapter 113, "Licensing and Regulation of Foster Family Homes," Chapter 114, "Licensing and Regulation of All Group Living Foster Care Facilities for Children," and Chapter 202, "Foster Care Placement and Services," Iowa Administrative Code.

These amendments implement the federal Preventing Sex Trafficking and Strengthening Families Act. These amendments update the description of reasonable supervision of foster children. These amendments also update language regarding liability of foster parents and add new requirements regarding annual fire inspections and building codes. Finally, these amendments change the requirement for provision of transition plan documents to any child leaving foster care at the age of 18 or older.

These amendments will provide better transition services for youths 14 years of age or older in foster care who are expected to age out of care when the youths reach 18 years of age.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2652C** on August 3, 2016. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 14, 2016.

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

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

These amendments are intended to implement Iowa Code section 217.6 and 2016 Iowa Acts, Senate File 2258.

These amendments will become effective December 1, 2016.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 105.8(9):

105.8(9) *Liability.* Juvenile shelter care homes that apply the reasonable and prudent parent standard reasonably and in good faith in regard to a child in foster care shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This subrule shall not remove or limit any existing liability protection afforded under any other law.

ITEM 2. Amend subrule 105.17(5) as follows:

105.17(5) *Other information.* The following information shall be requested when the child remains in the facility more than four days and, when available, shall be placed in the child's record.

a. to *c.* No change.

d. Medical.

(1) A record of all illnesses, immunizations, communicable diseases and follow-up treatment.

(2) Medical and surgical ~~authorization~~ releases or authorizations signed by the parent, guardian, custodian or court, including releases or authorizations for anesthesia and emergency medical and surgical treatment.

(3) A record of all medical and dental examinations, including findings.

(4) Date of last physical examination prior to placement.

e. No change.

f. Placement agreement, court order, and other releases and authorizations.

(1) ~~Agreement shall authorize~~ An agreement authorizing the facility to accept the child.

(2) ~~The~~ An agreement ~~shall set~~ setting forth the terms of payment for care.

~~(3) Medical release authorizing emergency medical and surgical treatment, including the administration of anesthesia.~~

~~(4)~~ (3) ~~All~~ Other releases and authorizations ~~shall be signed by the parent or legal guardian~~ applicable to the placement.

~~(5)~~ (4) All court orders affecting the custody or guardianship of the child.

ITEM 3. Adopt the following **new** definitions of "Age- or developmentally appropriate activities" and "Reasonable and prudent parent standard" in rule **441—113.2(237)**:

"Age- or developmentally appropriate activities" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

"Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encourage the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities. For the purposes of this definition, "caregiver" means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution (including group homes, residential treatment, shelters, or other congregate care settings) in which a child in foster care has been placed.

ITEM 4. Amend subrule 113.7(7) as follows:

113.7(7) *Supervision.* The foster parents shall provide reasonable supervision of foster children to ensure their safety.

a. Foster parents shall ~~monitor~~ reasonably supervise foster children while the children are using any hazardous ~~items. All~~ or dangerous objects or equipment~~, including but not limited to trampolines, motorized vehicles, and power tools, shall be inaccessible to a child unless:~~. In order for foster children to

participate in age- or developmentally appropriate activities, the foster parent would apply the reasonable and prudent parent standard.

~~(1) There is reasonable supervision by the foster parent, and~~

~~(2) Permission has been obtained from the parent or guardian for the foster child to use the equipment or vehicle.~~

b. No change.

ITEM 5. Adopt the following **new** subrule 113.7(9):

113.7(9) *Liability.* Foster parents who apply the reasonable and prudent parent standard reasonably and in good faith in regard to a foster child placed in their home shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This subrule shall not remove or limit any existing liability protection afforded under any other law.

ITEM 6. Adopt the following **new** subrule 114.5(3):

114.5(3) *Fire inspection.* Each facility shall procure an annual fire inspection approved by the state fire marshal and shall meet the recommendations thereof.

ITEM 7. Adopt the following **new** subrule 114.5(4):

114.5(4) *Local codes.* Each facility shall meet local building, zoning, sanitation and fire safety ordinances. Where no local standards exist, state standards shall be met.

ITEM 8. Adopt the following **new** subrule 114.10(12):

114.10(12) *Liability.* Licensed group living foster care facilities that apply the reasonable and prudent parent standard reasonably and in good faith in regard to a child in foster care shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This subrule shall not remove or limit any existing liability protection afforded under any other law.

ITEM 9. Amend subparagraph **202.11(7)"c"(4)** as follows:

(4) The transition plan shall document that any child leaving foster care at the age of 18 or older was provided with the following documents and information unless the child has been in foster care for less than ~~six months~~ 30 days or is not eligible to receive such document:

1. to 5. No change.

[Filed 9/14/16, effective 12/1/16]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2742C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code chapters 232 and 235A and 2016 Iowa Acts, Senate File 2258, the Department of Human Services hereby amends Chapter 175, "Abuse of Children," Iowa Administrative Code.

These amendments implement the federal Justice for Victims of Trafficking Act (Pub. L. No. 114-22). This law requires state child protective service agencies to consider a child to be a victim of "child abuse and neglect" and of "sexual abuse" if the child is identified as being a victim of sex trafficking or a victim of a severe form of trafficking in persons. This law also requires individuals who patronize or solicit persons for a commercial sex act to be equally culpable for sex trafficking offenses.

In addition, these amendments add an eleventh category of abuse, child sex trafficking, in accordance with Pub. L. No. 114-22 and 2016 Iowa Acts, Senate File 2258, and modify the current categories of sexual abuse.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2651C** on August 3, 2016. The Department received no comments during the public comment period. Since

publication of the Notice, corrections to cross references have been made in the definition of "child abuse assessment," in paragraph 175.24(1)"b" and in paragraph 175.24(2)"a."

The Council on Human Services adopted these amendments on September 14, 2016.

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

After analysis and review of this rule making, there may be an impact on jobs. All perpetrators of child sex trafficking who have a confirmed finding of child abuse will be placed on the Central Abuse Registry. Additionally, persons 14 years of age or older who reside in a home with the child whom they are confirmed to have sexually abused will be placed on the Central Abuse Registry. Perpetrators of sexual abuse who are 14 to 17 years of age may also have their names withheld from the Central Abuse Registry upon order from the court.

These amendments are intended to implement Iowa Code chapters 232 and 235A and 2016 Iowa Acts, Senate File 2258.

These amendments will become effective December 1, 2016.

The following amendments are adopted.

ITEM 1. Amend rule **441—175.21(232,235A)**, definitions of "Child abuse assessment," "Sex trafficking," and "Sex trafficking victim," as follows:

"Child abuse assessment" means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in Iowa Code section 232.68(2)*"a"*(1) through (3) and (5) through ~~(10)~~ (11) as amended by 2016 Iowa Acts, Senate File 2258; or which allege child abuse as defined in Iowa Code section 232.68(2)*"a"*(4) that also allege imminent danger, death, or injury to a child. A "child abuse assessment" results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the registry are met.

"Sex trafficking~~,~~" ~~as provided in 22 U.S.C. Section 7102(10),~~ means the recruitment, harboring, transportation, provision, ~~or~~ obtaining, patronizing, or soliciting of a person for the purpose of ~~a~~ commercial ~~sex act~~ sexual activity as defined in Iowa Code section 710A.1.

"Sex trafficking victim~~,~~" ~~as provided in 42 U.S.C. Section 675(9),~~ means ~~any of the following:~~ a victim of sex trafficking.

~~1. A victim of sex trafficking.~~

~~2. A victim of a severe form of trafficking in persons.~~

ITEM 2. Adopt the following **new** definitions of "Home" and "Reside" in rule **441—175.21(232,235A)**:

"Home" means a permanent or temporary structure where one resides, including a licensed foster family home. For the purpose of this chapter, "home" shall not be construed to include any public or private facility, such as an institution, hospital, health care facility, intermediate care facility for persons with an intellectual disability, residential care facility for persons with an intellectual disability, skilled nursing facility, group care, mental health facility, residential treatment facility, shelter care facility, detention facility, licensed day care center, or child foster care provided by an agency.

"Reside" or *"resides"* means to habitually sleep or live. A person's subjective intent as to where the person resides is not relevant.

ITEM 3. Rescind the definitions of "Commercial sex act" and "Severe form of trafficking in persons" in rule **441—175.21(232,235A)**.

ITEM 4. Amend paragraph **175.22(2)"b"** as follows:

b. If a report constitutes an allegation of child sexual abuse as defined under Iowa Code section ~~232.68(2)*"c,"*~~ 232.68(2)*"a"*(3) as amended by 2016 Iowa Acts, Senate File 2258, except that the suspected abuse resulted from the acts or omissions of a person who was not a caretaker or was not a person who resides in a home with the child, the department shall refer the report to law enforcement orally ~~and,~~ as soon as practicable~~,~~ and follow up in writing within 72 hours of receiving the report.

ITEM 5. Amend paragraph **175.24(1)"b"** as follows:

b. The alleged perpetrator of child abuse is ~~a caretaker.~~:

(1) A caretaker; or

(2) A person who resides in a home with the child, if the allegation is sexual abuse as defined in Iowa Code section 232.68(2)*"a"*(3) as amended by 2016 Iowa Acts, Senate File 2258; or

(3) A person who engages in or allows child sex trafficking as defined in Iowa Code section 232.68(2)*"a"*(11) as amended by 2016 Iowa Acts, Senate File 2258.

ITEM 6. Amend paragraph **175.24(2)"a"** as follows:

a. A child abuse assessment is required for all accepted reports which allege child abuse as defined in Iowa Code section 232.68(2)*"a"*(1) through (3) and (5) through ~~(10)~~ (11) as amended by 2016 Iowa Acts, Senate File 2258; or which allege child abuse as defined in Iowa Code section ~~232.68(4)~~ 232.68(2)*"a"*(4) that also allege imminent danger, death, or injury to a child. If one or more of the following factors are met, a child abuse assessment shall be required:

(1) to (10) No change.

[Filed 9/14/16, effective 12/1/16]

[Published 10/12/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2754C

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 546.3 and 546.10, the Professional Licensing and Regulation Bureau hereby amends Chapter 1, "Organization and Operation," Chapter 3, "Vendor Appeals," Chapter 5, "Waivers and Variances from Rules," Chapter 7, "Contested Cases," Chapter 8, "Denial of Issuance or Renewal of License for Nonpayment of Child Support, Student Loan, or State Debt," Chapter 9, "Petition for Rule Making," Chapter 10, "Declaratory Orders," and Chapter 13, "Public Records and Fair Information Practices," Iowa Administrative Code.

The Professional Licensing and Regulation Bureau of the Banking Division of the Department of Commerce coordinates the functions of seven professional licensing boards. In 2001, the Bureau (which was then a Division within the Department of Commerce), with the consent of the six boards then in existence, adopted a series of procedural chapters that would be applicable to all boards within the Bureau. At the same time, procedural rules were removed from the chapters of rules dedicated to individual boards. This initiative streamlined the rules and afforded stronger consistency among boards on procedural matters.

The amendments herein are a result of the five-year rolling review of administrative rules as outlined in Iowa Code section 17A.7(2). Board staff, with the assistance of legal counsel, reviewed all 14 chapters of the Bureau's rules to identify outdated or redundant references, inconsistencies with statutes, and methods of enhancing efficiencies. The amendments were then shared with all seven boards and with others who may be impacted, such as the Administrative Hearings Division of the Department of Inspections and Appeals.

The amendments to Chapter 1 remove the references to specific chapters of each board's rules, update the Bureau's physical address, add applicant contact information, and remove newsletter advertising. Amendments in Chapters 3, 5, 9, 10, and 13 allow for e-mail and electronic notice. Amendments in Chapters 7 and 8 revise contested case rules to align with changes in procedure, including recent amendments to the Iowa Rules of Civil Procedure, and to merge rules regarding the denial or suspension of a license associated with the collection of state debt, college student loans, and child support.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2456C** on March 16, 2016. The Bureau allowed public comments until 4:30 p.m. on April 5, 2016, in addition to

holding a public hearing on April 5, 2016. No public comments were received. These amendments are identical to those published under Notice.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These amendments were adopted by the Accountancy Examining Board on May 11, 2016; the Architectural Examining Board on May 10, 2016; the Engineering and Land Surveying Examining Board on May 19, 2016; the Interior Design Examining Board on May 16, 2016; the Landscape Architectural Examining Board on June 21, 2016; the Real Estate Commission on June 9, 2016; and the Real Estate Appraiser Examining Board on May 3, 2016.

After analysis and review of this rule making, the Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code section 546.10, as well as the statutes identified in each chapter, including Iowa Code chapters 17A, 252J, 272C, 272D, 542, 542B, 543B, 543D, 544A, 544B, and 544C and Iowa Code sections 261.126 and 261.127.

These amendments will become effective November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 193—1.4(546) as follows:

193—1.4(546) Purpose of the bureau. The bureau exists to coordinate the administrative support for the following seven professional licensing boards:

1.4(1) The engineering and land surveying examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of four professional engineers, one land surveyor, and two public members. The board administers Iowa Code chapter 542B, Professional Engineers and Land Surveyors, and board rules published under agency number [193C]~~—Chapters 1 to 13,~~ in the Iowa Administrative Code.

1.4(2) The accountancy examining board is an eight-member board appointed by the governor and confirmed by the senate. The board is composed of five certified public accountants, two public members, and one licensed public accountant. The board administers Iowa Code chapter 542, Public Accountants, and board rules published under agency number [193A]~~—Chapters 1 to 19,~~ in the Iowa Administrative Code.

1.4(3) The real estate commission is a seven-member commission appointed by the governor and confirmed by the senate. It is composed of five members, one of whom must be a salesperson, licensed under Iowa Code chapter 543B and two public members. The commission administers Iowa Code chapters 543B, Real Estate Brokers and Salespersons; 543C, Sales of Subdivided Land Outside of Iowa; 557A, Time-Shares; and commission rules published under agency number [193E]~~—Chapters 1 to 21,~~ in the Iowa Administrative Code.

