



# IOWA ADMINISTRATIVE BULLETIN

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NUMBER 9  
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## PREFACE

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

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

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

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

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### CITATION of Administrative Rules

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

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

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

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

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

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

## Schedule for Rule Making 2019

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
11	Wednesday, October 30, 2019	November 20, 2019
12	Wednesday, November 13, 2019	December 4, 2019
13	Friday, November 29, 2019	December 18, 2019

**PLEASE NOTE:**

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 12, 2019, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

### **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Storage of bulk dry animal nutrients, 49.1, 49.7	<u>Notice</u> <b>ARC 4698C</b>	10/9/19
Animal welfare, ch 67	<u>Notice</u> <b>ARC 4696C</b>	10/9/19
Meat and poultry inspection—cooperative interstate shipment (CIS) program, 76.2, 76.6	<u>Notice</u> <b>ARC 4697C</b>	10/9/19

### **ALCOHOLIC BEVERAGES DIVISION[185]**

COMMERCE DEPARTMENT[181]“umbrella”

Alcoholic beverages trade practices, rescind 16.41	<u>Notice</u> <b>ARC 4688C</b>	10/9/19
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### **CHIEF INFORMATION OFFICER, OFFICE OF THE[129]**

Waivers, ch 7	<u>Notice</u> <b>ARC 4710C</b>	10/23/19
Information technology governance, ch 8	<u>Notice</u> <b>ARC 4712C</b>	10/23/19
Procurement of information technology, ch 10	<u>Notice</u> <b>ARC 4711C</b>	10/23/19
Vendor appeals, ch 11	<u>Notice</u> <b>ARC 4730C</b>	10/23/19

### **COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]“umbrella”

All Iowa opportunity scholarship program, 8.2	<u>Filed</u> <b>ARC 4716C</b>	10/23/19
Iowa national guard educational assistance, amendments to ch 20	<u>Filed</u> <b>ARC 4717C</b>	10/23/19
Skilled workforce shortage tuition grant program, amendments to ch 23	<u>Filed</u> <b>ARC 4718C</b>	10/23/19
Student loan debt collection, amendments to ch 37	<u>Filed</u> <b>ARC 4719C</b>	10/23/19

### **ECONOMIC DEVELOPMENT AUTHORITY[261]**

Disaster recovery housing program, 48.3, 48.9 to 48.13	<u>Notice</u> <b>ARC 4723C</b> , also <u>Filed</u> Emergency <b>ARC 4724C</b>	10/23/19
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### **EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]“umbrella”

Timeline for required reporting of misconduct, 11.37	<u>Filed</u> <b>ARC 4699C</b>	10/9/19
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### **EDUCATION DEPARTMENT[281]**

Education program standards—contracted courses used to meet school or school district requirements, 12.5	<u>Notice</u> <b>ARC 4682C</b>	10/9/19
Senior year plus program, amendments to ch 22	<u>Notice</u> <b>ARC 4683C</b>	10/9/19
Gap tuition assistance program—eligibility criteria, assessment, redistribution of funds, amendments to ch 25	<u>Filed</u> <b>ARC 4700C</b>	10/9/19
Career academy incentive fund, 46.13	<u>Notice</u> <b>ARC 4684C</b>	10/9/19
Statewide sales and services tax for school infrastructure, amendments to ch 96	<u>Notice</u> <b>ARC 4685C</b>	10/9/19
Supplementary weighting, 97.1, 97.2(5), 97.5, 97.8	<u>Notice</u> <b>ARC 4686C</b>	10/9/19
Financial management of categorical funding—secure an advanced vision for education fund, school nutrition fund, 98.21, 98.69, 98.74(3)“b”	<u>Notice</u> <b>ARC 4687C</b>	10/9/19

### **ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Animal feeding operations—definition of “common ownership,” 65.1	<u>Notice</u> <b>ARC 4689C</b>	10/9/19
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### **HISTORICAL DIVISION[223]**

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

Confidential records; ancient records; vital statistics, 3.9	<u>Notice</u> <b>ARC 4721C</b>	10/23/19
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### **INSPECTIONS AND APPEALS DEPARTMENT[481]**

Food and consumer safety; food establishment and food processing plant inspections, 30.2, 30.7, 30.9(2), 31.1(4)	<u>Filed</u> <b>ARC 4731C</b>	10/23/19
Posted rules for games other than bingo and raffles; amusement concessions, 100.8, 101.1 to 101.4	<u>Filed</u> <b>ARC 4732C</b>	10/23/19

### **INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]“umbrella”

Licensing sanction prohibition for student loan debt and related service obligations, 50.53, 100.10(3)“a”(2), 100.17(6), 100.40(2)“k”	<u>Notice</u> <b>ARC 4713C</b>	10/23/19
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**IOWA FINANCE AUTHORITY[265]**

Beginning farmer tax credit and loan programs, 44.1 to 44.7 Notice **ARC 4729C**..... 10/23/19

**LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Boilers and pressure vessels—inspections, incident reporting, 90.7(3), 90.11(3)"c"  
Filed **ARC 4733C**..... 10/23/19

Inspectors of boilers and pressure vessels, 90.9 Filed **ARC 4734C**..... 10/23/19

**MEDICINE BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Standards of practice—appropriate pain management, 13.2 Filed **ARC 4714C** ..... 10/23/19

Licensure of genetic counselors, amendments to ch 20 Filed **ARC 4728C** ..... 10/23/19

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Interagency coordinating council for the state medical examiner—integration of duties of  
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Substance use disorder and problem gambling treatment program mandatory reporter  
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**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

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**TRANSPORTATION DEPARTMENT[761]**

- Electronic submission of proof of financial responsibility, 524.7(1)“c,” 640.1(3), 640.3, 640.4, 640.5(1), 640.6 Notice **ARC 4681C** ..... 10/9/19
- Electronic replacement of driver’s license or nonoperator’s identification card, 602.2(4), 605.11, 630.3 Notice **ARC 4715C** ..... 10/23/19

**UTILITIES DIVISION[199]**

- COMMERCE DEPARTMENT[181]“umbrella”
- Electric vehicle charging service, 20.20 Filed **ARC 4720C**..... 10/23/19
- Energy efficiency and demand response planning and reporting for natural gas and electric utilities required to be rate-regulated, ch 35 Filed **ARC 4709C**..... 10/9/19

**VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

- Future ready Iowa volunteer mentor program, ch 13 Filed **ARC 4722C**..... 10/23/19

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

- Claims for unemployment insurance benefits—verification of claimant identity, 24.3 Filed **ARC 4725C**..... 10/23/19

**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

Senator Waylon Brown  
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St. Ansgar, Iowa 50472

Representative Steven Holt  
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Denison, Iowa 51442

Senator Mark Costello  
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Imogene, Iowa 51645

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Sioux Rapids, Iowa 50585

Senator Robert Hogg  
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**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Storage of bulk dry animal nutrients, 49.1, 49.7 IAB 10/9/19 <b>ARC 4698C</b>	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 30, 2019 11 a.m. to 12 noon
Animal welfare, ch 67 IAB 10/9/19 <b>ARC 4696C</b>	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 30, 2019 9 to 10 a.m.
Meat and poultry inspection—cooperative interstate shipment (CIS) program, 76.2, 76.6 IAB 10/9/19 <b>ARC 4697C</b>	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 30, 2019 10 to 11 a.m.

**CHIEF INFORMATION OFFICER, OFFICE OF THE[129]**

Waivers, ch 7 IAB 10/23/19 <b>ARC 4710C</b>	OCIO Innovation Lab A Level, Room 12 Hoover State Office Bldg. Des Moines, Iowa	November 12, 2019 1 to 2 p.m.
Information technology governance, ch 8 IAB 10/23/19 <b>ARC 4712C</b>	OCIO Innovation Lab A Level, Room 12 Hoover State Office Bldg. Des Moines, Iowa	November 12, 2019 1 to 2 p.m.
Procurement of information technology, ch 10 IAB 10/23/19 <b>ARC 4711C</b>	OCIO Innovation Lab A Level, Room 12 Hoover State Office Bldg. Des Moines, Iowa	November 12, 2019 1 to 2 p.m.
Vendor appeals, ch 11 IAB 10/23/19 <b>ARC 4730C</b>	OCIO Innovation Lab A Level, Room 12 Hoover State Office Bldg. Des Moines, Iowa	November 12, 2019 1 to 2 p.m.

**EDUCATION DEPARTMENT[281]**

Education program standards—contracted courses used to meet school or school district requirements, 12.5 IAB 10/9/19 <b>ARC 4682C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 29, 2019 9 to 10 a.m.
Senior year plus program, amendments to ch 22 IAB 10/9/19 <b>ARC 4683C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 29, 2019 10 to 11 a.m.
Career academy incentive fund, 46.13 IAB 10/9/19 <b>ARC 4684C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 29, 2019 11 a.m. to 12 noon
Statewide sales and services tax for school infrastructure, amendments to ch 96 IAB 10/9/19 <b>ARC 4685C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 29, 2019 1 to 2 p.m.



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IAB 10/9/19 **ARC 4686C**

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

October 29, 2019  
2 to 3 p.m.

Financial management of  
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98.21, 98.69, 98.74(3)“b”  
IAB 10/9/19 **ARC 4687C**

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

October 29, 2019  
3 to 4 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Animal feeding  
operations—definition of  
“common ownership,” 65.1  
IAB 10/9/19 **ARC 4689C**

Conference Room 4 East  
Wallace State Office Bldg.  
Des Moines, Iowa

October 29, 2019  
1 to 2 p.m.

**PROFESSIONAL LICENSING AND REGULATION BUREAU[193]**

Expedited licensure for spouses  
of active duty military service  
members; prohibition of  
licensing sanctions for  
student loan debt repayment  
delinquency or default,  
amendments to chs 4, 8,  
14  
IAB 10/9/19 **ARC 4680C**

Bureau Offices, Suite 350  
200 East Grand Ave.  
Des Moines, Iowa

October 29, 2019  
9 to 9:30 a.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Massage therapists—child  
and dependent adult abuse  
mandatory reporter training,  
131.8(4)  
IAB 10/23/19 **ARC 4726C**

Fifth Floor Conference Room 526  
Lucas State Office Bldg.  
Des Moines, Iowa

November 13, 2019  
9 to 9:30 a.m.

Social workers—continuing  
education, child and dependent  
adult abuse mandatory reporter  
training, 280.9(3), 281.1,  
281.3(2)  
IAB 10/23/19 **ARC 4727C**

Fifth Floor Conference Room 526  
Lucas State Office Bldg.  
Des Moines, Iowa

November 12, 2019  
8 to 8:30 a.m.

Athletic trainers—child abuse  
and dependent adult abuse  
mandatory reporter training,  
351.9(4)  
IAB 10/9/19 **ARC 4690C**

Fifth Floor Board Conference Room 526  
Lucas State Office Bldg.  
Des Moines, Iowa

October 29, 2019  
10 to 10:30 a.m.

**TRANSPORTATION DEPARTMENT[761]**

Electronic submission of proof  
of financial responsibility,  
524.7(1)“c,” 640.1(3), 640.3,  
640.4, 640.5(1), 640.6  
IAB 10/9/19 **ARC 4681C**

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Blvd.  
Ankeny, Iowa

October 31, 2019  
10 a.m.  
(If requested)

**TRANSPORTATION DEPARTMENT[761](cont'd)**

Electronic replacement of driver's  
license or nonoperator's  
identification card, 602.2(4),  
605.11, 630.3  
IAB 10/23/19 **ARC 4715C**

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Blvd.  
Ankeny, Iowa

November 14, 2019  
10 a.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.

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
AGING, DEPARTMENT ON[17]  
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
    Soil Conservation and Water Quality Division[27]  
ATTORNEY GENERAL[61]  
AUDITOR OF STATE[81]  
BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]  
BLIND, DEPARTMENT FOR THE[111]  
CAPITAL INVESTMENT BOARD, IOWA[123]  
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]  
OMBUDSMAN[141]  
CIVIL RIGHTS COMMISSION[161]  
COMMERCE DEPARTMENT[181]  
    Alcoholic Beverages Division[185]  
    Banking Division[187]  
    Credit Union Division[189]  
    Insurance Division[191]  
    Professional Licensing and Regulation Bureau[193]  
        Accountancy Examining Board[193A]  
        Architectural Examining Board[193B]  
        Engineering and Land Surveying Examining Board[193C]  
        Landscape Architectural Examining Board[193D]  
        Real Estate Commission[193E]  
        Real Estate Appraiser Examining Board[193F]  
        Interior Design Examining Board[193G]  
    Utilities Division[199]  
CORRECTIONS DEPARTMENT[201]  
    Parole Board[205]  
CULTURAL AFFAIRS DEPARTMENT[221]  
    Arts Division[222]  
    Historical Division[223]  
EARLY CHILDHOOD IOWA STATE BOARD[249]  
ECONOMIC DEVELOPMENT AUTHORITY[261]  
    City Development Board[263]  
IOWA FINANCE AUTHORITY[265]  
EDUCATION DEPARTMENT[281]  
    Educational Examiners Board[282]  
    College Student Aid Commission[283]  
    Higher Education Loan Authority[284]  
    Iowa Advance Funding Authority[285]  
    Libraries and Information Services Division[286]  
    Public Broadcasting Division[288]  
    School Budget Review Committee[289]  
EGG COUNCIL, IOWA[301]  
ENERGY INDEPENDENCE, OFFICE OF[350]  
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
EXECUTIVE COUNCIL[361]  
FAIR BOARD[371]  
HUMAN RIGHTS DEPARTMENT[421]  
    Community Action Agencies Division[427]  
    Criminal and Juvenile Justice Planning Division[428]  
    Deaf Services Division[429]  
    Persons With Disabilities Division[431]  
    Latino Affairs Division[433]  
    Status of African-Americans, Division on the[434]

Status of Women Division[435]  
Status of Iowans of Asian and Pacific Islander Heritage[436]  
HUMAN SERVICES DEPARTMENT[441]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
Employment Appeal Board[486]  
Child Advocacy Board[489]  
Racing and Gaming Commission[491]  
State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
IOWA PUBLIC INFORMATION BOARD[497]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
Appeal Board, State[543]  
City Finance Committee[545]  
County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
Energy and Geological Resources Division[565]  
Environmental Protection Commission[567]  
Natural Resource Commission[571]  
Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]  
PUBLIC DEFENSE DEPARTMENT[601]  
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]  
Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
Professional Licensure Division[645]  
Dental Board[650]  
Medicine Board[653]  
Nursing Board[655]  
Pharmacy Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
Labor Services Division[875]  
Workers' Compensation Division[876]  
Workforce Development Board and Workforce Development Center Administration Division[877]

**ARC 4710C**

**CHIEF INFORMATION OFFICER, OFFICE OF THE [129]**

**Notice of Intended Action**

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

The Office of the Chief Information Officer hereby proposes to adopt new Chapter 7, “Waivers,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 8B.4(5) and 17A.9A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 8B and section 17A.9A.

*Purpose and Summary*

Pursuant to Iowa Code section 17A.9A(1), “[a]ny person may petition an agency for a waiver or variance from the requirements of a rule, pursuant to the requirements of this section, if the agency has established by rule an application, evaluation, and issuance procedure permitting waivers and variances.” This proposed rule making establishes such procedures by which persons may petition the Office for a waiver or variance, on a case-by-case basis, from administrative rules promulgated by the Office.

This proposed rule making does not apply to or permit requests for waivers or variances from participating agencies subject to information technology requirements set forth in Iowa Code chapter 8B or related rules, policies, standards, processes, or procedures promulgated, administered, and enforced by the Office. Pursuant to Iowa Code section 8B.21(5)“a,” the Office is required to “adopt rules allowing for participating agencies to seek a temporary or permanent waiver from any of the requirements of [Iowa Code chapter 8B] concerning the acquisition, utilization, or provision of information technology.” The Office has initiated simultaneously with this filing a separate Notice of Intended Action (**ARC 4712C**, IAB 10/23/19) which proposes that separate process. Further, this proposed rule making does not govern the waiver of the stated terms, conditions, or requirements in a procurement of information technology. The standards and processes for the granting of waivers from the stated terms, conditions, or requirements in a procurement of information technology shall be as stated in the competitive selection documents or other applicable solicitation documents initiating the procurement.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

This chapter will establish an agencywide waiver provision.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Office no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

Matt Behrens  
 Office of the Chief Information Officer  
 Hoover State Office Building, Level B  
 1305 East Walnut Street  
 Des Moines, Iowa 50319  
 Phone: 515.281.5503  
 Fax: 515.281.6137  
 Email: [cio@iowa.gov](mailto:cio@iowa.gov)

*Public Hearing*

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

November 12, 2019  
 1 to 2 p.m.

Hoover State Office Building, Level A  
 OCIO Innovation Lab, Room 12  
 1305 East Walnut Street  
 Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Office and advise of specific needs by calling 515.281.5503.

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following **new** 129—Chapter 7:

CHAPTER 7  
 WAIVERS

**129—7.1(8B,17A) Definitions.** The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall also apply:

“*Chief information officer*” or “*CIO*” means the state chief information officer or the CIO’s designee.

“*Competitive selection documents*” means the same as defined in rule 129—10.2(8B).

“*Information technology waiver*” means the same as defined in rule 129—8.1(8B).

“*Office*” or “*OCIO*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, vendor, or any legal entity.

“*Waiver or variance*” means, as applied to an identified person on the basis of the particular circumstances of that person, any action by the office that suspends in whole or in part the requirements or provisions of a rule of the office. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

**129—7.2(8B,17A) Scope of chapter and applicability.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the office in situations where no other more specifically applicable law provides for waivers. Generally, the office may grant a waiver from a rule only if the office has jurisdiction over the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. Except to the extent authorized and not otherwise prohibited by applicable law, the office may not waive requirements created or duties imposed by statute. Any waiver must be consistent with statute.

Notwithstanding the foregoing, to the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule. For example:

**7.2(1)** Iowa Code section 8B.21(5) and 129—Chapter 8 govern information technology waivers requested by a participating agency from the requirements of Iowa Code chapter 8B, rules adopted by the office, and information technology standards and policies prescribed by the office concerning the acquisition, utilization, or provision of information technology.

**7.2(2)** Additionally, this chapter does not govern the waiver of the stated terms, conditions, or requirements in a procurement of information technology. The standards and processes for the granting of waivers from the stated terms, conditions, or requirements in a procurement of information technology shall be as stated in the competitive selection documents or other applicable solicitation documents initiating the procurement.

**129—7.3(8B,17A) Granting a waiver.** In response to a petition completed pursuant to rule 129—7.5(8B,17A), the CIO may, in the CIO's sole discretion, issue an order waiving, in whole or in part, the requirements of a rule pursuant to subrule 7.3(1).

**7.3(1) Criteria for waiver.**

*a.* The CIO may grant a waiver if the CIO finds, based on clear and convincing evidence, each of the following:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested.

(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.

(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law.

(4) Equal protection of public health, safety, and welfare and information security will be substantially afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

*b.* In determining whether a waiver should be granted, the CIO shall consider the public interest, policies, and legislative intent of the statute on which the rule is based. When the rule from which a waiver is sought establishes administrative deadlines, the CIO shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

**7.3(2) Special waivers not precluded.** These rules shall not preclude the CIO from granting waivers in other contexts or on the basis of other statutes, rules, standards, policies, or procedures if:

*a.* The CIO deems it appropriate to do so; and

*b.* The CIO is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

**129—7.4(8B,17A) Filing of petition.** Any person may file with the office a petition requesting a waiver, in whole or in part, of a rule of the office on the ground that the application of the rule to the particular circumstances of that person would qualify for a waiver.

**7.4(1) General.** A petition for a waiver must be submitted in writing to the office of the chief information officer at the office's primary headquarters at the address identified in rule

## CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

129—1.2(8B,17A). Requests for waiver may be delivered, mailed, or sent by electronic means reasonably calculated to reach the intended recipient.

**7.4(2) *Special requirement for contested cases or appeals.*** If the petition relates to a pending appeal or contested case, the petition shall use the caption of the appeal or contested case, and in addition to being submitted to the office as required by subrule 7.4(1), a copy shall also be filed in the appeal or contested case proceeding.

**129—7.5(8B,17A) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person for whom a waiver is requested and the case number of any related pending appeal or contested case.
2. A description of and citation to the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration, and any alternative means or other condition or modification proposed to achieve the purposes of the applicable rule.
4. The relevant facts the petitioner believes would justify a waiver under each of the four criteria described in subrule 7.3(1). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes the relevant facts will justify a waiver.
5. A history of any prior contacts between the office and the petitioner relating to the activity that is the subject of the requested waiver, including but not limited to a list or description of prior notices, investigative reports, advice, negotiations, consultations or conferences, a description of contested case hearings relating to the activity within the past five years, and penalties relating to the proposed waiver.
6. Any information known to the requester regarding the office's treatment of similar cases.
7. The name, 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, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases authorizing persons with knowledge regarding the request to furnish the office with information relevant to the waiver.

**129—7.6(8B,17A) Additional information.** Prior to issuing an order granting or denying a waiver, the office may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in conjunction with a pending contested case or appeal, the office may, on its own motion or at the petitioner's request, schedule a meeting between the petitioner and the CIO, which may be conducted either in person or by telephonic or other similar electronic means.

**129—7.7(8B,17A) Notice.** The office shall acknowledge the receipt of a petition by means reasonably calculated to reach the petitioner or designee. The office 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 office may give notice to other persons. To accomplish this notice provision, the office 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 office attesting that notice has been provided. Notice may be provided by email or similar electronic means.

**129—7.8(8B,17A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings and the office's corresponding implementing rules at 129—Chapter 6 shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to office proceedings for a waiver only when the office so provides by rule or order or is required to do so by statute.



CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

**129—7.9(8B,17A) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and, if a waiver is issued, a description of the precise scope of the waiver including its duration and any conditions associated therewith.

**7.9(1) CIO discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the CIO, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the CIO based on the unique, individual circumstances set out in the petition.

**7.9(2) Burden of proof and persuasion.** The burden of proof and persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the CIO should exercise discretion to grant a waiver.

**7.9(3) Narrowly tailored.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**7.9(4) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the office shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**7.9(5) Conditions.** The CIO may place any condition on a waiver that the CIO finds desirable to protect the public health, safety, and welfare and information security.

**7.9(6) Time period of waiver.** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the CIO, a waiver may be renewed if the CIO finds that grounds for a waiver continue to exist.

**7.9(7) Time for ruling.** The CIO shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date or the department, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition is filed in a contested case, the CIO shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**7.9(8) When deemed denied.** Failure of the CIO to grant or deny a petition within the required time period shall be deemed a denial of that petition by the CIO.

**7.9(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. Such service may be effectuated by email or similar electronic means.

**129—7.10(8B,17A,22) Public availability.** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the office is authorized or required to keep confidential. The office may accordingly redact confidential information from petitions or orders prior to public inspection.

**129—7.11(8B,17A) Summary reports.** Semiannually, the office shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by such rules, and a general summary of the reasons justifying the office's actions on waiver requests under this chapter. If practicable, the report shall detail the extent to which the granting of a waiver under this chapter has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

**129—7.12(8B,17A) Cancellation of a waiver.** A waiver issued by the CIO pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the CIO issues an order finding any of the following:

## CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety, and welfare and information security will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

**129—7.13(8B,17A) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**129—7.14(8B,17A) Defense.** After the CIO issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**129—7.15(8B,17A) Judicial review.** Judicial review of an office decision granting or denying a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code sections 8B.4(5) and 17A.9A.

**ARC 4712C****CHIEF INFORMATION OFFICER, OFFICE OF THE[129]****Notice of Intended Action****Proposing rule making related to information technology governance and providing an opportunity for public comment**

The Office of the Chief Information Officer hereby proposes to adopt new Chapter 8, “Information Technology Governance,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 8B.4(5), 8B.4(6), 8B.21(1)“d,” 8B.21(5), 8B.23, 8B.24(1), 8B.24(2) and 8B.24(3) and section 8B.11(8) as amended by 2019 Iowa Acts, House File 772, section 10.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 8B.

*Purpose and Summary*

The Office is created for the purpose of leading, directing, managing, coordinating, and providing accountability for the information technology resources of state government. In furtherance of this role, the Office is, among other things, required or authorized by Iowa Code chapter 8B to:

1. Develop and implement an information strategic plan for the enterprise;
2. Establish an enterprise strategic and project management function for oversight of all information technology-related projects and resources of participating agencies;
3. Develop information technology governance requirements that apply to participating agencies, including:

- Standards of or related to cybersecurity, geospatial systems, application development, and information technology and procurement, including but not limited to system design and systems integration, and interoperability;

## CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

- Policies of or related to security to ensure the integrity of the state's information resources and to prevent the disclosure of confidential records, while still fostering transparency and data sharing;
  - Statewide standards for information technology security to maximize the functionality, security, and interoperability of the state's distributed information technology assets, including but not limited to communications and encryption technologies;
  - Standards for the implementation of electronic commerce, including standards for electronic signatures, electronic currency, and other items associated with electronic commerce;
  - Guidelines for the appearance and functioning of applications;
  - Standards for the integration of electronic data across state agencies;
  - Standards, policies, and procedures of or applicable to the procurement of information technology;
4. Require all information technology security services, solutions, hardware, and software purchased or used by a participating agency to be subject to approval by the office in accordance with security standards;
  5. Develop and implement effective and efficient strategies for the use and provision of information technology and information technology staff for participating agencies and other governmental entities; and
  6. Manage and oversee the lowAccess program.

In addition, the Office is required to "adopt rules allowing for participating agencies to seek a temporary or permanent waiver from any of the requirements of [Iowa Code chapter 8B] concerning the acquisition, utilization, or provision of information technology." See Iowa Code section 8B.21(5)"a."

To that end, this new chapter establishes the Office's process for developing and promulgating information technology policies, standards, processes, procedures, and guidelines, with appropriate stakeholder input; related assessment and enforcement processes and procedures; and a uniform process for the granting of information technology waivers requested by a participating agency from such information technology governance requirements.

*Fiscal Impact*

This rule making is likely to have no fiscal impact because it outlines processes already generally utilized and followed by the Office but not yet codified in rule. This rule making may have a positive fiscal impact, and binding rules that have the force and effect of law may provide the Office with more effective tools to incentivize and ensure compliance with information technology requirements developed, administered, and enforced by the Office.

*Jobs Impact*

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

*Waivers*

As required by Iowa Code section 8B.21(5)"a," this new chapter establishes a uniform process for the granting of information technology waivers requested by a participating agency from information technology governance requirements developed and administered by the Office. In addition, the Office has initiated a separate Notice of Intended Action (**ARC 4710C**, IAB 10/23/19) proposing to adopt general waiver processes pursuant to Iowa Code section 17A.9A(1) simultaneous with this Notice.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Office no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

CHIEF INFORMATION OFFICER, OFFICE OF THE[129](cont'd)

Matt Behrens  
Office of the Chief Information Officer  
Hoover State Office Building, Level B  
1305 East Walnut Street  
Des Moines, Iowa 50319  
Phone: 515.281.5503  
Fax: 515.281.6137  
Email: [cio@iowa.gov](mailto:cio@iowa.gov)

*Public Hearing*

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

November 12, 2019  
1 to 2 p.m.

Hoover State Office Building, Level A  
OCIO Innovation Lab, Room 12  
Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Office and advise of specific needs by calling 515.281.5503.

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following **new** 129—Chapter 8:

CHAPTER 8  
INFORMATION TECHNOLOGY GOVERNANCE

**129—8.1(8B) Definitions.** The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, the following definitions shall also apply:

“Agency” or “state agency” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, “agency” or “state agency” does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

“Chief information officer” or “CIO” means the state chief information officer or the CIO’s designee.

“Information technology governance document(s)” or “information technology governance requirement(s)” means compulsory information technology statutes, rules, policies, standards,

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processes, or procedures which are promulgated, administered, or enforced by the office and which govern participating agencies' acquisition, utilization, or provision of information technology.

*"Information technology waiver"* or *"waiver"* means, as applied to a participating agency on the basis of the particular circumstances of that agency, any action by the office that suspends, in whole or in part, the requirements of any information technology governance requirement.

*"Participating agency"* shall have the meaning ascribed to it under Iowa Code chapter 8B but does not include state agencies that are excluded from the definition of state agency as defined in this chapter or that are otherwise exempt pursuant to their specific enabling acts.

**129—8.2(8B) Purpose and applicability.**

**8.2(1) Purpose.** The office is created for the purpose of leading, directing, managing, coordinating, and providing accountability for the information technology resources of state government. In furtherance of this role, the office is, among other things, required or authorized to:

- a. Develop and implement an information strategic plan for the enterprise.
- b. Establish an enterprise strategic and project management function for oversight of all information technology-related projects and resources of participating agencies. In exercising this power and duty, the office will endeavor to collaborate and coordinate with participating agencies to the maximum extent possible.
- c. Develop information technology governance requirements that apply to participating agencies, including but not limited to:
  - (1) Standards of or related to cybersecurity, geospatial systems, application development, and information technology and procurement, including but not limited to system design and systems integration, and interoperability.
  - (2) Policies of or related to security to ensure the integrity of the state's information resources and to prevent the disclosure of confidential records, while still fostering transparency and data sharing.
  - (3) Statewide standards for information technology security to maximize the functionality, security, and interoperability of the state's distributed information technology assets, including but not limited to communications and encryption technologies.
  - (4) Standards for the implementation of electronic commerce, including standards for electronic signatures, electronic currency, and other items associated with electronic commerce.
  - (5) Guidelines for the appearance and functioning of applications.
  - (6) Standards for the integration of electronic data across state agencies.
  - (7) Standards, policies, and procedures of or applicable to the procurement of information technology.
- d. Require all information technology security services, solutions, hardware, and software purchased or used by a participating agency to be subject to approval by the office in accordance with security standards. In exercising this power and duty, the office will endeavor to collaborate and coordinate with participating agencies to the maximum extent possible.
- e. Develop and implement effective and efficient strategies for the use and provision of information technology and information technology staff for participating agencies and other governmental entities.
- f. Manage and oversee the IowAccess program.

This chapter outlines the office's process for achieving such objectives with appropriate stakeholder input, including the process by which the office establishes information technology governance requirements; related assessment and enforcement processes and procedures; and a uniform process for the granting of information technology waivers requested by a participating agency from such information technology governance requirements.

**8.2(2) Applicability.**

- a. Information technology governance requirements established by the office, unless waived in accordance with the waiver process set forth herein, shall apply to all participating agencies.