1.4(4) The architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered architects and two public members. The board administers Iowa Code chapter 544A, Registered Architects, and board rules published under agency number [193B]~~—Chapters 1 to 7,~~ in the Iowa Administrative Code.

1.4(5) The landscape architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered landscape architects and two public members. The board administers Iowa Code chapter 544B, Landscape Architects, and board rules published under agency number [193D]~~—Chapters 1 to 4,~~ in the Iowa Administrative Code.

1.4(6) The real estate appraiser examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five certified real estate appraisers and two public members. The board administers Iowa Code chapter 543D, Real Estate Appraisals and Appraisers, and board rules published under agency number [193F]~~—Chapters 1 to 15,~~ in the Iowa Administrative Code.

1.4(7) The interior design examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered interior designers and two public members. The board administers Iowa Code chapter 544C, Registered Interior Designers, and board rules published under agency number [193G]~~—Chapters 1 and 2,~~ in the Iowa Administrative Code.

ITEM 2. Amend rule 193—1.5(546) as follows:

193—1.5(546) Offices and communications. Correspondence and communications with the bureau or the boards in the bureau shall be addressed or directed to their offices at ~~1920 S.E. Hulsizer Road, Ankeny, Iowa 50021~~ 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. Each of the boards may be contacted through the bureau telephone number ~~(515)281-5910~~ (515)725-9022.

ITEM 3. Amend subrule 1.7(3) as follows:

1.7(3) To hire, allocate, develop, and supervise members of the staff employed to perform the duties assigned to the bureau and the boards in the bureau, including hiring a bureau chief to perform such administrative duties as may be assigned by the administrator and designating staff to act as the executive officer, who may be referred to as the board administrator, for and lawful custodian of the records of each board in the bureau.

ITEM 4. Renumber rule **193—1.9(272C,542,542B,543B,543D,544A,544B,544C)** as **193—1.10(272C,542,542B,543B,543D,544A,544B,544C)**.

ITEM 5. Adopt the following **new** rule 193—1.9(272C,542,542B,543B,543D,544A,544B,544C):

193—1.9(272C,542,542B,543B,543D,544A,544B,544C) Applicant contact information. In addition to the mailing address(es) that must be provided in accordance with the individual board's rules, applicants of the boards within the bureau must provide a telephone number and, if applicable, an e-mail address. The boards within the bureau will honor the "safe at home" address issued by any state's program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person's physical location.

ITEM 6. Amend renumbered rule 193—1.10(272C,542,542B,543B,543D,544A,544B,544C) as follows:

193—1.10(272C,542,542B,543B,543D,544A,544B,544C) Newsletter.

1.10(1) The administrator or administrator's designee may publish or contract with a vendor to publish a newsletter as a nonpublic forum to disseminate official information related to the regulated professions. This official information may include statutory requirements, statutory changes, rules, rule changes, proposed or pending rule changes, licensing requirements, license renewal procedures, board action, board interpretative rulings or guidelines, office procedures, disciplinary action, ethical or professional standards, education requirements, education opportunities (prelicense education, continuing education, and professional development), board business, board meetings, board news, and matters related thereto.

1.10(2) When boards are required or allowed ~~to mail notices~~ to notify licensees about matters such as license renewal, the boards may include such notices in the newsletter.

~~**1.10(3)** The newsletter may include vendor advertising to:~~

~~*a.* Enable the boards to communicate with licensees and other interested persons without expending moneys appropriated from the state's general fund; and~~

~~*b.* Provide a targeted opportunity for licensees to receive profession-specific information to facilitate entry into the profession and enhance professional performance.~~

~~**1.10(4)** All newsletter advertising must be consistent with the boards' missions. The primary mission of the boards in the bureau is to provide progressive, efficient and professional regulation and enforcement of the professions; to protect the public through examination, licensing and regulation of the professions; and to enhance economic growth through the responsible, competent, and ethical performance of the professions.~~

~~**1.10(5)** All newsletter advertising must be professional and respectful of the nature of the regulated professions, established as a nonpublic forum, and consistent with guidelines established by the administrator. Advertising shall be restricted to commercial offerings of goods and services directly related to the lawful practice of the professions or the regulation of the professions. Political, advocacy or issue-oriented advertising shall not be permitted.~~

~~**1.10(6)** Newsletter advertising shall be considered consistent with the boards' missions if it pertains to commercial offerings of goods or services in one or more of the following areas:~~

~~*a.* Entry into the profession, such as prelicense education or internship opportunities.~~

~~*b.* A licensee's compliance with statutes or rules, such as continuing education courses or publications containing professional standards.~~

~~*c.* The lawful and competent performance of the profession, e.g., errors and omissions insurance, or goods or services uniquely used in the profession, such as land surveying equipment or seals for design professionals.~~

~~*d.* Employment opportunities in the profession.~~

~~*e.* A professional's marketing of professional services to other professionals, e.g., a design professional's advertising the availability of specialized design services for other design professionals.~~

~~*f.* Education programs designed to enhance credentials of professionals, or profession-specific degrees.~~

~~**1.10(7)** Newsletter advertising shall be clearly separated from the substantive sections of each newsletter. Vendors authorized to solicit newsletter advertising must do so consistent with the administrator's advertising guidelines in a manner which is viewpoint-neutral and nondiscriminatory in all respects. Goods or services advertised in a newsletter must be lawful for all possible readers of any age to view, use or buy. The front page of each newsletter containing advertising must include a prominent disclaimer notifying the reader that the boards play no role in the solicitation of advertising, and do not explicitly or implicitly endorse any advertiser or any good or service advertised in the newsletter.~~

~~**1.10(8)** Commencing with the first bureau newsletter distributed on or after July 1, 2008, newsletter circulation may, at the administrator's sole discretion, include additional licensees within the division of banking, including but not limited to the following: state banks (Iowa Code chapter 524), debt management companies (Iowa Code chapter 533A), money services providers (Iowa Code chapter 533C), delayed deposit services providers (Iowa Code chapter 533D), mortgage bankers, mortgage brokers, and mortgage originators (Iowa Code chapter 535B), regulated loan companies (Iowa Code chapter 536), industrial loan companies (Iowa Code chapter 536A), and state chartered savings and loans (Iowa Code chapter 534). If the administrator expands the circulation as provided in this subrule, the newsletter may include advertising consistent with this rule on the topics listed in subrule 1.9(6) as such topics would apply to the additional types of licensees.~~

ITEM 7. Amend rule 193—3.1(546) as follows:

193—3.1(546) Purpose. This chapter outlines a uniform process for vendor appeals for all boards in the bureau. The process shall be applicable only when board services are acquired through a formal bidding procedure not handled by the department of administrative services or the office of the chief information officer.

ITEM 8. Amend rule 193—3.2(546) as follows:

193—3.2(546) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the board may appeal by filing a written notice of appeal with the board within five days of the date of the award, exclusive of Saturdays, Sundays, and legal state holidays. A written notice may be filed by ~~fax transmission to (515)281-7411~~ e-mail. The notice of appeal must be received by the board within the time frame specified to be considered timely. The notice of appeal must state the vendor's complete legal name, street address, telephone number, ~~fax number,~~ e-mail address and the specific grounds upon which the vendor challenges the board's award, including legal authority, if any. The notice of appeal commences a contested case.

ITEM 9. Amend subrule 3.3(1) as follows:

3.3(1) Upon receipt of a notice of vendor appeal, the board shall issue a written notice of the date, time and location of the appeal hearing to both the aggrieved vendor or vendors and the successful vendor. Service of the written notice of hearing shall be sent to the e-mail address provided by the appellant unless

the appellant specifically requests that notice be mailed or sent by certified mail. Hearing shall be held within 60 days of the date the notice of appeal was received by the board.

ITEM 10. Amend rule 193—5.6(17A,546) as follows:

193—5.6(17A,546) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, e-mail address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related contested case.

2. to 6. No change.

7. The name, address, e-mail address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, e-mail address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, e-mail address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. No change.

ITEM 11. Amend rule 193—5.8(17A,546) as follows:

193—5.8(17A,546) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided. Notice may be provided by e-mail or similar electronic means.

ITEM 12. Amend subrule 5.10(9) as follows:

5.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law. Service of the written notice shall be sent to the e-mail address provided by the petitioner unless the petitioner specifically requests a mailed copy.

ITEM 13. Renumber rules **193—5.11(17A,546)** to **193—5.16(17A,546)** as **193—5.12(17A,546)** to **193—5.17(17A,546)**.

ITEM 14. Adopt the following **new** rule 193—5.11(17A):

193—5.11(17A) Interim rulings.

5.11(1) The board chair, or vice chair, if the chair is unavailable, may rule on a petition for waiver or variance if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

5.11(2) The board chair or vice chair may call a special telephonic meeting of the board if a ruling cannot be made under subrule 5.11(1) and the practical result of waiting until the next regularly scheduled board meeting would be denial of the request due to timing issues.

5.11(3) Interim rulings are effective when made, but they shall also be placed on the agenda at the next regularly scheduled board meeting and recorded in the minutes.

ITEM 15. Amend rule 193—7.1(17A,542,542B,543B,543D,544A,544B,544C) as follows:

193—7.1(17A,542,542B,543B,543D,544A,544B,544C) Definitions. Except where otherwise specifically defined by law:

"Board" includes the engineering and land surveying examining board (Iowa Code chapter 542B), the accountancy examining board (Iowa Code chapter 542), the real estate commission (Iowa Code chapter 543B), the real estate appraiser examining board (Iowa Code chapter 543D), the architectural examining board (Iowa Code chapter 544A), the landscape architectural examining board (Iowa Code chapter 544B), and the interior design examining board (Iowa Code chapter 544C).

"Contested case" means any adversary proceeding before a board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C; an adversary proceeding ~~requested by~~ against a nonlicensee pursuant to Iowa Code section 542.14, 542B.27, 543B.34, 543D.21, or 544A.15; or any other proceeding designated a contested case by any provision of law, including but not limited to adversary proceedings involving license applicants and the reinstatement of a suspended, revoked or voluntarily surrendered license.

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

"License" means a license, registration, certificate, permit or other form of practice permission required or authorized by Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C.

"Party" means the state, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent or applicant, or an intervenor.

"Presiding officer" means the board and, when applicable, a panel of board members~~,~~ or an administrative law judge assigned to render a proposed decision in a nondisciplinary contested case.

"Probable cause" means a reasonable ground for belief in the existence of facts which would support a specified proceeding under applicable law and rules.

"Quorum" means a majority of the members of the board. Action may generally be taken upon a majority vote of board members present at a meeting who are not disqualified, although discipline may only be imposed by a majority vote of the members of the board who are not disqualified and, for the engineering and land surveying examining board, only upon an affirmative vote of at least five members of the board.

ITEM 16. Amend rule 193—7.2(17A,542,542B,543B,543D,544A,544B,544C,546) as follows:

193—7.2(17A,542,542B,543B,543D,544A,544B,544C,546) Scope and applicability of the Iowa Rules of Civil Procedure. This chapter applies to contested cases conducted by all boards in the bureau. Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

ITEM 17. Amend rule 193—7.3(17A,272C) as follows:

193—7.3(17A,272C) ~~Probable~~ Commencement of a contested case and probable cause. ~~In the event the board finds there is probable cause for taking disciplinary action against a licensee, the board shall order a~~ A contested case ~~hearing~~ in a disciplinary proceeding is commenced by the filing and service of a statement of charges and notice of hearing. A contested case in a nondisciplinary proceeding is commenced by the filing and service of a notice of hearing. A contested case may only be commenced by the board upon a finding of probable cause to do so by a quorum of the board.

ITEM 18. Amend subrule 7.6(1) as follows:

7.6(1) *Contents of notice of hearing.* Unless the hearing is waived, all contested cases shall commence with the service of a notice of hearing fixing the time and place for hearing. The notice, including any incorporated or attached statement of charges, shall contain those items specified in Iowa Code section 17A.12(2) and, if applicable, Iowa Code section 17A.18(3), and the following:

1. to 9. No change.

10. A statement requiring or authorizing the respondent to submit an answer of the type specified in rule 193—7.9(17A,272C) within 20 days after service of the notice of hearing.

11. No change.

12. Information on who to contact if, because of a disability, auxiliary aids or services are needed for a party to participate in the matter.

13. If applicable, the date, time, and manner of conduct of a prehearing conference under rule 193—7.21(17A,272C).

14. The mailing address and e-mail address for filing with the board and notice of the option of e-mail service as provided in subrule 7.17(6).

ITEM 19. Amend rule 193—7.7(13,272C) as follows:

193—7.7(13,272C) Legal representation.

7.7(1) Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

7.7(2) The respondent or applicant may be represented by an attorney. The attorney shall file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14. Business entities may be represented in a contested case by a nonlawyer partner, officer, director, shareholder, member, director, or other owner or manager.

ITEM 20. Amend subrule 7.9(1), introductory paragraph, as follows:

7.9(1) ~~The~~ Unless otherwise provided in the notice of hearing, the answer shall contain the following information:

ITEM 21. Amend rule 193—7.13(17A,272C) as follows:

193—7.13(17A,272C) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone or other electronic means. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone or other electronic means. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

ITEM 22. Amend subrule 7.14(2) as follows:

7.14(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. A person voluntarily appearing before the board or a committee of the board waives any objection to a board member or board staff both participating in the appearance and later participating as a decision maker or aid to the decision maker in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 7.28(9).

ITEM 23. Amend subrule 7.14(4) as follows:

7.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code ~~section~~ sections

17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

ITEM 24. Amend subrule 7.14(6) as follows:

7.14(6) A motion to disqualify a board member or other person shall first be directed to the affected board member or other person for determination. If the board member or other person determines that disqualification is appropriate, the board member or other person shall withdraw from further participation in the case. If the board member or other person determines that withdrawal is not required, the presiding officer shall promptly review that determination, provided that, if the person at issue is an administrative law judge, the review shall be by the board. If the presiding officer determines that disqualification is appropriate, the ~~presiding officer~~ board member or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 193—7.31(17A), if applicable, and seek a stay under rule 193—7.34(17A).

ITEM 25. Amend subrule 7.17(4) as follows:

7.17(4) *Filing—how and when made.* Except where otherwise provided by law, a document is deemed filed at the time it is received by the board. Parties may file documents with the board by hand delivery or mail or by electronic transmission to the e-mail address specified in the notice of hearing. If a document required to be filed within a prescribed period or on or before a particular date is received by the board after such period or such date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the board. The board will not provide a mailed file-stamped copy of documents filed by e-mail or other approved electronic means.

ITEM 26. Amend subrule 7.17(6) as follows:

7.17(6) *Electronic service.* The presiding officer may by order or a party or a party's attorney may by consent permit service ~~or filing~~ of particular documents by ~~facsimile,~~ e-mail or similar electronic means, unless precluded by a provision of law. In the absence of such an order or consent, ~~facsimile or~~ electronic transmission shall not satisfy service ~~or filing~~ requirements, but may be used to supplement service ~~or filing~~ when rapid notice is desirable. Consent to electronic service by a party or a party's attorney shall be in writing, may be accomplished through electronic transmission to the board and other parties, and shall specify the e-mail address for such service. Service by electronic transmission is complete upon transmission unless the board or party making service learns that the attempted service did not reach the party to be served.

ITEM 27. Amend rule 193—7.18(17A) as follows:

193—7.18(17A) Discovery.

~~**7.18(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.~~

~~**7.18(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 7.18(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.~~

~~**7.18(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.~~

7.18(1) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

7.18(2) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written

questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in a contested case proceeding.

7.18(3) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to a contested case proceeding. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceeding or impose an undue hardship. As a practical matter, the purpose of the disclosure requirements and discovery conference is served by the board's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 193—7.22(17A).

7.18(4) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

7.18(5) Discovery shall be served on all parties to the contested case proceeding, but shall not be filed with the board.

7.18(6) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

7.18(7) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

ITEM 28. Amend rule 193—7.19(17A,272C) as follows:

193—7.19(17A,272C) Issuance of subpoenas in a contested case.

7.19(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the executive officer or designee upon a written request that complies with this rule. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

a. to *d.* No change.

7.19(2) A request for a subpoena shall include the following information, as applicable:

a. The name, address, e-mail address, and telephone number of the person requesting the subpoena;

b. to *g.* No change.

7.19(3) No change.

7.19(4) The executive officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

7.19(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then file a motion asking the presiding officer to issue an order compelling production.

7.19(6) Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

7.19(7) No change.

7.19(8) If the person contesting the subpoena is not ~~the person under investigation~~ a party to the contested case proceeding, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is ~~the person under investigation~~ a party to the contested case proceeding, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

ITEM 29. Amend subrules 7.20(4) and 7.20(5) as follows:

7.20(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ~~five~~ seven days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

7.20(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure ~~237~~ 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

ITEM 30. Amend rule 193—7.21(17A,272C) as follows:

193—7.21(17A,272C) Prehearing conference and disclosures.

7.21(1) No change.

7.21(2) Each party shall ~~bring the following~~ disclose at or prior to the prehearing conference:

a. to *c.* No change.

7.21(3) No change.

7.21(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference. Unless otherwise provided in the order setting a prehearing conference, the prehearing conference shall be conducted by an administrative law judge.

7.21(5) The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 7.26(4) no later than three business days in advance of hearing, or as ordered by the presiding officer at the prehearing conference.

ITEM 31. Amend rule 193—7.25(17A,272C) as follows:

193—7.25(17A,272C) Hearings. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or other evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions. Parties have the right to participate or to be represented in all hearings. Any party may be represented by an attorney at the party's expense.

7.25(1) No change.

7.25(2) *Public hearing.* The hearing shall be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

7.25(3) to **7.25(7)** No change.

7.25(8) *Witness representation.* Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

7.25(9) *Depositions.* Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

7.25(10) *Witness fees.* The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

ITEM 32. Amend subrule 7.26(4) as follows:

7.26(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies should also be furnished to members of the board. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

ITEM 33. Amend subrule 7.27(6) as follows:

7.27(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure ~~236~~ 1.977.

ITEM 34. Amend subrule 7.30(1) as follows:

7.30(1) *Final decision.* When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive officer. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to the licensee's or other respondent's last-known U.S. Postal Service address or may be served as in the manner of original notices. A party's attorney may waive formal service and accept service in writing for the party. Copies shall be mailed by interoffice mail or first-class mail to the prosecutor and counsel of record.

ITEM 35. Amend subrule 7.32(2) as follows:

7.32(2) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision. Such an appeal is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

ITEM 36. Amend paragraph **7.34(1)"b"** as follows:

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons

justifying a stay or other temporary remedy. Seeking a stay from the board is required to exhaust administrative remedies before a stay may be sought from the district court.

ITEM 37. Amend rule 193—7.38(17A,272C) as follows:

193—7.38(17A,272C) Reinstatement.

7.38(1) The term "reinstatement" as used in this rule shall include both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license. Reinstating a license to active status under this rule is a two-step process:

a. First, the board must determine whether the suspended, revoked, or surrendered license may be reinstated under the terms of the order revoking or suspending the license or accepting the surrender of the license and under the two-part test described in subrule 7.38(5).

b. Second, if the board grants the application to reinstate, the licensee must complete and submit an application to demonstrate satisfaction of all administrative preconditions for reinstatement of the license to active status, including verification of completion of all continuing education and payment of reinstatement and renewal fees.

7.38(2) and **7.38(3)** No change.

7.38(4) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. In addition, the board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

7.38(5) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with subrule 7.30(3) must also be established. The burden of proof to establish such facts shall be on the respondent. An order of reinstatement may include such conditions as the board deems reasonable under the circumstances. The board may grant the application without hearing, but may not deny the application in whole or part without setting the matter for hearing or providing the applicant the opportunity to request a contested case hearing if aggrieved by a term of the reinstatement order.

7.38(6) No change.

ITEM 38. Rescind and reserve rules **193—7.43(252J)** to **193—7.45(272D)**.

ITEM 39. Amend **193—Chapter 8** as follows:

CHAPTER 8
DENIAL OF ISSUANCE OR RENEWAL, SUSPENSION, OR REVOCATION OF LICENSE FOR NONPAYMENT OF CHILD SUPPORT, STUDENT LOAN, OR STATE DEBT

193—8.1(252J) Nonpayment of child support. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

8.1(1) No change.

8.1(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee or applicant.

8.1(3) and **8.1(4)** No change.

8.1(5) All board fees for applications, license renewal or reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 252J.

8.1(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.1(7) The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, ~~or~~ renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

193—8.2(261) Nonpayment of student loan. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code ~~chapter 261~~ section 261.126. In addition to those procedures, this rule shall apply.

8.2(1) No change.

8.2(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

8.2(3) and **8.2(4)** No change.

8.2(5) All board fees required for application, license renewal or license reinstatement must be paid by applicants or licensees, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 261.

8.2(6) In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.2(7) The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the applicant or licensee when the license is issued, ~~or~~ renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

193—8.3(272D) Nonpayment of state debt. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

8.3(1) No change.

8.3(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee or applicant.

8.3(3) and **8.3(4)** No change.

8.3(5) All board fees required for ~~applications~~ application, license renewal or reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 272D.

8.3(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.3(7) The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, ~~or~~ renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 252J and 272D and Iowa Code sections 261.126 and 261.127.

ITEM 40. Amend rule 193—9.1(17A) as follows:

193—9.1(17A) Petition for rule making. Any person, board or other state agency may file a petition for rule making with the board.

A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

(NAME OF EXAMINING BOARD)

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. to 4. No change.

5. The names, ~~and~~ addresses, and e-mail addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

6. No change.

9.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, e-mail address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

9.1(2) No change.

ITEM 41. Amend subrule 9.4(2) as follows:

9.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Service of the written notice shall be sent to the e-mail address provided by the petitioner unless the petitioner specifically requests a mailed copy.

Petitioner shall be deemed notified of the denial or granting of the petition on the date when the board ~~mails~~ e-mails or delivers the required notification to petitioner.

ITEM 42. Amend rule 193—10.1(17A) as follows:

193—10.1(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

(NAME OF EXAMINING BOARD)

Petition by (Name of Petitioner) for Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. to 6. No change.

7. The names, ~~and~~ addresses, and e-mail addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.

8. Any request by petitioner for a meeting provided for by 193—10.7(17A). The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, e-mail address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

ITEM 43. Amend rule 193—10.2(17A) as follows:

193—10.2(17A) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 193—10.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons. Notice may be provided by e-mail or similar electronic means.

ITEM 44. Amend subrule 10.3(3) as follows:

10.3(3) A petition for intervention shall be filed at the board's offices. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

(NAME OF EXAMINING BOARD)

Petition by (Name of Original Petitioner) for Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. to 4. No change.

5. The names, ~~and~~ addresses, and e-mail addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

6. No change.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, e-mail address, and telephone number of the intervenor and

intervenor's representative, and a statement indicating the person to whom communications should be directed.

ITEM 45. Amend subrule 10.8(1) as follows:

10.8(1) Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Code section 17A.9. Within 30 days after receipt of a petition for a declaratory order, an agency shall, in writing, do one of the following:

a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

b. Set the matter for specified proceedings;

c. Agree to issue a declaratory order by a specified time; or

d. Decline to issue a declaratory order, stating the reasons for its action.

ITEM 46. Amend rule 193—10.11(17A) as follows:

193—10.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be ~~mailed~~ e-mailed promptly to the original petitioner and all intervenors unless the petitioner specifically requests a mailed copy.

ITEM 47. Amend subrule 13.3(1) as follows:

13.3(1) *Location of record.* A request for access to a record should be directed to the board which owns or is in physical possession of the record. The request shall be directed to the appropriate board at ~~1920 S.E. Hulsizer, Ankeny, Iowa 50021~~ 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

ITEM 48. Amend subrule 13.3(3) as follows:

13.3(3) *Request for access.* Requests for access to open records may be made in writing, in person, by facsimile, e-mail, or other electronic means~~,~~ or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, e-mail address, and telephone number of the person requesting the information to facilitate the board's response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

ITEM 49. Amend subrule 13.4(3) as follows:

13.4(3) *Notice to subject of record and opportunity to obtain 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, and whose address, e-mail 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.

ITEM 50. Amend subrule 13.5(2) as follows:

13.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, e-mail 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. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

ITEM 51. Amend rule 193—13.6(17A,22) as follows:

193—13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at ~~1920 S.E. Hulsizer, Ankeny, Iowa 50021~~ 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

ITEM 52. Amend subrule 13.8(4) as follows:

13.8(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services, centralized collection unit of the department of revenue for state debt, and college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapter 252J, sections 261.126 and 261.127 and chapter 272D.

ITEM 53. Amend subrule 13.11(1) as follows:

13.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the agency need not release the following records to the subject:

a. to *c.* No change.

d. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding, except those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9).

~~*e.* Confidential personnel records of licensees and examination candidates. (Iowa Code section 22.7(11))~~

~~*f.*~~ *e.* As otherwise authorized by law.

ITEM 54. Amend subrule 13.12(2) as follows:

13.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal related information in confidential personnel records of board staff~~,~~ and board members ~~and licensees~~. (Iowa Code section 22.7(11))

~~*b.* Personal related information in confidential personnel records of applicants for licensure. (Iowa Code section 22.7(11))~~

~~*c.*~~ *b.* All information in complaint and investigation files maintained by the board for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing or those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9). Unlicensed complaint files are open to the public.

~~*d.*~~ *c.* The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is

transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. Unlicensed hearing files are open to the public.

~~e.~~ *d.* Information relating to the examination results other than final score, except for information about the results of an examination which is given to the person who took the examination. (Iowa Code sections 542.17, 542B.32, 543B.52, 544A.27, and 544B.8)

~~f.~~ *e.* Information relating to the contents of an examination for licensure. (Iowa Code sections 542.17, 542B.32, 543B.52, 544A.27, and 544B.8)

~~g.~~ *f.* Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

~~h.~~ *g.* Information or records received from a restricted source and any other information or records made confidential by law, such as academic transcripts or substance abuse treatment information.

~~i.~~ *h.* References for examination or licensure applicants. (Iowa Code section 22.7(18))

~~j.~~ *i.* Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code ~~sections~~ section 22.7, 272C.6(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

~~k.~~ *j.* Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

~~l.~~ *k.* Those portions of agency staff manuals, instructions or other statements issued which set forth the criteria or guidelines to be used by agency staff in auditing, making inspections, or in selecting or handling cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. (Iowa Code sections 17A.2 and 17A.3)

l. E-mail addresses of licensees when solicited for the purpose of mass communication. An e-mail address may be open to the public when given as part of a specific, individual e-mail correspondence.

ITEM 55. Amend rule 193—13.13(17A,22), introductory paragraph, as follows:

193—13.13(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 193—13.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. ~~Most records~~ Records are stored on paper ~~only, but information from paper records may also be stored~~ and in electronic form ~~and some records may also be stored only in electronic form~~. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format. Data regarding licensees is stored in a data processing system that permits the comparison of personally identifiable information in one record system with personally identifiable information in another system. Some information ~~is~~ may also be placed on the ~~board~~ board's Web site or in its newsletter or shared with others to display in databases, national registries, and similar systems. The record systems maintained by the agency are:

ITEM 56. Amend rule 193—13.14(22), introductory paragraph, as follows:

193—13.14(22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 193—13.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in rule 193—13.13(17A,22) may contain information about individuals. ~~All records~~ Records are ~~stored on~~ paper and electronic and may be stored ~~and~~ in automated data processing systems ~~unless otherwise noted~~. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format.

ITEM 57. Amend subrule 13.14(4) as follows:

13.14(4) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to subrule 13.12(2), paragraphs ~~*"e"*~~ *"b"* and ~~*"d."*~~ *"c."* These records may contain information about individuals collected under the authority of Iowa Code sections 542.10, 542B.21, 543B.29, 543D.17, 544A.13, 544B.15, and 544C.9.