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b. The office of the governor and the offices of elective constitutional or statutory officers are not required to comply with information technology governance requirements established by the office. However, as required by Iowa Code section 8B.23, they must:

- (1) Consider the information technology governance requirements adopted by the office; and
- (2) In the case of any acquisition of information technology, consult with the office prior to making any such acquisition and provide a written report to the office relating to any decision regarding such acquisitions.

**129—8.3(8B) Advisory groups.** The office may establish advisory groups and related policies and procedures to organize and effectively and efficiently utilize such advisory groups. Advisory groups may be comprised of information technology leaders from agencies across state government to advise and assist the CIO and office in accomplishing the objectives, duties, and responsibilities outlined herein and in Iowa Code chapter 8B. Advisory groups established by the office shall be solely advisory to the CIO and office, and the CIO and office retain all final decision-making authority as conferred by Iowa Code chapter 8B.

**129—8.4(8B) Information technology governance requirements.**

**8.4(1) *Proposing information technology governance requirements.*** Anyone may recommend the development or adoption of an information technology governance requirement to the CIO or office or advisory committee created and designated by the CIO for such purpose.

**8.4(2) *Development of information technology governance requirements.*** Where the CIO, office, or advisory committee created and designated by the CIO for such purpose is of the opinion that a proposed information technology governance requirement has merit, the CIO, office, or advisory committee created and designated by the CIO for such purpose may work with the individual proposing the information technology governance requirement to develop the requirement. In developing information technology standards, the CIO, office, or advisory committee created and designated by the CIO for such purpose may consider, by way of example only:

- a. Whether and how such requirement furthers the objectives of the enterprise;
- b. Current industry standards or best practices;
- c. Whether and how the requirement would help avoid the duplication of services, resources, or support;
- d. Whether and how the requirement would further the state's information technology strategic plan, enterprise architecture, security plans, or any other information technology governance requirements;
- e. Whether and how the requirement would affect expenditures across the enterprise;
- f. Existing technology deployments;
- g. The impact on state resources;
- h. Acquisition, development and deployment time frames associated with implementing the requirement.

**8.4(3) *Types of information technology governance requirements.*** Information technology governance requirements may include any of the following:

- a. "Policy(ies)" means a high-level statement of intent applicable to the acquisition, utilization, or provision of information technology designed to facilitate an enterprisewide goal or objective.
- b. "Standard(s)" means a specific, minimum requirement(s) applicable to the acquisition, utilization, or provision of information technology, typically designed to facilitate the uniform application or implementation of one or more policies. Standards may set forth required or prohibited technical approaches, solutions, methodologies, products or protocols which must be adhered to in the design, development, implementation, or upgrade of systems architecture, including hardware, software and services. Standards are intended to establish uniformity in common technology infrastructures, applications, processes or data, and may define or limit the tools, proprietary product offerings or technical solutions which may be used, developed or deployed by participating agencies.

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c. “Process(es)” means a high-level overview of required tasks, approvals, procedures, or other processes, typically designed to operationalize one or more policies or standards in a manner that leads to consistent results.

d. “Procedure(s)” means an in-depth set of instructions for the completion of a specific process, task, or action typically designed to operationalize one or more processes or standards in a manner that leads to consistent results.

e. “Guideline(s)” or “best practices” means a recommended policy, process, task, or action related to the acquisition, utilization, or provision of information technology, typically designed to support related policies or standards. Guidelines or best practices are not required but are intended to aid participating agencies in assessing risks associated with technology decisions, facilitate knowledge transfer, and communicate lessons learned from past experience.

**8.4(4) Goals for information technology governance requirements.** The underlying purpose of information technology governance requirements is, by way of example only:

- a. To promote collaboration and consistency in the automation of systems;
- b. To eliminate duplicative development efforts and promote efficiencies for improved services to citizens and businesses;
- c. To ensure continuity of ongoing state operations;
- d. To ensure system security and the confidentiality, integrity, and availability of confidential or sensitive information stored or processed by state information systems;
- e. To promote administrative efficiencies relating to development and maintenance of systems; and
- f. To enable the state to realize its full purchasing power from the use of a statewide, enterprise approach to the selection of technology solutions.

**8.4(5) Adopting of information technology governance requirements and taking effect.**

a. Following the development of a proposed information technology governance requirement, the CIO may adopt the information technology governance requirement. The CIO shall solicit stakeholder input and feedback, including feedback from participating agencies to which the information technology governance requirement would apply, prior to adopting an information technology governance requirement.

b. The effective date of an information technology governance requirement shall be as stated in the applicable information technology governance document.

c. Upon taking effect, an information technology governance requirement shall apply to all participating agencies.

d. Participating agencies may request additional time to comply with information technology governance requirements. Such requests shall be considered a request for temporary waiver and must be submitted in accordance with rule 129—8.6(8B).

**129—8.5(8B) Assessment and enforcement of information technology governance requirements.**

**8.5(1) Compliance assessments and requests for information.** The office may periodically assess participating agencies’ compliance with information technology governance requirements. In so doing, the office will coordinate and collaborate with participating agencies. Participating agencies shall provide appropriate information, access, and assistance to complete such assessments, or as is otherwise necessary for the office to carry out its duties and responsibilities under Iowa Code chapter 8B. As part of such assessments, participating agencies may be required to, by way of example only:

a. Provide the office with information as required by Iowa Code section 8B.21(1) “k” and “l,” or as otherwise required pursuant to Iowa Code chapter 8B or 22. Such information may include, but not be limited to:

- (1) An inventory of information technology used by the participating agency.
- (2) Budget or spending information of or related to information technology.
- (3) Competitive selection documents, acquisition documents, internal procurement policies adopted by the participating agency, and other documents relied on, issued by, or executed by the participating agency related to the acquisition of information technology.

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(4) Information about any security incidents.

(5) Security logs and reports, such as latency statistics, user access summaries, user access IP address summaries, user access history and security logs for information technology systems of the participating agency or its vendors.

(6) Security processes and technical limitations of the participating agency or its vendors, such as those related to virus checking and port sniffing.

*b.* Permit the office or its third-party designee to conduct security testing and compliance audits on a participating agency's or its vendor's information systems. Such testing and compliance audits may include but not be limited to unannounced penetration and security tests as they relate to the receipt, maintenance, use or retention of the state of Iowa's sensitive or confidential information.

Failure of a participating agency to provide the office with information or submit to compliance audits as requested by the office may be considered a violation of these rules and Iowa Code chapter 8B.

**8.5(2) *Alternative assessment methods.*** Participating agencies may request the acceptance of results of like assessments conducted by third parties in lieu of an assessment by the office. Whether to accept such alternative assessment methods shall be determined in the discretion of the CIO in coordination with the applicable participating agency.

**8.5(3) *Determination of noncompliance.***

*a.* If the office determines that a participating agency is noncompliant with an information technology governance requirement, the office shall send a report to the head of the noncompliant participating agency, which report shall outline:

(1) The specific information technology governance requirement(s) forming the basis of a violation or ground for noncompliance;

(2) The relevant facts and corresponding reasoning supporting the office's findings and conclusions;

(3) The office's recommendations for remedying the violations or noncompliance.

*b.* Within 30 calendar days of receipt of the noncompliance notification, the participating agency shall submit to the office a written plan describing the actions the agency will take to achieve compliance or submit a written request for waiver in accordance with rule 129—8.6(8B). The office may, on its own motion or at the request of the participating agency, schedule a meeting between the participating agency and the office. Based on the participating agency's response and outcome of any meeting between the participating agency and the office, or office's decision with respect to any request for waiver submitted by the participating agency, the office may modify, alter, or amend its original report and recommendations.

**8.5(4) *Emergency remediation.*** When noncompliance with information technology governance requirements is determined by the CIO to be a threat to critical state information resources or information resources outside state government, the CIO may order the immediate shutdown or disconnection of the agency technology services that are contributing to the threat. If the agency does not immediately comply, the office, Iowa communications network, or other body may disconnect the agency from all shared services. The agency will be reconnected to shared services when the CIO determines there is no longer a critical threat.

**129—8.6(8B) Waivers from information technology governance requirements.**

**8.6(1) *Requests for waiver.*** A participating agency may file a request for waiver from an information technology governance requirement, in whole or in part, in accordance with the following form, manner, and content requirements.

*a.* Form and manner. A request for waiver shall be made on forms provided by the office and may be submitted by email to [cio@iowa.gov](mailto:cio@iowa.gov). A request for waiver must be signed by the head of the participating agency seeking the waiver.

*b.* Content. The request shall:

(1) Include the name and address of the participating agency and a telephone number and email address for the point of contact at the participating agency to whom inquiries and notices regarding the request for waiver may be directed;



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- (2) Include a reference to the specific information technology governance requirement for which the waiver is submitted;
- (3) Include a statement of facts, including a description of the problem or issue prompting the request;
- (4) Describe the participating agency's preferred solution;
- (5) Outline an alternative approach to be implemented by the participating agency intended to satisfy the waived information technology governance requirement;
- (6) Describe the business case for the alternative approach;
- (7) Include a copy of a third-party audit or report that compares the participating agency's preferred solution to the information technology solution that can be provided by the office;
- (8) Outline the economic justification for the waiver or a statement as to why the waiver is in the best interests of the state;
- (9) Specify the time period for which the waiver is requested and, to the extent a permanent waiver is requested, explain why a temporary waiver would be impracticable; and
- (10) Include or be accompanied by any other information, including supporting evidence or documentation, deemed relevant by the participating agency, including information that would aid the office in applying the factors outlined in Iowa Code section 8B.21(5) "b" or determining whether granting the request, in whole or in part, is in the best interests of the state of Iowa.

c. The office and participating agency shall collaborate on both determining the need for a waiver and, if a waiver is determined to be necessary, the development of request for waiver.

**8.6(2) Notice, additional information, and opportunity for meeting.**

a. Notice. The office may notify other participating agencies that may be interested in or affected by the office's decision regarding a request for waiver and may allow other participating agencies to review the request for waiver and related materials submitted in connection therewith.

b. Additional information.

(1) The office may request, or require in accordance with Iowa Code section 8B.21(1) "k" and "l," additional information, evidence, or documentation from the participating agency submitting the request that would aid the office in assessing the request in accordance with the factors outlined in Iowa Code section 8B.21(5) "b" and in determining whether granting the request, in whole or in part, is ultimately in the best interests of the state of Iowa.

(2) The office may permit, or require in accordance with Iowa Code section 8B.21(1) "k" and "l," other participating agencies that may be interested in or affected by the office's decision to submit supporting or competing viewpoints, evidence, or documentation that would aid the office in assessing the request in accordance with the factors outlined in Iowa Code section 8B.21(5) "b" and in determining whether granting the request, in whole or in part, is ultimately in the best interests of the state of Iowa.

c. The office shall coordinate and schedule a meeting with the participating agency submitting the request or any other participating agency that may be interested in or affected by the office's decision.

**8.6(3) Granting a waiver.** In response to the office's receipt of a request for waiver under and in accordance with this chapter, the CIO may issue an order waiving, in whole or in part, an information technology governance requirement. The CIO may only grant a waiver if the participating agency shows that the waiver would be in the best interests of the state. In determining whether to grant a waiver, in whole or in part, the CIO shall consider the factors outlined in Iowa Code section 8B.21(5) "b." The final decision on whether the circumstances justify the grant of a requested waiver, in whole or in part, shall be in the sole discretion of the CIO.

a. An order granting or denying a waiver, in whole or in part, shall be in writing and shall:

- (1) Identify the participating agency(ies) to which the order applies;
- (2) Identify the specific information technology governance requirements involved;
- (3) Include a statement of the relevant facts and reasons for the decision, including an application of the factors outlined in Iowa Code section 8B.21(5) "b" and an explanation as to how the waiver is or is not in the best interests of the state; and
- (4) To the extent a waiver is granted, describe the precise scope of the waiver including its duration and any conditions associated therewith.

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*b.* A waiver, if granted, shall provide the narrowest exception possible to the information technology governance requirements involved.

*c.* The CIO may place any condition on a waiver that the CIO finds desirable to protect the best interests of the state.

*d.* A waiver shall not be permanent unless the requestor can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the CIO, a waiver may be renewed if the CIO finds that grounds for a waiver continue to exist.

*e.* The CIO shall grant or deny a request for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date or the CIO, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days.

*f.* Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the participating agency by email to the contact at the participating agency identified in the request for waiver. The office may also transmit a copy of the order to other participating agencies that may be interested in or affected by the office's decision.

*g.* Consolidation. In the event the CIO receives similar requests for waivers from multiple participating agencies concerning the same information technology governance requirements, the CIO may consolidate the requests and issue a single ruling granting or denying the requests, in whole or in part.

**8.6(4) Cancellation of a waiver.** A waiver issued by the CIO pursuant to this chapter may be withdrawn, canceled, or modified after appropriate notice and fact-finding. Failure of a participating agency to cooperate in any fact-finding process initiated by the CIO to determine whether a waiver previously issued pursuant to this chapter should be withdrawn, canceled, or modified is grounds to cancel or modify a previously granted waiver.

**8.6(5) Violation of a waiver.** Violation of a condition in a waiver order shall be treated as a violation of the information technology governance requirement for which the waiver was granted.

**8.6(6) Defense.** After the CIO issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the participating agency to which the order pertains in any proceeding in which the rule in question is sought to be invoked.

**129—8.7(8B,22) Public availability.** Reports issued by the office, or orders granting or denying waivers, under this chapter shall be indexed, filed, and made available for public inspection as provided in Iowa Code section 17A.3. Such reports, orders, and related materials may be considered public records under Iowa Code chapter 22; provided, however, that such reports, orders, and related materials may contain information the office is authorized or required to keep confidential. The office may accordingly redact confidential information from petitions or orders prior to public release or inspection.

**129—8.8(8B) Appeals.** A participating agency may appeal a final decision of the CIO regarding the participating agency's noncompliance with information technology governance requirements under rule 129—8.5(8B), or a denial, in whole or in part, of a request for waiver under rule 129—8.6(8B), to the director of the department of management within seven calendar days following the service of the decision. The director of the department of management shall respond within 14 days following the receipt of the appeal.

These rules are intended to implement Iowa Code chapter 8B.

**ARC 4711C**

**CHIEF INFORMATION OFFICER, OFFICE OF THE [129]**

**Notice of Intended Action**

**Proposing rule making related to procurement of information technology and providing an opportunity for public comment**

The Office of the Chief Information Officer hereby proposes to adopt new Chapter 10, "Procurement of Information Technology," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 8B.4(5), 8B.4(6), 8B.21(1)"d," 8B.24(4), 8B.24(5)"f," and 8B.24(6) and section 8B.11(8) as amended by 2019 Iowa Acts, House File 772, section 10.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 8B.

*Purpose and Summary*

This proposed rule making sets forth the methods the Office may utilize in procuring information technology devices and services on behalf of state government, including the establishment of master information technology agreement and prequalification processes, and the related decisional framework governing how to decide which acquisition method to deploy. Further, this proposed rule making specifies the dollar thresholds and related conditions and methods under and by which participating agencies may procure information technology directly. This proposed rule making also establishes processes requiring participating agencies to seek and obtain the Office's approval before procuring information technology directly and establishes that, as required by Iowa Code section 8B.23(2), the office of the Governor and the offices of elective constitutional or statutory officers must consult with the Office prior to procuring information technology, that those offices must consider the information technology standards adopted by the Office, and that those offices must provide a written report to the Office relating to decisions regarding such acquisitions upon request by the Office. This rule making establishes performance review and suspension and debarment processes and procedures applicable to information technology vendors selling information technology devices and services to state government.

*Fiscal Impact*

The Office finds that these rules will have a positive fiscal impact. Providing clarity and a more uniform process involving information technology acquisitions will reduce transaction costs to the State and other governmental entities.

*Jobs Impact*

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

*Waivers*

As required by Iowa Code section 8B.21(5)"a," the Office has initiated a separate Notice of Intended Action (**ARC 4712C**, IAB 10/23/19) that proposes to establish a uniform process for the granting of information technology waivers requested by a participating agency from information technology governance requirements developed and administered by the Office, including the requirements of this new chapter, simultaneous with this Notice. In addition, the Office has initiated a separate Notice of

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Intended Action (**ARC 4710C**, IAB 10/23/19) that proposes to adopt general waiver processes pursuant to Iowa Code section 17A.9A(1) simultaneous with this Notice.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Office no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

Matt Behrens  
Office of the Chief Information Officer  
Hoover State Office Building, Level B  
1305 East Walnut Street  
Des Moines, Iowa 50319  
Phone: 515.281.5503  
Fax: 515.281.6137  
Email: [cio@iowa.gov](mailto:cio@iowa.gov)

*Public Hearing*

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

November 12, 2019  
1 to 2 p.m.

Hoover State Office Building, Level A  
OCIO Innovation Lab, Room 12  
Des Moines, Iowa

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

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Office and advise of specific needs by calling 515.281.5503.

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following **new** 129—Chapter 10:

CHAPTER 10  
PROCUREMENT OF INFORMATION TECHNOLOGY

**129—10.1(8B) General provisions.**

**10.1(1) Applicability.** This chapter governs:

*a.* The process for participating agencies and other governmental entities to obtain approval from or consult with, as applicable, the office in connection with the acquisition of information technology; and

*b.* The procurement of information technology by and for the office; by the office for the benefit or use of participating agencies or other governmental entities; and by a participating agency directly, to the extent the participating agency possesses the procurement authority to make such purchases.

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**10.1(2) Funding.** The office and participating agencies shall follow these procurement policies and information technology governance requirements promulgated by the office regardless of the funding source supporting the procurement. However, when these rules or information technology governance requirements promulgated by the office prevent the state from obtaining and using a federal grant, these rules and information technology governance requirements may be suspended pursuant to and in accordance with Iowa Code section 8B.21(5) and 129—Chapter 8 to the extent required to comply with the federal grant requirements.

**129—10.2(8B) Definitions.** The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, the following definitions shall also apply:

*“Acquisition”* or *“acquire”* means the same as “procurement,” “procure,” or “purchase.”

*“Acquisition document”* or *“procurement document”* means any document or instrument that effectuates an acquisition of information technology, including but not limited to a contract, agreement, purchase order, statement of work, bill of sale, invoice, or other similar document.

*“Agency”* or *“state agency”* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, “agency” or “state agency” does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

*“American-based business”* means an entity that has its principal place of business in the United States of America.

*“American-made product”* means product(s) produced or grown in the United States of America.

*“Award”* means the selection of a vendor to receive a contract, master information technology agreement, or order for information technology as the outcome of a competitive selection process.

*“Chief information officer”* or *“CIO”* means the state chief information officer or the state chief information officer’s designee.

*“Competitive bidding procedure”* or *“competitive selection process”* means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, evaluated, accepted, rejected, or awarded. A “competitive bidding procedure” or “competitive selection process” includes but is not limited to a reverse auction as permitted by subrule 10.3(4), any competitive selection process outlined in 11—Chapter 118, or any prequalification process or subsequent solicitation outlined in subrule 10.5(6). When used to refer to a competitive selection process administered by another governmental entity, a “competitive bidding procedure” or “competitive selection process” includes any competitive bidding procedure or competitive selection process the other governmental entity is authorized to use pursuant to its laws, rules, and regulations.

*“Competitive selection documents”* means documents prepared and issued that solicit information technology to be purchased through a competitive selection process. A competitive selection document may be an electronic document.

*“Contract let by another governmental entity”* means either:

1. A contract entered into by another governmental entity under which the office may order information technology on its own behalf or on the behalf of a participating agency or other governmental entity, or approve a participating agency’s or other governmental entity’s request to procure information technology in the same manner; or
2. A contract entered into by another governmental entity as the outcome of a competitive selection process conducted by that other governmental entity which contract the office, or a participating agency or other governmental entity as authorized by the office, may leverage by entering into a separate contract for the purchase of information technology based thereon (also referred to as a “leveraged contract”),

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other than a contract entered into by the state board of regents or an institution under the control of the state board of regents. When the leveraged contract is the result of a competitive process administered by another governmental entity, such process may serve as a substitute for or in lieu of the office, or a participating agency or other governmental entity as authorized by the office, administering its own competitive selection process.

“*Emergency*” includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety;
2. In which immediate action must be taken to preserve critical services or programs;
3. That compromises the security of information systems or lifeline critical infrastructure, or otherwise poses a substantial risk or threat to the security, confidentiality, or integrity of sensitive or confidential information; or
4. In which the need is a result of events or circumstances not reasonably foreseeable.

“*Emergency procurement*” means an acquisition resulting from an emergency need.

“*Enterprise*” means most or all state agencies acting collectively.

“*Fair and reasonable price*” means a price that is commensurate with the extent and complexity of the information technology to be provided and is comparable to the price paid by other entities for projects of similar scope and complexity.

“*Formal competition*” means a competitive selection process other than informal competition, including without limitation a request for proposals or request for bids, and which results in the procurement of information technology.

“*Governmental entity*” means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

“*Informal competition*” means a streamlined competitive selection process in which the purchasing entity makes an effort to contact at least three prospective vendors identified by the purchasing entity as qualified to perform the necessary work to request that vendors provide bids or proposals for the information technology the purchasing entity needs.

“*Information technology governance documents*” or “*information technology governance requirements*” means compulsory information technology statutes, rules, policies, standards, processes, or procedures which are promulgated, administered, or enforced by the office and which govern participating agencies’ acquisition, utilization, or provision of information technology.

“*Information technology services*” shall mean the same as defined in Iowa Code chapter 8B. In addition, the term “information technology services” shall include:

1. Cloud services, including software, platform, or infrastructure services delivered or accessed from a remote location through an Internet- or web-based interface. Such delivery or access models are commonly referred to as “software-as-a-service,” “platform-as-a-service,” “infrastructure-as-a-service,” or other variations of “as-a-service.”
2. Service provided in connection with the provisioning of broadband.
3. Value-added services.

“*Intergovernmental agreement*” means an agreement for information technology between a state agency and any other governmental entity, whether federal, state, or local, or any department, division, unit or subdivision thereof.

“*Iowa-based business*” means an entity that has its principal place of business in Iowa.

“*Iowa product*” means a product(s) produced in Iowa.

“*Life cycle cost*” means the expected total cost of ownership during the life of a product, including disposal costs.

“*Master information technology agreement*” means a contract entered into by the office which establishes prices, terms, and conditions for the purchase of information technology. These contracts may involve the needs of one or more state agencies or other governmental entities.

“*Material modification*,” as it relates to a previously approved information technology procurement, means a change in the procurement of 10 percent or \$25,000, whichever is less, or a change of sufficient

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importance or relevance so as to have possible significant influence on the outcome. Participating agencies shall not break purchasing into smaller increments in order to avoid the thresholds in this rule.

*"Negotiated contract"* means an agreement that meets the requirements of Iowa Code section 8B.24(5) "b."

*"Order"* means a direct purchase or a purchase from a state contract, master information technology agreement, or contract let by another governmental entity.

*"Participating agency"* shall mean the same as defined in Iowa Code chapter 8B but does not include state agencies that are excluded from the definition of state agency as defined in this chapter or that are otherwise exempt pursuant to their specific enabling acts.

*"Procurement," "procure," or "purchase"* means the acquisition of information technology through lease, lease/purchase, acceptance of, contracting for, obtaining title or license to, use of, or any other manner or method for acquiring information technology or an interest therein.

*"Procurement authority"* means a state agency authorized by statute to purchase information technology directly; or a state agency that has been delegated the authority to or has otherwise been authorized to procure information technology directly by the office, including but not limited to as such procurement authority is delegated to a participating agency or such procurement is otherwise authorized by the office by and pursuant to this chapter.

*"Responsible bidder"* means a vendor that has the capability in all material respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the purchasing entity may consider various factors, including but not limited to the vendor's competence and qualification for the type of information technology required, the vendor's integrity and reliability, the past performance of the vendor relative to the information technology to be provided, the past experience of the purchasing entity or other governmental entities in relation to the vendor's performance, the relative quality of the information technology as compared with similar information technology available from other sources, the proposed terms of delivery, and the best interests of the state.

*"Reverse auction process" or "reverse auction"* means a repetitive competitive bidding process that allows vendors to submit one or more bids, with each bid having a lower cost than the previous bid.

*"Sole source"* includes, but is not limited to, a circumstance in which a purchasing entity determines that:

1. One service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the information technology;
2. The information technology being purchased involves work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the information technology;
3. The federal government or other provider of funds for the information technology being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the purchasing entity's use of the funds in a way that restricts the state agency to only one information technology provider;
4. Applicable law requires, provides for, or permits use of a sole source procurement;
5. The procurement is for an upgrade, or compatibility is the overriding consideration, or the procurement would prevent avoidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation;
6. Any other circumstance as the office may identify from time to time.

*"Sole source procurement"* means an acquisition occurring when one of the circumstances set forth in the definition of "sole source" in this chapter is satisfied.

*"Targeted small business" or "TSB"* means a targeted small business as defined in Iowa Code section 15.102 that is certified by the department of inspections and appeals pursuant to Iowa Code section 10A.104 and as authorized by Iowa Code chapter 73.

*"Upgrade"* means additional hardware or software enhancements, extensions, features, options, or devices to support, enhance, or extend the life or increase the usefulness of previously procured information technology.

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“*Vendor*” means a person, firm, corporation, partnership, business or other commercial entity that offers or provides information technology for sale, lease, or license.

**129—10.3(8B) Methods of procurement.**

**10.3(1) *Methods.*** The office may procure information technology on its own behalf or on behalf of participating agencies or other governmental entities using any of the methods set forth in Iowa Code section 8B.24(5) or authorize participating agencies to procure information technology in a similar manner (including but not limited to subject to applicable approval processes and requirements, as such procurement authority is delegated to a participating agency by the office elsewhere in this chapter). Such methods include but are not limited to:

- a.* A cooperative procurement agreement pursuant to Iowa Code section 8B.24(5) “*a.*”
- b.* A negotiated contract under any of the circumstances set forth in Iowa Code section 8B.24(5) “*b*”(1) to 8B.24(5) “*b*”(3).
- c.* A contract let by another governmental entity pursuant to Iowa Code section 8B.24(5) “*c*” if:
  - (1) The contract authorizes other governmental entities to procure information technology therefrom or leverage the contract by entering into a separate contract based on the contract, as applicable;
  - (2) The purchasing entity notifies the other governmental entity of the purchasing entity’s intent to use or leverage the other governmental entity’s contract;
  - (3) The purchasing entity follows applicable procedures under the contract required for other governmental entities to purchase therefrom or leverage the contract; and
  - (4) The vendor provides written assurances to the purchasing entity that any contemplated purchases or resulting leveraged contract would not adversely impact the governmental entity which was the original signatory to the contract.
- d.* A reverse auction process in accordance with the requirements of Iowa Code section 8B.24(5) “*d.*”
- e.* A competitive selection process in the same manner as outlined in 11—Chapter 118 and in accordance with the requirements identified in rule 129—10.12(8B).
- f.* Other agreements for the purchase, disposal, or other disposition of information technology, including but not limited to the following:
  - (1) Intergovernmental agreement. An intergovernmental agreement with a governmental entity which has the resources available to supply the information technology sought.
  - (2) Emergency procurement. An emergency procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of “emergency” as set forth in this chapter is satisfied. The following requirements shall apply to an emergency procurement:
    1. An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the purchasing entity should consider price and availability of the information technology so that the purchasing entity obtains the best value for the funds spent under the circumstances.
    2. Justification for the emergency procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the reasons the purchase is an emergency. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.
    3. The head of the purchasing entity shall sign all emergency justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign an emergency contract or amendment.
    4. Use of an emergency procurement does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.
  - (3) Sole source procurement. A sole source procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of “sole source” as set forth in this chapter is satisfied. The following requirements shall apply to a sole source procurement:



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1. Justification for the sole source procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the reasons the purchase qualifies as a sole source. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.

2. The head of the purchasing entity shall sign all sole source justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign a sole source contract or amendment.

3. Use of a sole source procurement method does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.

**10.3(2) Request for information (RFI).** A request for information (RFI) is a nonbinding method the office or a participating agency may use to obtain market information from interested parties for a possible upcoming purchase. Information may include but is not limited to best practices, industry standards, technology issues, qualifications and capabilities of potential suppliers, current pricing, or existing contract vehicles. Agencies considering the use of an RFI may contact the office for information and guidance in using this process.

**129—10.4(8B) Master information technology agreements.**

**10.4(1) Master information technology agreements.** In furtherance of the office's duty to cooperate with other governmental entities in the procurement of information technology and in an effort to make such procurements in a cost-effective, efficient manner, the office may enter into master information technology agreements to procure information technology for participating agencies and other governmental entities, or may authorize participating agencies and other governmental entities to procure information technology thereunder, pursuant to any of the methods set forth in rule 129—10.3(8B). The office may procure information technology for participating agencies and other governmental entities from such master information technology agreements or may authorize participating agencies and other governmental entities to procure information technology directly therefrom. Master information technology agreements for particular information technology or a particular class of information technology may be awarded to a single vendor or to multiple vendors, in the sole discretion of the office, irrespective of the procurement method utilized.

**10.4(2) Use of master information technology agreements.**

*a.* If the office has entered into a master information technology agreement, a participating agency shall procure information technology through the master information technology agreement, unless:

- (1) The contract states that use of the master information technology agreement is optional;
- (2) An information technology governance document provides otherwise; or
- (3) The participating agency has obtained a waiver from the office pursuant to Iowa Code section 8B.21(5) and corresponding information technology waiver rules in 129—Chapter 8.

*b.* Unless otherwise stated in the master information technology agreement, any governmental entity may purchase from a master information technology agreement held by the office.

*c.* All governmental entities must notify the office of their intent to utilize a master information technology agreement held by the office and consult with the office about any proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations, restrictions, requirements, or obligations found in the master information technology agreement, of which the governmental entity should be aware. A participating agency that obtains approval from the office for an acquisition as required by rule 129—10.7(8B) does not need to separately consult with the office as required by this paragraph before making a purchase under a master information technology agreement held by the office.

**129—10.5(8B) Prequalification of vendors.** In accordance with Iowa Code section 8B.24(4), using an invitation to qualify, the office may prequalify a list of vendors capable of delivering particular information technology or a class of information technology. The office, in its sole discretion, may

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determine for what information technology or classes of information technology it would be appropriate to use an invitation to qualify.

**10.5(1) Purpose.** The purpose of an invitation to qualify for information technology acquisitions includes but is not limited to the following:

- a. Standardizing the terms and conditions relating to all information technology provided by vendors, thereby avoiding repetition and duplication of efforts.
- b. Accomplishing information technology assignments in a manner consistent with information technology governance requirements prescribed by the office.
- c. Reducing the time required for the solicitation of proposals from vendors for individual projects.