ITEM 58. Renumber subrules **13.14(8)** to **13.14(14)** as **13.14(9)** to **13.14(15)**.

ITEM 59. Adopt the following **new** subrule 13.14(8):

13.14(8) Declaratory orders.

ITEM 60. Amend subrule 13.17(2) as follows:

13.17(2) *Home address.* License applicants and licensees are requested to provide both home and business addresses. Both addresses are treated as open records. The boards within the bureau will honor the "safe at home" address issued by any state's program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person's physical location. If a license applicant or licensee has a basis to shield a home address from public disclosure, such as a domestic abuse protective order, written notification should be provided to the board office. Absent a court order, the board may not have a basis under Iowa Code chapter 22 to shield the home address from public disclosure, but the board may refrain from placing the home address on its Web site and may notify the applicant or licensee before the home address is released to the public to provide an opportunity for the applicant or licensee to seek injunction.

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ARC 2744C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Sign Language Interpreters and Transliterators hereby amends Chapter 361, "Licensure of Sign Language Interpreters and Transliterators," and Chapter 362, "Continuing Education for Sign Language Interpreters and Transliterators," Iowa Administrative Code.

These amendments are intended to strengthen the supervision requirements for temporary sign language interpreter and transliterator license holders in response to complaints and concerns received by the Board about the quality of services being provided under the current temporary license regulations, which allow for continuing education in lieu of direct supervision. These amendments clarify the definition of direct supervision of a temporary license holder, revise the requirements for temporary licensure, and revise the continuing education requirements for new licensees and temporary license holders by rescinding subrules 361.2(4) to 361.2(7) and incorporating requirements for temporary licensure into new rule 645—361.3(154E).

Notice of Intended Action was published in the June 22, 2016, Iowa Administrative Bulletin as **ARC 2597C**. A public hearing was held on July 12, 2016, at 8:00 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No public comment was received. These amendments are identical to those published under Notice of Intended Action.

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions accorded under 645—Chapter 18.

These amendments were adopted by the Board on August 15, 2016.

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

These amendments are intended to implement Iowa Code sections 147.3, 147.10, and 147.55, and chapters 154E and 272C.

These amendments will become effective on November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend rule **645—361.1(154E)**, definition of "Direct supervision of a temporary license holder," as follows:

"Direct supervision of a temporary license holder" means ~~board review of a temporary license holder's evidence of professional development and continuing educational training or in-person~~ monitoring of interpreting or transliterating services ~~in the same room as~~ while personally observing the temporary license holder providing those services, as outlined in ~~subrule 361.2(6).~~ paragraphs 361.3(3)*"b"* and *"c."*

ITEM 2. Rescind subrules **361.2(4)** to **361.2(7)**.

ITEM 3. Renumber rule **645—361.3(154E)** as **645—361.4(154E)**.

ITEM 4. Adopt the following **new** rule 645—361.3(154E):

645—361.3(154E) Requirements for temporary license.

361.3(1) An applicant for licensure who has not successfully completed one of the board-approved examinations set forth in paragraph 361.2(1)*"d"* but has complied with all other requirements in paragraphs 361.2(1)*"a"* to *"c"* shall be issued a temporary license to practice interpreting that shall be valid for two years from initial issue date. A temporary license holder may renew a temporary license once for the immediately following two-year period.

361.3(2) An applicant who is issued a temporary license is subject to the same requirements as those required of a licensed interpreter or transliterator set forth in Iowa Code chapters 154E and 147 and 645—Chapters 361 to 363.

361.3(3) A temporary license holder is only authorized to practice if the following direct supervision requirements are fulfilled. A temporary license holder must:

a. Enter into a written agreement with a supervisor in which the temporary license holder and the supervisor agree to the minimum requirements provided in paragraphs 361.3(3)*"b"* and *"c."* The supervisor shall possess a full, unrestricted sign language interpreter and transliterator license. The agreement shall be signed and dated by the temporary license holder and the supervisor; shall include the temporary license holder's and supervisor's names, addresses and contact information; and shall be provided to the board upon request.

b. Have a supervisor observe the temporary license holder in active practice for no fewer than six bimonthly observation sessions per year at events lasting at least 30 minutes each, if the temporary license holder is working alone in providing active interpreter or transliterator services, or at least 60 minutes each, if the temporary license holder is working in a team interpreting situation. At least two of the observation sessions must be in person, and the remainder of the observation sessions may be performed through technology that allows direct observation of the temporary license holder providing active interpreter or transliterator services.

c. Attend at least six bimonthly advisory sessions with the supervisor per year for the purpose of discussing the supervisor's suggestions for the temporary license holder's professional skill development based on the observation sessions. An advisory session may occur immediately following an observation session if the setting is appropriate. At least two of the advisory sessions must be in person and the remainder of the advisory sessions may be performed through technology that allows real-time assessment and feedback. Each advisory session shall involve only the temporary license holder and supervisor.

d. Maintain an event log documenting the date, time, length and setting of each observation session and advisory session and whether the session was performed in person or through other technological means. The temporary license holder shall ensure that the supervisor verifies the occurrence of the observation session or advisory session by placing the temporary license holder's signature on the log

prior to submission to the supervisor. This event log shall be provided to the board upon request and must be submitted with the temporary license holder's renewal application.

e. Ensure that the supervisor attends each of the observation sessions and advisory sessions or reschedules the sessions as necessary to ensure compliance.

f. Comply with the required observation session and advisory session obligations. If for any reason the replacement of a supervisor becomes necessary, the temporary license holder shall be responsible for developing a new written agreement with the new supervisor. A replacement of supervisors shall not excuse noncompliance with observation session and advisory session obligations.

g. Obtain permission from clients as necessary to allow the supervisor to be in attendance during the observation sessions.

361.3(4) As an Iowa-licensed practitioner in accordance with this chapter, a supervisor providing direct supervision of a temporary license holder as provided in subrule 361.3(3) is obligated to report to the board an interpreter or transliterator temporary license holder who is not complying with direct supervision requirements or who is not practicing in compliance with Iowa law and rules including, but not limited to, Iowa Code chapter 154E and 645—Chapters 361 to 363.

ITEM 5. Amend rule 645—362.2(154E,272C) as follows:

645—362.2(154E,272C) Continuing education requirements.

362.2(1) Requirements for permanent licensees. The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each odd-numbered year and ending on June 30 of the next odd-numbered year. Each biennium, each person who is licensed to practice as a sign language interpreter or transliterator in this state shall be required to complete a minimum of 40 hours of continuing education as specified in rule 645—362.3(154E). ~~A licensee who provides proof of a current National Interpreter Certification or current Registry of Interpreters for the Deaf Certification meets continuing education requirements for that biennium renewal cycle.~~

362.2(2) ~~Requirements~~ Exception for new permanent licensees. A person licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of the license. ~~unless the licensee holds a temporary license and has chosen to meet the requirements for temporary licensure specified in 645—subparagraph 361.2(6)*"b"*(2). The~~ Thereafter, the new licensee shall complete ~~a minimum of 40 hours of continuing education during the biennial license period for each subsequent license renewal and~~ the continuing education requirements as set forth in rule 645—362.3(154E). The licensee may use continuing education hours acquired anytime from the initial licensing until the second license renewal to meet the requirements. ~~for the second license renewal period. A licensee who provides proof of a current national interpreter certification issued by an organization recognized by the board (e.g., Registry of Interpreters for the Deaf (RID); National Association of the Deaf (NAD); NAD-RID National Interpreter Certification (NIC)) meets continuing education requirements.~~

362.2(3) NIC or RID Certification. A licensee who provides proof of a current National Interpreter Certification or current Registry of Interpreters for the Deaf Certification meets continuing education requirements for that biennium renewal cycle.

~~**362.2(3)**~~ **362.2(4)** Requirements for temporary license holders. ~~Prior to July 1, 2009, the temporary license holder shall comply with requirements specified in 645—subrule 361.2(6). Beginning July 1, 2009, the temporary license holder shall comply with continuing education requirements at the time of each license renewal including the first renewal of the license. Temporary~~ The biennial continuing education compliance period shall extend for a two-year period beginning on the date of initial licensure. Each biennium, temporary license holders shall be required to obtain 40 hours of continuing education as set forth in ~~subparagraph 362.3(2)*"a"*(2) and paragraph 362.3(2)*"b"* for each subsequent renewal biennium beginning July 1, 2009~~ rule 645—362.3(154E). The temporary license holder may use only continuing education hours acquired during the current biennial license period for renewal. Proof of continuing education hours acquired shall be submitted with a temporary license renewal application.

~~**362.2(4)**~~ **362.2(5)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

~~**362.2(5)**~~ **362.2(6)** No hours of continuing education shall be carried over into the next biennium.
~~**362.2(6)**~~ **362.2(7)** It is the responsibility of each licensee to finance the cost of continuing education.

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ARC 2765C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.181 as amended by 2016 Iowa Acts, House File 2460, sections 57 and 58, the Department of Public Health hereby adopts new Chapter 107, "Board-Certified Behavior Analyst and Board-Certified Assistant Behavior Analyst (BCBA/BCaBA) Grants Program," Iowa Administrative Code.

The new chapter establishes rules to implement the board-certified behavior analyst and board-certified assistant behavior analyst grants program. The program provides grants to Iowa resident and nonresident applicants who are enrolled in a program to be eligible for board certification as a behavior analyst or assistant behavior analyst. The purpose of the program is to increase access to certified behavior analyst and certified behavior assistant analyst professionals. These rules were written in cooperation with the Department of Education and the Department of Human Services' Autism Support Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2460C** on March 16, 2016. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2621C** on July 20, 2016. The department received written comments, and a public hearing was held on August 17, 2016, and was attended by five members of the public.

Comments included discussion of the requirement of award recipients to provide supervision and discussion of the scope of practice violations for the profession. The Department will address these concerns in the Request for Proposal (RFP) application process to ensure that supervision requirements are met to the extent allowable by certification rules and employment site policies and procedures. Discussion included the quality of educational programming for online programs versus programs offered at a physical location. The Department will address this issue in the RFP application process by providing preference points for programs with a physical location. Additional comments were technical in nature. The Department changed incorrect references to a national Behavior Analyst Certification Board to the international Behavior Analyst Certification Board in the definitions of "board-certified assistant behavior analyst" and "board-certified behavior analyst." Other than these technical corrections, the rules are identical to those published under Amended Notice of Intended Action.

The Department of Public Health adopted these rules on September 14, 2016.

After analysis and review of this rule making, it is projected that these rules will positively impact employment opportunities for board-certified behavior analysts and board-certified assistant behavior analysts in Iowa and increase access for Iowans to these health care services. The Department of Education and the Department of Human Services' Autism Support Program have determined that there are insufficient numbers of board-certified behavior analysts and board-certified assistant behavior analysts to provide services to clients of the Autism Support Program and to the public. It is assumed that the establishment of this new program will provide health care agencies that are recruiting these practitioners opportunities to recruit behavior analysts after the analysts have completed their training and are certified. No formal estimates on the number of jobs are available.

These rules are intended to implement Iowa Code section 135.181 as amended by 2016 Iowa Acts, House File 2460, sections 57 and 58.

These rules will become effective November 16, 2016.

The following amendment is adopted.

Adopt the following **new** 641—Chapter 107:

CHAPTER 107
BOARD-CERTIFIED BEHAVIOR ANALYST AND BOARD-CERTIFIED ASSISTANT BEHAVIOR ANALYST (BCBA/BCaBA) GRANTS PROGRAM

641—107.1(135) Scope and purpose. The board-certified behavior analyst and board-certified assistant behavior analyst (BCBA/BCaBA) grants program is established to increase access for Iowans to applied behavior analysis services by providing grants to Iowa resident and nonresident applicants who have been accepted for admission or are attending a university, a community college, or an accredited private institution, within or outside the state of Iowa; are enrolled in a program, offered at a physical location or online, that is accredited and meets coursework requirements to prepare the applicant to be eligible for board certification as a behavior analyst or assistant behavior analyst; and demonstrate financial need.

641—107.2(135) Definitions. For the purposes of these rules, the following definitions shall apply:

"Board-certified assistant behavior analyst" or *"BCaBA"* means a person who has a bachelor's degree from an accredited university, has completed approved coursework as defined by the international Behavior Analyst Certification Board, has completed a defined period of supervised practical experience, and has passed the BCaBA examination.

"Board-certified behavior analyst" or *"BCBA"* means a person who has an acceptable graduate degree from an accredited university as defined by the international Behavior Analyst Certification Board, has completed acceptable graduate coursework in behavior analysis, has completed a defined period of supervised practical experience, and has passed the BCBA examination.

"Department" means the Iowa department of public health.

"Director" means the director of the Iowa department of public health.

"Full-time enrollment" means the applicant is enrolled in a program to be eligible for board certification as a behavior analyst or assistant behavior analyst with the appropriate number of semester credit hours as defined by the educational institution.

"Nonresident" means a person who is not a resident.

"Part-time enrollment" means the applicant is enrolled in a program to be eligible for board certification as a behavior analyst or assistant behavior analyst with the appropriate number of semester credit hours as defined by the educational institution.

"Resident" means a natural person who physically resides in Iowa as the person's principal and primary residence and who establishes evidence of such residency by providing the department with one of the following:

1. A valid Iowa driver's license,
2. A valid Iowa nonoperator's identification card,
3. A valid Iowa voter registration card,
4. A current Iowa vehicle registration certificate,
5. A utility bill,
6. A statement from a financial institution,
7. A residential lease agreement,
8. A check or pay stub from an employer,
9. A child's school or child care enrollment documents,
10. Valid documentation establishing a filing for homestead or military tax exemption on property located in Iowa, or
11. Other valid documentation as deemed acceptable by the department to establish residency.

641—107.3(135) Eligibility criteria. To be eligible for a grant, the applicant shall:

107.3(1) Be an Iowa resident or nonresident.

107.3(2) Be accepted for admission to or be attending a university, a community college, or an accredited private institution, within or outside the state of Iowa, be enrolled in a program, offered at a physical location or online, that is accredited and meets coursework requirements to prepare the applicant to be eligible for board certification as a behavior analyst or assistant behavior analyst, and demonstrate financial need.

107.3(3) Have on file with the college student aid commission a current Free Application for Federal Student Aid (FAFSA) and Iowa Financial Aid Application or similar financial aid documentation from another state and submit documentation of financial need as described in the department's request for proposal process.

107.3(4) Agree to practice in the state of Iowa for a period of time, not to exceed four years, as specified in the contract entered into between the applicant and the department at the time the grant is awarded.

107.3(5) Agree, as specified in the contract between the applicant and the department at the time the grant is awarded, that during the contract period, the applicant will assist in supervising an individual working toward board certification as a behavior analyst or assistant behavior analyst or to consult with schools and service providers that provide services and supports to individuals with autism.

641—107.4(135) Priority in grant awards. Priority in the awarding of a grant shall be given to resident applicants.

641—107.5(135) Amount of a grant. The department shall award funds based upon the amount set aside in the special fund, as identified in Iowa Code section 135.181 as amended by 2016 Iowa Acts, House File 2460, sections 57 and 58. Moneys appropriated to, and all other moneys specified for deposit in, the fund shall be dedicated to the board-certified behavior analyst and board-certified assistant behavior analyst (BCBA/BCaBA) grants program as established in Iowa Code section 135.181 as amended by 2016 Iowa Acts, House File 2460, sections 57 and 58. These rules shall be implemented only to the extent that funding is available. The amount of funding awarded to each applicant shall be based on the applicant's enrollment status (full-time enrollment or part-time enrollment), the number of applicants, and the total amount of available funds. The total amount of funds awarded to an individual applicant shall not exceed 50 percent of the total costs attributable to program tuition and fees, annually. Awarded grant funds will be payable to the student and prorated on the number of semesters or other terms of study to complete the program.

641—107.6(135) Use of funds. Funds awarded may be used to offset the costs attributable to tuition and fees for the accredited behavior analyst or assistant behavior analyst program.

641—107.7(135) Review process.

107.7(1) An applicant shall complete and submit an application to the program in the manner specified by the department. An applicant, if awarded a grant, shall enter into a contract with the department for up to a four-year period. The department shall follow requirements for competitive selection contained in 641—Chapter 176 in awarding these funds.

107.7(2) The department shall establish an application process for applicants eligible to receive funding. The application review process and review criteria for preference in awarding the grants shall be described in a request for proposals.

107.7(3) An applicant may appeal the denial of a properly submitted grant application. Appeals shall be governed by rule 641—176.8(135).

641—107.8(135) Reporting. The department shall submit a report to the governor and the general assembly by January 1, annually. The report shall include the number of applications received for the immediately preceding fiscal year; the number of applications approved; the total amount of funding

awarded in grants in the immediately preceding fiscal year; the cost of administering the program in the immediately preceding fiscal year; and recommendations for any changes to the program.

These rules are intended to implement Iowa Code section 135.181 as amended by 2016 Iowa Acts, House File 2460, sections 57 and 58.

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PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 142C.15 and 17A.3, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 122, "Anatomical Gift Public Awareness and Transplantation Fund," Iowa Administrative Code.

The Department does not currently have rules established for the anatomical gift public awareness and transplantation fund. The rules outline the funding requirements for state agencies or nonprofit legal entities conducting anatomical gift public awareness projects. The rules outline the funding requirements for hospitals conducting anatomical gift public awareness projects and improving referral protocols. The rules also outline funding requirements for transplant recipients, donors, and caretakers for the reimbursement of out-of-pocket expenses not covered by insurance.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2634C** on July 20, 2016. Public comments received were supportive of the adoption of the rules and not specific to any item in particular. After receiving comments at the Administrative Rules Review Committee meeting on August 5, 2016, the Department made one change to the definition of "human organ" to include corneas, bones, tendons, heart valves, blood vessels, veins, and skin.

The Department of Public Health adopted these rules on September 14, 2016.

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

These rules are intended to implement Iowa Code section 142C.15.

These rules will become effective November 16, 2016.

The following rules are adopted.

Adopt the following **new** 641—Chapter 122:

CHAPTER 122
ANATOMICAL GIFT PUBLIC AWARENESS AND TRANSPLANTATION FUND

641—122.1(142C) Scope and purpose. The anatomical gift public awareness and transplantation fund was established by the legislature as a separate fund consisting of monetary contributions collected by county treasurers during the vehicle registration process and other contributions to the fund. Not more than 20 percent of the moneys in the fund annually may be expended in the form of grants to state agencies or to nonprofit legal entities. Not more than 30 percent of the moneys in the fund annually may be expended in the form of grants to hospitals for reimbursement for costs directly related to the development of in-hospital anatomical gift public awareness projects, anatomical gift referral protocols, and associated administrative expenses. Any unobligated moneys in the fund annually may be expended in the form of grants to transplant recipients, transplant candidates, living organ donors, or to legal representatives on behalf of transplant recipients, transplant candidates, or living organ donors for the reimbursement of out-of-pocket expenses not covered by insurance. These rules shall be implemented only to the extent that funding is available.

641—122.2(142C) Definitions. For purposes of this chapter, the following definitions apply:

"Anatomical gift" means a human organ donated by a living or deceased person for the purpose of transplantation.

"Caretaker" means a person who provides care, protection, or services to a transplant recipient or living organ donor.

"Department" means the Iowa department of public health.

"Donor" means an individual whose body or body part is the subject of an anatomical gift.

"Human organ" means an eye, heart, lung, liver, pancreas, kidney, cornea, bone, tendon, heart valve, blood vessel, vein, or skin.

"Recipient" means the person receiving a human organ via transplant surgery.

"Resident" means a natural person who physically resides in Iowa as the person's principal and primary residence and who establishes evidence of such residency by providing the department with one of the following:

1. A valid Iowa driver's license,
2. A valid Iowa nonoperator's identification card,
3. A valid Iowa voter registration card,
4. A current Iowa vehicle registration certificate,
5. A utility bill,
6. A statement from a financial institution,
7. A residential lease agreement,
8. A check or pay stub from an employer,
9. A child's school or child care enrollment documents,
10. Valid documentation establishing a filing for homestead or military tax exemption on property located in Iowa, or
11. Other valid documentation as deemed acceptable by the department to establish residency.

"Transplantation" means surgically moving a human organ from an organ donor to a recipient.

"Transplant social worker" means the hospital social worker assisting the organ donor or recipient.

641—122.3(142C) State agencies or nonprofit legal entities. Funding is available for state of Iowa agencies or nonprofit legal entities to conduct anatomical gift public awareness projects.

122.3(1) *Eligibility criteria.* To be eligible for a grant, the applicant shall be a state agency or nonprofit legal entity which, through a competitive bid process, submits a plan for an anatomical gift public awareness project.

122.3(2) *Amount of grant.* The department may offer a grant opportunity to state agencies and nonprofit entities through a competitive bid process. The total amount of grant funds awarded to an applicant shall be based on the number of applicants and the availability of funds. Awarded grant funds will be made payable to the applicant.

122.3(3) *Review process.*

a. An applicant shall make an application to the program in the manner specified by the department. The department shall follow the requirements for competitive selection contained in 641—Chapter 176 in awarding these funds.

b. The department shall establish a request for bids and application process for applicants eligible to receive funding. The application review process and review criteria for preference in awarding the grants shall be described in the request for bids.

c. An applicant may appeal the denial of a properly submitted grant application. Appeals shall be governed by rule 641—176.8(135,17A).

641—122.4(142C) Hospitals. Funding is available to hospitals for reimbursement for costs directly related to the development of in-hospital anatomical gift public awareness projects, anatomical gift referral protocols, and associated administrative expenses.

122.4(1) *Eligibility criteria.* To be eligible for a grant, the applicant shall be a hospital physically located in Iowa which, through a competitive bid process, submits a plan for an anatomical gift public awareness project or an implementation or improvement of referral protocol.

122.4(2) *Amount of grant.* The department may offer a grant opportunity to Iowa hospitals through a competitive bid process. The total amount of grant funds awarded to an applicant shall be based on the number of applicants and the availability of funds. Awarded grant funds will be made payable to the applicant.

122.4(3) *Review process.*

a. An applicant shall make an application to the program in the manner specified by the department. The department shall follow the requirements for competitive selection contained in 641—Chapter 176 in awarding these funds.

b. The department shall establish a request for bids and application process for applicants eligible to receive funding. The application review process and review criteria for preference in awarding the grants shall be described in the request for bids.

c. An applicant may appeal the denial of a properly submitted grant application. Appeals shall be governed by rule 641—176.8(135,17A).

641—122.5(142C) Transplant recipients and donors. Funding is available to transplant recipients, donors, and a single caretaker for the reimbursement of out-of-pocket expenses not covered by insurance.

122.5(1) *Eligibility criteria.* To be eligible for a grant, an applicant (or the applicant's legal representative) must be a U.S. citizen and a resident of the state of Iowa or be a living organ donor to a resident of Iowa who:

a. Has undergone a transplant surgery, or

b. Is in need of dental clearance in order to be placed on a transplant list as maintained by the United Network for Organ Sharing (UNOS), or

c. Has been tested as a potential donor and been rejected.

122.5(2) *Grant application.* The department shall make the grant application form available on the department's Web site. Awards shall be made on a reimbursement basis to Iowa resident donors and donor recipients. The total amount of grant funds awarded to an applicant shall be based on the number of applicants and the availability of funds. Awarded grant funds will be made payable to the applicant.

122.5(3) *Application process.*

a. The applicant shall complete the application, as provided by the department, in its entirety and forward the application to the applicant's transplant social worker for review, comment and approval.

b. The transplant social worker shall review the information and documentation provided by the applicant and attest to their accuracy.

c. The completed application shall be mailed to the address provided on the application. Applications that are incomplete or illegible shall be returned via U.S. mail to the applicant or to the attention of transplant social workers for completion. Original receipts shall be submitted with the application.

d. Grant application documentation shall be retained by the applicant and the transplant social workers for a minimum of five years.

122.5(4) *Eligible expenses.* The department may reimburse applicants for the following expenses. A more comprehensive list of items eligible for reimbursement is located in the Guidelines - Category 3 document at http://idph.iowa.gov/anatomical-gift.

a. Dental expenses required for placement of the recipient on a transplant list and expenses directly related to the transplant, to include:

(1) Initial routine exam.

(2) Complete cleaning.

(3) Full mouth X-rays.

(4) Up to $1,500 of remaining expenses.

b. Prescription medication (maximum of $2,000).

c. Lodging (rate determined by the department).

d. Airfare (coach) for donor and caretaker for a maximum of two people at a rate determined by the department.

e. Expenses immediately preceding and immediately following transplant surgery until the recipient and living organ donor are medically released by the hospital.

f. Disposable, short-term cleaning and daily life items, such as paper towels, paper plates, tin foil, toilet paper, etc.

g. Rehospitalization.

h. Mileage at current rate of state reimbursement.

i. Child care when both parents undergo surgery related to a single organ transplant.

122.5(5) *Ineligible expenses.* The department may not reimburse for the following.

a. Lost wages.

b. Alcohol or nonfood items, such as gum, breath mints, candy, etc.

c. Delivery fees and charges, Internet access, or garage rental.

d. In-domicile meals, food, or lodging.

e. Medication not directly associated with the transplant or medication taken prior to the transplant.

f. Medication and supplies available over the counter, such as blood pressure cuffs, gauze, bandages, scales, support hose, etc.

g. Credit card fees, check processing fees, and nonrefundable security deposits.

h. Lodging and meals for visitors.

i. Dentures.

j. Nondisposable or long-term cleaning and daily life expenses, such as vacuum, broom, towels, bedding, etc.

k. Personal items, such as shampoo, lotion, toothbrush, toothpaste, personal hygiene items, or clothing, etc.

l. Labels, stamps, envelopes, notebooks, etc.

m. Follow-up visit meals, lodging, etc.

n. Expenses covered by primary, secondary, or tertiary insurance.

122.5(6) *Review process.*

a. The department shall review grant applications and supporting documentation on a first-come, first-served basis.

b. Grant reimbursement limits and eligibility shall be determined by the department.

c. Grant applications and payments are not considered public records pursuant to Iowa Code section 22.7(2).

These rules are intended to implement Iowa Code section 142C.15.

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ARC 2767C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 131, "Emergency Medical Services—Provider Education/Training/Certification," and Chapter 132, "Emergency Medical Services—Service Program Authorization," Iowa Administrative Code.

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical providers. The rules in Chapter 132 describe the standards for the authorization of EMS services. These amendments update the reference to the Iowa Emergency Medical Care Provider Scope of Practice and to the Critical Care Paramedic (CCP) Curriculum to the most recent editions, June 2016 and January 2016, respectively. The updated editions reflect current medical practice and

core knowledge necessary for paramedics performing enhanced procedures for critical patients. The scope of practice document also removes the EMT-Intermediate and EMT-Ambulance provider levels, which are no longer certification levels in the State of Iowa. Provisions for administration of intranasal naloxone for all provider levels are incorporated in the updated scope of practice document to comply with 2016 Iowa Acts, Senate File 2218.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2628C** on July 20, 2016. No public comment was received. These amendments are identical to those published under Notice of Intended Action.

The Department of Public Health adopted these amendments on September 14, 2016.

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

These amendments are intended to implement Iowa Code chapter 147A.

These amendments will become effective November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **131.3(3)"b"** as follows:

b. Scope of Practice for Iowa EMS Providers (~~April 2015~~ June 2016) is hereby incorporated and adopted by reference for emergency medical care providers. For any differences that may occur between the Scope of Practice adopted by reference and these administrative rules, the administrative rules shall prevail.

ITEM 2. Amend paragraph **131.5(1)"c"** as follows:

c. A training program shall use the Iowa CCP curriculum (~~November 2001~~ January 2016) for courses leading to the CCP endorsement.