**10.5(2) Evaluation criteria.** The office shall develop the evaluation criteria for vendor prequalification based upon its expertise, information and research, and the needs of the office, participating agencies, and other governmental entities. The office shall develop evaluation criteria for each invitation to qualify. Examples of evaluation criteria include but are not limited to:

- a. Affirmative responses to mandatory agreement questionnaires.
- b. Ratings on professional/technical personnel questionnaires.
- c. Scoring in a specified range on client reference surveys.
- d. Competitive cost data by type of service.
- e. Acceptable vendor financial information.
- f. Ability to comply with information technology governance requirements, other applicable industry standards, regulatory requirements, or any combination thereof.
- g. Willingness and ability to submit personnel to background checks.

**10.5(3) Issuance and time to respond.** The office may issue invitations to qualify as needed. The office shall provide notice of the issuance of an invitation to qualify pursuant to rule 129—10.12(8B). In addition to the applicable evaluation criteria and other substantive requirements contained within the invitation to qualify, the office shall specify in the invitation to qualify:

- a. The date and time at which vendors may begin submitting responses.
- b. The form and manner in which responses shall be submitted to the office.
- c. The date and time at which vendor responses will no longer be accepted.

**10.5(4) Response and evaluation.** Vendors may apply for eligibility on a continuous basis during the time period the invitation to qualify remains open. The office will not accept vendor responses after the response window has closed but may extend or reopen the window if the best interests of the state would be served. The office may evaluate vendor responses for placement on a prequalified vendor list during the period that the invitation to qualify remains open or after the response window has closed. Vendors seeking to qualify must meet all the evaluation criteria established by the office for a particular category or type of solicitation. The office retains the sole discretion to determine whether vendors that submit responses meet the evaluation criteria established by the office and to weigh the evaluation criteria in the manner it deems appropriate to determine whether such vendors are responsible bidders and able to provide the particular information technology or class of information technology sought. An approved vendor shall remain prequalified for the period specified by the office in the invitation to qualify, unless the vendor fails to meet any minimum acceptable performance levels established by the office as permitted by subrule 10.5(7) or breaches any terms and conditions included in any contract agreed to by the vendor.

**10.5(5) Not an award and execution of contracts.** Vendor prequalification is not an award and does not create an obligation on the part of the office. However, prior to conducting subsequent solicitations pursuant to subrule 10.5(6), prequalified vendors may be required to negotiate and agree to general terms and conditions which may be applicable to subsequent solicitations conducted pursuant to subrule 10.5(6).

**10.5(6) Subsequent solicitations.** Following the completion of the prequalification process, the office or governmental entities may select a prequalified vendor to provide specific information technology pursuant to a scaled-down competitive selection process without public notice. Such solicitation may be restricted only to prequalified vendors, in addition to the TSB notification required

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by paragraph 10.12(1)“d.” Prequalified vendors receiving an award may be required to negotiate and agree to additional terms and conditions applicable to the specific information technology acquired.

**10.5(7) Acceptable performance levels.** The office may establish and notify prequalified vendors of minimum acceptable performance levels and institute performance tracking mechanisms on prequalified vendors. If a vendor’s performance falls below the minimum acceptable level, the vendor may be removed from the prequalified list.

**10.5(8) Approval/consultation required.**

*a.* In addition to the requirements of paragraph 10.5(8)“b,” before a participating agency may acquire information technology from a prequalified vendor, the participating agency must receive the approval(s) required by rule 129—10.7(8B).

*b.* All governmental entities must notify the office of their intent to acquire information technology from a vendor prequalified by the office pursuant to the office’s processes hereunder and consult with the office about the proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations, restrictions, requirements, or obligations found in any applicable contracts, of which the governmental entity should be aware.

**10.5(9) Appeal rights.** A vendor that does not prequalify or that is removed from the prequalified list due to the vendor’s performance has the right to appeal pursuant to 129—Chapter 11.

**129—10.6(8B) Method of procurement, how determined.** In determining which of the procurement methods set forth in Iowa Code section 8B.24(5) and rule 129—10.3(8B) to utilize or to authorize a participating agency to utilize in acquiring information technology, whether to establish a master information technology agreement pursuant to rule 129—10.4(8B), or whether to prequalify vendors pursuant to the prequalification process outlined in rule 129—10.5(8B), the office may consider the following nonexclusive list of factors:

1. The manner in which such decision would further the state’s information technology strategic plan.
2. The manner in which such decision would enhance the security of state information-technology systems, and the immediacy of the need to do so.
3. The manner in which such decision would improve compatibility, interoperability, and connectivity between state agencies.
4. The manner in which such decision would further improve statewide efforts to standardize data elements and better encourage or facilitate the sharing of data across state agencies.
5. The manner in which such decision would likely affect the cost to the state for the information technology.
6. The need to standardize the terms and conditions relating to the information technology provided by vendors with respect to a specific information technology or a class of information technology.
7. The administrative costs/overhead associated with pursuing an alternative method.
8. The likelihood that an alternative method would result in a different or better outcome.
9. The likely willingness and ability of state agencies to follow the office’s decision and leadership with respect to a particular information technology acquisition.
10. The needs of all state agencies.
11. The need to avoid repetition and duplication.
12. Whether such decision would improve compliance with the information technology standards and policies prescribed by the office, other applicable industry standards, state or federal regulatory requirements related to information security, or any combination thereof.
13. Whether such decision would reduce the time required to solicit proposals from vendors to obtain the required information technology.
14. Whether there is an emergency or other pressing need.
15. The competitiveness of the market for the particular information technology sought and the likelihood vendors would supply thorough and meaningful proposals in response to a solicitation as part of a competitive selection process.

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16. Any other factors deemed relevant by the office.

**129—10.7(8B) Approval process for participating agencies.**

**10.7(1) Approval, when required.** Any procurement of information technology, an information technology project, or information technology outsourcing satisfying any or all of the following conditions must receive prior approval from the office before a participating agency issues a competitive selection document; issues any order or other acquisition document, including an order under a master information technology agreement; or otherwise seeks to procure information technology through the office or on its own procurement authority (including but not limited to where such procurement authority is delegated by the office to a participating agency elsewhere in this chapter). Prior approval is required when the information technology acquisition, project, or outsourcing satisfies any or all of the following conditions:

- a. Costs \$25,000 or more; or
- b. Is projected to involve 750 agency staff hours or more; or
- c. Involves substantial information-security concerns, including but not limited to the sensitivity or confidentiality of the data involved; the location of the system, data to be stored therein, or both; or the data involved is subject to state or federal regulatory requirements governing data security, confidentiality, or integrity; or
- d. Involves significant compatibility, interoperability, or connectivity concerns.

The participating agency's approval request shall be submitted in the form and manner identified by the office. Participating agencies shall not break purchasing into smaller increments in order to avoid the threshold requirements of this rule.

**10.7(2) Office's review of proposed procurement.** When the office's prior approval is required by subrule 10.7(1), the office will review a proposed information technology procurement regardless of funding source, method of procurement, or agency procurement authority. The office will review a proposed procurement, without limitation:

- a. To determine whether the proposed procurement complies with applicable information technology governance requirements prescribed by the office, including but not limited to those of or relating to information security.
- b. To determine whether the proposed procurement method is advisable, considering the factors set forth in rule 129—10.6(8B), including but not limited to whether an established master information technology agreement may be utilized to procure the proposed information technology.
- c. To determine whether the proposed procurement is a necessary purchase or in the best interests of the state, considering, without limitation, the factors set forth in rule 129—10.6(8B).

**10.7(3) Conditions.** The office may place any condition the office finds desirable on an approval to protect the best interests of the state. For example, the office may condition its approval on:

- a. The incorporation of contractual protections or implementation of compensating controls to safeguard sensitive or confidential data to be stored, processed, or transmitted by or through the information technology.
- b. The ability of vendors to comply with state or federal regulatory requirements governing data security, confidentiality, integrity, or other similar requirements.
- c. The ability to achieve the necessary compatibility, interoperability, or connectivity with enterprise systems.
- d. Any other condition deemed desirable to protect the best interests of the state.

**10.7(4) Outcome of review and requests for waiver.**

a. If the office approves a procurement proposed by a participating agency, in whole or in part, the procurement may proceed, subject to any conditions imposed by the office in accordance with subrule 10.7(3).

b. If the office denies a procurement proposed by a participating agency, the office will notify the participating agency of the available options, which may include modifying and resubmitting the request, canceling the request, or requesting an information technology waiver from the office pursuant to 129—Chapter 8.

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c. A participating agency may not appeal or otherwise complain about an adverse decision rendered by the office unless or until the participating agency has requested a waiver from the office's decision pursuant to 129—Chapter 8.

**10.7(5) Ongoing approval—when required.** Once a procurement proposed by a participating agency is approved by the office, ongoing approval is not required, unless:

- a. There is a material modification to a previously approved procurement; or
- b. Communicated by the office to the participating agency in writing.

If additional approval is required pursuant to this rule, such approval shall follow the same process outlined in subrules 10.7(1) to 10.7(4).

**129—10.8(8B) Consultation.**

**10.8(1) When required for nonparticipating agencies.** The office of the governor and the offices of elective constitutional or statutory officers are not required to obtain prior approval from the office before acquiring information technology pursuant to rule 129—10.7(8B). However, pursuant to Iowa Code section 8B.23(2), the office of the governor and the offices of elective constitutional or statutory officers must consult with the office prior to procuring information technology, consider the information technology standards adopted by the office, and provide a written report to the office relating to decisions regarding such acquisitions upon request by the office.

**10.8(2) Encouraged for non-information technology acquisitions.** Even where an information technology acquisition is not appropriately deemed an information technology acquisition, the office may provide advice to or consult with any governmental entity regarding the acquisition of goods, services, or an outsourcing of state functions when the acquisition includes a substantial information-technology component, includes a substantial information-security component, or would grant a third party access to the state's sensitive or confidential information. Such consultation is generally encouraged to ensure, by way of example only:

- a. Appropriate contractual protections or compensating controls are incorporated or implemented to safeguard sensitive or confidential data or information.
- b. The chosen vendor is able to comply with any applicable state or federal regulatory requirements governing data security, confidentiality, integrity, or otherwise.
- c. The vendor's information-technology systems comply with applicable information technology governance requirements.
- d. The vendor's information-technology systems are adequately designed or architected in a manner that will adequately safeguard the state's sensitive or confidential information.
- e. The vendor information-technology systems will be capable of adequately and securely connecting to or interfacing with state information-technology systems, to the extent necessary.

**10.8(3) Master information technology agreements and invitations to qualify.** In accordance with and as further set forth in paragraphs 10.4(2)“c” and 10.5(8)“b,” all governmental entities must notify the office of their intent to utilize master information technology agreements or to acquire information technology from a vendor prequalified by the office in accordance with the office's prequalification and subsequent solicitation processes and to consult with the office about any such proposed acquisition.

**129—10.9(8B) Delegated procurement authority.** Subject to the approval and consultation processes and requirements set forth in rules 129—10.7(8B) and 129—10.8(8B), participating agencies may procure information technology through a competitive selection process administered by the participating agency consistent with the purchasing thresholds and requirements established by this rule.

**10.9(1) Agency direct purchasing—basic tier.** For information technology purchases that do not exceed the following dollar thresholds, participating agencies may procure information technology without competition:

- a. Non-master-information-technology-agreement information technology devices costing less than \$1,500.
- b. Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is less than \$5,000, or when the

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estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is less than \$15,000.

*c.* Non-master-information-technology-agreement information technology devices or services from a TSB for purchases of less than the amount determined by the department of administrative services by rule, but not to exceed \$25,000. Participating agencies shall search the TSB directory on the web and purchase directly from a TSB if it is reasonable and cost-effective to do so. A participating agency must confirm that the vendor is certified as a TSB by the department of inspections and appeals prior to making a purchase pursuant to this subrule.

**10.9(2) *Agency direct purchasing—middle tier.*** For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using either formal or informal competition:

*a.* Non-master-information-technology-agreement information technology devices costing greater than or equal to \$1,500 but less than \$5,000.

*b.* Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to \$5,000 but less than \$50,000, or when the estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is greater than or equal to \$15,000 but less than \$150,000.

**10.9(3) *Agency direct purchasing—advanced tier.*** For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using only formal competition:

*a.* Non-master-information-technology-agreement information technology goods costing greater than or equal to \$5,000.

*b.* Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to \$50,000, or when the estimated value of the multiyear information technology services contract in the aggregate, including any extensions or renewals, is greater than or equal to \$150,000.

**10.9(4) *Training, when required.*** Participating agency personnel engaged in the purchase of information technology at the middle or advanced tier shall have completed enhanced procurement training identified by the office.

**10.9(5) *Misuse of agency authority.***

*a.* Participating agencies shall not break purchasing into smaller increments for the purpose of avoiding the purchasing thresholds established by this rule.

*b.* Except as otherwise authorized or permitted by the office, purchasing authority delegated to participating agencies by this rule shall not be used to avoid the use of master information technology agreements.

**10.9(6) *Other methods where authorized by office.*** The office may authorize participating agencies to make direct purchases utilizing any other procurement methods outlined in rule 129—10.3(8B) on a case-by-case basis.

**129—10.10(8B) Duration of master information technology agreements.** The initial term of a master information technology agreement shall be as determined by the office. Following the initial term, a master information technology agreement may be extended or renewed by the office for a number of periods and in durations as determined by the office.

**129—10.11(8B) Duration of information technology contracts.** Each contract signed by the office or a participating agency shall have a specific starting and ending date and may be structured in a manner that includes an initial term and option(s) for renewal terms. The initial term, renewal term, and total term may be of a duration as determined by the office or participating agency making the purchase. Unless otherwise authorized or permitted by the office, information technology contracts entered into by the office or a participating agency shall not exceed ten years. Information technology contracts should be assessed on a regular basis so the enterprise obtains the best value for the funds spent;

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avoids inefficiencies, waste or duplication; and is able to take advantage of new innovations, ideas, and technologies.

**129—10.12(8B) Requirements applicable to competitive selection process.****10.12(1) Notice of competitive selection.**

*a. Opportunity posting.* The office and each participating agency shall provide public notice of solicitations by posting notice of every formal competitive selection opportunity to the official centralized procurement website operated by the department of administrative services. Alternatively, a participating agency may add a link to the centralized procurement website that connects to the website maintained by the agency on which requests for bids and proposals for that agency are posted. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state website operated by the department of administrative services.

*b. Other forms of notice.* In addition to the requirements and options set forth in paragraph 10.12(1)“a,” notice of competitive bidding opportunities and proposals may also be provided by print, telephone or fax, email or other electronic means, or by other means that give reasonable notice to vendors.

*c. Bids voided.* A formal competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this subrule is void and shall be rebid.

*d. Targeted small business notification.* Targeted small businesses shall be notified of all solicitations at least 48 hours prior to the general release of the notice of solicitation. The notice shall be distributed to the state of Iowa’s 48-hour procurement notice website for posting.

*e. Vendor intent to participate.* In the event the office elects to conduct any procurement electronically or otherwise, it may require that vendors prequalify or otherwise indicate their intention to participate in the procurement process.

**10.12(2) Specifications in competitive selection process.** Specifications shall be as set forth in the applicable competitive selection documents but shall generally comport with the following guidelines. Such guidelines shall not be construed or interpreted as limiting the office or participating agencies in developing specifications or terms and conditions in competitive selection documents that are necessary to effectively and efficiently procure information technology.

*a. Limitations on brands and models.* Specifications used in competitive selection documents shall generally be written in a manner that encourages competition. Specifications shall be written in general terms without reference to a particular brand or model unless the reference is clearly identified as intending to illustrate the general characteristics of the item or a specific brand or model is necessary to maintain compliance with an information technology requirement; to maintain or improve compatibility, interoperability, or connectivity with or across state information-technology systems and equipment; or to adequately safeguard the confidentiality, integrity, or availability of confidential or sensitive data or information or information systems.

*b. Life cycle cost and energy efficiency.* The office or participating agencies shall consider life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products.

*c. Financial security.* The office or participating agencies may require bid, appeal, litigation, fidelity, or performance security or bond, or any combination thereof, as designated in the competitive selection documents or by rule. When required, a security may be by certified check, cashier’s check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the office or participating agency. When required, security shall not be waived.

**10.12(3) Award.**

*a. How determined.* In determining which vendor(s) should receive an award following a competitive selection process, the office or participating agency shall select a vendor(s) on the basis of criteria contained in the competitive selection documents.

*b. Intent to award.* After evaluating responses to a solicitation using formal competition, the office or participating agency shall notify each vendor that submitted a response to the solicitation of its intent to award to a particular vendor(s) subject to execution of a written contract(s). Such notice may be made by

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electronic means, including to the vendor's authorized representative and corresponding email address as identified in the vendor's proposal. This notice of intent to award does not constitute the formation of a contract(s) between the state and successful vendor(s).

*c. Rejection of bids.* The office and participating agencies reserve the right to reject any or all responses to solicitations at any time for any reason. New bids may be requested at a time deemed convenient to the office or participating agency involved.

*d. Minor deficiencies and informalities.* In addition to any waiver rights reserved or processes included in the competitive selection documents, the office and participating agencies reserve the right to waive minor deficiencies and informalities if, in the judgment of the office or participating agency, the best interest of the state will be served.

*e. Tied bids and preferences.* If an award is based on the highest score and there is a tied score, or if the award is based on the lowest cost and there is a tied cost, the award shall be determined as follows:

(1) Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, first preference will be given to the Iowa vendor. Tied bids involving Iowa-produced or Iowa-manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing process outlined in subparagraph 10.12(3) "e"(3) will be held among the Iowa vendors only.

(2) If a tied bid does not include an Iowa vendor or Iowa-produced or Iowa-manufactured product, preference will be given to a vendor based in the United States or products produced or manufactured in the United States over a vendor based or products produced or manufactured outside the United States.

(3) If a tied bid neither includes an Iowa vendor or Iowa-produced or Iowa-manufactured product nor a United States vendor or United States-produced or United States-manufactured product, a drawing may be held in the presence of the vendors with the tied bids or in front of at least three noninterested parties. All drawings shall be documented.

**129—10.13(8B) Performance reviews and suspension/debarment.**

**10.13(1) Review of vendor performance.** The office, in cooperation with other governmental entities, may periodically review the performance of vendors. State agencies obtaining information technology from vendors are encouraged to document vendor performance throughout the duration of any contract and report any problems to the office as they are identified. Performance reviews shall be based on the specifications or service levels in the vendors' contract(s) or as set forth or identified in any applicable statement of work, order, or other applicable acquisition document. Performance reviews shall include but need not be limited to:

- a.* Compliance with applicable contract specifications or requirements;
- b.* On-time delivery; and
- c.* Accuracy of billing.

Performance reviews help determine whether vendors are responsible bidders for future projects.

**10.13(2) Suspension or debarment.** Prior performance on a state contract may cause a vendor to be disqualified or preclude a vendor from being considered a qualified or responsible bidder in future procurements. In addition, a vendor or subcontractor of a vendor may be suspended or debarred for any of the following reasons:

- a.* Failure to deliver within specified delivery dates without prior agreement of the office or applicable governmental entity;
- b.* Failure to deliver in accordance with contract specifications or requirements;
- c.* Attempts to influence the decision of any state employee involved in the procurement process;
- d.* Evidence of agreements by vendors to restrain trade or impede competitive bidding;
- e.* Determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation, executive orders, or contract terms of conditions;
- f.* Evidence that a vendor has willfully filed or submitted a false certificate or information with or to the office or other governmental entities;
- g.* Suspension or debarment by the federal government;



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*h.* Any other reason identified in the competitive selection documents or contract.

The office shall notify any vendor considered for suspension or debarment and provide the vendor an opportunity to respond to and cure any deficiencies prior to suspending or debarment any vendor. If the vendor fails to remedy the situation after receiving such notice, the office may suspend the vendor from eligibility for state information technology acquisitions for a period of time as specified by the office or debar the vendor from all future state business. The office may notify the department of administrative services of the office's final decision, which, in the department of administrative services' discretion, may take reciprocal action as it relates to the acquisition of goods and services of general use.

**129—10.14(8B) Additional requirements and authorizations to information technology acquisitions and agreements.**

**10.14(1)** Information technology shall not be performed or obtained pursuant to a contract until all parties to the contract have signed a written contract. If an information technology contract requires the execution of orders or statements of work to effectuate individual transactions, information technology shall not be performed or obtained until the appropriate transactional document(s) is executed by both parties in a signed writing. A vendor that provides information technology to a governmental entity prior to the execution of a contract or appropriate transactional document shall not be entitled to any payment for the information technology.

**10.14(2)** Except to the extent of any conflict or inconsistency with this chapter, all information technology service contracts shall, to the extent applicable, comply with the requirements of 11—Chapter 119.

**10.14(3)** The office and participating agencies may enter into a contract for information technology in which a contractual limitation of vendor liability is provided for as authorized by and in accordance with 11—Chapter 120.

**10.14(4)** All information technology contracts shall comply with the requirements of 11—Chapter 121, which, among other requirements, requires state agencies entering into contracts to include a clause in every contract prohibiting employment discrimination and requiring compliance with applicable laws, rules, and executive orders governing equal opportunity in employment and affirmative action.

**129—10.15(8B) Confidential information in a solicitation response.** Unless material submitted in response to a solicitation is identified as proprietary or confidential by the vendor in accordance with Iowa Code section 22.7, all submissions by a vendor are public information. To facilitate a fair and objective evaluation of proposals, submissions by vendors will not be released to competitors or the public prior to issuance of the notice of intent to award or final disposition of any vendor appeal taken in accordance with 129—Chapter 11, whichever occurs later. Aggrieved or adversely affected vendors may only obtain proposals or other relevant evidence or information in furtherance of an appeal pursuant to the disclosure/protective order processes set forth in 129—Chapter 11. If a vendor's claim of confidentiality is challenged by a competitor or through a request by a citizen to view the proposal, it is the sole responsibility of the vendor to defend the claim of confidentiality in an appropriate venue. State agencies will not release the subject material while the matter is being adjudicated.

These rules are intended to implement Iowa Code chapter 8B.

**ARC 4730C**

**CHIEF INFORMATION OFFICER, OFFICE OF THE[129]**

**Notice of Intended Action**

**Proposing rule making related to vendor appeals  
and providing an opportunity for public comment**

The Office of the Chief Information Officer hereby proposes to adopt new Chapter 11, "Vendor Appeals," Iowa Administrative Code.

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*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 8B.4(5), 8B.24(2), 8B.24(3), 8B.24(5)“f” and 8B.24(6) and section 8B.11(8) as amended by 2019 Iowa Acts, House File 772, section 10.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 8B.

*Purpose and Summary*

The Office is required to institute procedures to ensure effective and efficient compliance with information technology standards established by the Office, and to develop policies and procedures that apply to all information technology goods and services acquisitions and ensure the compliance of all participating agencies. In furtherance of that objective, this proposed rule making establishes a process by which vendors may challenge the Office’s or participating agencies’ administration of competitive selection processes, prequalification processes, or reverse auction processes administered by the Office or participating agencies as authorized by the Office. If a purchasing entity has adopted its own rules, processes, or procedures governing award or disqualification decisions of or by the purchasing entity, the purchasing entity may rely on those rules, processes, or procedures in lieu of these rules at its election.

*Fiscal Impact*

The Office finds that these rules will have a positive fiscal impact. Providing a streamlined and efficient process for vendors to identify material deficiencies in procurement processes administered by the State will help to ensure compliance with enterprise information technology standards and requirements, result in positive and beneficial procurement outcomes, and help to reduce fraud, waste, and abuse.

*Jobs Impact*

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

*Waivers*

The Office has, simultaneous with this filing, initiated a separate Notice of Intended Action (**ARC 4710C**, IAB 10/23/19) to adopt general waiver processes pursuant to Iowa Code section 17A.9A(1).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Office no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

Matt Behrens  
Office of the Chief Information Officer  
Hoover State Office Building, Level B  
1305 East Walnut Street  
Des Moines, Iowa 50319  
Phone: 515.281.5503  
Fax: 515.281.6137  
Email: [cio@iowa.gov](mailto:cio@iowa.gov)

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*Public Hearing*

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

November 12, 2019  
1 to 2 p.m.

Hoover State Office Building, Level A  
OCIO Innovation Lab, Room 12  
1305 East Walnut Street  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following new 129—Chapter 11:

CHAPTER 11  
VENDOR APPEALS

**129—11.1(8B) Purpose.**

**11.1(1)** The office is required to institute procedures to ensure effective and efficient compliance with information technology standards established by the office, and to develop policies and procedures that apply to all information technology goods and services acquisitions and ensure the compliance of all participating agencies. In furtherance of that objective, these rules establish the process by which vendors may challenge the office's or participating agencies' administration of competitive selection processes, prequalification processes, or reverse auction processes administered by the office or participating agencies as authorized by the office. A vendor's failure to utilize this process shall be deemed a failure to exhaust administrative remedies.

**11.1(2)** These rules shall not apply if a purchasing entity has adopted its own rules governing award or disqualification decisions of or by the purchasing entity that conflict with these rules. However, even if a purchasing entity has adopted its own vendor appeal rules, the purchasing entity may elect to follow these rules in the case of information technology goods and services acquisitions to the extent the purchasing entity has stated its intention to follow these rules in the competitive selection documents or other applicable solicitation documents.

**129—11.2(8B) Definitions.** The definitions in Iowa Code section 8B.1 and rule 129—10.2(8B) shall apply to this chapter. In addition, the following definitions shall also apply:

"Award," for purposes of this chapter, means the selection of a vendor to receive a contract, master information technology agreement, or order for information technology as the outcome of a competitive selection process or reverse auction process, or decision to not prequalify or remove a vendor from a prequalified list as part of a prequalification process.

"Head of the purchasing entity" means the head of the purchasing entity or that person's designee.

**129—11.3(8B) Filing an appeal.**

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**11.3(1) *Notice of intent to appeal.*** Any vendor that filed a timely bid or proposal and that is aggrieved or adversely affected by an award (“appellant”), including a decision of the purchasing entity to disqualify a vendor, may appeal the decision by filing a notice of intent to appeal with the entity issuing the competitive selection documents or other applicable solicitation documents (“purchasing entity”) to the purchasing entity’s address as identified in the competitive selection documents or other applicable solicitation documents. The purchasing entity must actually receive the notice of intent to appeal within the time frame specified in the competitive selection documents or other applicable solicitation documents for the notice of intent to appeal and thereby the appeal to be considered timely. If the competitive selection documents or other applicable solicitation documents are silent on the time frame to appeal, the time frame shall be five days from the date of the issuance of the notice of intent to award. Failure to timely file a notice of intent to appeal will result in dismissal.

**11.3(2) *Initial disclosures—public, redacted proposals and evaluation materials.*** Following the purchasing entity’s receipt of the notice of intent to appeal, the purchasing entity will transmit to the appellant a public copy from which claimed confidential or proprietary information has been excised of the awardee’s proposal and, to the extent applicable, evaluation committee materials, documentation, analysis, and results. Upon written request of the appellant, the purchasing entity will provide a public copy from which claimed confidential or proprietary information has been excised of unsuccessful vendors’ proposals. The appellant shall be entitled to no additional discovery, materials, or information in furtherance of the appellant’s appeal unless and until the proceedings advance to a second-tier review.

**11.3(3) *Notice of appeal.*** Within five days of the appellant’s receipt of the initial disclosures required by subrule 11.3(2), the appellant shall file a formal notice of appeal with the purchasing entity to the purchasing entity’s address as identified in the competitive selection documents or other applicable solicitation documents. Such notice of appeal shall conform to and comply with the form and format and content requirements set forth in subrules 11.3(4) and 11.3(5). The purchasing entity must actually receive the notice of appeal within the five-day time frame. Failure to timely file a notice of appeal will result in dismissal.

**11.3(4) *Form and format.*** Notices of appeal should be concise and logically arranged. No other technical forms of pleading are required.

**11.3(5) *Contents.*** Notice pleading is not permitted. The notice of appeal shall:

- a. Include the name, address, email address, and telephone and facsimile numbers of the vendor;
- b. Be signed by the vendor or the vendor’s authorized representative;
- c. Identify the specific award forming the basis of the vendor’s challenge;
- d. Set forth information establishing the timeliness of the appeal;
- e. State the specific legal and factual grounds upon which the vendor is appealing the award, in a manner that ties the underlying factual assertions to the legal grounds forming the basis of the appeal;
- f. Describe how the vendor is aggrieved or adversely affected by the award;
- g. If applicable, explain whether and why the vendor failed to raise the issue(s) raised in the appeal through a request for clarification process or other question and answer process available during the competitive selection process;

- h. State that the vendor agrees and consents to, and by submitting its notice of appeal to the purchasing entity stipulates to the entry of, a protective order as a condition precedent to receiving any documents or information containing or comprised of, in whole or in part, confidential or proprietary information relevant to the vendor’s appeal should the matter proceed to a second-tier review; and

- i. Set forth the specific relief requested, i.e., whether the vendor is requesting that the award be reversed in its entirety or remanded back to the purchasing entity to correct any legal errors.

**11.3(6) *Public records.*** A notice of appeal shall be considered a public record and may be distributed to third parties, including to the vendor’s competitors, in accordance with rule 129—11.4(8B). If the vendor believes the notice of appeal contains information that should be maintained by the purchasing entity as proprietary or confidential in accordance with applicable law, the vendor must conspicuously identify such a request on the first page of the notice of appeal; mark each page upon which confidential or proprietary information appears; submit a public copy from which claimed confidential or proprietary information has been excised (information must be excised in such a way as to allow the public to

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determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible); enumerate the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential in the notice of appeal; and explain why disclosure of the specific information would not be in the best interest of the public in the notice of appeal. Notwithstanding the foregoing, intervenors, including vendor's competitors, may still receive an unredacted copy of a notice of appeal subject to the protective order requirements and processes set forth in this chapter.

**11.3(7) *Failure to comply.*** An appeal may be dismissed for failure to comply with any of the requirements of this rule.

**129—11.4(8B) Notice of receipt of appeal to awardee and intervention.**

**11.4(1) *Notice of likely appeal.*** Following the purchasing entity's receipt of a timely notice of intent to appeal, the purchasing entity shall promptly give notice of the likely appeal to the awardee(s), if any.

**11.4(2) *Intervention.*** The awardee(s) may intervene within five days of such notification by filing a notice of intent to intervene with the purchasing entity.

**11.4(3) *Initial disclosures—notice of appeal and public, redacted proposals and evaluation materials.*** Following the purchasing entity's receipt of a timely formal notice of appeal in accordance with subrule 11.3(3), the purchasing entity will transmit to the intervenor(s) a public copy from which claimed confidential or proprietary information has been excised of the formal notice of appeal and the appellant's proposal and, to the extent applicable, evaluation committee materials, documentation, analysis, and results. Subject to agreement and consent by the awardee(s) to the entry of a protective order in accordance with the provisions of this chapter governing protective orders, the purchasing entity may provide unredacted copies of the formal notice of appeal to the intervenor(s). If the intervenor(s) does not agree to the entry of a protective order, the purchasing entity will only provide the awardee(s) with a public, redacted copy of the notice of appeal. Upon written request of the intervenor, the purchasing entity will provide a public copy from which claimed confidential or proprietary information has been excised of unsuccessful vendors' proposals. The intervenor(s) shall be entitled to no additional discovery, materials, or information unless and until the proceedings advance to a second-tier review.

**11.4(4) *Intervention.*** Within five days of the appellant's receipt of the initial disclosures required by subrule 11.4(3), the intervenor(s) may submit a written justification defending the award, which written justification shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations set forth in rule 129—11.3(8B) applicable to notices of appeal.

**129—11.5(8B) First-tier review.**

**11.5(1) *Internal review.*** Following the receipt of a notice of appeal in accordance with rule 129—11.3(8B) and written justification or expiration of the period for intervention in accordance with rule 129—11.4(8B), the purchasing entity shall conduct an internal review of the grounds upon which the vendor challenges the award and the facts and circumstances involved. The purchasing entity shall issue a brief written decision affirming, modifying, or reversing, in whole or in part, the award and order any relief as determined appropriate by the purchasing entity.

**11.5(2) *Consultation with office.*** The office may consult with and assist other purchasing entities in conducting the review required by this rule.

**11.5(3) *Waiver.***

*a.* An issue that is not raised in the original notice of appeal shall be deemed waived for purposes of any first-, second-, or third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such issues may not be raised for the first time at a second-tier review hearing.

*b.* If a competitive selection document or other solicitation document contains a request for clarification process, or other similar question and answer process, failure of a vendor to raise an issue (including but not limited to related to the bid specifications) that could have been raised as part of that process shall constitute a waiver of any objection or argument as part of any first-, second-, or third-tier review or judicial review; such waiver is intended to ensure that purchasing entities are able to correct

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material issues or errors with competitive selection documents or award processes as early as possible in an orderly and efficient fashion, in a manner that is fair to all prospective vendors, and in a manner that avoids costly and time-consuming litigation to purchasing entities and the state.

**11.5(4) *Final decision and request for second-tier review.*** The purchasing entity's written decision shall become final unless within five days of the issuance thereof a vendor that is aggrieved or adversely affected by such decision files a request for second-tier review. A request for second-tier review shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations, set forth in rule 129—11.3(8B) applicable to notices of appeal. An issue that was raised in the original notice of appeal but that is not again raised in a request for second-tier review shall be deemed waived for purposes of any second- or third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such unraised issues may not be raised for the first time at a second-tier review hearing.

**11.5(5) *Nonparticipation of agency head or designee.*** The head of the purchasing entity or that person's designee who will serve as final decision maker in the event of a third-tier review, as applicable, shall not participate in the internal review or formulation of the written decision required by this rule.

**129—11.6(8B) *Informal debriefing.*** Within five days of the issuance of a first-tier review decision, on the purchasing entity's own motion or if requested by the appellant or intervenor following an adverse first-tier review decision, the purchasing entity may grant an opportunity for the adversely affected party to appear before the purchasing entity for an informal discussion and debriefing of the basis of the first-tier decision and surrounding facts and circumstances forming the basis of such decision. This is an elective step in the process and is not required as a prerequisite to initiating a second-tier review. Likewise, the purchasing entity is neither required to offer nor required to grant a request for an informal debriefing.

**11.6(1)** An informal debriefing is intended to provide an interested party with an opportunity to share in an informal setting the party's concerns with the process leading to the award. A party is not required to attend an informal debriefing, but attendance is strongly encouraged.

**11.6(2)** Because proposals, notices of appeal, and evaluation committee materials, documentation, analysis, and results may contain confidential or proprietary information, a party's participation may be contingent on the party's agreeing and consenting to the entry of a protective order in accordance with the provisions of this chapter governing protective orders, or the discussion will be limited to the public, redacted contents of materials or information forming the basis of any discussion.

**11.6(3)** A party may be represented by legal counsel at an informal debriefing.

**11.6(4)** Following the informal debriefing, the purchasing entity may affirm, modify, or reverse, in whole or in part, its prior decision, or the appellant may withdraw its appeal.

**11.6(5)** The head of the purchasing entity or that person's designee who will serve as final decision maker in the event of a third-tier review, as applicable, shall not participate in an informal debriefing conducted in accordance with this rule or in preparing any decision or order affirming, modifying, or reversing, in whole or in part, a prior decision.

**129—11.7(8B) *Second-tier review.***

**11.7(1) *Hearing scheduled.*** Upon receipt of a request for second-tier review, the purchasing entity shall contact the administrative hearings division of the department of inspections and appeals to conduct a hearing. The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's administrative rules governing contested case proceedings, unless the provisions of this chapter provide otherwise. In applying the office's administrative rules governing contested case proceedings where the purchasing entity is an entity other than the office, the terms "office" and "chief information officer" shall be deemed to refer to the applicable purchasing entity and head of the purchasing entity as defined in this chapter, respectively. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the request for second-tier review was received by the purchasing entity.

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**11.7(2) *Appeal security.*** To the extent required in the competitive selection documents or other applicable solicitation documentation, the vendor initiating the appeal shall supply to the purchasing entity an appeal security equal to 25 percent of total contract value with the request for second-tier review. For the purpose of this rule, “contract value” means the aggregate total compensation the vendor is likely to receive under the entire term of the contract, including all extensions and renewals, if awarded. If the contract value is not readily discernable, the purchasing entity will supply the vendor with an estimate upon request, which estimate shall be final. A vendor forfeits an appeal security if, as determined by the purchasing entity, following resolution of the appeal, the appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor. Failure to supply the purchasing entity with the appeal security required by this rule shall result in dismissal of the appeal.

**11.7(3) *Discovery.*** Any discovery by the appellant is limited to what actually occurred at the purchasing entity as it relates to the award process in accordance with the review standards set forth in this chapter. Overbroad or unduly burdensome discovery requests shall not be permitted.

*a. Additional disclosures.* In addition to the materials, documents, and information disclosed as part of the initial disclosures processes set forth in rules 129—11.3(8B) and 129—11.4(8B), and, to the extent such materials, documents, or information contain or are comprised of confidential or proprietary information, subject to a protective order entered in accordance with rule 129—11.11(8B), the purchasing entity will promptly transmit to the other parties any additional, relevant materials, documents, or information identified as part of its internal review during the first-tier review. Generally, relevant materials, documents, or information include:

- (1) The competitive selection documents and any amendments thereto;
- (2) Bids, proposals, or other like responses submitted by prospective vendors; and
- (3) Documentation generated during the evaluation process, including the final results.

*b. Discovery requests.* As a condition of requesting a second-tier review, the appellant is required to promptly respond to discovery requests made by the purchasing entity to the appellant, which requests may, by way of example only, be designed to probe whether the appellant failed to disclose information relevant to the award process that would have resulted in the appellant’s disqualification or whether the appellant engaged in any previously unreported inappropriate contact with the purchasing entity that would have resulted in the appellant’s disqualification. An appellant that would have been disqualified lacks standing and is not prejudiced by the purchasing entity’s decision to issue an award to a different vendor.

*c. Protective orders.* Because proposals, notices of appeal, and evaluation committee materials, documentation, analysis, and results may contain confidential or proprietary information, a party’s access to such materials, documents, or information is contingent on the entry of a protective order in accordance with the provisions of this chapter governing protective orders, or the party’s access will be limited to the public, redacted contents of such materials, documents, or information.

**11.7(4) *Witnesses and exhibits.*** The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the date set for the hearing. In order to avoid duplication or the submission of extraneous materials, the parties must meet either in person or by telephonic or electronic means prior to the hearing to discuss the evidence to be presented.

**11.7(5) *Hearings.***

*a. Telephonic or electronic hearings preferred.* Except where the determination of material factual issues presented turns on the credibility of witnesses, or where otherwise ordered by the presiding officer on the presiding officer’s own motion, hearings shall be conducted by telephonic or electronic means. A party requesting an in-person hearing shall bear the burden of forwarding sufficient reasons to justify an in-person hearing. If the hearing is conducted by telephonic or electronic means, the parties must deliver all exhibits to the office of the presiding officer at least three days prior to the time the hearing is conducted.

*b. Recording and transcription.* Oral proceedings in connection with a vendor appeal may be either recorded by mechanized means or transcribed by a certified shorthand reporter at the request of a party. A party requesting that a certified shorthand reporter transcribe the hearing shall bear the costs.

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Parties may obtain copies of recordings or transcriptions of proceedings from the presiding officer or certified shorthand reporter, as applicable, at the requester's expense.

*c. Retention time.* The purchasing entity shall file and retain the recording or transcription of oral proceedings for at least five years from the date of the decision.

**11.7(6) Proposed decision.** The presiding officer shall issue a proposed, written decision within 30 days of the hearing.

**129—11.8(8B) Third-tier review.** The proposed decision from a second-tier review shall become the final decision of the purchasing entity within ten days after the presiding officer has mailed the proposed decision to the parties unless prior to that time a party submits a request for third-tier review of the proposed decision in accordance with the provisions of this rule or the purchasing entity initiates review of the proposed decision on its own motion.

**11.8(1)** A party appealing the proposed decision to the head of the purchasing entity shall mail or deliver a request for third-tier review to the purchasing entity's headquarters and to the office's headquarters. A request for third-tier review shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations, set forth in rule 129—11.3(8B) applicable to notices of appeal. An issue that was raised in the original notice of appeal and again raised in a request for second-tier review but not raised in the request for third-tier review shall be deemed waived for purposes of any third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such unraised issues may not be raised for the first time at any oral proceedings held in connection with a request for third-tier review.

**11.8(2)** The party appealing the proposed decision shall be responsible for causing the transfer of and otherwise submitting the record forming the basis of prior stages to the presiding officer, including filing the recording and transcript generated as part of the second-tier review. The party appealing the proposed decision shall bear the cost of such transfer and submission, including the cost of obtaining the recording and transcript generated as part of the second-tier review.

**11.8(3)** Any party may submit to the purchasing entity exceptions to and a brief in support of or in opposition to the proposed decision within 15 days after the mailing of a request for third-tier review. The submitting party shall mail copies of any exceptions or brief it files to all other parties to the proceeding. The head of the purchasing entity shall notify the parties if the head of the purchasing entity deems oral arguments by the parties to be appropriate.

**11.8(4)** When the head of the purchasing entity consents or on the head of the purchasing entity's own motion, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. The head of the purchasing entity shall notify all parties in advance of the scheduled time and place for oral arguments. An oral argument may be either recorded by mechanized means or transcribed by a certified shorthand reporter at the request of a party. A party requesting that a certified shorthand reporter transcribe an oral argument shall bear the costs. Parties may obtain copies of recordings or transcriptions of proceedings from the head of the purchasing entity or certified shorthand reporter, as applicable, at the requester's expense.

**11.8(5)** The head of the purchasing entity shall review the proposed decision based on the record developed and issues properly raised and decided in all prior stages. The issues for review shall be those specified in the party's request for third-tier review and which were properly raised or decided during all prior stages. The head of the purchasing entity shall not take any further evidence. The head of the purchasing entity shall issue a final decision of the purchasing entity. The decision shall be in writing and shall conform to the requirements of Iowa Code chapter 17A.

**11.8(6)** The office may consult with and assist another purchasing entity in conducting a third-tier review.

**11.8(7)** Any party may file an application for rehearing in accordance with Iowa Code section 17A.16(2) and rule 129—6.30(8B,17A).



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**129—11.9(8B) Standards, burdens, and remedies applicable in vendor appeal.** The following standards, burden of proof and persuasion, and available remedies shall apply at all stages of review before the purchasing entity, including first-, second-, and third-tier reviews.

**11.9(1) Standard of review/prejudice.** Before the purchasing entity, the standard of review to be applied during a vendor appeal, including for purposes of either a first-, second-, or third-tier review, is whether the procurement process substantially complied with the relevant rules or legally binding procedures applicable to the award process at issue and, if not, whether there is prejudice to the nonprevailing vendor(s) because:

*a.* The noncompliance demands a conclusion the award process was not conducted fairly, openly or objectively; and

*b.* Compliance with the rule or legally binding procedure would have resulted in a different outcome.

**11.9(2) Burden of proof and persuasion.** Before the purchasing entity, including for purposes of a first-, second-, or third-tier review, the aggrieved or adversely affected vendor seeking to set aside a notice of intent to award bears the burden of proof and persuasion as the moving party. The burden of proof is clear and convincing evidence.

**11.9(3) Remedies for noncompliance.** Before the purchasing entity, at any stage, including as part of a first-, second-, or third-tier review, if a determination is made that an award process failed to substantially comply with the standard set forth in subrule 11.9(1) and resulted in the requisite prejudice, the remedy for such founded noncompliance shall be narrowly tailored and specifically designed to remediate the specific noncompliance. Wholesale remedies invalidating or voiding solicitations should be avoided unless the facts and circumstances are such that no conceivable measures could be taken to remediate the founded noncompliance.

*a.* Remedies for founded noncompliance may include, but shall not be limited to:

(1) Remanding the award back to the evaluation committee or other applicable selection group with directions to take steps to remedy the noncompliance and reissue the award if the purchasing entity determines the contract is still necessary to meet the purchasing entity's governmental or business needs or objectives;

(2) Where the facts and circumstances are such that no conceivable measures could be taken to remediate the founded noncompliance, voiding the award process and resulting contract and requiring that the contract be recompeted if the purchasing entity determines a contract is still necessary to meet the purchasing entity's governmental or business needs or objectives.

*b.* In determining the appropriate remedy, consideration shall be given to all the circumstances surrounding the award, including the seriousness of the deficiency, the degree of prejudice to other parties or to the integrity of the procurement system, the good faith of the parties, the cost to the purchasing entity, the urgency of the solicitation, and the impact on the purchasing entity's mission and best interests of the state.

**11.9(4) Award of costs against appellant.** If at any point in the appeal process an appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor, the purchasing entity may order any one or combination of the following against the appellant:

*a.* Dismissal of the appeal;

*b.* The payment of costs incurred in administering the process, including any hearing and related expenses;

*c.* The payment of attorneys' fees and consultant and expert witness fees;

*d.* Suspension or debarment from future opportunities; or

*e.* Forfeiture of the appeal security supplied in accordance with subrule 11.7(2).

**129—11.10(8B) Stay of agency action for vendor appeal.**

**11.10(1) When available.**

*a.* Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons

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justifying a stay, and shall be accompanied by an additional appeal bond equal to 120 percent of the total contract value. If the contract value is not readily discernable, the office will supply the vendor with an estimate upon request, which estimate shall be determinative. A vendor forfeits an appeal security if, as determined by the purchasing entity, following resolution of the appeal the appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the purchasing entity or another vendor.

*b.* Any party adversely affected by a final decision and order may petition the purchasing entity for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the purchasing entity within five days of receipt of the final decision and order and shall state the reasons justifying a stay.

**11.10(2) *When granted.*** In determining whether to grant a stay, the purchasing entity shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

**11.10(3) *Vacation.*** A stay may be vacated by the issuing authority upon application of the purchasing entity or any other party.

**11.10(4) *Where no stay.*** Except where provided otherwise in the contract between the parties, in the absence of a stay, the purchasing entity may, in its discretion, proceed to enter into a contract with the awardee during the pendency of the appeal. In the event the purchasing entity enters into a contract with the awardee during the pendency of an appeal and the contract is ultimately determined to be void through this appeal process, following the exhaustion of all opportunities for further appeal including intra-agency appeal or judicial review or appeal therefrom, the original awardee shall only be entitled to amounts, if any, due and owing for actual services or deliverables provided up to the date the contract is declared void and the opportunity for further appeal has fully expired.

#### **129—11.11(8B) Protective orders.**

**11.11(1) *General rule/purpose.*** To facilitate the fair and objective evaluation of proposals and cost-effective administration of vendor appeal processes, information and materials of or related to procurement processes or awards will not be released or otherwise available for public inspection prior to the issuance of the notice of intent to award or final disposition of any vendor appeal taken in accordance with this chapter, whichever occurs later. By submitting materials, documents, or information to the office as part of a competitive selection process or other award process, the vendor agrees and consents to the purchasing entity’s distribution of such materials, documents, or information to third parties, including other vendors that may be the submitting vendor’s competitors, as part of an appeal process, including, subject to the entry of a protective order in accordance with this rule, materials, documents, or information comprised, in whole or in part, of confidential or proprietary information. For purposes of any materials, documents, or information disclosed as part of a vendor appeal, parties are only entitled to materials, documents, or information comprised, in whole or in part, of confidential or proprietary information after a protective order has been entered in accordance with this rule. By filing a notice of appeal in accordance with rule 129—11.3(8B) or a written justification in accordance with rule 129—11.4(8B), the appellant or the awardee, as applicable, agrees and consents to the entry of a protective order in substantially the same form as set forth in this rule as a condition precedent to receiving any documents or information containing or comprised of, in whole or in part, confidential or proprietary information related to the appeal. In the absence of a protective order, parties will only receive public, redacted copies of materials or information.

**11.11(2) *How issued.*** In order to facilitate the exchange of information and materials as is necessary to facilitate an efficient and effective appeal process, the purchasing entity may enter a protective order(s) on its own motion or on the request of any party seeking access to confidential or proprietary information. The purchasing entity generally will not issue a protective order where an appellant is not represented by counsel, in which case the parties will only receive a public, redacted copy(ies) of information and materials.

**11.11(3) *Form of protective order.*** Protective orders entered in accordance with this rule shall be issued in substantially the following form and shall establish procedures for access to confidential and

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proprietary information, identification and safeguarding of that information, and submission of redacted copies of documents omitting confidential and proprietary information.

(NAME OF PURCHASING ENTITY)

<p>(NAME OF APPELLANT),</p> <p>APPELLANT,</p> <p>V.</p> <p>(NAME OF PURCHASING ENTITY),</p> <p>RESPONDENT,</p> <p>(NAME OF INTERVENOR(S), IF ANY),</p> <p>INTERVENOR.</p>	<p>DOCKET NO. ____ (“ACTION”)</p> <p>PROTECTIVE ORDER</p>
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Certain information that may be exchanged in discovery involves the production of trade secrets, confidential business information, or other confidential or proprietary information. Accordingly, (Name of Purchasing Entity) (“Purchasing Entity”) enters the following protective order (“Order”) to govern the proceedings. Where the term “Purchasing Entity” as used herein refers to the Purchasing Entity serving in an adjudicatory capacity in connection with this Action, such reference, to the extent the procedural posture of the Action at the time necessitates such an understanding, shall be understood as referring to any tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel.

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” (referred to both individually and collectively as “Label”). A Label shall be placed clearly on each page of the Protected Material (except native files, deposition and hearing transcripts) for which such protection is sought. A Label shall be included in the title of the designated native files. For any deposition and hearing transcripts, a Label shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY.”

2. With respect to documents, information or material designated “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” (referred to both individually and collectively as “DESIGNATED MATERIAL”), subject to the provisions herein and unless otherwise stated herein or provided by applicable law or rule, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Iowa Rules of Civil Procedure; (b) all prehearing and hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pleadings, exhibits to pleadings and other filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

3. Protected Material (i.e., “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY”) may be designated as such at any time. Inadvertent or unintentional production of documents,

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information or material that has not been designated as DESIGNATED MATERIAL or Labeled shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s) as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Material and any documents, information or material derived from or based on such Protected Material.

4. "CONFIDENTIAL" documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the producing party, upon order of the Purchasing Entity, or as set forth in paragraph 12 herein:

(a) outside counsel of record in this Action for the Parties. The Attorney General's Office shall be considered outside counsel of the Purchasing Entity for purposes of this Order;

(b) employees of such outside counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;

(c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action, provided the names and titles of such in-house counsel have been disclosed to the designating party;

(d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that either party may in good faith request the other Party's consent to designate one or more additional representatives, the other Party shall not unreasonably withhold such consent, and the requesting Party may seek leave to designate such additional representative(s) if the requesting Party believes the other Party has unreasonably withheld such consent;

(e) outside consultants or experts (i.e., not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; and (2) before access is given, the consultant or expert has completed the Acknowledgment Form attached as Exhibit A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert at least ten (10) days before access to the Protected Material is to be given to that consultant or expert to afford the producing Party an opportunity to object to and notify the receiving Party in writing that it objects to the disclosure of the Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Purchasing Entity within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking resolution of the dispute with respect to the proposed disclosure. No disclosure shall occur until all such objections are resolved by agreement of the Parties or order of the Purchasing Entity;

(f) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial/hearing consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and

(g) the Purchasing Entity serving in an adjudicatory capacity in connection and its personnel or tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel.

5. A Party shall designate documents, information or material as "CONFIDENTIAL" only upon a good faith belief that the documents, information or material contains confidential or proprietary information or trade secrets of the Party or a third party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.

6. Documents, information or material produced pursuant to any discovery request in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents

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thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.

7. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material "RESTRICTED – ATTORNEYS' EYES ONLY."

8. For Protected Material designated RESTRICTED – ATTORNEYS' EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 4(a), 4(b), 4(e), 4(f) and 4(g).

9. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall gather all copies of such documents, information or other material and return them to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party within ten (10) business days.

10. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties are hereby ORDERED to safeguard all such documents, information and material to protect against disclosure to any unauthorized persons or entities.

11. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating party; (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information; (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL; (iv) a current or former officer, director or employee of the producing Party or a current or former officer, director or employee of a company affiliated with the producing Party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to paragraphs 8 and 9 of this Order); (vi) an independent contractor, consultant, and/or expert retained for the purpose of litigating this Action (subject to paragraph 4 of this Order); (vii) court reporters and videographers; (viii) the Purchasing Entity serving in an adjudicatory capacity in connection and its personnel or tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel; or (ix) other persons entitled hereunder to access to DESIGNATED MATERIAL. Such DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or in an order issued by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

12. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as "CONFIDENTIAL" or "RESTRICTED – ATTORNEYS' EYES ONLY" pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the

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terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as “Confidential” in accordance with this Order.

13. Any DESIGNATED MATERIAL that is filed in connection with this Action shall be filed under seal and shall remain under seal until further order of the Purchasing Entity. The filing party shall be responsible for informing the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action that the filing should be sealed and for placing the legend “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER” above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a prehearing pleading filed with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall, except to the extent otherwise provided for or required by applicable law or rule, be redacted to the extent necessary and the pleading or exhibit filed publicly with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

14. The Order applies to prehearing discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at any hearing of this Action, or from using any information contained in DESIGNATED MATERIAL at any hearing of this Action, subject to any prehearing order issued by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

15. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) business days of receipt of the written request, the requesting Party may apply to the Purchasing Entity for relief. Upon any such application to the Purchasing Entity, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Iowa Rule of Civil Procedure 1.517, subject to that Rule’s provisions relating to sanctions. In making such application, the requirements of the Iowa Rules of Civil Procedure shall be met. Pending the Purchasing Entity’s ruling or order on such application, or the ruling or order by the tribunal serving as an agent of the Purchasing Entity in connection with this Action, the original designation of the designating Party shall be maintained and respected.

16. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has agreed to be bound by this Order. A copy of the Acknowledgment Form is attached as Exhibit A.

17. To the extent that any discovery is taken of persons who are not Parties to this Action and in the event that such third parties contended the discovery sought involves trade secrets, confidential business information, or other proprietary information, such third parties may agree to be bound by this Order.

18. To the extent that discovery or testimony is taken of third parties, the third parties may designate as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” any documents, information, or other material, in whole or in part, produced or given by such third parties. The third parties shall have ten (10) business days after production of such documents, information, or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as “CONFIDENTIAL” in accordance with this Order.

19. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall be returned to the producing Party or, where agreed to by the producing Party, destroyed by the receiving Party. The receiving Party shall verify the return or destruction, as applicable, by affidavit furnished to the producing Party upon the producing Party’s request.

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20. The failure to designate documents, information, or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information, and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.

21. Any Party knowing or believing that any other Party subject to this Order is in violation of or intends to violate this Order and after raising the question of violation or potential violation with the opposing Party and having been unable to resolve the matter by agreement, such Party may move the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

22. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.

23. Nothing in this Order shall be construed to effect an abrogation, waiver, or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or hearing privilege.

24. Each of the Parties shall also retain the right to file a motion with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action: (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

25. Nothing in this Order applies to a Party's use of its own DESIGNATED MATERIAL which it designated as such pursuant to this Order, or to material which the Party had available to it through means other than discovery in this proceeding.

26. **(SAMPLE REGULATORY COMPLIANCE PROVISION—INSERT ALTERNATE OR ADDITIONAL LANGUAGE IF NATURE OF DATA OR INFORMATION POTENTIALLY INVOLVED IN ACTION REQUIRES AS MUCH)** The Parties recognize that they may be required to produce in response to discovery requests patient information protected by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations found at 45 C.F.R. parts 160, 162, and 164 ("HIPAA"). Any such information exchanged shall be subject to this Order, shall be used solely for the purpose of the litigation of this Action, and shall at all relevant times be protected by the Parties from further redisclosure by the Parties. Any document containing information protected by HIPAA shall be filed under seal and shall not be open to public examination. At the conclusion of the litigation of this Action, all documents exchanged that contain information protected by HIPAA shall be either returned to the disclosing Party or destroyed, with the exception that copies of such records may be retained for document retention purposes only. At the end of any relevant document retention obligation, the documents protected by this provision of this Order shall be either returned to the disclosing Party or destroyed.

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EXHIBIT A—(NAME OF PURCHASING ENTITY)

<p>(NAME OF APPELLANT),</p> <p style="padding-left: 40px;">APPELLANT,</p> <p style="padding-left: 40px;">V.</p> <p>(NAME OF PURCHASING ENTITY),</p> <p style="padding-left: 40px;">RESPONDENT,</p> <p>(NAME OF INTERVENOR(S), IF ANY),</p> <p style="padding-left: 40px;">INTERVENOR.</p>	<p>DOCKET NO. ____ (“ACTION”)</p> <p><b>PROTECTIVE ORDER ACKNOWLEDGMENT FORM (“ACKNOWLEDGEMENT FORM”)</b></p>
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Certain information that may be exchanged in discovery involves the production of trade secrets, confidential business information, or other confidential or proprietary information.

I, \_\_\_\_\_, declare that:

1. My address is \_\_\_\_\_.  
     My current employer is \_\_\_\_\_.  
     My current occupation is \_\_\_\_\_.

2. I have received a copy of the Protective Order in this Action. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” that is disclosed to me.

4. Promptly upon termination of these actions, I will return or destroy, as applicable, all documents and things designated as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” that came into my possession, and all documents and things that I have prepared relating thereto, to or at the direction of the outside counsel for the party by whom I am employed.

5. I hereby submit to the jurisdiction of the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action for the purpose of enforcement of the Protective Order in this Action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature \_\_\_\_\_

Date \_\_\_\_\_

IT IS SO ORDERED.

Dated this the \_\_\_\_ day of \_\_\_\_.

(name of Purchasing Entity Representative or Agent Issuing Protective Order)

**11.11(4) Violation of terms of protective order.** Any violation of the terms of a protective order may result in the imposition of sanctions as the purchasing entity deems appropriate, including prohibition from participation in the remainder of the protest, dismissal of the protest, or suspension or debarment from future opportunities.

**129—11.12(8B) Issues not for consideration.** The following are types of challenges that shall not form the basis of a vendor appeal. Any attempted vendor appeal that fits into one of the following categories



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shall be dismissed anytime sufficient information is obtained to determine the appeal fits into one of the following categories.

**11.12(1) *Contract administration.*** Relating to contract administration. The administration of an existing contract is within the discretion of the purchasing entity. Disputes between a vendor and the agency are resolved pursuant to the disputes clause of the contract.

**11.12(2) *Subcontract protests.*** Appeals of the award or selection, or proposed award or selection, of a subcontractor. Such selection is determined pursuant to the applicable clauses of the contract.

**11.12(3) *Protests of orders.*** Individual orders, statements of work, or other transactional documents executed under an existing contract, including a master information technology agreement.

**11.12(4) *Alternative procurement methods.*** A decision to procure information technology through a method other than a competitive selection process, reverse auction process, or prequalification process. Alternative procurement methods that do not properly form the basis of a vendor appeal under this chapter include but are not limited to:

- a. A cooperative procurement agreement pursuant to Iowa Code section 8B.24(5) "a."
- b. A negotiated contract under any of the circumstances set forth in Iowa Code section 8B.24(5) "b"(1) to (3).
- c. An intergovernmental agreement with a governmental entity that has the resources available to supply the information technology sought.
- d. An emergency procurement.
- e. A sole source procurement.

**11.12(5) *Suspensions or debarments.*** Suspensions or debarments.  
These rules are intended to implement Iowa Code chapter 8B.

**ARC 4723C**

## **ECONOMIC DEVELOPMENT AUTHORITY[261]**

### **Notice of Intended Action**

#### **Proposing rule making related to disaster recovery housing program and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to amend Chapter 48, "Workforce Housing Tax Incentives Program," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 15.106A and 2019 Iowa Acts, House File 772, section 30.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 15.119 and 15.352 to 15.355.

#### *Purpose and Summary*

2019 Iowa Acts, House File 772, amends the Workforce Housing Tax Incentive Program and creates additional incentives for a new category of projects referred to as the Disaster Recovery Housing Program. This proposed rule making is intended to implement the Disaster Recovery Housing Program. This rule making amends the definition of a "small city," defines "disaster recovery housing project," establishes the eligibility requirements for tax incentives under the Disaster Recovery Housing Program, and describes the application process, the award process, and the administration of the disaster recovery housing tax incentives.