ITEM 3. Amend paragraph **132.2(4)"b"** as follows:

b. Scope of Practice for Iowa EMS Providers (~~April 2015~~ June 2016) is hereby incorporated and adopted by reference for emergency medical care providers. For any differences that may occur between the Scope of Practice adopted by reference and these administrative rules, the administrative rules shall prevail.

[Filed 9/22/16, effective 11/16/16]
[Published 10/12/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2768C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 423.42, the Department of Revenue hereby amends Chapter 15, "Determination of a Sale and Sale Price," Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," and Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

These amendments are necessary to reflect the enactment of 2016 Iowa Acts, House File 2433. House File 2433 modifies the exemptions contained in Iowa Code section 423.3(47) by exempting supplies and by defining replacement parts and supplies. The amendments incorporate these changes into new rules that implement Iowa Code section 423.3(47). The new rules are intended to modernize and simplify the administration of the exemptions under Iowa Code section 423.3(47). The amendments also update terminology and cross references used in existing rules.

Notice of Intended Action was published in IAB Vol. XXXIV, No. 2, p. 70, July 20, 2016, as **ARC 2636C**. The Department allowed public comments until September 22, 2016. The Department received three sets of comments from organizations representing businesses in Iowa. In response to the comments received, the Department has made the changes listed below:

- Paragraph 230.14(2)"c" has been revised to explain that tables on which property is assembled on an assembly line may be exempt equipment when the tables are used for an exempt purpose.
- Paragraph 230.14(2)"h" has been revised to include water used for cooling as a potentially exempt item when the cooling water is used for an exempt purpose.
- Subrule 230.14(4) has been revised to clarify a claimant's responsibility to keep records in order to qualify for exemption under these rules.
- Paragraph 230.15(4)"b" has been revised to explain that self-produced patterns may be exempt supplies.
- Subrule 230.16(3) has been revised to clarify that a cooling or heating system may qualify as exempt machinery used to maintain the environmental conditions necessary for other machinery and equipment directly and primarily used in processing by a manufacturer.
- An additional example of exempt prototype materials directly and primarily used in research and development of new products has been added to rule 701—230.17(423).

In addition, Item 12 contains a nonsubstantive grammatical change.

These amendments are otherwise identical to those published under Notice.

After analysis and review of this rule making, the Department finds that the changes in the amendments are likely to have a positive impact on jobs by exempting supplies. The Department estimates that, between fiscal years 2017 and 2021, manufacturers will reduce their total state and local sales and use tax burden by $29.2 million to $34.8 million annually under the amendments. Reducing the tax burden on business inputs for manufacturers is likely to have a positive impact on jobs.

These amendments are intended to implement Iowa Code section 423.3(47) as amended by 2016 Iowa Acts, House File 2433, and section 423.3(48).

These amendments will become effective on November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **15.3(3)"a,"** definition of "Fuel consumed in processing," as follows:

"Fuel consumed in processing" includes fuel used in grain drying~~,~~ or providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in implements of husbandry engaged in agricultural production, as well as fuel used in "processing" as defined in rules 701—18.29(422,423), ~~and~~ 701—18.58(422,423), and 701—230.15(423). See rule 701—17.2(422) for a detailed description of "fuel used in processing." See rule 701—17.3(422,423) for extensive discussion regarding electricity and steam used in processing.

ITEM 2. Amend subrule 18.29(7) as follows:

18.29(7) *Other department rules concerned with processing.* Various sections of the Iowa Code set out activities ~~which~~ that are defined by statute to be "processing". The rules interpreting these statutes for the purposes of sales and use tax law are the following:

a. 701—15.3(422,423) ~~Certificates of resale, processing, and fuel used in processing~~ Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

b. 701—17.2(422) Fuel used in processing—when exempt.

c. 701—17.3(422,423) ~~Electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax~~ Processing exemptions.

d. 701—17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), 17.9(6), and 17.9(7) for processing exemptions.

e. 701—17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.

f. 701—18.3(422,423) Chemical compounds used to treat water.

g. 701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.

h. 701—18.58(422,423) Sales or rentals of machinery, equipment, and computers and sales of fuel and electricity to manufacturers and sales or rentals of computers to commercial enterprises for periods on and after July 1, 1997, but before July 1, 2016.

i. 701—26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.

j. 701—28.2(423) Processing of property defined.

k. 701—33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.

l. 701—33.7(423) Property used to manufacture certain vehicles to be leased.

m. For property sold on or after July 1, 2016, computers, machinery, equipment, replacement parts, and supplies used for an exempt purpose under Iowa Code section 423.3(47). See rules 701—230.14(423) to 701—230.22(423).

ITEM 3. Amend rule 701—18.58(422,423), introductory paragraph, as follows:

701—18.58(422,423) Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997, but before July 1, 2016. The sale or rental of machinery, equipment, or computers used by a manufacturer in processing; the sale or rental of a computer used in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise; and the sale or rental of various other types of tangible personal property are, under certain circumstances, exempt from tax as of July 1, 1997, but before July 1, 2016. For sales that occur on or after July 1, 2016, see rules 701—230.14(423) to 701—230.22(423).

ITEM 4. Amend rule 701—230.5(423) as follows:

701—230.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases ~~which~~ that are similar to argon. An "inert gas" is any gas ~~which~~ that is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases ~~which~~ that are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for use in "processing," as those terms are defined in ~~referenced 701—subrule 18.58(1)~~ subrules 230.15(3) and 230.15(4).

This rule is intended to implement Iowa Code section 423.3(51).

ITEM 5. Adopt the following **new** rule 701—230.14(423):

701—230.14(423) Exemption for the sale of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies used for certain manufacturing purposes if the sale occurs on or after July 1, 2016. Rules 701—230.14(423) to 701—230.20(423) exempt the sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies when used in an exempt manufacturing purpose. Rule 701—230.21(423) exempts the purchase of fuel used in such computers, machinery, and equipment. Rule 701—230.22(423) exempts the service of designing or installing such machinery and equipment. Rules 701—230.14(423) to 701—230.22(423) apply to sales of such products occurring on or after July 1, 2016. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

230.14(1) *Generally.* The sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax if the property is any of the following:

a. Directly and primarily used in processing by a manufacturer (see rule 701—230.15(423)).

b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (see rule 701—230.16(423)).

c. Directly and primarily used in research and development of new products or processes of processing (see rule 701—230.17(423)).

d. Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise (see rule 701—230.18(423)).

e. Directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

f. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (see rule 701—230.20(423)).

g. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph *"a," "b," "c," "e,"* or *"f"* (see rule 701—230.21(423)).

230.14(2) *Computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies.*

a. Computers. "Computer" means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of "computer" is point-of-sale equipment. For a characterization of "point-of-sale equipment," see subparagraph 230.14(2)*"g"*(4). Also included within the meaning of the word "computer" is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedure of a computer. An operating system or executive program is exempt from sales tax under rules 701—230.14(423) to 701—230.20(423) only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 701—18.34(422,423). Excluded from the meaning of the word "computer" is any software consisting of an application program. For purposes of this paragraph, "operating system or executive program" means a computer program that is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software, which is a collection of one or more programs used to develop and implement the specific applications that the computer is to perform and which calls upon the services of the operating system or executive program.

b. Machinery. "Machinery" is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. Machinery also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery.

c. Equipment. In general usage, "equipment" refers to devices or tools used to produce a final product or achieve a given result. Exempt "equipment" under these rules includes tables on which property is assembled on an assembly line, if those tables are directly and primarily used in processing by a manufacturer.

d. Replacement parts. "Replacement part" means tangible personal property other than computers, machinery, equipment, or supplies, regardless of the cost or useful life of the tangible personal property, that meets all of the following conditions:

(1) The tangible personal property replaces a component of a computer, machinery, or equipment, which component is capable of being separated from the computer, machinery, or equipment;

(2) The tangible personal property performs the same or similar function as the component it replaced; and

(3) The tangible personal property restores the computer, machinery, or equipment to an operational condition, or upgrades or improves the efficiency of the computer, machinery, or equipment.

e. Supplies. "Supply" means tangible personal property, other than computers, machinery, equipment, or replacement parts, that meets one of the following conditions:

(1) The tangible personal property is to be connected to a computer, machinery, or equipment and requires regular replacement because the item is consumed or deteriorates during use. Such supplies include, but are not limited to, saw blades, drill bits, filters, and other similar items with a short useful life.

(2) The tangible personal property is used in conjunction with a computer, machinery, or equipment and is specially designed for use in manufacturing specific products and may be used interchangeably and intermittently on a particular computer, machine, or piece of equipment. Such supplies include, but are not limited to, jigs, dies, tools, and other similar items.

(3) The tangible personal property comes into physical contact with other tangible personal property used in processing and is used to assist with or maintain conditions necessary for processing. Such supplies include, but are not limited to, cutting fluids, oils, coolants, lubricants, and other similar items with a short useful life.

(4) The tangible personal property is directly and primarily used in an activity described in rules 701—230.14(423) to 701—230.20(423). Such supplies include, but are not limited to, prototype materials and testing materials.

f. Materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies. "Materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies" means tangible personal property that is incorporated into a computer, machinery, equipment, replacement part, or supply when the computer, machinery, equipment, replacement part, or supply is constructed or assembled.

g. Exclusions. Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—230.14(423) to 701—230.20(423) regardless of how the property is used.

(1) Land.

(2) Intangible property.

(3) Hand tools. "Hand tool" means a tool that can be held in the hand or hands and is powered by human effort.

(4) Point-of-sale equipment and computers. "Point-of-sale equipment and computers" means input, output, and processing equipment and computers used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at the counter, desk, or other specific point where the transaction occurs. Point-of-sale equipment and computers do not include equipment and computers used primarily for depositing or withdrawing funds from financial institution accounts.

(5) Certain centrally assessed industrial machinery, equipment, and computers. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423). Property used but not owned by persons whose property is defined by such provisions of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423).

(6) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—230.14(423) to 701—230.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

h. Examples. When used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423), the following items may be exempt computers, machinery, equipment, replacement parts, or supplies. This list is not all-inclusive.

(1) Coolers, including coolers that do not change the nature of materials stored in them.

(2) Equipment that eliminates bacteria.
(3) Palletizers.
(4) Storage bins.
(5) Property used to transport raw, semifinished, or finished goods.
(6) Vehicle-mounted cement mixers.
(7) Self-constructed machinery and equipment.
(8) Packaging and bagging equipment, including conveyer systems.
(9) Equipment that maintains an environment necessary to preserve a product's integrity.
(10) Equipment that maintains a product's integrity directly.
(11) Quality control equipment.
(12) Water used for cooling.

230.14(3) *Leased and rented property.* The exemptions under rules 701—230.14(423) to 701—230.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, machinery, equipment, replacement parts, or supplies may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—230.14(423) to 701—230.20(423). Additionally, a lessor's purchase of computers, machinery, equipment, replacement parts, or supplies for lease or resale may be an exempt sale for resale under Iowa Code section 423.3(2).

230.14(4) *Record keeping.* Individuals claiming an exemption must always be able to prove they qualify for the exemption. To claim the exemptions described in this rule, purchasers must be able to prove that computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423). When both exempt and nonexempt machinery and equipment are used in the same facility, replacement parts and supplies used in the machinery and equipment are exempt under these rules only to the extent the purchaser can prove which replacement parts and supplies were used in the exempt machinery and equipment. Detailed, contemporaneous records should be maintained to verify that qualifying property is used for an exempt purpose. The precise records required may vary from purchaser to purchaser. Computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are not exempt under rules 701—230.14(423) to 701—230.20(423) if the property is not used for an exempt purpose.

This rule is intended to implement Iowa Code section 423.3(47) as amended by 2016 Iowa Acts, House File 2433.

ITEM 6. Adopt the following **new** rule 701—230.15(423):

701—230.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer if the sale occurs on or after July 1, 2016. The sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

230.15(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));
b. Directly used (see subrule 230.15(2));
c. Primarily used (see subrule 230.15(2));
d. Used in processing (see subrule 230.15(3)); and
e. Used by a manufacturer (see subrule 230.15(4)).

230.15(2) *Directly and primarily used.*

a. *Directly used.*

(1) Generally. Property is "directly used" only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is "directly used," consideration should be given to the following factors:

1. The physical proximity of the property to the exempt activity;

2. The temporal proximity of the use of the property to the use of other property that is directly used in the exempt activity; and

3. The active causal relationship between the use of the property and the exempt activity. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

(2) Examples. The following property typically is not directly used in an exempt manner:

1. Property used exclusively for the comfort of workers, such as air cooling, air conditioning, or ventilation systems.

2. Property used in support operations, such as a machine shop, where production machinery is assembled, maintained, or repaired.

3. Property used by administrative, accounting, or personnel departments.

4. Property used by security, fire prevention, first aid, or hospital stations.

5. Property used in communications or safety.

b. Primarily used. The primary use of property is the activity or activities for which the property is used more than half of the time.

230.15(3) *Processing.*

a. Generally. "Processing" means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; construction of packaging and shipping devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the processor. "Receipt or producing of raw materials" means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, "production of raw materials" is deemed to occur immediately following the severance of the raw materials from the real estate.

b. The beginning of processing. Processing begins with a processor's receipt or production of raw material. Thus, when a processor produces its own raw material, it is engaged in processing. Processing also begins when a supplier transfers possession of raw materials to a processor.

c. The completion of processing. Processing ends when the finished product is transferred from the processor or delivered for shipment by the processor. Therefore, a processor's packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

d. Examples of the beginning, intervening steps, and the ending of processing. Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

EXAMPLE A: Company A manufactures fine furniture. Company A owns a grove of walnut trees that it uses as raw material. Company A's employees cut the trees, transport the logs to Company A's facility, store the logs in a warehouse to begin the curing process, and eventually take the logs to Company A's sawmill. The walnut trees are real property while they are growing. Thus, no "production of raw materials" has occurred with regard to the trees until they have been severed from the soil and transformed into logs. Processing of the logs begins when they are placed on vehicles for transport to Company A's factory. However, if the transport vehicles are "vehicles subject to registration," the vehicles are not exempt from the fee for new registration under this rule (see subparagraph 230.14(2)*"g"*(6)).