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*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

Jennifer Klein  
Economic Development Authority  
200 East Grand Avenue  
Des Moines, Iowa 50309  
Phone: 515.348.6144  
Email: [jennifer.klein@iowaeda.com](mailto:jennifer.klein@iowaeda.com)

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

*Emergency Rule Making Adopted by Reference*

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 4724C**, IAB 10/23/19). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

**ARC 4721C****HISTORICAL DIVISION[223]****Notice of Intended Action****Proposing rule making related to public records and fair information practices and providing an opportunity for public comment**

The Department of Cultural Affairs hereby proposes to amend Chapter 3, “Public Records and Fair Information Practices,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 303.1A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 22.16 and 144.43(3)“b.”

*Purpose and Summary*

Through this proposed rule making, the State Historical Society of Iowa clarifies what is considered a confidential record; defines “ancient records” and identifies the accessibility of these records; and adds “vital statistics” as a record series covered under rule 223—3.9(17A,22) and identifies when these records become public records.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

Anthony Jahn  
Department of Cultural Affairs  
600 East Locust Street  
Des Moines, Iowa 50319-1006  
Email: [anthony.jahn@iowa.gov](mailto:anthony.jahn@iowa.gov)

*Public Hearing*

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

HISTORICAL DIVISION[223](cont'd)

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 3.9(2) as follows:

**3.9(2) Confidential records.** The state archives has custody of records which other state agencies have created. An agency which creates records shall identify which records are confidential when transferring those records to the state archives. ~~Any~~ Unless otherwise required by law, any confidential record in an agency shall retain its confidential record status after its transfer to the state archives.

ITEM 2. Adopt the following **new** subrules 3.9(3) and 3.9(4):

**3.9(3) Ancient records.** Notwithstanding any confidentiality designation by the transferring agency, once any record in the state archives is more than 100 years old, the record shall be available for public examination and copying unless:

- a. The record is ordered to be sealed and is not subject to inspection by any court; or
- b. Federal law, rule, or regulation prohibits disclosure of the record.

**3.9(4) Vital statistics.** Notwithstanding any confidentiality designation, the following vital statistics records in the state archive may be inspected and copied as of right:

- a. A record of birth that is at least 75 years old.
- b. A record of marriage that is at least 75 years old.
- c. A record of divorce, dissolution of marriage, or annulment of marriage that is at least 75 years old.
- d. A record of death or fetal death that is at least 50 years old.

**ARC 4713C**

**INSURANCE DIVISION[191]**

**Notice of Intended Action**

**Proposing rule making related to licensing sanctions regarding student loan debt or related service obligations and providing an opportunity for public comment**

The Insurance Division hereby proposes to amend Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Chapter 55, "Licensing of Public Adjusters," and Chapter 100, "Sales of Cemetery Merchandise, Funeral Merchandise and Funeral Services," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 523A and 2019 Iowa Acts, Senate File 304.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 304.

*Purpose and Summary*

During the 2019 Legislative Session, a change was made to the Iowa Code which resulted in the repeal of Iowa Code sections 261.121 through 261.127, effective July 1, 2019. These Iowa Code sections had required the Division to take action against a person to whom it issues a license who is in default

## INSURANCE DIVISION[191](cont'd)

or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency. This proposed rule making implements this change by rescinding Division rules that implemented Iowa Code sections 261.121 through 261.127.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

The Division's general waiver provisions of 191—Chapter 4 apply to these rules.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Division no later than 4 p.m. on November 12, 2019. Comments should be directed to:

Tracy Swalwell  
Iowa Insurance Division  
Two Ruan Center  
601 Locust Street, Fourth Floor  
Des Moines, Iowa 50309  
Phone: 515.725.1249  
Fax: 515.281.3059  
Email: [tracy.swalwell@iid.iowa.gov](mailto:tracy.swalwell@iid.iowa.gov)

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve rule **191—50.53(261)**.

ITEM 2. Amend paragraph **55.9(5)“c”** as follows:

c. A licensed public adjuster shall report to the division all ~~college student aid commission or child support recovery unit~~ actions taken under or in connection with Iowa Code chapter ~~261 or 252J~~ and all court orders entered in such actions.

INSURANCE DIVISION[191](cont'd)

ITEM 3. Amend paragraph **55.12(1)“1”** as follows:

*l.* Failing to comply with an administrative or court order imposing a child support ~~or student loan~~ obligation, following procedures of rules 191—10.20(522B) and 191—10.21(522B), replacing the words “producer” with “public adjuster”;

ITEM 4. Amend subparagraph **100.10(3)“a”(2)** as follows:

(2) Failure to pay state debt, ~~or~~ child support ~~or student loan~~.

ITEM 5. Rescind and reserve subrule **100.17(6)**.

ITEM 6. Rescind and reserve paragraph **100.40(2)“k.”**

**ARC 4729C**

## **IOWA FINANCE AUTHORITY[265]**

### **Notice of Intended Action**

#### **Proposing rule making related to beginning farmer programs and providing an opportunity for public comment**

The Iowa Finance Authority hereby proposes to amend Chapter 44, “Iowa Agricultural Development Division,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 16.5 and 2019 Iowa Acts, House File 768, section 7.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 16, subchapter VIII, part 5, as amended by 2019 Iowa Acts, House File 768.

#### *Purpose and Summary*

2019 Iowa Acts, House File 768, creates a Beginning Farmer Tax Credit Program. Pursuant to 2019 Iowa Acts, House File 768, section 7, the authority is directed to adopt rules that are necessary for the administration of the program. This proposed rule making sets forth the eligibility criteria for eligible taxpayers and qualified beginning farmers, the requirements of an agricultural lease agreement upon which the tax credit is based, the process to be followed when a lease is amended, the application process and the required content of the tax credit application, and the procedure for calculating tax credit awards.

The rule making also updates outdated statutory references and amends the Beginning Farmer Loan Program’s eligibility criteria and related definitions to clarify the differences between the loan program and the tax credit program.

#### *Fiscal Impact*

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

#### *Jobs Impact*

After analysis and review of this rule making, a positive impact on jobs is expected. The Beginning Farmer Tax Credit Program is likely to create additional opportunities for individuals who wish to begin farming in Iowa.

## IOWA FINANCE AUTHORITY[265](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

Kristin Hanks-Bents  
Iowa Finance Authority  
1963 Bell Avenue, Suite 200  
Des Moines, Iowa 50315  
Email: [kristin.hanks-bents@iowafinance.com](mailto:kristin.hanks-bents@iowafinance.com)

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 265—44.1(16) as follows:

**265—44.1(16) General.**

**44.1(1)** *Description of Iowa agricultural development ~~division (IADD)~~ (IAD) board.* The ~~IADD~~ IAD board consists of five members appointed by the governor. The executive director of the Iowa finance authority or the executive director’s designee shall serve as an ex officio nonvoting member. Members are appointed for staggered six-year terms. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as the appointed members determine.

**44.1(2)** *Division organization and personnel.* The executive director of the authority may organize the division and employ necessary qualified personnel.

**44.1(2) 44.1(3)** *General course and method of operations.* The ~~IADD~~ IAD board generally meets on a monthly basis or at the call of the chairperson or whenever two appointed members so request. The purpose of the meetings shall be to review progress in implementation and administration of programs, to consider and act upon proposals for assistance, and take other actions as necessary and appropriate.

**44.1(3) 44.1(4)** *Location where public may submit requests for assistance or obtain information.* Requests for assistance or information should be directed to the Iowa finance authority at the address set forth in rule 265—1.3(16); telephone (515)725-4900. Requests may be made personally, by telephone, U.S. mail or any other medium available, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Special arrangements for accessibility to the authority at other times will be provided as needed.

## IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 2. Amend rule 265—44.2(16) as follows:

**265—44.2(16) Definitions.**

“*Act*” means Iowa Code chapter 16.

“*Agricultural asset*” means agricultural land, located in this state, including any agricultural improvements, machinery, equipment, and other depreciable agricultural property, ~~crops or livestock used for farming purposes.~~

“*Agricultural development board*” or “*IAD board*” means the agricultural development board created in Iowa Code section 16.2C and described in rule 265—44.1(16).

“*Agricultural asset transfer agreement*” means any commonly accepted written agreement which specifies the terms of the transfer of operation of the agricultural asset. ~~The agreement may be made on a cash basis or a commodity share basis.~~

“*Agricultural improvements*” means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. “Agricultural improvements” includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.

“*Agricultural land*” means land located in Iowa suitable for use in farming and which is or will be operated as a farm.

“*Agricultural lease agreement*” or “*agreement*” means an agreement for the transfer of agricultural assets, that must at least include a lease of agricultural land, from an eligible taxpayer to a qualified beginning farmer as provided in 2019 Iowa Acts, House File 768, section 9.

“*Application*” means a completed instrument on a form approved by IADD.

“*Authority*” means the Iowa finance authority created in Iowa Code section 16.1A.

“*Beginning farmer*” means an individual, partnership, family farm corporation, or family farm limited liability company, with a low or moderate net worth that engages in farming or wishes to engage in farming.

“*BFCF*” means beginning farmer custom farming tax credit program.

“*BFCF eligible applicant*” means an individual, partnership, family farm corporation or family farm limited liability company that has a net worth of not more than the maximum allowable net worth. ~~The applicant must also satisfy all of the criteria contained in Iowa Code sections 16.79 and 16.81 and the provisions of these rules relating to recipient eligibility.~~

“*BFLP*” means beginning farmer loan program.

“*BFLP eligible applicant beginning farmer*” means an individual who has a net worth of not more than the maximum allowable net worth. ~~The applicant must also be a beginning farmer, as defined in Iowa Code section 16.75, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility~~ a beginning farmer who also meets the requirements of a first-time farmer as defined in Section 147(c) of the Internal Revenue Code.

“*BFTC*” means beginning farmer tax credit program.

“*BFTC eligible applicant*” means an individual, partnership, family farm corporation or family farm limited liability company that has a net worth of not more than the maximum allowable net worth. ~~The applicant must also satisfy all of the criteria contained in Iowa Code sections 16.79 and 16.80 and the provisions of these rules relating to recipient eligibility.~~

“*Bond purchaser*” means any lender or any person, as defined in Iowa Code section 4.1(20), who purchases an authority bond under the individual agricultural development bond program.

“*Cash basis rent agreement*” means an agreement whereby operation of the agricultural asset is transferred via a fixed cash payment per annum.

“*Commodity share basis agreement*” means an agreement whereby operation of the agricultural asset is transferred via a risk-sharing mechanism, whereby the agricultural asset owner receives a portion of the production as payment for use of the agricultural asset.

“*Custom farming contract*” means any commonly accepted written contract which specifies the terms of the work to be performed by the beginning farmer for an Iowa landowner or tenant or livestock owner. ~~The contract must provide for the production of crops or livestock located on agricultural land.~~



## IOWA FINANCE AUTHORITY[265](cont'd)

The taxpayer will pay the BFCF eligible applicant on a cash basis, and the total amount paid for each tax year that the tax credit is claimed must equal at least \$1,000. The contract must be in writing for a term of not more than 24 months. A contract is not allowed if the taxpayer and BFCF eligible applicant are: persons who hold a legal or equitable interest in the same agricultural land or livestock; related family members, such as spouse, child, stepchild, brother, or sister; or partners in the same partnership which holds a legal or equitable interest.

“Eligible taxpayer” means a taxpayer who is eligible to participate in the beginning farmer tax credit program, including by meeting all the criteria provided in paragraph 44.6(1) “a.”

“Farm” means a farming enterprise which is generally recognized as a farm rather than a rural residence.

“Farming” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority.

“Flex lease agreement” means an agreement whereby operation of the agricultural asset is transferred via a combination of fixed cash payments and, at times, additional payment based on the production or other variables.

“IADD” means the Iowa agricultural development division of the Iowa finance authority.

“Lender” means any regulated bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal governmental agency or instrumentality, or other financial institution or entity authorized and able to make mortgage loans or secured loans in this state.

~~“Low income farmer” means a farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan with the authority.~~

“Low or moderate net worth” means a net worth that does not exceed the maximum allowable net worth defined in this rule.

“LPP” means loan participation program.

~~“LPP eligible applicant” means an individual who has a net worth of not more than the maximum allowable net worth. The applicant must be a low income farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan and who satisfies all of the criteria contained in the Act and the provisions of these rules relating to recipient eligibility.~~

~~“LPP loan” means the “last-in/last-out” loan participation requested by the lender from the authority.~~

~~“Maximum allowable net worth” for calendar year 2013 is \$691,172. The means the maximum allowable net worth for each calendar year which shall be increased or decreased as of January 1 of such calendar year from the previous year by an amount equal to the percentage increase or decrease (September to September) in the United States Department of Agriculture “Index of Prices Paid for Commodities and Services, Interest, Taxes, and Farm Wage Rates” reported as of October 1 of the immediately preceding calendar year. The maximum allowable net worth will be rounded to the nearest thousand dollars. The authority will post the maximum allowable net worth for each calendar year on its website at [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov).~~

“Net worth” means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the net worth of the individual, partnership, limited liability company or corporation. Assets shall be valued at fair market value.

“Participated loan” means a loan or loans, any portion of which is participated to the authority by the lender.

“Qualified beginning farmer” means a beginning farmer who is eligible to participate in the beginning farmer tax credit program by meeting the criteria set forth in paragraph 44.6(1) “b.”

“Total assets” means all assets including but not limited to cash, crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, net cash value of life insurance, machinery,

## IOWA FINANCE AUTHORITY[265](cont'd)

equipment, cars, trucks, farm and other real estate including life estates and personal residence, value of beneficial interest in a trust, government payments or grants, and any other assets.

“Total assets” shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the lender. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

“*Total liabilities*” means all liabilities including but not limited to accounts payable, notes or other indebtedness owed, taxes, rent, amount owed on any real estate contract or real estate mortgage, judgments, accrued interest payable, and any other liabilities. Liabilities shall be determined on the basis of generally accepted accounting principles.

In only those cases where the liabilities include an amount for deferred tax liability that causes the applicant’s net worth to change from exceeding the maximum allowable net worth to an amount no greater than the maximum allowable net worth, the applicant is required to have a certified public accountant prepare the financial statement and provide supporting calculations and documentation acceptable to the board.

“*USDA*” means the United States Department of Agriculture.

“*USDA-NASS*” means the United States Department of Agriculture’s National Agricultural Statistical Service.

“*Veteran*” means the same as defined in Iowa Code section 35.1.

ITEM 3. Rescind rule 265—44.3(16) and adopt the following **new** rule in lieu thereof:

**265—44.3(16) Beginning farmer loan program eligibility.** A loan to or on behalf of a beginning farmer shall be provided only if the following criteria are satisfied:

1. The beginning farmer is an individual and a resident of Iowa.
2. The agricultural land and agricultural improvements or depreciable agricultural property the beginning farmer proposes to purchase will be located in the state.
3. The beginning farmer has sufficient education, training, or experience in the type of farming for which the beginning farmer requests the loan and must demonstrate that education, training, or experience to the satisfaction of the authority.
4. If the loan is for the acquisition of agricultural land, the beginning farmer has or will have access to adequate working capital, farm equipment, machinery, or livestock. If the loan is for the acquisition of depreciable agricultural property, the beginning farmer has or will have access to adequate working capital or agricultural land. In the loan application, the beginning farmer must demonstrate to the satisfaction of the authority that the beginning farmer has or will have access to adequate working capital, farm equipment, machinery, or livestock.
5. The beginning farmer shall materially and substantially participate in farming.
6. The agricultural land and agricultural improvements shall only be used for farming by the beginning farmer, the beginning farmer’s spouse, or the beginning farmer’s minor children.

ITEM 4. Strike “eligible applicant” and “eligible applicants” wherever they appear in rule **265—44.4(16)** and insert “beginning farmer” and “beginning farmers,” respectively, in lieu thereof.

ITEM 5. Amend subrule 44.5(1) as follows:

**44.5(1) Program summary.** The loan participation program is intended to assist lenders and ~~LPP eligible applicants~~ (hereinafter referred to as “borrower(s)”) beginning farmers by purchasing a portion of a loan made by a lender to a ~~borrower~~ beginning farmer for the purchase of agricultural property.

a. *Supplement to ~~borrower’s~~ beginning farmer’s down payment.* The LPP loan can be used to supplement the ~~borrower’s~~ beginning farmer’s down payment so that the ~~borrower~~ beginning farmer can more readily secure a loan (the “participated loan”) from a lender.

b. *Last-in/last-out collateral position.* The program enables lenders to request a “last-in/last-out” LPP loan from the authority. The lender, on behalf of the ~~borrower~~ beginning farmer, shall apply for the LPP loan on application forms provided by the authority.

## IOWA FINANCE AUTHORITY[265](cont'd)

*c. Lender's certification.* The lender and the ~~borrower~~ beginning farmer shall certify that the information included in the application and any other documents submitted for consideration is true and correct to the best of their knowledge.

*d. LPP loan in conjunction with BFLP loan.* The loan participation program may be used in conjunction with the authority's beginning farmer loan program, provided the ~~borrower~~ beginning farmer meets the criteria for both programs.

ITEM 6. Amend paragraph 44.5(3)"e" as follows:

*e. Machinery and equipment.* The participated loan can be used for the purchase of agricultural machinery and equipment for which an income tax deduction for depreciation is allowed in computing state and federal income taxes. This machinery and equipment must be used in the ~~borrower's~~ beginning farmer's farming operation.

ITEM 7. Amend subrule 44.5(5) as follows:

**44.5(5) Program parameters.**

*a. Purchase price impact.* Maximum LPP loan amount and loan terms will be determined by the ~~IADD~~ IAD board.

*b. LPP interest rate.* The ~~IADD~~ IAD board will set the interest rate on the LPP loan.

*c. LPP loans outstanding.* Loans under the program may be issued more than once, provided that the outstanding LPP loan totals do not exceed the maximum amount set by the ~~IADD~~ IAD board.

ITEM 8. Amend subrule 44.5(6) as follows:

**44.5(6) LPP loan application procedures.**

*a. Financial statement.* Lenders may use their own form of financial statement. The authority may require other forms deemed necessary and appropriate to document the eligibility of the ~~borrower~~ beginning farmer and the ~~borrower's~~ beginning farmer's ability to make principal and interest payments.

If the ~~borrower~~ beginning farmer or the ~~borrower's~~ beginning farmer's spouse is involved in a business, partnership, limited liability company, or corporation, either related or unrelated to the ~~borrower's~~ beginning farmer's farming operation, a financial statement from this entity must also be submitted with the application.

*b. Income statement.* A copy of the ~~borrower's~~ beginning farmer's prior three years' federal income tax returns (if available) shall be submitted.

*c. Background letter.* The application will also include a background letter on the ~~borrower~~ beginning farmer, documenting to the satisfaction of the authority sufficient training, experience and access to capital.

*d. Credit evaluation.* ~~The lender will submit a credit evaluation of the project for which an LPP loan is sought.~~ The lender will evaluate the ~~borrower's~~ beginning farmer's net worth and ability to pay principal and interest and certify the sufficiency of security for the participated loan. The authority will review the application and make its own credit evaluation prior to issuance of an LPP loan.

*e. and f.* No change.

*g. Recording documents and fees.* Any recording or filing fees or transfer taxes associated with the participated loan will be paid by the ~~borrower~~ beginning farmer or lender and not the authority. Also, the authority will have no responsibility with respect to the preparation, execution, or filing of any declaration of value or groundwater hazard statements.

ITEM 9. Amend subrule 44.5(7) as follows:

**44.5(7) Loan administration procedures.**

*a. Lender's responsibilities.* The lender is responsible for servicing the participated loan following accepted standards of loan servicing and for transferring LPP loan payments to the authority.

(1) At the request of ~~IADD~~ the authority, the lender shall:

1. On an annual basis, provide the authority with copies of a current financial statement or a current tax return, or both.

## IOWA FINANCE AUTHORITY[265](cont'd)

2. Provide copies of insurance to the authority with the lender named as loss payee. The lender will apply payments to the participated loan according to the IADD-approved amortization schedule(s) or on a pro-rata basis.

(2) The lender shall not, without prior consent of the authority:

1. Make or consent to any substantial alterations in the terms of any participated loan instrument;

2. Make or consent to releases of security or collateral unless replaced with collateral of equal value on the participated loan;

~~3. Use the collateral purchased with funds from the participated loan as security for any other loan without prior written consent of the authority;~~

~~4.~~ 3. Accelerate the maturity of the participated loan;

~~5.~~ 4. Sue upon any participated loan instrument;

~~6.~~ 5. Waive any claim against any ~~borrower~~ beginning farmer, cosignor, guarantor, obligor, or standby creditor arising out of any instruments.

b. to d. No change.

e. *Subsequent loans.* Any loan or advance made by a lender to a ~~borrower~~ beginning farmer subsequent to the beginning farmer's obtaining an LPP loan under the program and secured by collateral or security pledged for the participated loan will be subordinate to the participated loan.

f. *Events of loan default.*

(1) Default will occur when the participated loan payment is 30 days past due. Notice to cure will be sent by the lender to the ~~borrower~~ beginning farmer with a copy sent to the authority; and the lender will take appropriate steps to cure the default through mediation, liquidation, or foreclosure if needed.

(2) and (3) No change.

g. *Applying principal and interest payments.* Lenders shall receive all payments of principal and interest. All payments made prior to liquidation or foreclosure shall be made according to the IADD-approved amortization schedule(s) or on a pro-rata basis. All accrued interest must be paid to zero at least annually on the anniversary date of the note.

h. No change.

ITEM 10. Amend subrule 44.5(8) as follows:

**44.5(8) *Right to audit.*** The authority shall have, at any time, the right to audit records of the lender and the ~~borrower~~ beginning farmer relating to any participated loan made under the program.

ITEM 11. Amend rule 265—44.6(16) as follows:

**265—44.6(16) Beginning farmer tax credit program.**

**44.6(1) *Eligibility.***

a. *Eligible taxpayer.* A taxpayer is eligible to participate in the beginning farmer tax credit program if the taxpayer meets all of the following requirements:

(1) The taxpayer is a person who may acquire or otherwise obtain or lease agricultural land in this state pursuant to Iowa Code chapter 9H or 9I. However, the taxpayer must not be a person who may acquire or otherwise obtain or lease agricultural land exclusively because of an exception provided in one of those chapters or in a provision of another chapter of the Iowa Code, including but not limited to Iowa Code chapter 10, 10D, or 501 or section 15E.207.

(2) The taxpayer has entered into an agricultural lease agreement with a qualified beginning farmer to lease agricultural land as provided in 2019 Iowa Acts, House File 768, section 9.

(3) The taxpayer has not been at fault for terminating a prior agreement under the program or another agreement in which the taxpayer was allowed to claim a tax credit under Iowa Code section 175.37 as it existed prior to January 1, 2015, or Iowa Code section 16.80 as it existed prior to January 1, 2018.

(4) If the agreement includes the lease of a confinement feeding operation structure as defined in Iowa Code section 459.102, the taxpayer is not a party to a pending administrative or judicial action, including a contested case proceeding under Iowa Code chapter 17A, relating to an alleged violation

## IOWA FINANCE AUTHORITY[265](cont'd)

involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(5) The taxpayer is not a partner of a partnership, shareholder of a family farm corporation, or member of a family farm limited liability company that is the lessee of an agricultural asset that is part of an agricultural lease agreement.

b. *Qualified beginning farmer.* A beginning farmer must meet all of the following criteria to be eligible for participation in the beginning farmer tax credit program:

(1) Is a resident of the state. If the beginning farmer is a partnership, all partners must be residents of the state. If the beginning farmer is a family farm corporation, all shareholders must be residents of the state. If the beginning farmer is a family farm limited liability company, all members must be residents of the state.

(2) Has sufficient education, training, or experience in farming. If the beginning farmer is a partnership, at least one partner who is not a minor must have sufficient education, training, or experience in farming. If the beginning farmer is a family farm corporation, at least one shareholder who is not a minor must have sufficient education, training, or experience in farming. If the beginning farmer is a family farm limited liability company, at least one member who is not a minor must have sufficient education, training, or experience in farming.

(3) Has access to adequate working capital and production items.

(4) Will materially and substantially participate in farming. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, at least one of the partners, shareholders, or members who is not a minor must materially and substantially participate in farming.

(5) Does not own more than 10 percent ownership interest in an agricultural asset included in the agreement.

(6) Is of majority age pursuant to Iowa Code section 599.1 and is legally able to enter into a contract.

**44.6(1) 44.6(2) General provisions.**

a. A beginning farmer tax credit is allowed only for agricultural assets that are subject to an agricultural lease agreement entered into by an eligible taxpayer and a qualifying beginning farmer participating in the beginning farmer tax credit program established pursuant to 2019 Iowa Acts, House File 768, section 7.

a. b. *Term.* The term of the credit shall be equal to the term of the agricultural assets transfer lease agreement, except that any unused credit may be carried forward for a period of ten years set forth in 2019 Iowa Acts, House File 768, section 11, if unused in the tax year the credits are earned. Credits may not be carried back to past tax years.

b. *Fees.* The authority may charge reasonable and necessary fees to defray the costs of this program.

c. *Expiration of lease.* The BFTC eligible applicant will continue to be eligible for the term of the lease. Upon expiration of the lease, both the taxpayer and BFTC eligible applicant must reapply to continue the tax credit.

**44.6(2) 44.6(3) Application procedures.**

a. The authority shall prepare and make available appropriate forms to be used in making application for the tax credit, including forms for both the taxpayer and the BFTC eligible applicant qualified beginning farmer.

b. Each application shall include, but not be limited to, the following:

(1) Taxpayer information: name, and address, email address if available, and social security number, length of the lease, type of lease, and location of the agricultural asset to be leased or tax identification number. In addition, the application shall have attached to it a copy of the lease agreement between the parties. The taxpayer shall also indicate the length of the lease, the type of lease, and the location of the agricultural asset to be leased.

(2) BFTC eligible applicant Qualified beginning farmer information: name and address, email address if available, and location of the asset to be leased. In addition, the application shall have attached to it a copy of the BFTC eligible applicant's most recent qualified beginning farmer's current financial

## IOWA FINANCE AUTHORITY[265](cont'd)

statement (generally prepared one month preceding application submission). The application will also include a background letter on the BFTC eligible applicant qualified beginning farmer documenting to the satisfaction of the authority that the beginning farmer has sufficient education, training, or experience in farming and has access to adequate working capital and production items. This letter may be submitted by one or more of the following: the BFTC eligible applicant qualified beginning farmer, the taxpayer or another third party.

(3) A copy of the agricultural lease agreement that conforms to the requirements set forth in subrule 44.6(4).

c. Complete applications shall be processed in the order they are received by the authority.

d. Authority staff will review applications for completeness and eligibility and make recommendations to the IAD board. The IAD board will review applications and recommendations from authority staff and make recommendations to the authority. Upon review of the recommendations of the IAD board, the authority will approve, defer, or deny each application.

~~44.6(3) Execution of an agricultural assets transfer agreement.~~ In addition to the requirements of rule 265—44.6(16), both the taxpayer and the BFTC eligible applicant shall execute an agricultural assets transfer agreement. The form used shall be a commonly accepted form and signed by all parties.

~~44.6(4) Procedures following tax credit approval.~~ Either the BFTC eligible applicant or the taxpayer shall immediately notify the authority of any material changes in the agricultural assets transfer agreement. Written approval from the authority is required if the change impacts the amount of the tax credit awarded. The authority shall act upon these changes pursuant to Iowa Code section 16.80.

44.6(4) Requirements of an agricultural lease agreement.

a. The agricultural lease agreement must meet the following requirements:

(1) The agreement must include the lease of agricultural land located in this state, including any improvements, and may provide for the rental of agricultural equipment as defined in Iowa Code section 322F.1.

(2) The agreement must include provisions which describe the consideration paid for the agreement in a manner that allows the authority to calculate the value of the lease in order to determine the tax credit amount as provided in 2019 Iowa Acts, House File 768, section 11.

(3) The agreement must be in writing and signed by all parties.

(4) The agreement must be for at least two years, but not more than five years. The agreement may be renewed by the eligible taxpayer and qualified beginning farmer for a term of at least two years, but not more than five years.

(5) The agreement shall not include a lease or rental of equipment intended as a security.

b. The agreement cannot be assigned, and the agricultural land subject to the agreement shall not be subleased.

c. The agricultural assets shall not be leased or rented at a rate that is substantially higher than the market rate for similar agricultural assets leased or rented within the same community. As used in this paragraph, when referring to an agricultural asset that is cropland, “substantially higher” means not more than 30 percent above the average cash rent paid for cropland rented in the same county according to the most recent cash rent survey for cropland published by a unit of Iowa State University of Science and Technology recognized by the authority.

44.6(5) Changes to an agricultural lease agreement.

a. The underlying lease for agricultural land may only be amended without submitting a new application if any of the following apply:

(1) The terms of the amended lease are more favorable to the qualified beginning farmer, including but not limited to the rent payment being reduced.

(2) A party has changed their name.

(3) The owner of an agricultural asset is changed to the owner’s estate or trust upon the eligible taxpayer’s death.

b. If the eligible taxpayer and the qualified beginning farmer are amending an agricultural lease agreement but none of the conditions of paragraph 44.6(5) “a” apply, then the eligible taxpayer must submit a new application for a tax credit.

## IOWA FINANCE AUTHORITY[265](cont'd)

c. If an amendment to an agreement changes the total amount that will be paid to the eligible taxpayer under the agreement, the eligible taxpayer shall notify the authority in a manner and form prescribed by the authority within 30 days of the date the amendment is executed by the parties.

(1) If the amendment will reduce the total amount paid to the eligible taxpayer under the agreement, the authority shall recalculate and reduce the eligible taxpayer's tax credit award under 2019 Iowa Acts, House File 768, section 12.

(2) If the amendment will increase the total amount paid to the eligible taxpayer under the agreement, the tax credit award shall not be increased unless the eligible taxpayer submits an amended application to the authority on the relevant form available on the authority's website and that meets the requirements of 2019 Iowa Acts, House File 768, section 10. If the amended application is approved under 2019 Iowa Acts, House File 768, section 10, the authority may increase the amount of the tax credit award. The increased amount of the tax credit award shall be subject to the aggregate award limitation in 2019 Iowa Acts, House File 768, section 12, for the calendar year in which the increased award is made.

d. Paragraph 44.6(5) "c" does not apply to an amendment to an agreement that requires a new application under paragraph 44.6(5) "b" in order to be valid.

e. An eligible taxpayer or qualified beginning farmer may terminate an agreement as provided in the agreement or by law. The eligible taxpayer must notify the authority of the termination within 30 days of the date of termination in the manner and form prescribed by the authority.

f. Expiration of lease. Prior to the expiration of the lease, the qualified beginning farmer will continue to be eligible for the term of the lease. Upon expiration of the lease, both the taxpayer and qualified beginning farmer must reapply to continue the tax credit.