EXAMPLE B: Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its equipment to offload the logs from railroad cars at its facility. Company A then stores and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C: Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer it brews. Company C also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing, including fermentation or aging (the transformation of the raw materials from one state to another) as well as the storage of hops in a bin and the storage of beer prior to bottling (the holding of materials in an existing state). Any movement of the product between containers is also a part of processing.

EXAMPLE D: After the brewing process is complete, Company C places its beer in various containers, stores the beer, and moves the beer to Company C's customers by a common carrier that picks up the beer at Company C's facility. Company C's activities of placing the beer into bottles, cans, and kegs, storing the beer after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are part of processing.

230.15(4) *Manufacturer.*

a. Generally. "Manufacturer" means a person that purchases, receives, or holds personal property of any description for the purpose of adding to its value by a process of manufacturing, refining, purifying, or combining of different materials, or by the packing of meats, with a view to selling the property for gain or profit, but also includes contract manufacturers. A "contract manufacturer" is a manufacturer that otherwise falls within the definition of manufacturer, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities. A person does not need to be primarily engaged in an activity listed in this subrule in order to qualify as a manufacturer for purposes of this rule.

b. Nonexclusive examples. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; repairing of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; and the activities of restaurateurs, hospitals, medical doctors, and those who merely process data are illustrative, nonexclusive examples of businesses that ordinarily are not manufacturers.

EXAMPLE A: Company A owns and operates a gravel pit. Company A sells the gravel extracted from the pit to others who use the gravel for surfacing roads and as an ingredient in concrete manufacture. Company A removes overlay and raw gravel from the pit and then transports the gravel to a plant where washing and sizing of the gravel take place. Company A is a manufacturer, but only with respect to those activities that occur after it extracts the gravel from the ground.

EXAMPLE B: Company B owns a manufacturing plant. Company B also owns a machine shop where it uses a metal press machine to fabricate patterns. All of these patterns are used in Company B's manufacturing plant as part of processing, and the metal press machine is used solely to fabricate these patterns. The sales price of the metal press machine is not exempt from sales and use tax under this rule because Company B does not use the metal press machine to manufacture a product for sale at a gain or profit. Similarly, the sales price of replacement parts and supplies used in the metal press machine is not exempt from sales and use tax under this rule. However, the patterns themselves may be exempt supplies if they are directly and primarily used in processing, and the raw materials used to produce the patterns may be exempt under this rule. Additionally, the computers, machinery, equipment, replacement parts, and supplies used in Company B's manufacturing plant may be exempt if they are directly and primarily used in processing.

230.15(5) *Replacement parts and supplies.*

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in paragraph 230.14(2)*"d."* In addition to the other requirements, an exempt

replacement part must replace a component of a computer, machinery, or equipment that is directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

b. *Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in paragraph 230.14(2)*"e."* In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, machinery, or equipment that is directly and primarily used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(1).

ITEM 7. Adopt the following **new** rule 701—230.16(423):

701—230.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions if the sale occurs on or after July 1, 2016. The sales price of computers, machinery, equipment, replacement parts, supplies and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

230.16(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

b. Directly used (see subrule 230.15(2));

c. Primarily used (see subrule 230.15(2));

d. Used by a manufacturer (see subrule 230.15(4)); and

e. Used to maintain:

(1) A manufactured product's integrity;

(2) Unique environmental conditions required for a manufactured product; or

(3) Unique environmental conditions required for other computers, machinery, equipment, replacement parts, or supplies directly and primarily used in processing by a manufacturer.

230.16(2) *Replacement parts and supplies.*

a. *Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in paragraph 230.14(2)*"d."* In addition to the other requirements, an exempt replacement part must replace a component of a computer, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer.

b. *Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in paragraph 230.14(2)*"e."* In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental

conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer.

230.16(3) *Example of property directly and primarily used to maintain integrity or unique environmental conditions.* A manufacturer purchases a cooling system or heating system that qualifies as machinery. The manufacturer uses the system to directly and primarily maintain the proper temperature of other machinery and equipment. The manufacturer uses such machinery and equipment directly and primarily in processing. The system is not used for the comfort of the workers. Because the system directly and primarily maintains the environmental conditions necessary for machinery and equipment directly and primarily used in processing, the system is exempt from sales and use tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(2).

ITEM 8. Adopt the following **new** rule 701—230.17(423):

701—230.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing if the sale occurs on or after July 1, 2016. The sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

230.17(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

b. Directly used (see subrules 230.15(2) and 230.17(3));

c. Primarily used (see subrule 230.15(2)); and

d. Used in research and development (see subrule 230.17(2)) of:

(1) New products; or

(2) Processes of processing.

230.17(2) "Research and development" means experimental or laboratory activity that has as its ultimate goal the development of new products or processes of processing.

230.17(3) Property is used "directly" in research and development only if it is used in actual experimental or laboratory activity that qualifies as research and development under this rule.

230.17(4) Replacement parts and supplies.

a. *Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in paragraph 230.14(2)*"d."* In addition to the other requirements, an exempt replacement part must replace a component of a computer, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

b. *Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in paragraph 230.14(2)*"e."* In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing, or

an exempt supply must itself be directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

230.17(5) Examples.

EXAMPLE A: Company A is a hybrid seed producer. Company A maintains a research and development laboratory for use in developing new varieties of corn seed. Company A purchases the following items for use in its research and development laboratory: a laboratory computer for processing data related to the genetic structure of various corn plants, an electron microscope for examining the structure of corn plant genes, a steam cleaner for cleaning rugs in the laboratory offices, and office furniture for use in the laboratory offices. The laboratory computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the office furniture are not directly used in research. Therefore, the sales prices of the laboratory computer and the microscope are exempt from sales and use tax. The sales prices of the steam cleaner and the office furniture are not exempt from tax under this rule.

EXAMPLE B: Company B is a manufacturer of agricultural equipment. Company B is researching and developing a new tractor. Company B purchases materials to produce a prototype of its new tractor. The prototype tractor will be tested in various settings, including a laboratory and actual agricultural production. The materials used to produce the prototype tractor are exempt supplies directly and primarily used in research and production of new products. The sales price for the materials is exempt regardless of whether Company B sells the prototype tractor after testing, or if it scraps the prototype tractor after testing.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(3).

ITEM 9. Adopt the following **new** rule 701—230.18(423):

701—230.18(423) Exemption for the sale of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise if the sale occurs on or after July 1, 2016. The sales price of computers is exempt from sales and use tax when the computers are used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise. The sales price of machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is not exempt under this rule. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

230.18(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers (see paragraph 230.14(2)*"a"*);

b. Used in processing or storage of data or information (see subrule 230.18(2)); and

c. Used by:

(1) An insurance company (see subrule 230.18(3));

(2) A financial institution (see subrule 230.18(3)); or

(3) A commercial enterprise (see subrule 230.18(3)).

230.18(2) *Processing or storage of data or information.* All computers store and process information. However, only if the "final output" for a user or consumer is stored or processed data will the computer be eligible for exemption from tax under this rule.

230.18(3) *Insurance company, financial institution, or commercial enterprise.*

a. *Insurance company.* An insurance company is an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or an insurer authorized to do business in Iowa as an insurer or as a licensed insurance producer under Iowa Code chapter 522B. Excluded from the definition of "insurance company" are benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

b. Financial institution. A financial institution is any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under Iowa Code chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company.

c. Commercial enterprise. A commercial enterprise is a business or manufacturer conducted for profit, other than an insurance company or financial institution. "Commercial enterprise" includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations as well as nonprofit organizations. A hospital that is a not-for-profit organization is not a commercial enterprise. The term "profession" means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term "occupation" means the principal business of an individual, such as the business of farming. A professional entity that carries on any profession or occupation, such as an accounting firm, is not a commercial enterprise.

230.18(4) *Exempt property.* To qualify for exemption under this rule, tangible personal property must satisfy the definition of "computers" contained in paragraph 230.14(2)*"a."* Other property, including machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies, is not exempt under this rule, even if the property is used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

230.18(5) *Examples of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.* A health insurance company has four computers. Computer A is used to monitor the temperature within the insurance company's building. Computer A transmits messages to the building's heating and cooling systems, which tell the systems when to raise or lower the level of heating or air conditioning. Computer B is used to store patient records and to recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company's employees to perform various additional tasks or to better perform work the employees can already do. Computer D uses various canned programs to accomplish this function. The final output of Computer A is neither stored nor processed information. Therefore, Computer A does not meet the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information. The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sales prices of Computers B, C, and D are exempt from sales and use tax as computers used in processing or storage of data or information by an insurance company.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(4).

ITEM 10. Adopt the following **new** rule 701—230.19(423):

701—230.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products if the sale occurs on or after July 1, 2016. The sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in recycling or reprocessing of waste products. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

230.19(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

b. Directly used (see subrule 230.15(2));

c. Primarily used (see subrule 230.15(2)); and

d. Used in:

(1) Recycling of waste products (see subrule 230.19(2)); or

(2) Reprocessing of waste products (see subrule 230.19(2)).

230.19(2) *Recycling and reprocessing.*

a. "Recycling" is any process by which waste or materials that would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. Recycling includes, but is not limited to, the composting of yard waste that has been previously separated from other waste. Recycling does not include any form of energy recovery.

b. "Reprocessing" is not a subcategory of processing. Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property.

c. Recycling or reprocessing generally begins when the waste products are collected or separated. Recycling or reprocessing generally ends when waste products are in the form of raw material or another non-waste product. Activities that occur between these two points and are an integral part of recycling or processing qualify as recycling or reprocessing.

230.19(3) *Replacement parts and supplies.*

a. *Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in paragraph 230.14(2)*"d."* In addition to the other requirements, an exempt replacement part must replace a component of a computer, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

b. *Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in paragraph 230.14(2)*"e."* In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products, or an exempt supply must itself be directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

230.19(4) *Examples.*

a. Computers, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

b. End loaders, forklifts, trucks, conveyor systems, and other moving devices directly and primarily used in the movement of waste products during recycling or reprocessing may be exempt from sales and use tax under this rule.

c. A bin or other container used to store waste products before collection for recycling or reprocessing is not directly and primarily used in recycling or reprocessing, and its sales price is not exempt from sales and use tax under this rule.

d. A vehicle used directly and primarily for collecting waste products for recycling or reprocessing could be a vehicle used for an exempt purpose under this rule, and such a vehicle could be exempt from the fee for new registration. Thus, a garbage truck could qualify for this exemption if the truck is directly and primarily used in recycling; however, a garbage truck primarily used to haul garbage to a landfill does not qualify for exemption under this rule.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport

the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code sections 321.105A(2)*"c"*(24) and 423.3(47)*"a"*(5).

ITEM 11. Adopt the following **new** rule 701—230.20(423):

701—230.20(423) Exemption for the sale of pollution-control equipment used by a manufacturer if the sale occurs on or after July 1, 2016. The sales price of pollution-control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer. Other equipment, and computers, machinery, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies are not exempt from sales and use tax under this rule. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

230.20(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Pollution-control equipment (see subrule 230.20(2)); and

b. Used by a manufacturer (see subrule 230.15(4)).

230.20(2) "Pollution-control equipment" is any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. Other property, including replacement parts and supplies, is not exempt under this rule. Pollution-control equipment does not include any apparatus used to eliminate noise pollution. Liquid, solid, and gaseous wastes are included within the meaning of the word "pollution." Pollution-control equipment specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or of the United States government. Wastewater treatment equipment, dust mitigation systems, and scrubbers used in smokestacks are examples of pollution-control equipment. However, pollution-control equipment does not include any equipment used only for worker safety, such as a gas mask.

EXAMPLE: A manufacturer constructs a wastewater treatment facility to treat wastewater from its manufacturing facility. The wastewater treatment facility diverts wastewater from the local water treatment plant. The facility then converts wastewater into a biogas, which the manufacturer uses as an energy source in its manufacturing facility. The sales price of the pollution-control equipment used in the wastewater treatment facility is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47)*"a"*(6).

ITEM 12. Adopt the following **new** rule 701—230.21(423):

701—230.21(423) Exemption for the sale of fuel or electricity used in exempt property if the sale occurs on or after July 1, 2016. The sales price of fuel or electricity consumed by computers, machinery, or equipment that is exempt from sales and use tax under rule 701—230.14(423), 701—230.15(423), 701—230.16(423), 701—230.17(423), 701—230.19(423), or 701—230.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by replacement parts, supplies, or computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such property is exempt under rules 701—230.14(423) to 701—230.20(423). For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer's power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47)*"b."*

ITEM 13. Adopt the following **new** rule 701—230.22(423):

701—230.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment if the sale occurs on or after July 1, 2016. The sales price from the

services of designing or installing new industrial machinery or equipment is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

230.22(1) Required elements. To qualify for the exemption, the purchaser must prove the service is:

a. A design or installation service (see subrule 230.22(2));

b. Of new (see subrule 230.22(3)); and

c. Industrial machinery or equipment (see subrule 230.22(4)).

230.22(2) Design or installation services include electrical and electronic installation. "Design or installation" services do not include any repair service.

230.22(3) "New" means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.

230.22(4) Industrial machinery or equipment.

a. Generally. "Industrial machinery or equipment" means machinery or equipment, as defined in subrule 230.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

(1) Property used directly and primarily in processing by a manufacturer (see rule 701—230.15(423)).

(2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer's product or to maintain unique environmental conditions for computers, machinery, or equipment (see rule 701—230.16(423)).

(3) Property used directly and primarily in research and development of new products or processes of processing (see rule 701—230.17(423)).

(4) Property used directly and primarily in recycling or reprocessing of waste products (see rule 701—230.19(423)).

(5) Pollution-control equipment used by a manufacturer (see rule 701—230.20(423)).

b. Exclusions. The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

(1) Computers (see paragraph 230.14(2)*"a"*).

(2) Replacement parts (see paragraph 230.14(2)*"d"*).

(3) Supplies (see paragraph 230.14(2)*"e"*).

(4) Materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see paragraph 230.14(2)*"f"*).