**44.6(6) Procedure for calculating tax credit awards.**

a. The amount of the tax credit for a cash rent agreement equals 5 percent of the amount of rent received for each year.

b. For a commodity share agreement, the amount of the tax credit shall equal 15 percent of the gross amount that the eligible taxpayer would receive as a rent payment from the sale of the eligible taxpayer's share of the crop in each harvest year.

c. To calculate the credit for a commodity share agreement, the authority will use the following assumptions:

(1) Fifty percent of the leased land is allocated to corn and 50 percent of the leased land is allocated to soybeans, unless the lease specifies a different allocation of corn and soybeans. If the lease specifies a different allocation of corn and soybeans, then the leased land will be allocated proportionally, in accordance with the terms of the lease.

(2) For all years of the lease, the prices used for corn and soybeans will be the average prices for the last five years excluding the highest and lowest prices based on the USDA-NASS statewide data calculated at the time the application is approved.

(3) For all years of the lease, the commodity yields used for corn and soybeans will be the past ten-year average per-bushel yields for the same county where the leased land is located excluding the years of highest and lowest per-bushel yields based on the USDA-NASS data calculated at the time the application is approved.

(4) If the lease specifies a crop other than corn and soybeans, the relevant price and yield data from USDA-NASS for that crop will be used.

d. To calculate the credit for a commodity share agreement, the authority will use the following formula: (1/2 acres leased multiplied by corn yield multiplied by corn price multiplied by percentage of owner's share multiplied by .15) plus (1/2 acres leased multiplied by soybean yield multiplied by soybean price multiplied by owner's share multiplied by .15) = the amount of the tax credit. If the lease specifies a different allocation of corn and soybeans, then the leased acres will be in accordance with the terms of the lease.

e. The amount of the tax credit for a flex lease agreement equals the sum of the following amounts:

(1) The portion of the lease that is based on rent will be calculated as a cash rent agreement.

IOWA FINANCE AUTHORITY[265](cont'd)

(2) The portion of the lease that is based on crop yield will be calculated as a commodity share agreement.

(3) If the flexible or bonus portion of the lease is based on crop production, the annual yield used to calculate the bonus will be the yield defined in subparagraph 44.6(6) "c"(3). If the annual yield is above the yield needed to trigger the bonus, the taxpayer will be awarded additional tax credits. The formula for calculating the tax credit will be yield above lease bonus trigger multiplied by price multiplied by percentage of owner's share multiplied by 0.15.

(4) For other factors used in a flex lease agreement, the relevant data used will be the past ten-year average per-bushel yield for the same county where the leased land is located excluding the highest and lowest years based on the USDA-NASS data.

f. The amount of the tax credit shall be reduced by the percent ownership interest of the qualifying beginning farmer in the agricultural asset.

ITEM 12. Rescind and reserve rule **265—44.7(16)**.

**ARC 4726C**

## **PROFESSIONAL LICENSURE DIVISION[645]**

### **Notice of Intended Action**

#### **Proposing rule making related to child and dependent adult abuse mandatory reporter training and providing an opportunity for public comment**

The Board of Massage Therapy hereby proposes to amend Chapter 131, "Licensure of Massage Therapists," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 152C and Iowa Code section 272C.2.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, chapter 91 [House File 731].

#### *Purpose and Summary*

2019 Iowa Acts, chapter 91, amends Iowa Code sections 232.69 and 235B.16, which govern mandatory training in child and dependent adult abuse for certain professionals. This proposed rule making amends the Board's requirements for mandatory training in child and dependent adult abuse reporting to reflect the statutory changes and requires that licensees who must make reports for child and dependent adult abuse comply with the training requirements provided in the amended Iowa Code sections 232.69 and 235B.16 every three years. This proposed rule making also updates subrule 131.8(4) to remove a reference to a rescinded rule provision.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

#### *Waivers*

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on November 13, 2019. Comments should be directed to:

Tony Alden  
Professional Licensure Division  
Iowa Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Phone: 515.281.4401  
Fax: 515.281.3121  
Email: [tony.alden@idph.iowa.gov](mailto:tony.alden@idph.iowa.gov)

*Public Hearing*

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

November 13, 2019  
9 to 9:30 a.m.

Fifth Floor Conference Room 526  
Lucas State Office Building  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Amend subrule 131.8(4) as follows:

**131.8(4)** Mandatory reporter training requirements.

*a.* A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of ~~two hours of~~ training in child abuse identification and reporting as required by Iowa Code section 232.69(3) "b" in the previous ~~five~~ three years or condition(s) for waiver of this requirement as identified in paragraph "e."

*b.* A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of ~~two hours of~~ training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) "b" in the previous ~~five~~ three years or condition(s) for waiver of this requirement as identified in paragraph "e."

*c.* ~~A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."~~

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course course(s) shall be a the curriculum approved provided by the Iowa department of public health abuse education review panel human services.~~

*d.* The licensee shall maintain written documentation for ~~five~~ three years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

*e.* The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, ~~including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645 Chapter 133.~~

*f.* The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

**ARC 4727C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

**Proposing rule making related to continuing education and mandatory reporting requirements and providing an opportunity for public comment**

The Board of Social Work hereby proposes to amend Chapter 280, "Licensure of Social Workers," and Chapter 281, "Continuing Education for Social Workers," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 154C.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 606, and 2019 Iowa Acts, House File 731.

*Purpose and Summary*

This proposed rule making seeks to implement 2019 Iowa Acts, House File 606, which requires the Board to not limit the number of hours of continuing education licensees can earn online, and 2019 Iowa Acts, House File 731, which changes Iowa's mandatory reporting requirements. The proposed amendments to Chapter 281 remove the Board's requirement that no more than 12 hours of continuing education can be completed via independent study. The proposed amendment to Chapter 280 changes the mandatory reporting rule to coincide with changes passed in House File 731.

*Fiscal Impact*

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

*Jobs Impact*

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

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*Waivers*

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

Tony Alden  
Professional Licensure Division  
Iowa Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Phone: 515.281.4401  
Fax: 515.281.3121  
Email: [tony.alden@idph.iowa.gov](mailto:tony.alden@idph.iowa.gov)

*Public Hearing*

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

November 12, 2019  
8 to 8:30 a.m.

Fifth Floor Conference Room 526  
Lucas State Office Building  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 280.9(3) as follows:

**280.9(3)** Mandatory reporting of child abuse and dependent adult abuse.

*a.* ~~A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "f."~~ Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats children in Iowa shall complete an initial two-hour child abuse mandatory reporter training course offered by the department of human services within six months of employment, or prior to the expiration of a current certificate. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certificate.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~b. A licensee who regularly examines, attends, counsels or treats dependent adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "f."~~ Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats adults in Iowa shall complete an initial two-hour dependent adult abuse mandatory reporter training course offered by the department of human services within six months of employment, or prior to the expiration of a current certificate. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certificate.

~~c. A licensee who regularly examines, attends, counsels or treats both dependent adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting in dependent adults and children or condition(s) for waiver of this requirement as identified in paragraph "f."~~

~~d. Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.~~

~~e. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.~~

~~f. c.~~ The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including waiver of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 281.

~~g. d.~~ The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "c," and "b."

ITEM 2. Rescind the definition of "Independent study" in rule 645—281.1(154C).

ITEM 3. Rescind paragraph 281.3(2)"b."

ITEM 4. Reletter paragraphs 281.3(2)"c" to "k" as 281.3(2)"b" to "j."

**ARC 4715C**

## **TRANSPORTATION DEPARTMENT[761]**

### **Notice of Intended Action**

#### **Proposing rule making related to replacement of driver's license or nonoperator's identification card and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 602, "Classes of Driver's Licenses," Chapter 605, "License Issuance," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 307.12.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 321.189 as amended by 2019 Iowa Acts, Senate File 303, section 1, and Iowa Code section 321.190.

TRANSPORTATION DEPARTMENT[761](cont'd)

*Purpose and Summary*

This proposed rule making corrects a cross reference in Chapter 602 and updates Chapters 605 and 630 to conform the rules with 2019 Iowa Acts, Senate File 303, which amends Iowa Code section 321.189 to allow a person attaining the age of 21 to apply electronically for a replacement driver's license or nonoperator's identification card for the unexpired months of the credential. The cost of a replacement driver's license or identification card is the same \$10 charge regardless of whether the person obtains the replacement electronically, uses a self-serve kiosk, or comes in person to a driver's license service center. Prior to the law change, the Department did not offer electronic replacement of a license or identification card, but the person could obtain a replacement credential in person or by using a self-serve kiosk. A person has been able to obtain an electronic renewal of a license or identification card for several years, and where applicable, the proposed amendment mirrors the existing criteria for eligibility to renew the license or identification card electronically. The reason the law targets electronic replacement of a credential for a person upon attaining the age of 21 is because that is the age that the license or identification card can be issued with a horizontal rather than a vertical orientation and that is the age when the credential is no longer required to contain the phrase "under twenty-one."

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 12, 2019. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy Bureau  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

November 14, 2019  
10 a.m.

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Boulevard  
Ankeny, Iowa

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

## TRANSPORTATION DEPARTMENT[761](cont'd)

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

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 602.2(4) as follows:

**602.2(4) Passenger restriction for intermediate licensee.** The passenger restriction required by Iowa Code ~~subsection~~ section 321.180B(2) will be added to an intermediate license unless waived by the licensee's parent or guardian at the time the license is issued. If the restriction is not waived at the time the license is issued, the intermediate license will be designated with a "9" restriction with the following notation: "Only 1 unrelated minor passenger allowed until [six months from the date the license is issued]." The licensee must obey the restriction for the first six months after the intermediate license is issued. If a parent or guardian wishes to waive the passenger restriction after the license has already been issued, the licensee and the parent or guardian must apply for a duplicate license and pay the replacement fee pursuant to ~~761—subrule 605.11(3)~~ 761—subrule 605.11(4).

ITEM 2. Amend rule 761—605.11(321) as follows:

**761—605.11(321) Duplicate license.**

**605.11(1) and 605.11(2)** No change.

**605.11(3) Replacement upon attaining the age of 21.** A licensee, upon attaining the age of 21, who is otherwise eligible for a driver's license is eligible to electronically apply for a replacement driver's license under this rule for the unexpired months of the license, regardless of whether the most recent issuance occurred electronically.

a. Except for the requirements in subparagraphs 605.25(7)"a"(1) and 605.25(7)"a"(2), the licensee must meet the eligibility requirements listed in paragraph 605.25(7)"a" to replace the license electronically and must also meet the following criteria:

(1) The licensee must be at least 21 years old.

(2) The licensee must currently hold a driver's license marked "Under 21" as provided in Iowa Code section 321.189.

b. Notwithstanding any other provision of this chapter to the contrary, the department may accept an electronic replacement application if the licensee seeks replacement of a special instruction permit or a license with a single "J" restriction accompanied by a "9" restriction.

~~605.11(3)~~ **605.11(4) Fee.** The fee to replace a license is \$10.

This rule is intended to implement Iowa Code sections 321.13, 321.189 as amended by 2019 Iowa Acts, Senate File 303, section 1, 321.195 and 321.208, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 3. Amend paragraph **605.12(1)"a"** as follows:

a. Submitting the address change in writing to the Driver and Identification Services Bureau, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; or

ITEM 4. Amend rule 761—630.3(321) as follows:

**761—630.3(321) Duplicate card.**

**630.3(1) and 630.3(2)** No change.

TRANSPORTATION DEPARTMENT[761](cont'd)

**630.3(3)** *Replacement upon attaining the age of 21.* A cardholder, upon attaining the age of 21, who is otherwise eligible for a nonoperator’s identification card is eligible to electronically apply for a replacement card under this rule for the unexpired months of the card, regardless of whether the most recent issuance occurred electronically.

*a.* Except for the requirements in 761—subparagraphs 605.25(7) “a”(1) and 605.25(7) “a”(2), the cardholder must meet the eligibility requirements listed in 761—paragraph 605.25(7) “a” to replace the card electronically and must also meet the following criteria:

(1) The cardholder must be at least 21 years old.

(2) The cardholder must currently hold a nonoperator’s identification card marked “Under 21” as provided in Iowa Code section 321.190.

*b.* Reserved.

~~630.3(3)~~ **630.3(4)** *Fee.* The fee to replace a nonoperator’s identification card is the same amount as the fee required to replace a driver’s license. See 761—subrule ~~605.11(3)~~ 761—subrule 605.11(4).

### TREASURER OF STATE

#### Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for October is 3.75%.

#### INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants .....	Maximum 6.0%
74A.4 Special Assessments .....	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective October 9, 2019, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

#### TIME DEPOSITS

7-31 days .....	Minimum .10%
32-89 days .....	Minimum .10%
90-179 days .....	Minimum .35%
180-364 days .....	Minimum .50%
One year to 397 days .....	Minimum .60%
More than 397 days .....	Minimum .75%

## TREASURER OF STATE(cont'd)

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

**USURY**

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

November 1, 2018 — November 30, 2018	5.00%
December 1, 2018 — December 31, 2018	5.25%
January 1, 2019 — January 31, 2019	5.00%
February 1, 2019 — February 28, 2019	4.75%
March 1, 2019 — March 31, 2019	4.75%
April 1, 2019 — April 30, 2019	4.75%
May 1, 2019 — May 31, 2019	4.50%
June 1, 2019 — June 30, 2019	4.50%
July 1, 2019 — July 31, 2019	4.50%
August 1, 2019 — August 31, 2019	4.00%
September 1, 2019 — September 30, 2019	4.00%
October 1, 2019 — October 31, 2019	3.75%
November 1, 2019 — November 30, 2019	3.75%



ARC 4724C

**ECONOMIC DEVELOPMENT AUTHORITY[261]****Adopted and Filed Emergency****Rule making related to disaster recovery housing program**

The Economic Development Authority hereby amends Chapter 48, “Workforce Housing Tax Incentives Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 15.106A and 2019 Iowa Acts, House File 772, section 30.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 15.119 and 15.352 to 15.355.

*Purpose and Summary*

2019 Iowa Acts, House File 772, amends the Workforce Housing Tax Incentive Program and creates additional incentives for a new category of projects referred to as the Disaster Recovery Housing Program. This rule making is intended to implement the Disaster Recovery Housing Program. This rule making amends the definition of a “small city,” defines “disaster recovery housing project,” establishes the eligibility requirements for tax incentives under the Disaster Recovery Housing Program, and describes the application process, the award process, and the administration of the disaster recovery housing tax incentives.

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

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are unnecessary or impractical because statute so provides.

*Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Authority also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 3, 2019, because 2019 Iowa Acts, House File 772, section 30, allows the Authority to adopt emergency rules to implement House File 772 and states that the rules shall be effective immediately upon filing unless a later date is specified in the rules. This rule making will confer a benefit, and the Authority has determined that an immediate effective date is useful to further the purposes of House File 772 and this rule making.

*Adoption of Rule Making*

This rule making was adopted by the Authority on August 16, 2019.

*Concurrent Publication of Notice of Intended Action*

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 4723C** to allow for public comment.

*Fiscal Impact*

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

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making became effective on October 3, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following new definition of “Disaster recovery housing project” in rule **48.3(15)**:

“*Disaster recovery housing project*” means a qualified housing project located in a county that has been declared a major disaster by the President of the United States on or after March 12, 2019, and that is also a county in which individuals are eligible for federal individual assistance.

ITEM 2. Amend rule **261—48.3(15)**, definition of “Small city,” as follows:

“*Small city*” means any city or township located in this state, except those located wholly within one or more of the 11 most populous counties in the state, as determined by the most recent federal decennial census population estimates issued by the United States bureau of census. ~~For the purposes of this definition, a small city that is located in more than one county shall be considered to be located in the county having the greatest taxable base within the small city.~~

ITEM 3. Adopt the following new 261—Chapter 48, subheading, to precede rule 216—48.9(15):

## DISASTER RECOVERY HOUSING PROGRAM

ITEM 4. Adopt the following new rules 261—48.9 to 261—48.13:

**261—48.9(15) Housing project minimum requirements.** To receive disaster recovery housing tax incentives pursuant to the program, a proposed disaster recovery housing project shall meet all of the following requirements:

**48.9(1)** The project includes at least one of the following:

- a. Four or more single-family dwelling units, except for a project located in a small city, then two or more single-family dwelling units.
- b. One or more multiple dwelling unit buildings each containing three or more individual dwelling units.
- c. Two or more dwelling units located in the upper story of an existing multi-use building.

**48.9(2)** The project consists of any of the following:

- a. Rehabilitation, repair, or redevelopment at a brownfield site or grayfield site that results in new dwelling units.
- b. The rehabilitation, repair, or redevelopment of dilapidated dwelling units.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

*c.* The rehabilitation, repair, or redevelopment of dwelling units located in the upper story of an existing multi-use building.

*d.* The new construction, rehabilitation, repair, or redevelopment of dwelling units in a distressed workforce housing community. The authority will determine whether a community is considered a distressed workforce housing community pursuant to subrule 48.4(2).

*e.* For a project located in a small city that meets the minimum housing project requirements under this subrule, development at a greenfield site. A project located in a small city is not required to complete the distressed workforce housing community application pursuant to subrule 48.4(2).

*f.* For a disaster recovery housing project, development at a greenfield site.

**48.9(3)** Except as provided in subrules 48.9(4) and 48.9(5) below, the average dwelling unit cost does not exceed \$200,000 per dwelling unit. For purposes of this rule, the average dwelling unit cost equals the costs directly related to the housing project divided by the total number of dwelling units in the housing project.

**48.9(4)** The average dwelling unit cost does not exceed \$250,000 per dwelling unit if the project involves the rehabilitation, repair, redevelopment, or preservation of eligible property, as that term is defined in Iowa Code section 404A.1(8) “*a.*”

**48.9(5)** The average dwelling unit cost does not exceed \$215,000 per dwelling unit if the project is located in a small city.

**48.9(6)** The dwelling units, when completed and made available for occupancy, meet the U.S. Department of Housing and Urban Development’s housing quality standards and all applicable local safety standards.

**48.9(7)** The project is not located in a 100-year floodplain.

**261—48.10(15) Housing project application and agreement.****48.10(1) Application.**

*a.* A housing business seeking disaster recovery housing tax incentives pursuant to rule 261—48.11(15) shall make application to the authority in the manner prescribed in this rule. The authority may accept applications on a continuous basis and will review applications in the order received. The authority will acknowledge receipt of the application and notify the applicant within 30 days as to whether the disaster recovery housing project will be awarded tax incentives pursuant to this rule.

*b.* The application for disaster recovery housing tax incentives described in paragraph 48.10(1) “*a.*” shall include all of the following:

(1) The following information establishing local participation for the housing project:

1. A resolution in support of the housing project by the community where the housing project will be located.

2. Documentation of local matching funds pledged for the housing project in an amount equal to at least \$1,000 per dwelling unit, including but not limited to a funding agreement between the housing business and the community where the housing project will be located. For purposes of this paragraph, local matching funds shall be in the form of cash or cash equivalents or in the form of a local property tax exemption, rebate, refund, or reimbursement.

(2) A report that meets the requirements and conditions of Iowa Code section 15.330(9).

(3) Information showing the total costs and funding sources of the housing project sufficient to allow the authority to adequately determine the financing that will be utilized for the housing project, the actual cost of the dwelling units, and the amount of qualifying new investment.

(4) A certification that the applicant’s housing project is located in a county that has been declared a major disaster by the President of the United States on or after March 12, 2019, and is also located in a county in which individuals are eligible for federal individual assistance.

(5) Documentation that provides evidence that the housing project is needed due to impact of the disaster that is the subject of the presidential major disaster declaration.

(6) Information showing that the housing project is located outside of a 100-year floodplain.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

(7) Any other information deemed necessary by the authority to evaluate the eligibility and financial need of the housing project under the disaster recovery housing program.

**48.10(2) Application review—tax incentive award.**

a. Upon review of the application, the authority may make a tax incentive award to a disaster recovery housing project under the disaster recovery housing program. The tax incentive award shall represent the maximum amount of tax incentives that the disaster recovery housing project may qualify for under the program. In determining a tax incentive award, the authority shall not use an amount of project costs that exceeds the amount included in the application of the housing business. Tax incentive awards shall be approved by the director of the authority.

b. After making a tax incentive award, the authority shall notify the housing business of its tax incentive award under the program. The notification shall include the amount of tax incentives under rule 261—48.11(15) for which the housing business has received an award and a statement that a housing business has no right to receive a tax incentive certificate or claim a tax incentive until all requirements of the program, including all requirements imposed by the agreement entered into pursuant to subrule 48.10(3), are satisfied. The amount of tax credits included on a tax credit certificate issued pursuant to this chapter, or a claim for refund of sales and use taxes, shall be contingent upon completion of all requirements in subrule 48.10(3).

**48.10(3) Agreement and fees.**

a. Upon receipt of a tax incentive award to the disaster recovery housing project, the housing business shall enter into an agreement with the authority for the successful completion of all requirements of the disaster recovery housing program. The agreement shall identify the tax incentive award amount, the tax incentive award date, the project completion deadline, and the total costs of the disaster recovery housing project.

b. The compliance cost fees imposed in Iowa Code section 15.330(12) shall apply to all agreements entered into under the program and shall be collected by the authority in the same manner and to the same extent as described in Iowa Code section 15.330(12).

c. A housing business shall complete its disaster recovery housing project within three years from the date incentives are awarded by the authority to the disaster recovery housing project.

d. Upon completion of a disaster recovery housing project, an examination of the project in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements, completed by a certified public accountant authorized to practice in this state, shall be submitted to the authority.

e. Upon review of the examination as described in paragraph 48.10(3)“d” and verification of the amount of the qualifying new investment, the authority may notify the housing business of the amount that the housing business may claim as a refund of the sales and use tax under Iowa Code section 15.355(2), and may issue a tax credit certificate to the housing business stating the amount of disaster recovery housing investment tax credits under rule 261—48.11(15) that the eligible housing business may claim. The sum of the amount that the housing business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

**48.10(4) Maximum tax incentives amount.**

a. The maximum amount of tax incentives that may be awarded under rule 261—48.11(15) to a housing business for a disaster recovery housing project shall not exceed \$1 million.

b. If a housing business qualifies for a higher amount of tax incentives under rule 261—48.11(15) than is allowed by the limitation imposed in paragraph 48.10(4)“a,” the authority and the housing business may negotiate an apportionment of the reduction in tax incentives between the sales and use tax refund provided in subrule 48.11(2) and the disaster recovery housing investment income tax credits provided in subrule 48.11(3) provided the total aggregate amount of tax incentives after the apportioned reduction does not exceed the amount in paragraph 48.10(4)“a.”

**48.10(5) Termination and repayment.** The failure by a housing business in completing a disaster recovery housing project to comply with any requirement of the disaster recovery housing program or any of the terms and obligations of an agreement entered into pursuant to this rule may result in the revocation, reduction, termination, or rescission of the tax incentive award or the approved tax incentives

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

and may subject the housing business to the repayment or recapture of tax incentives claimed under rule 261—48.11(15). The repayment or recapture of tax incentives pursuant to this rule shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

**261—48.11(15) Disaster recovery housing tax incentives.**

**48.11(1) Eligibility.** A housing business that has entered into an agreement with the authority for the successful completion of program requirements pursuant to rule 261—48.10(15) is eligible to receive the tax incentives described in subrules 48.11(2) and 48.11(3).

**48.11(2) Sales tax refunds.** A housing business may claim a refund of the sales and use taxes paid under Iowa Code chapter 423 that are directly related to a disaster recovery housing project. The refund available pursuant to this subrule shall be as provided in Iowa Code section 15.331A to the extent applicable for purposes of the disaster recovery housing program.

**48.11(3) Income tax credits.**

*a.* For a disaster recovery housing project, a housing business may claim a tax credit in an amount not to exceed 20 percent of the qualifying new investment of a disaster recovery housing project.

*b.* 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, and against the moneys and credits tax imposed in Iowa Code section 533.329.

*c.* An individual may claim a tax credit under this subrule of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

*d.* Any tax credit in excess of the taxpayer's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

*e.* (1) To claim a tax credit under this subrule, a taxpayer shall include one or more tax credit certificates with the taxpayer's tax return.

(2) The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the credit, the name of the eligible housing business, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

(3) The tax credit certificate, unless rescinded by the authority, shall be accepted by the department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and to Iowa Code chapter 432, and against the moneys and credits tax imposed pursuant to Iowa Code section 533.329, subject to any conditions or restrictions placed by the authority upon the face of the tax credit certificate and subject to the limitations of this program.

(4) A tax credit certificate issued under an agreement entered into pursuant to subrule 48.10(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address; the denomination that each replacement tax credit certificate is to carry; and any other information required by the department of revenue. Tax credit certificate amounts of less than \$1,000 shall not be transferable.

(5) Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.

(6) A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Code chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa Code chapter 422, divisions II, III, and V.

*f.* For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the tax credit described under this subrule.

**261—48.12(15) Program funding allocation and management of excess demand.**

**48.12(1)** The authority shall allocate \$10 million to disaster recovery housing tax incentives pursuant to rules 261—48.9(15) to 261—48.13(15). In allocating tax credits pursuant to Iowa Code section 15.119(5), as enacted by 2019 Iowa Acts, House File 772, for the period beginning July 1, 2019, and ending June 30, 2024, the authority shall not allocate more than \$10 million for purposes of Iowa Code section 15.119(5).

**48.12(2)** The authority shall issue tax incentives under the program for disaster recovery housing projects on a first-come, first-served basis until the maximum amount of tax incentives allocated under Iowa Code section 15.119(5) is reached.

**48.12(3)** The authority will administer a wait list for disaster recovery housing projects in accordance with Iowa Code section 15.354(6) “*d.*”

**261—48.13(15) Application submittal and review process.**

**48.13(1)** The authority will develop a standardized application and make the application available to eligible housing businesses and to communities. To apply for assistance under the disaster recovery housing program, an interested person shall submit an application to the authority. Applications must be submitted online at [www.iowagrants.gov](http://www.iowagrants.gov). Instructions for application submission may be obtained at [www.iowagrants.gov](http://www.iowagrants.gov) or by contacting the Community Development Division, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309.

**48.13(2)** The authority has final decision-making authority on requests for financial assistance for the disaster recovery housing program. Applications will be reviewed and scored by the staff of the authority. The director or the director’s designee will make final funding decisions after considering the recommendations of staff. The director may approve, defer or deny an application.

[Filed Emergency 9/30/19, effective 10/3/19]

[Published 10/23/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

ARC 4716C

**COLLEGE STUDENT AID COMMISSION[283]****Adopted and Filed****Rule making related to all Iowa opportunity scholarships**

The College Student Aid Commission hereby amends Chapter 8, “All Iowa Opportunity Scholarship Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 261.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 261.

*Purpose and Summary*

The rule making implements amendments enacted in 2019 Iowa Acts, Senate File 246. Senate File 246 strikes age thresholds that restrict eligibility for two student populations, thus ensuring that all applicants are held to similar general eligibility criteria.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 14, 2019, as **ARC 4588C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on September 20, 2019.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

The following rule-making action is adopted:

Amend rule ~~283—8.2(261)~~, definitions of “Eligible foster care student” and “Eligible surviving-child student,” as follows:

“*Eligible foster care student*” means a person who has a high school diploma or a high school equivalency diploma under Iowa Code chapter 259A and is described by any of the following:

1. Is age 17 and is in a court-ordered placement under Iowa Code chapter 232 under the care and custody of the department of human services or juvenile court services.
2. Is age 17 and has been placed in a state juvenile institution pursuant to a court order entered under Iowa Code chapter 232 under the care and custody of the department of human services.
3. Is ~~age 18 through 23~~ and is described by any of the following:
  - On the date the person reached age 18 or during the 30 calendar days preceding or succeeding that date, the person was in a licensed foster care placement pursuant to a court order entered under Iowa Code chapter 232 under the care and custody of the department of human services or juvenile court services.
  - On the date the person reached age 18 or during the 30 calendar days preceding or succeeding that date, the person was under a court order under Iowa Code chapter 232 to live with a relative or other suitable person.
  - The person was in a licensed foster care placement pursuant to an order entered under Iowa Code chapter 232 prior to being legally adopted after reaching age 16.
  - On the date the person reached age 18 or during the 30 calendar days preceding or succeeding that date, the person was placed in a state juvenile institution pursuant to a court order entered under Iowa Code chapter 232 under the care and custody of the department of human services.

“*Eligible surviving-child student*” means a person who is ~~under age 26, or under age 30 if the student is a veteran who is eligible for or has exhausted benefits under the federal Post 9/11 Veterans Educational Assistance Act of 2008; who is not a convicted felon as defined in Iowa Code section 910.15; and who meets any of the following criteria:~~

1. Is the child of a peace officer, as defined in Iowa Code section 97A.1, who was killed in the line of duty as determined by the board of trustees of the Iowa department of public safety peace officers’ retirement, accident, and disability system in accordance with Iowa Code section 97A.6(16).
2. Is the child of a police officer or fire fighter, as defined in Iowa Code section 411.1, who was killed in the line of duty as determined by the statewide fire and police retirement system in accordance with Iowa Code section 411.6(15).
3. Is the child of a sheriff or deputy sheriff, as defined in Iowa Code section 97B.49C, who was killed in the line of duty as determined by the Iowa public employees’ retirement system in accordance with Iowa Code section 97B.52(2).
4. Is the child of a fire fighter or police officer included under Iowa Code section 97B.49B, who was killed in the line of duty as determined by the Iowa public employees’ retirement system in accordance with Iowa Code section 97B.52(2).

[Filed 9/23/19, effective 11/27/19]

[Published 10/23/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4717C**

**COLLEGE STUDENT AID COMMISSION[283]**

**Adopted and Filed**

**Rule making related to Iowa national guard educational assistance**

The College Student Aid Commission hereby amends Chapter 20, “Iowa National Guard Educational Assistance Program,” Iowa Administrative Code.



## COLLEGE STUDENT AID COMMISSION[283](cont'd)

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 261.3 and 261.86 as amended by 2019 Iowa Acts, House File 758.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 261.