230.22(5) Billing. The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where the machine is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where the machine is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2772C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue hereby amends Chapter 42, "Adjustments to Computed Tax and Tax Credits," and Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Iowa Administrative Code.

These amendments update the rules on tax credits for purchasers and producers of renewable energy pursuant to Iowa Code chapter 476C. These amendments are necessary as a result of 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468. These amendments also reorganize the rules and clarify language regarding the limitations period during which eligible facilities may claim the credit.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2681C** on August 17, 2016. No public comments were received in relation to this rule making. These amendments are identical to those published in the Notice of Intended Action.

Any person who believes that the application of the discretionary provisions of these rules 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).

The Department of Revenue adopted these amendments on September 21, 2016.

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

These amendments are intended to implement 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

These amendments will become effective November 16, 2016.

The following amendments are adopted.

ITEM 1. Amend rule 701—42.28(422,476C) as follows:

701—42.28(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa individual income tax liability. ~~The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).~~

42.28(1) ~~*Application and review process for the renewable energy tax credit.*~~ *Eligible facility application process.*

a. Eligible facility application process, generally. A producer or purchaser of a renewable energy facility must be approved as an eligible renewable energy facility by the Iowa utilities board in order to qualify for the renewable energy tax credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, ~~2017~~ 2018. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

b. Limitations on maximum energy production and nameplate generating capacity. The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 363 megawatts. ~~The~~ For tax years beginning prior to January 1, 2015, the maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 53 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. For tax years beginning on or after January 1, 2015, the maximum amount of energy production for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 63 megawatts of nameplate generating capacity and, annually, 167 billion British thermal units of heat for a commercial purpose. A facility that is not operational within 30 months

after issuance of approval from the utilities board will no longer be considered a qualified facility. However, if the facility is a wind energy conversion property and is not operational within 18 months due to the unavailability of necessary equipment, the facility may apply for a 12-month extension of the 30-month limit. Extensions can be renewed for succeeding 12-month periods if the facility applies for the extension prior to expiration of the current extension period. A producer of renewable energy, who is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility. However, for tax years beginning on or after January 1, 2015, an entity described in Iowa Code section 476C.1(6)*"b"*(4) or (5) may have an ownership interest in up to four solar energy conversion facilities described in Iowa Code section 476C.3(4)*"b"*(3).

42.28(2) *Tax credit certificate procedure.*

a. Tax credit application process. A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.21(1). The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that were generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year for which the credit is applied.

b. Tax credit calculation. The department shall calculate the amount of the credit for which the applicant is eligible in accordance with subrules 42.28(3) and 42.28(4) and shall issue a tax credit certificate for that amount or shall notify the applicant in writing of its refusal to do so.

c. Tax credit certificate issuance. The tax credit certificate will include the taxpayer's name, address and federal identification number; the tax type for which the credit will be claimed; the amount of the credit; and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.28(5). Once a tax credit certificate is issued pursuant to Iowa Code chapter 476C, it shall not be terminated or rescinded.

d. Taxpayers that are partnerships, limited liability companies, S corporations, or estates or trusts. If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation or of the beneficiary's interest in the estate or trust.

e. Carryforward. To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

42.28(3) *Limitations.*

a. Energy production. Of the maximum amount of energy production capacity equivalent for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities:

(1) No single facility may be allocated more than ten megawatts of nameplate generating capacity or energy production capacity equivalent.

(2) For tax years beginning on or after January 1, 2015, ten megawatts of nameplate generating capacity or energy production capacity equivalent shall be reserved for solar energy conversion facilities described in Iowa Code section 476C.3(4)*"b"*(3) that have a generating capacity of one and one-half megawatts or less.

(3) For tax years, beginning on or after January 1, 2014, 55 billion British thermal units of heat for a commercial purpose shall be reserved annually for an eligible facility that is a refuse conversion facility for processed, engineered fuel from a multicounty solid waste management planning area.

(4) For tax years beginning on or after January 1, 2014, the maximum annual amount of energy production capacity for a single refuse conversion facility is 55 billion British thermal units of heat for a commercial purpose.

b. Related persons. The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

c. Operation. The facility must be operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.28(1).

d. Prohibited for persons that have received a credit under Iowa Code chapter 476B. A person that has received a wind energy production tax credit pursuant to Iowa Code chapter 476B may not be issued a renewable energy tax credit certificate.

e. Ten-year award limitation. The credit is allowed for a ten-year period beginning on the date the purchaser first purchases renewable energy from a qualified facility or on the date the qualified facility first began producing renewable energy for on-site consumption. For example, if a renewable energy facility first began producing energy for on-site consumption on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and used for on-site consumption by the producer between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased or produced for on-site consumption after December 31, 2027.

~~42.28(2)~~ 42.28(4) *Computation of the credit.* The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or ~~44 cents~~ $1.44 per 1000 standard cubic feet of hydrogen fuel, or $4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or $4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility or used for on-site consumption by the producer during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility or used for on-site consumption by the producer may exceed 12 months if the facility was operational for fewer than 12 months in its initial year of operation.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased or used for on-site consumption by the producer between April 1, 2006, and December 31, 2007.

~~The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.~~

~~The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.28(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the~~

~~date of denial to file a protest in accordance with rule 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.28(1). In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.~~

~~If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.~~

~~The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased or used for on-site consumption by the producer between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased or produced for on-site consumption after December 31, 2024.~~

~~To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.~~

~~42.28(3)~~ 42.28(5) *Transfer of the renewable energy tax credit certificate.*

a. One-transfer limitation. The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

b. Transfer process—information required. Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number; ~~and~~ the amount of the tax credit being transferred; the value of any consideration provided by the transferee to the transferor; and any other information required by the department. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

c. Tax year. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit.

d. Consideration. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes.

Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

~~**42.28(4)**~~ **42.28(6)** *Small wind innovation zones.* Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

42.28(7) *Appeals.* If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing, and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

This rule is intended to implement Iowa Code section 422.11J and Iowa Code chapter 476C as amended by ~~2014 Iowa Acts, Senate File 2343~~ 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

ITEM 2. Amend rule 701—52.27(422,476C) as follows:

701—52.27(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa corporation income tax liability. ~~The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).~~

52.27(1) ~~*Application and review process for the renewable energy tax credit.*~~ *Eligible facility application process.*

a. Eligible facility application process, generally. A producer or purchaser of a renewable energy facility must be approved as an eligible renewable energy facility by the Iowa utilities board in order to qualify for the renewable energy tax credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, ~~2017~~ 2018. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

b. Limitations on maximum energy production and nameplate generating capacity. The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 363 megawatts of nameplate generating capacity. ~~The~~ For tax years beginning prior to January 1, 2015, the maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 53 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. For tax years beginning on or after January 1, 2015, the maximum amount of energy production for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 63 megawatts of nameplate generating capacity and, annually, 167 billion British thermal units of heat for a commercial purpose. A facility that is not operational within 30 months after issuance of approval from the utilities board will no longer be considered a qualified facility. However, if the facility is a wind energy conversion property and is not operational within 18 months due to the unavailability of necessary equipment, the facility may apply for a 12-month extension of the 30-month limit. Extensions can be renewed for succeeding 12-month periods if the facility applies for the extension prior to expiration of the current extension period. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility. However, for tax years beginning on or after January 1, 2015, an entity described in Iowa Code section 476C.1(6)*"b"*(4) or (5) may have

an ownership interest in up to four solar energy conversion facilities described in Iowa Code section 476C.3(4)*"b"*(3).

52.27(2) *Tax credit certificate procedure.*

a. Tax credit application process. A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.21(1). The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that were generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year for which the credit is applied.

b. Tax credit calculation. The department shall calculate the amount of the credit for which the applicant is eligible in accordance with subrules 52.27(3) and 52.27(4) and shall issue a tax credit certificate for that amount or shall notify the applicant in writing of its refusal to do so.

c. Tax credit certificate issuance. The tax credit certificate will include the taxpayer's name, address and federal identification number; the tax type for which the credit will be claimed; the amount of the credit; and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.27(5). Once a tax credit certificate is issued pursuant to Iowa Code chapter 476C, it shall not be terminated or rescinded.

d. Taxpayers that are partnerships, limited liability companies, S corporations, or estates or trusts. If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation or of the beneficiary's interest in the estate or trust.

e. Carryforward. To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

52.27(3) *Limitations.*

a. Energy production. Of the maximum amount of energy production capacity equivalent for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities;

(1) No single facility may be allocated more than ten megawatts of nameplate generating capacity or energy production capacity equivalent.

(2) For tax years beginning on or after January 1, 2015, ten megawatts of nameplate generating capacity or energy production capacity equivalent shall be reserved for solar energy conversion facilities described in Iowa Code section 476C.3(4)*"b"*(3) that have a generating capacity of one and one-half megawatts or less.

(3) For tax years beginning on or after January 1, 2014, 55 billion British thermal units of heat for a commercial purpose shall be reserved annually for an eligible facility that is a refuse conversion facility for processed, engineered fuel from a multicounty solid waste management planning area.

(4) For tax years beginning on or after January 1, 2014, the maximum annual amount of energy production capacity for a single refuse conversion facility is 55 billion British thermal units of heat for a commercial purpose.

b. Related persons. The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

c. Operation. The facility must be operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 52.27(1).

d. Prohibited for persons that have received a credit under Iowa Code chapter 476B. A person that has received a wind energy production tax credit pursuant to Iowa Code chapter 476B may not be issued a renewable energy tax credit certificate.

e. Ten-year award limitation. The credit is allowed for a ten-year period beginning on the date the purchaser first purchases renewable energy from a qualified facility or on the date the qualified facility first began producing renewable energy for on-site consumption. For example, if a renewable energy facility first began producing energy for on-site consumption on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and used for on-site consumption by the producer between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased or produced for on-site consumption after December 31, 2027.

~~52.27(2)~~ 52.27(4) *Computation of the credit.* The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or ~~44 cents~~ $1.44 per 1000 standard cubic feet of hydrogen fuel, or $4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or $4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility or used for on-site consumption by the producer during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility or used for on-site consumption by the producer may exceed 12 months if the facility was operational for fewer than 12 months in its initial year of operation.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased or used for on-site consumption by the producer between April 1, 2006, and December 31, 2007.

~~The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.~~

~~The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 52.27(1). In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.~~

~~If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners,~~

~~members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.~~

~~The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased or used for on-site consumption by the producer between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased or produced for on-site consumption after December 31, 2024.~~

~~To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.~~

~~**52.27(3)**~~ **52.27(5)** *Transfer of the renewable energy tax credit certificate.*

a. One-transfer limitation. The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

b. Transfer process—information required. Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number; ~~and~~ the amount of the tax credit being transferred; the value of any consideration provided by the transferee to the transferor; and any other information required by the department. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

c. Tax year. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit.

d. Consideration. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

~~**52.27(4)**~~ **52.27(6)** *Small wind innovation zones.* Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

52.27(7) *Appeals.* If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

This rule is intended to implement Iowa Code section 422.33 and chapter 476C as amended by ~~2014 Iowa Acts, Senate File 2343~~ 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

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[Published 10/12/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/12/16.

ARC 2755C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321F.11, the Iowa Department of Transportation, on September 20, 2016, adopted amendments to Chapter 424, "Transporter Plates," Chapter 430, "Motor Vehicle Leasing Licenses," and Chapter 451, "Emergency Vehicle Permits," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the August 3, 2016, Iowa Administrative Bulletin as **ARC 2640C**.

The amendments:

- Correct the name of the Office of Vehicle and Motor Carrier Services.
- Eliminate a duplicative reference to Iowa Code section 321.451.
- Add language allowing the Department to deny an application for a privately owned vehicle to be designated as an authorized emergency vehicle if the vehicle does not comply with Iowa Code section 321.451 or does not demonstrate necessity.
- Add a new rule within Chapter 451 concerning the process used by the Department when denying an application or revoking a certificate of designation for authorized emergency vehicles.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 321.58, 321.451 and 321F.11.

These amendments will become effective November 16, 2016.

Rule-making actions:

ITEM 1. Amend subrule 424.1(1) as follows:

424.1(1) *Information.* Information and blank forms relating to this chapter may be obtained from and completed forms shall be submitted to the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

ITEM 2. Amend subrule 430.1(1) as follows:

430.1(1) *Information.* Information and blank forms relating to this chapter may be obtained from and completed forms shall be submitted to the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

ITEM 3. Amend rule 761—451.1(321) as follows:

761—451.1(321) Information. Information about certificates of designation for authorized emergency vehicles is available from the office of vehicle and motor carrier services. The address ~~of the office of~~

~~vehicle services~~ is: Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

This rule is intended to implement Iowa Code sections 321.2 and 321.3.

ITEM 4. Amend subrule 451.2(1) as follows:

451.2(1) *Application.* Application for a certificate which designates a privately owned vehicle as an authorized emergency vehicle shall be submitted to the office of vehicle and motor carrier services on a form prescribed by the department. ~~Iowa Code section 321.451 lists the types of privately owned vehicles that may be issued a certificate of designation and the requirements for designation.~~ The department shall deny an application if the department does not establish that the vehicle will be used as an authorized emergency vehicle, as described in Iowa Code section 321.451, or that the vehicle does not otherwise demonstrate necessity for the designation.

ITEM 5. Adopt the following **new** rule 761—451.3(17A,321):

761—451.3(17A,321) Application denial or certificate revocation.

451.3(1) The department may deny an application or revoke a certificate of designation if an applicant or certificate holder fails to comply with the applicable provisions of this chapter or Iowa Code section 321.231 or 321.451, the certificate holder is no longer eligible for the certificate, or the certificate holder otherwise abuses the certification.

451.3(2) The department shall send notice by certified mail to a person whose certificate of designation is to be revoked or denied. The notice shall be mailed to the person's mailing address as shown on departmental records and the revocation or denial shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle and motor carrier services. The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation or denial.

This rule is intended to implement Iowa Code chapter 17A and sections 321.13, 321.231 and 321.451.

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