*Purpose and Summary*

This rule making implements amendments enacted by 2019 Iowa Acts, House File 758, sections 14, 15, and 16, and makes a technical amendment to reflect current practice. Section 16 of House File 758 amends the statute to allow students in science, technology, engineering, or mathematics (STEM)-related programs of study to receive up to 130 credit hours of funding. In addition, the statutory name of the National Guard Educational Assistance Program is being changed to the National Guard Service Scholarship Program. The technical amendment updates the definition of “state-defined payment period” to reflect a recent change from five payment-reporting periods to six payment-reporting periods.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 14, 2019, as **ARC 4595C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on September 20, 2019.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making actions are adopted:

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

ITEM 1. Amend **283—Chapter 20**, title, as follows:

~~IOWA NATIONAL GUARD EDUCATIONAL ASSISTANCE~~ SERVICE SCHOLARSHIP  
PROGRAM

ITEM 2. Amend rule 283—20.1(261), introductory paragraph, as follows:

**283—20.1(261) Educational—assistance Scholarships to Iowa national guard members for undergraduate studies at eligible Iowa institutions.** The adjutant general shall determine eligibility requirements and select program recipients. The decision of the adjutant general is final.

ITEM 3. Amend subrule **20.1(1)**, definition of “State-defined payment period,” as follows:

“*State-defined payment period*” means one of ~~five~~ six payment terms and corresponding deadlines as defined by the college student aid commission.

ITEM 4. Amend subrule 20.1(5) as follows:

**20.1(5) Award limitations.** Awards may be used for ~~educational assistance including~~ tuition and fees; room and board; books, supplies, transportation and personal expenses; dependent care; and disability-related expenses. Individual award amounts shall be determined by the adjutant general and shall be neither less than an amount equal to 50 percent of the resident tuition rate established for students attending regent institutions nor exceed the amount of the resident tuition rate established for students attending regent institutions.

ITEM 5. Amend subrule 20.1(6) as follows:

**20.1(6) Restrictions.**

*a.* A guard member may use ~~benefits~~ scholarships only for undergraduate ~~educational assistance~~ expenses described in subrule 20.1(5).

*b.* A guard member who has met the educational requirements for a baccalaureate degree is not eligible for benefits.

*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~~ a scholarship was applied must be reported to the commission within the state-defined payment period.

*d.* A qualified student who is enrolled in a postsecondary program of study that meets the eligibility requirements of the Edith Nourse Rogers STEM scholarship may receive benefits for no more than 130 credit hours, or the equivalent, of undergraduate study. All credit hours within a term of enrollment to which a scholarship is applied must be reported to the commission within the state-defined payment period.

[Filed 9/23/19, effective 11/27/19]

[Published 10/23/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4718C**

**COLLEGE STUDENT AID COMMISSION[283]**

**Adopted and Filed**

**Rule making related to skilled workforce shortage tuition grants**

The College Student Aid Commission hereby amends Chapter 23, “Skilled Workforce Shortage Tuition Grant Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 261.3 and 261.130 as amended by 2019 Iowa Acts, Senate File 245.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 261.

*Purpose and Summary*

This rule making implements amendments enacted in 2019 Iowa Acts, Senate File 245. Senate File 245 strikes references to an Iowa Department of Workforce Development reporting requirement, effective July 1, 2019. Senate File 245 also provides a grandfather clause for students enrolled in a program of study that is subsequently removed from the list of eligible programs.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 14, 2019, as **ARC 4594C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on September 20, 2019.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 23.1(2) as follows:

**23.1(2) Student eligibility.**

a. A recipient must be an Iowa resident as defined in 283—Chapter 10.

b. A recipient must be enrolled at an Iowa community college for at least three semester hours or the equivalent in a career-technical, career option, or other training program which is eligible for federal Title IV funding and is in an industry which has been identified as having a shortage of skilled workers by the community college in a regional skills gap analysis or by the department of workforce development ~~in the department's most recent quarterly report~~. If a community college no longer identifies the industry as having a shortage of skilled workers or the department no longer identifies the industry as a high-demand job, an eligible student who received a grant for a career-technical or career option program based on

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

that identification shall continue to receive the grant until achieving a postsecondary credential, up to an associate degree, as long as the student is continuously enrolled in that program and continues to meet all other eligibility requirements.

c. A recipient may receive an award under this program for general education classes identified by the community college as required for completion of a career-technical or career option program in an identified skilled workforce shortage area. A recipient must be concurrently enrolled in a career-technical or career option program.

d. A recipient may receive an award under this program for not more than the equivalent of four semesters. A recipient who is making satisfactory academic progress but cannot complete the course because of required classes may receive the grant for one additional semester.

e. A recipient who is a full-time student may receive no more than one-half of the student's tuition and fees, as established by the commission, or the amount of the student's established financial need, whichever is less. A recipient who is a part-time student shall receive a prorated portion of the full-time award. The proration will be established by the commission in a manner consistent with federal Pell Grant Program proration. Recipients who are part-time students enrolled in 3 to 5 credit hours will receive awards equal to one-fourth of the full-time award; recipients enrolled in 6 to 8 credit hours will receive awards equal to one-half of the full-time award; and recipients enrolled in 9 to 11 credit hours will receive awards equal to three-fourths of the full-time award.

f. A recipient may again be eligible for an award under paragraph 23.1(2) "d" if the recipient resumes study after at least a two-year absence, except that award assistance shall not be used for coursework for which credit was previously received.

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

**23.1(3) Priority for grants.**

a. Applicants enrolled in programs required to fill the needs of industry in areas which have been identified as having shortages of skilled workers by the community college in a regional skills gap analysis or by the department of workforce development ~~in the department's most recent quarterly report~~ will receive priority. Skill gap areas will be ranked by each community college in order of the perceived need, and awards will be made to applicants as long as funding remains available.

b. Applicants who apply by the priority date specified in the application are ranked in order of the estimated amount of the family's contribution toward college expenses, and awards are granted to those who demonstrate need in order of family contribution from lowest to highest, insofar as funds permit.

ITEM 3. Amend rule ~~283—23.1(261)~~, implementation sentence, as follows:

This rule is intended to implement ~~2012 Iowa Acts, Senate File 2321, section 20~~ Iowa Code section 261.130.

[Filed 9/23/19, effective 11/27/19]

[Published 10/23/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4719C**

**COLLEGE STUDENT AID COMMISSION[283]**

**Adopted and Filed**

**Rule making related to student loan debt collection**

The College Student Aid Commission hereby amends Chapter 37, "Student Loan Debt Collection," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 261.3.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 261 as amended by 2019 Iowa Acts, Senate File 304.

*Purpose and Summary*

This rule making implements 2019 Iowa Acts, Senate File 304, section 3, which repeals sections of the Iowa Code relating to license sanctions for defaulted student loan borrowers.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 14, 2019, as **ARC 4596C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on September 20, 2019.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 283—37.1(261) as follows:

**283—37.1(261) General purpose.** ~~In collection of defaulted student loans, the commission may initiate the license sanction process described in Iowa Code sections 261.121 to 261.127 to suspend, revoke or deny issuance or renewal of a variety of licenses held or applied for by any person who has defaulted on an obligation owed to or collected by the commission. Licenses subject to this sanction are defined in Iowa Code section 252J.1(3). In addition to the procedures set forth in Iowa Code sections 261.121 to 261.127, this chapter shall apply.~~

The In collection of defaulted student loans, the commission may apply administrative wage garnishment and state tax offset procedures established under Iowa Code chapter 261, specifically including private partnership loans authorized for collection under Iowa Code section 261.38.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

ITEM 2. Rescind and reserve rule **283—37.3(261)**.

ITEM 3. Amend **283—Chapter 37**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 261.37, and 261.38 ~~and 261.121 to 261.127~~.

[Filed 9/23/19, effective 11/27/19]

[Published 10/23/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4731C**

## **INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

### **Rule making related to food and consumer safety and food establishment and food processing plant inspections**

The Inspections and Appeals Department hereby amends Chapter 30, "Food and Consumer Safety," and Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 10A.104 and 137F.2.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2 and 2019 Iowa Acts, Senate File 265.

#### *Purpose and Summary*

The amendments correct the date in the reference to the Food and Drug Administration Food Code with Supplement in rule 481—30.2(10A,137C,137D,137F). The 2013 Food Code was adopted by the Department effective January 1, 2018 (rule 481—31.1(137F), **ARC 3188C**, IAB 7/5/17).

The amendments also reinstate several provisions related to double licenses in rule 481—30.7(137F) that were removed in 2018, which resulted in unintended consequences to licensees.

The amendments add a confidentiality provision related to complainants who file a complaint with the Department's Food and Consumer Safety Bureau.

The amendments implement changes made to Iowa Code chapter 137F resulting from the enactment of 2019 Iowa Acts, Senate File 265. The legislation requires the Department to adopt rules for the sale at a farmers market of culinary mushrooms commonly referred to as a variety of wild oyster.

Finally, the amendments adopt a definition of "wild-harvested mushroom" and amend the requirements related to the wild-harvested mushroom identification course to obtain certification as a wild-harvested mushroom identification expert.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 14, 2019, as **ARC 4589C**. Two sets of questions were received by the Department. One individual requested clarification regarding whether the double license provisions affected the licensing required for the individual's operations. Another individual requested information regarding the purpose and effect of the confidentiality provision. No other comments were received. No changes from the Notice have been made.

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

*Adoption of Rule Making*

This rule making was adopted by the Department on October 4, 2019.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 481—30.2(10A,137C,137D,137F), introductory paragraph, as follows:

**481—30.2(10A,137C,137D,137F) Definitions.** If both the ~~2009~~ 2013 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,137D,137F) define a term, the definition in rule 481—30.2(10A,137C,137D,137F) shall apply.

ITEM 2. Adopt the following **new** definition of “Wild-harvested mushroom” in rule **481—30.2(10A,137C,137D,137F)**:

“*Wild-harvested mushroom*” means a fresh mushroom that has been picked in the wild and has not been processed (e.g., dried or frozen). “Wild-harvested mushroom” does not include cultivated mushrooms or mushrooms that have been packaged in an approved food processing plant.

ITEM 3. Amend rule 481—30.7(137F) as follows:

**481—30.7(137F) Double licenses.**

**30.7(1)** Any establishment that holds a food service establishment license and has gross sales over \$20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license. The license holder shall keep a record of these food sales and make it available to the department upon request.

**30.7(2)** Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

**30.7(3)** A food establishment that holds both a food service establishment license and a retail food establishment license shall pay a license fee based on the annual gross sales for the dominant form of business plus \$150.

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

EXAMPLE: A food establishment holds a food service establishment license and a retail food establishment license. It has annual gross sales of more than \$750,000 for its retail food establishment and \$120,000 for its food service establishment. The food establishment pays a license fee of \$400 for its retail food establishment license (paragraph 30.4(1)“c”) and \$150 for its food service establishment license (rule 481—30.7(137F)).

**30.7(4)** The dominant form of business shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and of a food processing plant. The dominant form of business shall be deemed to be the business with higher annual gross sales. Food establishments that also process low-acid food in hermetically sealed containers or process acidified foods are required to have a food processing plant license in addition to the food establishment license. Regardless of the type of license, food processing plants shall be inspected pursuant to food processing inspection standards and food establishments shall be inspected pursuant to the Food Code.

This rule is intended to implement Iowa Code sections 10A.104 and 137F.6.

ITEM 4. Amend subrule 30.9(2) as follows:

**30.9(2)** *Confidential records.* The following are examples of confidential records:

- a. Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;
  - b. Health information related to foodborne illness complaints and outbreaks; ~~and~~
  - c. The name or any identifying information of a person who files a complaint with the department;
- and
- e. d. Other state or federal agencies’ records.

For records of other federal or state agencies, the department shall refer the requester of such information to the appropriate agency.

ITEM 5. Amend subrule 31.1(4) as follows:

**31.1(4)** Morel mushrooms and oyster mushrooms (*Pleurotus ostreatus*, *Pleurotus populinus*, or *Pleurotus pulmonarius*). Section 3-201.16, paragraph (A), is amended by adding the following:

“A food establishment or farmers market time/temperature control for safety food licensee may serve or sell morel mushrooms or oyster mushrooms (a variety classified as *Pleurotus ostreatus*, *Pleurotus populinus*, or *Pleurotus pulmonarius*) if procured from an individual who has completed a ~~morel~~ wild-harvested mushroom identification expert course. Every morel mushroom or oyster mushroom shall be identified and found to be safe by a certified ~~morel~~ wild-harvested mushroom identification expert whose competence has been verified and approved by the department through the expert’s successful completion of a ~~morel~~ wild-harvested mushroom identification expert course provided by either an accredited college or university or a mycological society. The course may address identification of morel mushrooms, oyster mushrooms, or both. The certified ~~morel~~ wild-harvested mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom or an oyster mushroom. A ~~morel~~ wild-harvested mushroom identification expert course shall be at least ~~three~~ two hours in length and include a visual identification exercise for each wild-harvested mushroom species that the individual will be certified to identify at the completion of the course. The individual’s certification of successful completion of the course must clearly indicate whether the certified wild-harvested mushroom identification expert is certified to identify morel mushrooms, oyster mushrooms, or both.

~~To~~ To maintain status as a ~~morel~~ wild-harvested mushroom identification expert, the individual shall have successfully completed a ~~morel~~ wild-harvested mushroom identification expert course described above within the past three years. A person who wishes to offer a ~~morel~~ wild-harvested mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market time/temperature control for safety food licensees offering morel mushrooms or oyster mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms or oyster mushrooms were obtained:

- “1. The name, address, and telephone number of the ~~morel~~ wild-harvested mushroom identification expert;



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

“2. A copy of the ~~morel~~ wild-harvested mushroom identification expert’s certificate of successful completion of the course, containing the date of completion; and

“3. The quantity of morel mushrooms or oyster mushrooms purchased and the date(s) purchased.

“Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that wild wild-harvested mushrooms should be thoroughly cooked and may cause allergic reactions or other effects.”

[Filed 10/4/19, effective 11/27/19]

[Published 10/23/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4732C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

**Rule making related to amusement concessions and posted rules**

The Inspections and Appeals Department hereby amends Chapter 100, “General Provisions for Social and Charitable Gambling,” and Chapter 101, “Amusement Concessions,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 10A.104 and 99B.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 99B and 2018 Iowa Acts, Senate File 2333.

*Purpose and Summary*

The amendments to Chapter 100 clarify that rules made available on a sign near the front of a playing area or electronically at each player’s location shall be accessible to the player before the player forfeits money to play the game.

The amendments to Chapter 101 implement changes made to Iowa Code chapter 99B resulting from 2018 Iowa Acts, Senate File 2333, which increased to \$950 the value of a prize that may be awarded for playing an amusement concession. The amendments to Chapter 101 also implement changes to Iowa Code chapter 99B resulting from 2015 Iowa Acts, Senate File 482.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 14, 2019, as **ARC 4590C**. The Department received one question in response to the Notice regarding the Department’s authority relative to the Iowa Racing and Gaming Commission to promulgate rules. No other comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on October 4, 2019.

*Fiscal Impact*

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

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 481—100.8(99B) as follows:

**481—100.8(99B) Posted rules—games other than bingo and raffles.** Rules established by the licensee shall be posted on a sign near the front of the playing area or made available electronically at each player's location. Rules for each game shall be accessible to a player before the player forfeits money to play the game. Rules shall be in large, easily readable print and shall include:

1. to 5. No change.

ITEM 2. Amend rule 481—101.1(99B) as follows:

**481—101.1(99B) License requirements.** No games shall be conducted until an application is approved and a license is issued by the department.

**101.1(1) License required.** A gambling license is required for each amusement concession game. The name and description of the game shall be attached to the application.

**101.1(2) Licensee.** The person conducting an amusement concession, for the purposes of licensure, is the owner of the amusement concession.

**101.1(3) Requirements.** Application and license requirements are found in ~~rules 481—100.2(99B) and 100.3(99B)~~ 481—Chapter 100.

~~**101.1(1)** A carnival, bazaar, centennial or celebration sponsored by a bona fide civic group, service club or merchants group may be issued a license which allows the sponsor of the event to conduct all games permitted for 14 consecutive calendar days. Anyone other than the sponsor who conducts a game must apply for a license and pay the fee shown on the application.~~

~~**101.1(2)** The location of an amusement concession shall comply with requirements in Iowa Code section 99B.4.~~

This rule is intended to implement Iowa Code section ~~99B.4~~ 99B.31.

ITEM 3. Amend rule 481—101.2(99B) as follows:

**481—101.2(99B) Prizes.** All prizes shall be merchandise. The value of any prize shall not exceed ~~\$50~~ \$950. Small merchandise prizes may be exchanged for a prize of greater value if the value of the exchanged prize does not exceed ~~\$50~~ \$950. A prize which cannot be obtained shall not be displayed.

This rule is intended to implement Iowa Code section ~~99B.3~~ 99B.31.

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

ITEM 4. Amend rule 481—101.3(99B) as follows:

**481—101.3(99B) Conducting games.** In addition to the requirements found in Iowa Code section 99B.31, the following apply.

**101.3(1) Object of each game.** The object of each game must be attainable and possible to perform under the rules of the game by an average individual.

**101.3(2) No hidden numbers allowed.** The possible results shall not be hidden, as in a punchboard or pull-tab which conceals numbers.

**101.3(3) Cost.** The cost to play each game shall not exceed \$3 \$5.

~~Iowa Code section 99B.3 prohibits raffles at any licensed amusement concession.~~

This rule is intended to implement Iowa Code section ~~99B.3~~ 99B.31.

ITEM 5. Amend rule 481—101.4(99B) as follows:

**481—101.4(99B) Posted rules.** ~~Rules for each game shall be clearly posted on a sign at least 30 inches by 30 inches~~ Requirements for posted rules are found in rule 481—100.8(99B).

This rule is intended to implement Iowa Code section ~~99B.3~~ 99B.31.

[Filed 10/4/19, effective 11/27/19]

[Published 10/23/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4733C**

**LABOR SERVICES DIVISION[875]**

**Adopted and Filed**

**Rule making related to inspections of boilers and pressure vessels**

The Boiler and Pressure Vessel Board hereby amends Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 89.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 89.

*Purpose and Summary*

This rule making adopts new fees for visits by state boiler inspectors outside of the normal course of business and updates the phone numbers for reporting boiler explosions, injuries, and related incidents.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 31, 2019, as **ARC 4564C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on September 26, 2019.

LABOR SERVICES DIVISION[875](cont'd)

*Fiscal Impact*

Since requests for inspections outside the normal schedule are not common, any impact on the Boiler and Pressure Vessel Safety Fund should be minimal.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 81.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making actions are adopted:

ITEM 1. Rescind paragraph **90.7(3)“e”** and adopt the following **new** paragraph in lieu thereof:

e. An additional fee will be charged if, upon the request of an owner or user, the labor commissioner agrees to any non-routine schedule for an inspection outside of normal business hours, a special inspection, or a site visit. The additional fee will be calculated at a rate of \$200 per hour, including travel time, with a minimum charge of \$400.

ITEM 2. Rescind paragraph **90.7(3)“f.”**

ITEM 3. Reletter paragraph **90.7(3)“g”** as **90.7(3)“f.”**

ITEM 4. Amend paragraph **90.11(3)“c”** as follows:

c. Incident reports shall be made by calling ~~(515)281-3647~~ [\(515\)725-5609](#) or ~~(515)281-6533~~ [\(515\)725-5610](#). If the incident occurs during normal division operating hours, notification shall occur before close of business on that day. If the incident occurs when the division office is closed, the notification shall occur no later than close of business on the next division business day. Division hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.

[Filed 9/26/19, effective 11/27/19]

[Published 10/23/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4734C****LABOR SERVICES DIVISION[875]****Adopted and Filed****Rule making related to inspectors of boilers and pressure vessels**

The Labor Commissioner hereby amends Chapter 90, “Administration of the Boiler and Pressure Vessel Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 89.7.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 89.

*Purpose and Summary*

This rule making integrates the statutory requirement that a commissioned special inspector be a representative of a “reputable insurance company” with the administrative rules for commissioned special inspectors.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 31, 2019, as **ARC 4565C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commissioner on September 26, 2019.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

LABOR SERVICES DIVISION[875](cont'd)

The following rule-making actions are adopted:

ITEM 1. Renumber subrules **90.9(1)** to **90.9(9)** as **90.9(2)** to **90.9(10)**.

ITEM 2. Adopt the following **new** subrule 90.9(1):

**90.9(1)** *Definition of “reputable insurance company.”* As used in this rule, “reputable insurance company” means a company recognized by the Iowa insurance division as a licensed insurer, a risk retention group, an alien surplus lines insurer, or a surplus lines insurer.

ITEM 3. Amend renumbered subrule 90.9(5) as follows:

**90.9(5)** *Denials.* The labor commissioner may refuse to issue or renew a special inspector’s commission for failure to complete an application package, if the applicant or inspector does not hold a National Board commission, or for any reason listed in subrules ~~90.9(6)~~ 90.9(7) to ~~90.9(8)~~ 90.9(9).

ITEM 4. Amend renumbered subrule 90.9(7) as follows:

**90.9(7)** *Reasons for probation.* The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector does not represent a reputable insurance company or the special inspector filed inaccurate reports.

ITEM 5. Amend renumbered paragraphs **90.9(8)**“f,” “i” and “j” as follows:

*f.* The special inspector committed numerous violations as described in subrule ~~90.9(6)~~ 90.9(7);  
*i.* The division received a certificate of noncompliance; ~~or~~  
*j.* The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs “a” to “h” of this subrule; ~~or~~  
or

ITEM 6. Adopt the following **new** paragraph **90.9(8)**“k”:

*k.* The special inspector does not represent a reputable insurance company.

ITEM 7. Amend renumbered paragraphs **90.9(9)**“e,” “h” and “i” as follows:

*e.* The special inspector committed repeated violations as described in subrule ~~90.9(7)~~ 90.9(8);  
*h.* The National Board revoked or suspended the special inspector’s work card; ~~or~~  
*i.* The division received a certificate of noncompliance; ~~or~~  
or

ITEM 8. Adopt the following **new** paragraph **90.9(9)**“j”:

*j.* The special inspector does not represent a reputable insurance company.

[Filed 9/26/19, effective 11/27/19]

[Published 10/23/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4714C**

## **MEDICINE BOARD[653]**

**Adopted and Filed**

### **Rule making related to standards of practice for appropriate pain management**

The Board of Medicine hereby amends Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapters 147, 148 and 272C and 2018 Iowa Acts, House File 2377.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2018 Iowa Acts, House File 2377.

MEDICINE BOARD[653](cont'd)

*Purpose and Summary*

This rule making amends the standards of practice for appropriate pain management. This rule making references the U.S. Centers for Disease Control and Prevention (CDC) Guideline for Prescribing Opioids for Chronic Pain. These amendments require a physician to register with the Iowa Prescription Monitoring Program at the same time that the physician applies for registration or renews registration to prescribe controlled substances as required by the Iowa Board of Pharmacy. These amendments also require a physician or the physician's designated agent to utilize the Iowa Prescription Monitoring Program prior to issuing an opioid prescription and, beginning January 1, 2020, to transmit electronically as an electronic prescription every prescription for controlled and noncontrolled substances. This rule making makes it a ground for discipline if a physician prescribes opioids in dosage amounts exceeding what would be prescribed by a reasonably prudent physician in the state of Iowa acting in the same or similar circumstances. This rule making also encourages the use of nonopioid pharmacologic therapy and nonpharmacologic therapy, including but not limited to adjunct therapies such as acupuncture, physical therapy and massage, osteopathic manipulative therapy and occupational therapy.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 10, 2019, as **ARC 4382C**. A public hearing was held on May 3, 2019, at 9 a.m. at the Board's office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing.

The Iowa Osteopathic Medical Association recommended adding osteopathic manipulative therapy to the list of recommended nonpharmacologic therapies utilized for pain management. In addition, the Iowa Occupational Therapy Association recommended adding occupational therapy to the same list.

Since publication of the Notice, the Board revised rule 653—13.2(148,272C) to reflect those recommendations. The Board also amended subrule 13.2(8) to include all prescriptions (controlled and noncontrolled substances) to be consistent with Iowa Code section 124.308. Finally, the Board changed the word "or" to "and" in paragraph 13.2(5)"e."

*Adoption of Rule Making*

This rule making was adopted by the Board on September 20, 2019.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

*Review by Administrative Rules Review Committee*

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

MEDICINE BOARD[653](cont'd)

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making action is adopted:

Amend rule 653—13.2(148,272C) as follows:

**653—13.2(124,148,272C) Standards of practice—appropriate pain management.** This rule establishes standards of practice for the management of acute and chronic pain. The board encourages the use of nonopioid pharmacologic therapy and nonpharmacologic therapy, including but not limited to adjunct therapies such as acupuncture, physical therapy and massage, osteopathic manipulative therapy and occupational therapy in the treatment of acute and chronic pain. ~~This rule focuses on prescribing and administering controlled substances to provide relief and eliminate suffering for patients with acute or chronic pain.~~

1. This rule is intended to encourage appropriate pain management, including the use of ~~controlled substances~~ opioids for the treatment of pain, while stressing the need to establish safeguards to minimize the potential for substance abuse and drug diversion.

2. The goal of pain management is to treat each patient's pain in relation to the patient's overall health, including physical function and psychological, social and work-related factors. At the end of life, the goals may shift to palliative care.

3. The board recognizes that pain management, ~~including the use of controlled substances,~~ is an important part of general medical practice. Unmanaged or inappropriately treated pain impacts patients' quality of life, reduces patients' ability to be productive members of society, and increases patients' use of health care services.

4. Physicians should not fear board action for treating pain with ~~controlled substances~~ opioids as long as the physicians' prescribing is consistent with appropriate pain management practices. Dosage alone is not the sole measure of determining whether a physician has complied with appropriate pain management practices. The board recognizes the complexity of treating patients with chronic pain or a substance abuse history. Generally, the board is concerned about a pattern of improper pain management or a single occurrence of willful or gross overtreatment or undertreatment of pain.

5. ~~The board recognizes that the undertreatment of pain is a serious public health problem that results in decreases in patients' functional status and quality of life, and that adequate access by patients to proper pain treatment is an important objective of any pain management policy.~~

6. ~~5. Inappropriate pain management may include nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments. Inappropriate pain management is a departure from the acceptable standard of practice in Iowa and may be grounds for disciplinary action.~~

**13.2(1) Definitions.** For the purposes of this rule, the following terms are defined as follows:

"*Acute pain*" means the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. Generally, acute pain is self-limited, lasting no more than a few weeks following the initial stimulus.

"*Addiction*" means a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

"*Chronic pain*" means ~~persistent or episodic pain of a duration or intensity that adversely affects the functioning or well-being of a patient when (1) no relief or cure for the cause of pain is possible; (2) no relief or cure for the cause of pain has been found; or (3) relief or cure for the cause of pain through other medical procedures would adversely affect the well-being of the patient. If pain persists beyond the anticipated healing period of a few weeks, patients should be thoroughly evaluated for the presence of chronic pain.~~ pain that typically lasts longer than three months or past the time of normal tissue healing.



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Chronic pain can be the result of an underlying medical disease or condition, injury, medical treatment, inflammation, or an unknown cause.

“Opioid” means any U.S. Food and Drug Administration (FDA)-approved product or active pharmaceutical ingredient classified as a controlled substance that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

“Pain” means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Pain is an individual, multifactorial experience influenced by culture, previous pain events, beliefs, mood and ability to cope.

“Physical dependence” means a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

“Pseudoaddiction” means an iatrogenic syndrome resulting from the misinterpretation of relief-seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief-seeking behaviors resolve upon institution of effective analgesic therapy.

“Substance abuse” means the use of a drug, including alcohol, by the patient in an inappropriate manner that may cause harm to the patient or others, or the use of a drug for an indication other than that intended by the prescribing clinician. An abuser may or may not be physically dependent on or addicted to the drug.

“Tolerance” means a physiological state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

“Undertreatment of pain” means the failure to properly assess, treat and manage pain or the failure to appropriately document a sound rationale for not treating pain.

**13.2(2)** ~~Laws and regulations governing controlled substances.~~ Nothing in this rule relieves a physician from fully complying with applicable federal and state laws and regulations ~~governing controlled substances.~~

**13.2(3)** Undertreatment of pain. The undertreatment of pain is a departure from the acceptable standard of practice in Iowa. Undertreatment may include a failure to recognize symptoms and signs of pain, a failure to treat pain within a reasonable amount of time, a failure to allow interventions, e.g., analgesia, to become effective before invasive steps are taken, a failure to address pain needs in patients with reduced cognitive status, a failure to use ~~controlled substances~~ opioids for terminal pain due to the physician’s concern with addicting the patient, or a failure to use an adequate level of pain management.

**13.2(4)** Assessment and treatment of acute and chronic pain. Appropriate assessment of the etiology of the pain is essential to the appropriate treatment of acute and chronic pain. ~~Acute pain is not a diagnosis; it is a symptom.~~

*a.* Prescribing ~~controlled substances~~ opioids for the treatment of acute and chronic pain should be based on clearly diagnosed and documented pain. Appropriate management of acute and chronic pain should include an assessment of the mechanism, type and intensity of pain. The patient’s medical record should clearly document a medical history, a pain history, a clinical examination, a medical diagnosis and a treatment plan.

*b.* Prescribing opioids for the treatment of acute and chronic pain should only be accomplished within an established physician-patient relationship and should be based on clearly diagnosed and documented unrelieved pain.

*c.* On March 15, 2016, the U.S. Centers for Disease Control and Prevention (CDC) issued the CDC Guideline for Prescribing Opioids for Chronic Pain to provide recommendations for the prescribing of opioid pain medication for patients 18 years of age and older in primary care settings. Recommendations focus on the use of opioids in treating chronic pain (pain lasting longer than three months or past the time of normal tissue healing) outside of active cancer treatment, palliative care, and end-of-life care. A physician who prescribes, dispenses or administers opioids to patients for the treatment of chronic pain should become familiar with the CDC Guideline for Prescribing Opioids for Chronic Pain.

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**13.2(5) *Effective management of chronic pain.*** ~~Prescribing controlled substances for the treatment of chronic pain should only be accomplished within an established physician-patient relationship and should be based on clearly diagnosed and documented unrelieved pain.~~ To ensure that chronic pain is properly assessed and treated, a physician who prescribes, dispenses or administers ~~controlled substances~~ opioids to a patient for the treatment of chronic pain shall exercise sound clinical judgment and establish an effective pain management plan in accordance with the following:

*a. Patient evaluation.* A patient evaluation that includes a physical examination and a comprehensive medical history shall be conducted prior to the initiation of treatment. The evaluation shall also include an assessment of the pain, physical and psychological function, diagnostic studies, previous interventions, including medication history, substance abuse history and any underlying or coexisting conditions. Consultation/referral to a physician with expertise in pain medicine, addiction medicine or substance abuse counseling or a physician who specializes in the treatment of the area, system, or organ perceived to be the source of the pain may be warranted depending upon the expertise of the physician and the complexity of the presenting patient. Interdisciplinary evaluation is strongly encouraged.

*b. Treatment plan.* The physician shall establish a comprehensive treatment plan that tailors drug therapy to the individual needs of the patient. To ensure proper evaluation of the success of the treatment, the plan shall clearly state the objectives of the treatment, for example, pain relief or improved physical or psychosocial functioning. The treatment plan shall also indicate if any further diagnostic evaluations or treatments are planned and their purposes. The treatment plan shall also identify any other treatment modalities and rehabilitation programs utilized. The patient's short- and long-term needs for pain relief shall be considered when drug therapy is prescribed. The patient's ability to request pain relief as well as the patient setting shall be considered. For example, nursing home patients are unlikely to have their pain control needs assessed on a regular basis, making prn (on an as-needed basis) drugs less effective than drug therapy prescribed for routine administration that can be supplemented if pain is found to be worse. The patient should receive prescriptions for ~~controlled substances~~ opioids from a single physician and a single pharmacy whenever possible.

*c. Informed consent.* The physician shall document discussion of the risks and benefits of ~~controlled substances~~ opioids with the patient or person representing the patient.

*d. Periodic review.* The physician shall periodically review the course of drug treatment of the patient and the etiology of the pain. The physician should adjust drug therapy to the individual needs of each patient. Modification or continuation of drug therapy by the physician shall be dependent upon evaluation of the patient's progress toward the objectives established in the treatment plan. The physician shall consider the appropriateness of continuing drug therapy and the use of other treatment modalities if periodic reviews indicate that the objectives of the treatment plan are not being met or that there is evidence of diversion or a pattern of substance abuse. Long-term opioid treatment is associated with the development of tolerance to its analgesic effects. There is also evidence that opioid treatment may paradoxically induce abnormal pain sensitivity, including hyperalgesia and allodynia. Thus, increasing opioid doses may not improve pain control and function.

*e. Consultation/referral.* A specialty consultation may be considered at any time if there is evidence of significant adverse effects or lack of response to the medication. Pain, physical medicine, rehabilitation, general surgery, orthopedics, anesthesiology, psychiatry, neurology, rheumatology, oncology, addiction medicine, ~~or~~ and other consultation may be appropriate. The physician should also consider consultation with, or referral to, a physician with expertise in addiction medicine or substance abuse counseling, if there is evidence of diversion or a pattern of substance abuse. The board encourages a multidisciplinary approach to chronic pain management, including the use of adjunct therapies such as acupuncture, physical therapy and massage.

*f. Documentation.* The physician shall keep accurate, timely, and complete records that detail compliance with this subrule, including patient evaluation, diagnostic studies, treatment modalities, treatment plan, informed consent, periodic review, consultation, and any other relevant information about the patient's condition and treatment.

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*g. Pain management agreements.* A physician who treats patients for chronic pain with ~~controlled substances~~ opioids shall consider using a pain management agreement with each patient being treated that specifies the rules for medication use and the consequences for misuse. In determining whether to use a pain management agreement, a physician shall evaluate each patient, taking into account the risks to the patient and the potential benefits of long-term treatment with ~~controlled substances~~ opioids. A physician who prescribes ~~controlled substances~~ opioids to a patient for more than 90 days for the treatment of chronic pain shall utilize a pain management agreement if the physician has reason to believe a patient is at risk of drug abuse or diversion. If a physician prescribes ~~controlled substances~~ opioids to a patient for more than 90 days for the treatment of chronic pain and chooses not to use a pain management agreement, then the physician shall document in the patient's medical records the reason(s) why a pain management agreement was not used. Use of pain management agreements is not necessary for hospice or nursing home patients. ~~A sample~~ Sample pain management agreement and prescription drug risk assessment tools may be found on the board's website at [www.medicalboard.iowa.gov](http://www.medicalboard.iowa.gov).

*h. Substance abuse history or comorbid psychiatric disorder.* A patient's prior history of substance abuse does not necessarily contraindicate appropriate pain management. However, treatment of patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care and communication with the patient, monitoring, documentation, and consultation with or referral to an expert in the management of such patients. The board strongly encourages a multidisciplinary approach for pain management of such patients that incorporates the expertise of other health care professionals.

*i. Drug testing.* A physician who prescribes ~~controlled substances~~ opioids to a patient for more than 90 days for the treatment of chronic pain shall consider utilizing drug testing to ensure that the patient is receiving appropriate therapeutic levels of prescribed medications or if the physician has reason to believe that the patient is at risk of drug abuse or diversion.

*j. Termination of care.* The physician shall consider termination of patient care if there is evidence of noncompliance with the rules for medication use, drug diversion, or a repeated pattern of substance abuse.

**13.2(6) Pain management for terminal illness.** The provisions of this subrule apply to patients who are at the stage in the progression of cancer or other terminal illness when the goal of pain management is comfort care. When the goal of treatment shifts to comfort care rather than cure of the underlying condition, the board recognizes that the dosage level of ~~opiates or controlled substances~~ opioids to control pain may exceed dosages recommended for chronic pain and may come at the expense of patient function. The determination of such pain management should involve the patient, if possible, and others the patient has designated for assisting in end-of-life care.

**13.2(7) Prescription monitoring program.** The Iowa board of pharmacy has established a prescription monitoring program pursuant to Iowa Code sections 124.551 to 124.558 to assist prescribers and pharmacists in monitoring the prescription of controlled substances to patients. ~~The board recommends that physicians~~ A physician shall register for the prescription monitoring program at the same time the physician applies for registration or renews registration to prescribe controlled substances as required by the Iowa board of pharmacy. A physician or the physician's designated agent shall utilize the prescription monitoring program when prescribing controlled substances to patients if the physician has reason to believe that a patient is at risk of drug abuse or diversion prior to issuing an opioid prescription to assist the physician in determining appropriate treatment options and to improve the quality of patient care. A physician is not required to utilize the prescription monitoring program to assist in the treatment of a patient receiving inpatient hospice care or long-term residential facility patient care. An order issued in an inpatient hospital setting is not considered a prescription for the purposes of these rules. Patient safety is adequately protected in an inpatient hospital setting, and physicians caring for patients in an inpatient hospital setting do not prescribe. A link to the prescription monitoring program may be found at the board's website at [www.medicalboard.iowa.gov](http://www.medicalboard.iowa.gov).

**13.2(8) Electronic prescriptions.** Beginning January 1, 2020, all prescriptions (controlled and noncontrolled substances) shall be transmitted electronically as electronic prescriptions pursuant to Iowa Code section 124.308. A prescription shall be transmitted to a pharmacy by the physician or the

## MEDICINE BOARD[653](cont'd)

physician's authorized agent in compliance with federal law and regulation for electronic prescriptions of controlled substances.

~~13.2(8)~~ **13.2(9)** *Pain management resources.* The board strongly recommends that physicians consult the following resources regarding the proper treatment of chronic pain. This list is provided for the convenience of licensees, and the publications included are not intended to be incorporated in the rule by reference.

a. American Academy of Hospice and Palliative Medicine or AAHPM is the American Medical Association-recognized specialty society of physicians who practice in hospice and palliative medicine in the United States. The mission of the AAHPM is to enhance the treatment of pain at the end of life.

b. American Academy of Pain Medicine or AAPM is the American Medical Association-recognized specialty society of physicians who practice pain medicine in the United States. The mission of the AAPM is to enhance pain medicine practice by promoting a climate conducive to the effective and efficient practice of pain medicine.

c. American Pain Society or APS is the national chapter of the International Association for the Study of Pain, an organization composed of physicians, nurses, psychologists, scientists and other professionals who have an interest in the study and treatment of pain. The mission of the APS is to serve people in pain by advancing research, education, treatment and professional practice.

d. DEA Policy Statement: Dispensing Controlled Substances for the Treatment of Pain. On August 28, 2006, the Drug Enforcement Agency (DEA) issued a policy statement establishing guidelines for practitioners who dispense controlled substances for the treatment of pain. This policy statement may be helpful to practitioners who treat pain with controlled substances.

e. Interagency Guideline on Prescribing Opioids for Pain. Developed by the Washington State Agency Medical Directors' Group in collaboration with an expert advisory panel, actively practicing providers and public stakeholders, the guideline focuses on evidence-based treatment for chronic-pain patients. The guideline was published in 2007 and updated in 2015.

f. Responsible Opioid Prescribing: A Physician's Guide. In 2007, in collaboration with author Scott Fishman, M.D., the Federation of State Medical Boards' (FSMB) Research and Education Foundation published a book on responsible opioid prescribing based on the FSMB Model Policy for the Use of Controlled Substances for the Treatment of Pain.

g. World Health Organization: Pain Relief Ladder. Cancer pain relief and palliative care. Technical report series 804. Geneva: World Health Organization.

h. CDC Guideline for Prescribing Opioids for Chronic Pain. On March 15, 2016, the U.S. Centers for Disease Control and Prevention (CDC) issued a guideline to provide recommendations for the prescribing of opioid pain medication for patients 18 years of age and older in primary care settings. Recommendations focus on the use of opioids in treating chronic pain (pain lasting longer than three months or past the time of normal tissue healing) outside of active cancer treatment, palliative care, and end-of-life care.

**13.2(10)** *Grounds for discipline.* A physician may be subject to disciplinary action for violation of these rules, the rules found in 653—Chapter 23, or any of the following:

a. A physician who prescribes opioids in dosage amounts exceeding what would be prescribed by a reasonably prudent physician in the state of Iowa acting in the same or similar circumstances.

b. A physician who knowingly fails to comply with the confidentiality requirements of Iowa Code section 124.553 or who delegates program information access to another individual except as provided in Iowa Code section 124.553.

c. A physician who knowingly fails to comply with other requirements of Iowa Code chapter 124.

**13.2(11)** *Unlawful access, disclosure, or use of information.* A person who intentionally or knowingly accesses, uses, or discloses information from the prescription monitoring program in violation of Iowa Code section 124.553, unless otherwise authorized by law, is guilty of a class "D" felony. This subrule shall not preclude a physician who requests and receives information from the

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prescription monitoring program consistent with the requirements of Iowa Code section 124.553 from otherwise lawfully providing that information to any other person for medical care purposes.

This rule is intended to implement Iowa Code chapters 124, 148 and 272C.

[Filed 9/25/19, effective 11/27/19]

[Published 10/23/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4728C**

## **MEDICINE BOARD[653]**

**Adopted and Filed**

### **Rule making related to licensure of genetic counselors**

The Board of Medicine hereby amends Chapter 20, "Licensure of Genetic Counselors," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapters 147, 148, 148H and 272C.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 148H.

#### *Purpose and Summary*

Chapter 20 establishes the requirements for licensure of genetic counselors. This rule making defines the types of informal and nonpublic actions an applicant must report to the Board as part of the license application process. This rule making indicates that the Board will accept a letter sent directly from the American Board of Genetic Counseling (ABGC) or the American Board of Medical Genetics and Genomics (ABMGG) to the Board as proof that an applicant has been granted active candidate status for provisional licensure. This rule making indicates that the licensure committee shall consult with an Iowa-licensed genetic counselor if the committee is unable to eliminate questions or concerns about an applicant. This rule making defines the practice of genetic counseling to include precision medicine and indicates that if an applicant has not engaged in active practice in the last three years in the United States, the Board shall consult with an Iowa-licensed genetic counselor to determine whether there is another option to demonstrate the applicant's current clinical competency. This rule making creates an option for an employer-based pathway for an applicant to demonstrate current clinical competency if the applicant has not engaged in active practice in the past three years in the United States. This rule making indicates that the Board shall consult with an Iowa-licensed genetic counselor prior to denying a license.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 5, 2019, as **ARC 4477C**. This rule making was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 4468C** on the same date. No public hearing was held. No comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Board on September 20, 2019.

MEDICINE BOARD[653](cont'd)

*Fiscal Impact*

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

*Jobs Impact*

This rule making will likely increase the pool of genetic counselors and increase access to genetic counseling services in Iowa. It will likely have a positive jobs impact, which is difficult to measure at this time.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019, at which time the Adopted and Filed Emergency rule making is hereby rescinded.

The following rule-making actions are adopted:

ITEM 1. Amend paragraphs **20.8(2)“f”** and **“h”** as follows:

*f.* A statement disclosing and explaining any informal or nonpublic actions, such as letters of warning, letters of education, any confidential retraining, or any kind of confidential action taken toward a genetic counselor's certification or license which is not public discipline; warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, genetic counseling or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction;

*h.* A letter sent directly from the ABGC or ABMGG to the board verifying the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or proof of active candidate status for provisional licensure a letter sent directly from ABGC or ABMGG to the board verifying the applicant has been granted active candidate status for provisional licensure;

ITEM 2. Amend paragraphs **20.8(4)“a”** and **“b”** as follows:

*a.* Paying all fees charged by regulatory authorities, national ~~testing or credentialing~~ certifying organizations, health facilities, and educational institutions providing the information specified in subrule 20.8(2);

*b.* Providing accurate, up-to-date, and truthful information on the application form including, but not limited to, that specified under subrule 20.8(2) related to prior professional experience, education, training, active certification, licensure ~~or registration~~, and disciplinary history.

ITEM 3. Amend paragraph **20.8(5)“g”** as follows:

*g.* If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, and after consultation with an Iowa-licensed genetic counselor, the committee shall recommend that the board:

(1) and (2) No change.

MEDICINE BOARD[653](cont'd)

(3) If an applicant has not engaged in the field of genetic counseling or precision medicine in the past three years in any jurisdiction of the United States, the board may, after consultation with an Iowa-licensed genetic counselor, require an applicant to:

1. and 2. No change.

3. ~~Successfully~~ If the genetic counselor is employed or has an offer of employment, successfully complete any other pathway as agreed upon by the board and the genetic counselor's employer;

(4) to (7) No change.

ITEM 4. Amend subparagraph **20.8(5)“h”(3)** as follows:

(3) If an applicant has not engaged in the field of genetic counseling or precision medicine in the past three years in any jurisdiction of the United States, the board may, after consultation with an Iowa-licensed genetic counselor, require an applicant to:

1. and 2. No change.

3. ~~Successfully~~ If the genetic counselor is employed or has an offer of employment, successfully complete any other pathway as agreed upon by the board and the genetic counselor's employer;

ITEM 5. Amend subrule 20.8(6), introductory paragraph, as follows:

**20.8(6) Grounds for denial of licensure.** The board, on the recommendation of the committee, and after consultation with an Iowa-licensed genetic counselor, may deny an application for licensure for any of the following reasons:

ITEM 6. Amend paragraph **20.10(1)“b”** as follows:

*b.* A letter sent directly from the ABGC or ABMGG to the board verifying that the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or ~~proof of active candidate status for provisional licensure~~ a letter sent directly from ABGC or ABMGG to the board verifying the applicant has been granted active candidate status for provisional licensure.

ITEM 7. Rescind paragraph **20.11(1)“d”** and adopt the following new paragraph in lieu thereof:

*d.* A letter sent directly from the ABGC or ABMGG to the board verifying the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or a letter sent directly from the ABGC or ABMGG to the board verifying the applicant has been granted active candidate status for provisional licensure.

ITEM 8. Amend subrule 20.11(2), introductory paragraph, as follows:

**20.11(2) Reinstatement for an applicant who has been out of practice for three years.** If an applicant for reinstatement has not engaged in the field of genetic counseling or precision medicine in the past three years in any jurisdiction of the United States, the board may, after consultation with an Iowa-licensed genetic counselor, require an applicant to:

[Filed 9/25/19, effective 11/27/19]

[Published 10/23/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4720C**

## **UTILITIES DIVISION[199]**

**Adopted and Filed**

**Rule making related to electric vehicle charging services**

The Utilities Board hereby amends Chapter 20, “Service Supplied by Electric Utilities,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 476.2.

UTILITIES DIVISION[199](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 476.1 and 476.25.

*Purpose and Summary*

This adopted rule making is intended to provide clarity to the issue of whether a commercial electric vehicle (EV) charging station may provide EV charging services without becoming a public utility under Iowa Code chapter 476.

This rule making originated from a July 27, 2018, request by Iowa 80 Truckstop, Inc., and Truckstops of Iowa, Inc., (collectively, Truckstops) for the Board to issue an order declaring that electric energy sold for the purpose of EV charging is not considered the resale of electric service and declaring that EV charging may occur by the kilowatt-hour (kWh). The tariff covering the Truckstops' electric service precludes EV charging on a kWh basis. Because the questions raised significant legal and policy issues affecting the state as a whole and to provide for greater public input and participation, the Board denied the request for declaratory relief and initiated a rule making regarding EV infrastructure.

Commercial EV charging implicates at least two separate and distinct potential electric energy transactions. First, an electric energy transaction occurs between the EV charging station and the vehicle (i.e., charging the EV's batteries). Second, a potential electric energy transaction occurs through the electric energy generator supplying electricity to the EV charging station.

The primary intended purpose of adopted subrule 20.20(1) is to address the former of the two described transactions—to clarify that an EV charging station does not become a “public utility” under Iowa Code section 476.1 solely by virtue of the EV charging transaction between the EV charging station and the vehicle. Under the adopted subrule, the legality of the latter of the two described transactions (i.e., the transaction between the electric energy generator and the EV charging station) is not altered by the adopted subrule and is determined under existing adjudicatory and statutory law.

Subrule 20.20(2) protects consumers from the unnecessary duplication of electric service by providing that entities furnishing electricity to an EV charging station must comply with the exclusive service territory provisions in Iowa Code section 476.25.

Subrule 20.20(3) requires EV charging stations to comply with all other applicable statutes and regulations governing the provision of EV charging services, including all taxing requirements.

Following consideration of all received written and oral comments, on September 30, 2019, the Board issued an order adopting new rule 199—20.20(476) as published in the Notice of Intended Action. The order is available on the Board's electronic filing system, [efs.iowa.gov](https://efs.iowa.gov), under Docket No. RMU-2018-0100.

*Public Comment and Changes to Rule Making*

After the July 2018 request from the Truckstops, on August 27, 2018, the Board issued an order requesting stakeholder input concerning the proposed rule making and scheduled a workshop for October 17, 2018, to discuss the same. The Board received 23 comments. From the utility industry, the Board received comments from the Iowa Association of Municipal Utilities (IAMU), MidAmerican Energy Company (MidAmerican), Interstate Power and Light Company (IPL), and the Iowa Association of Electric Cooperatives (IAEC). The Board also received comments from businesses with an interest in electric vehicle charging, including the Truckstops; Tesla, Inc.; Siemens Digital Grid; ChargePoint, Inc.; and Kwik Trip, Inc. Other stakeholders and interested parties filed comments, including the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; the Environmental Law and Policy Center and the Iowa Environmental Council (Environmental Advocates); the Iowa Chapter of the Sierra Club (Sierra Club); Americans for Prosperity; the Energy Equality Coalition/Mr. George Landrith; the Electric Auto Association; and the Alliance for Transportation Electrification. In addition, the Board received a number of comments from interested individuals.



UTILITIES DIVISION[199](cont'd)

On October 17, 2018, the Board held a workshop and received presentations from OCA; the Truckstops; ChargePoint; Siemens Digital Grid; Alliance for Transportation Electrification; Greenlots; IPL; MidAmerican; IAMU; IAEC; Sierra Club; the Environmental Advocates; and Mr. Andrew Fisher.

Following receipt of the written comments and the information shared at the workshop, the Board began the process of drafting proposed rule language. On February 6, 2019, the Board issued an order sharing proposed rule language and inviting stakeholder initial and reply comments. The Board received initial comments from the Truckstops; OCA, the Environmental Advocates, Sierra Club, IAMU and IAEC, IPL, the Alliance for Transportation Electrification, MidAmerican, Greenlots, and ChargePoint. The Board received reply comments from the Truckstops, ChargePoint, IAEC and IAMU, IPL, the Environmental Advocates, and OCA. The Board also received comments from interested individuals.

On April 19, 2019, the Board issued an Order Commencing Rule Making proposing to adopt language substantially similar to the language previously shared with stakeholders on February 6, 2019. The Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on May 8, 2019, as **ARC 4417C**. The Board accepted written comments concerning the noticed rule through May 28, 2019. OCA, ChargePoint, Tesla, the Environmental Advocates, Sierra Club, and individual Iowans filed comments in support of rule 199—20.20(476) as published in the NOIA, while IPL, MidAmerican, IAMU, and IAEC filed comments expressing concern.

The Board conducted an oral presentation on June 12, 2019. OCA, the Environmental Advocates, Sierra Club, and the Truckstops spoke in support of rule 199—20.20(476) as published in the NOIA. IPL, MidAmerican, IAMU, and IAEC expressed concern and generally advocated for rule language that permitted commercial EV charging only if the commercial charging station obtained the electricity from the incumbent electric utility.

In an effort to address the concerns expressed by the utilities and utility associations to the version of the rule published in the NOIA, on July 17, 2019, the Board issued an order containing alternative rule language, which incorporated another state's analysis of the EV charging issue, and invited additional stakeholder initial and reply comments. Through August 1, 2019, the Board received nine initial comments and through August 16, 2019, received four reply comments. A number of commenters expressed support for the July 17, 2019, amended language (with modifications); however, MidAmerican, IAMU, IAEC, and IPL objected, asserting that the revised language was based on an erroneous interpretation of a provision of law, was arbitrary and capricious, and was the product of illogical and wholly irrational reasoning. In sum, the July 17, 2019, revised language did not remedy the concerns expressed by the utilities and utility associates regarding rule 199—20.20(476) as published in the NOIA and resulted in a number of new stakeholder objections.

Because the version of rule 199—20.20(476) as published in the NOIA is narrowly drawn to solely address the commercial EV charging transaction between an EV charging station and the vehicle while leaving unaltered the existing legal principles governing the furnishing of electricity from generation to the EV charging station, on September 30, 2019, the Board issued an order adopting rule 199—20.20(476) as published in the NOIA.

No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Board on September 30, 2019.

#### *Fiscal Impact*

Because new rule 199—20.20(476) simply clarifies that electric vehicle charging stations are not public utilities so as to fall under the scope of the Board's regulatory authority, it is anticipated the amendment will have no fiscal impact.

#### *Jobs Impact*

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

UTILITIES DIVISION[199](cont'd)

*Waivers*

No waiver provision is included in the proposed amendment because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making action is adopted:

Adopt the following **new** rule 199—20.20(476):

**199—20.20(476) Electric vehicle charging service.**

**20.20(1)** Electric energy sold for the purpose of electric vehicle charging at a commercial or public electric vehicle charging station constitutes neither the furnishing of electricity to the public nor the resale of electric service. If the electricity used for electric vehicle charging is obtained from a rate-regulated public utility, the terms and conditions of the service to the electric vehicle charging station shall be governed by and subject to the utility's filed tariff. A rate-regulated public utility shall not, through its filed tariff, prohibit electric vehicle charging or restrict the method of sale of electric vehicle charging at a commercial or public electric vehicle charging station.

**20.20(2)** A person, partnership, business association, or corporation, foreign or domestic, furnishing electricity to a commercial or public electric vehicle charging station shall comply with Iowa Code section 476.25.

**20.20(3)** Electric utilities and entities providing commercial or public electric vehicle charging shall comply with all applicable statutes and regulations governing the provision of electric vehicle charging service, including, but not limited to, all taxing requirements, and shall, if necessary, file all appropriate tariffs.

[Filed 9/30/19, effective 11/27/19]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4722C**

**VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

**Adopted and Filed**

**Rule making related to future ready Iowa volunteer mentor program**

The Iowa Commission on Volunteer Service hereby adopts new Chapter 13, "Future Ready Iowa Volunteer Mentor Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in 2018 Iowa Acts, chapter 1067, section 6.

## VOLUNTEER SERVICE, IOWA COMMISSION ON[817](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2018 Iowa Acts, chapter 1067.

*Purpose and Summary*

This rule making implements the Future Ready Iowa Volunteer Mentor Program. The Future Ready Iowa Volunteer Mentor Program is designed to support implementation of the Future Ready Iowa Skilled Workforce Last-Dollar Scholarship Program and the Future Ready Iowa Skilled Workforce Grant Program created in 2018 Iowa Acts, chapter 1067, by matching volunteer mentors with scholarship and grant recipients. The Volunteer Mentor Program is a voluntary program for scholarship and grant recipients that is designed to provide mentors to help recipients increase success in school and make meaningful career connections.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 19, 2019, as **ARC 4508C**. A public hearing was held on July 9, 2019, at 11 a.m. in the Central First Floor Conference Room, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on September 24, 2019.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making action is adopted:

Adopt the following **new** 817—Chapter 13:

CHAPTER 13  
FUTURE READY IOWA VOLUNTEER MENTOR PROGRAM

## VOLUNTEER SERVICE, IOWA COMMISSION ON[817](cont'd)

**817—13.1(15H) Purpose and program description.** The purpose of the future ready Iowa volunteer mentor program is to match volunteer mentors with student mentees and to support implementation of the future ready Iowa skilled workforce last-dollar scholarship program and the future ready Iowa skilled workforce grant program created in 2018 Iowa Acts, chapter 1067, sections 12 and 13. The future ready Iowa volunteer mentor program is an optional program for recipients of these scholarships and grants and is designed to provide mentors to help recipients increase success in school and make meaningful career connections. The Iowa commission on volunteer service will manage this statewide program by partnering with employers, local high schools, nonprofits, local eligible institutions of higher education and others to develop mentoring cohorts.

**817—13.2(15H) Definitions.**

*“Commission”* means the Iowa commission on volunteer service.

*“Eligible institution”* means an institution meeting the requirements outlined in 2018 Iowa Acts, chapter 1067, section 12.

*“Grant program”* means the future ready Iowa skilled workforce grant program outlined in 2018 Iowa Acts, chapter 1067, section 13.

*“Last-dollar scholarship”* means the future ready Iowa skilled workforce last-dollar scholarship program outlined in 2018 Iowa Acts, chapter 1067, section 12.

*“Program”* means the future ready Iowa volunteer mentor program as defined in 2018 Iowa Acts, chapter 1067, section 6.

*“Student mentee”* means a student who has elected to participate in the program, has agreed to program expectations, and has been matched with a volunteer mentor through the program. Student mentees must meet the criteria in 2018 Iowa Acts, chapter 1067, sections 12 and 13.

*“Volunteer mentor”* means an adult who has applied to be a mentor, has met the screening guidelines, has attended mentor training, has committed to meeting with the mentee according to program guidelines, and has been matched with a mentee in the program.

**817—13.3(15H) Program standards, guidelines, and expectations.** The commission will maintain on its website standards, guidelines, and expectations for a productive and appropriate relationship between volunteer mentors and student mentees. Standards, guidelines, and expectations are aimed at helping students meet the last-dollar scholarship or grant program requirements, identify work-based learning opportunities, and make career-related connections that are advantageous to participants in the program through a healthy mentor-mentee relationship. Failure to adhere to the program standards may result in ineligibility to participate in the program. To the extent possible, volunteer mentors and student mentees will be matched based on gender, career aspirations, geography and mentor-to-mentee ratio.

**817—13.4(15H) Mentor/mentee agreement.** All volunteer mentors and student mentees must complete and sign a written agreement issued by the commission as part of the program enrollment process. Agreements will include expectations on regular communication, appropriate conduct, utilization of the online platform and participation in any training or resources offered to improve the efficacy of the mentor-mentee relationship. Failure by either party to adhere to the agreement may result in dismissal from the program.

**817—13.5(15H) Mentor request and application process.**

**13.5(1) Mentor request process.** Students may request a volunteer mentor through the commission’s website or partner agencies, including through referrals from high schools and eligible institutions. Eligible institutions must collaborate in the facilitation of this subrule by providing information on the mentor request process to all students who meet the criteria of 2018 Iowa Acts, chapter 1067, sections 12 and 13.

**13.5(2) Mentor application process.** Prospective mentors should apply to be a volunteer mentor through the commission’s website or through high schools, eligible institutions, or partner agencies or employers. These partner agencies may also enlist employers and other partners to help make direct

VOLUNTEER SERVICE, IOWA COMMISSION ON[817](cont'd)

mentoring connections with local mentoring cohorts. Prospective mentors must complete an application, consent to an Iowa division of criminal investigation criminal background check, attend orientation training and agree to the minimum commitment and guidelines outlined in the mentor/mentee agreement.

**817—13.6(15H) Subrecipient award process.** If the commission deems it necessary, the commission may seek subrecipients to carry out components of the program through the commission's regular grant program application processes. The commission may also work with partner state agencies to assist in the administration of this chapter.

These rules are intended to implement 2018 Iowa Acts, chapter 1067, section 6.

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[Published 10/23/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/19.

**ARC 4725C**

## **WORKFORCE DEVELOPMENT DEPARTMENT[871]**

**Adopted and Filed**

### **Rule making related to social security number on claims for unemployment benefits**

The Director of the Workforce Development Department hereby amends Chapter 24, "Claims and Benefits," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 96.11.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 96.6.

#### *Purpose and Summary*

This amendment updates and clarifies the identity verification process used when claims for unemployment insurance benefits are filed.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 28, 2019, as **ARC 4631C**. The Notice was reviewed by the Administrative Rules Review Committee at its meeting on September 10, 2019. No public comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Director of the Department on October 2, 2019.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on November 27, 2019.

The following rule-making action is adopted:

Rescind rule 871—24.3(96) and adopt the following **new** rule in lieu thereof:

**871—24.3(96) Social security number needed for filing.** A claim will not become valid until the identity of the claimant has been verified by the department.

**24.3(1)** Upon the filing of a claim, notification shall be provided to the claimant if the claimant's identity was not verified.

**24.3(2)** If the agency is unable to verify the claimant's identity in the claim application, the claimant must provide approved documents. Approved documents must include at least one document containing a social security number. The department shall determine the approved documents required to verify identity. The list of approved documents can be found at the nearest local workforce center or online.

**24.3(3)** The claimant's identity will not be considered verified until approved documents have been provided. The claim shall remain locked from issuance of benefits until the claimant has provided the approved documents to verify identity.

**24.3(4)** After filing a claim application, the claimant shall not be eligible for benefits for any week until approved documents are provided to verify identity.

**24.3(5)** Approved documents must be provided or postmarked by Saturday at 11:59 p.m. of the week in which the approved documentation is due, and the claim shall be unlocked for all weeks following the most recent effective date of the claim application.

**24.3(6)** If required documents are provided in any subsequent weeks following the due date, the claimant shall be eligible, provided there are no other outstanding issues with the claim, as of the Sunday of the week the claimant's identity was verified.

This rule is intended to implement Iowa Code section 96.6.

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