IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XL October 25, 2017 NUMBER 9 Pages 929 to 1078

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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]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

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

STEPHANIE A. HOFF, Administrative Code Editor

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making
2017

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
11	**Wednesday, November 1, 2017**	**November 22, 2017**
12	**Wednesday, November 15, 2017**	**December 6, 2017**
13	**Wednesday, November 29, 2017**	**December 20, 2017**

PLEASE NOTE:

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

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

Note change of filing deadline

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 14, 2017, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]
Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Attest services; CPA firm licensure; definition of "state"; review of rules, amendments to chs 1, 6 to 8, 10, 13, 14, 20, 21 Filed **ARC 3422C** 10/25/17

AGING, DEPARTMENT ON[17]

Training requirement for options counselors, 23.7 Notice **ARC 3376C** 10/11/17

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Vegetable seed labeling, 40.3 Notice **ARC 3359C** 10/11/17
Organic certification, amendments to ch 47 Notice **ARC 3403C** 10/25/17

COLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"

All Iowa opportunity scholarship program; all Iowa opportunity foster care grant program, amend ch 8; rescind ch 9 Filed Emergency After Notice **ARC 3381C** 10/11/17
Iowa tuition grant program—for-profit institutions, ch 11 Filed Emergency After Notice **ARC 3382C** 10/11/17

ECONOMIC DEVELOPMENT AUTHORITY[261]

Career and technical skill assessment services and testing, amendments to chs 5, 7 to 9, 20, 58 Filed **ARC 3383C** 10/11/17
Community catalyst building remediation program, ch 45 Filed **ARC 3384C** 10/11/17
Workforce housing tax incentives program, amendments to ch 48 Notice **ARC 3377C** 10/11/17
Iowa targeted small business certification program, ch 52 Notice **ARC 3378C** 10/11/17
Enterprise zone agreements; new investments, 59.15(3), 68.4 Filed **ARC 3385C** 10/11/17
STEM internship program—maximum employer award amount, 110.4(1) Filed **ARC 3386C** 10/11/17

EDUCATION DEPARTMENT[281]

School health services; special education, amendments to chs 14, 41 Filed **ARC 3387C** 10/11/17
High school equivalency diploma, ch 32 Notice **ARC 3365C** 10/11/17
General transfer rule—exception to ensure homeless student access to extracurricular activities, 36.15(3) Notice **ARC 3364C** 10/11/17

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Electronic submittal of manure management plan updates and associated fees, 65.16(3)"b" Filed **ARC 3388C** 10/11/17

HUMAN SERVICES DEPARTMENT[441]

Iowa health and wellness plan, 74.1 Notice **ARC 3375C** 10/11/17
Hospice services election statement—Medicare election of hospice benefits, 78.36(4)"b"(1) Notice **ARC 3419C** 10/25/17
Medicaid providers—alternative means for providing documentation of services, 79.3(2)"d" Notice **ARC 3357C**, also Filed Emergency **ARC 3358C** 10/11/17
Family planning services, 75.1, 75.70, 76.2, 76.14(2) Notice **ARC 3356C**, also Filed Emergency **ARC 3354C** 10/11/17
Elimination of three-month retroactive Medicaid coverage benefit, 74.5, 75.1(35), 75.11(2), 75.19(1), 75.25, 76.4, 76.13, 76.14(2) Notice **ARC 3355C**, also Filed Emergency **ARC 3353C** 10/11/17
Family planning program, amend ch 7; adopt ch 87 Filed **ARC 3389C** 10/11/17
HCBS waivers—home-delivered meals, 78.34(11), 78.37(8), 78.38(6) Notice **ARC 3374C** 10/11/17

INSPECTIONS AND APPEALS DEPARTMENT[481]

Contested cases; rules of procedure and practice before the administrative hearings division, adopt ch 9; amend chs 10, 30, 50, 57, 58, 62 to 65, 67, 90, 100, 105, 106 Notice **ARC 3407C** 10/25/17
Iowa code of administrative judicial conduct, 10.1, 10.29, ch 15 Notice **ARC 3408C** 10/25/17
Factors determining imposition of citation and fine, 56.7, 56.10 Filed **ARC 3390C** 10/11/17

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"

Iowa stopgap measure, 82.7 to 82.14 Notice **ARC 3348C**, also Filed Emergency **ARC 3349C** 10/11/17

Health insurance sales—protections for seniors moving between a Medicare supplement policy and a Medicare Part C policy, 15.5 Notice of Termination **ARC 3404C** 10/25/17
Regulation of securities offerings and those who engage in the securities business, 50.66, 50.91, 50.92 Filed **ARC 3391C** 10/11/17
Term and universal life insurance reserve financing, ch 112 Notice **ARC 3362C** 10/11/17

IOWA FINANCE AUTHORITY[265]

Home and community-based services rent subsidy program, 24.1 to 24.9 Filed **ARC 3423C** 10/25/17
Military service home ownership assistance program, 27.2 to 27.5 Filed **ARC 3424C** 10/25/17
HOME investment partnerships program, 39.2 to 39.9 Filed **ARC 3425C** 10/25/17
Shelter assistance fund, 41.1, 41.2, 41.4, 41.6, 41.10 Filed **ARC 3426C** 10/25/17
Emergency solutions grant program, 42.1, 42.2, 42.4 to 42.8, 42.10 to 42.12 Filed **ARC 3427C** 10/25/17

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

OSHA civil penalty structure, amendments to ch 3 Notice **ARC 3415C** 10/25/17

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Permanent and administrative medicine physician licensure, amendments to ch 9 Notice **ARC 3368C** 10/11/17
Standards of practice—experimental treatments for patients with a terminal illness, 13.13 Notice **ARC 3360C** 10/11/17
Standards of practice—tick-borne disease diagnosis and treatment, 13.14 Notice **ARC 3361C** 10/11/17

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Pharmacist licensure by examination—provision of ITIN and proof of presence, 2.2(1) Notice **ARC 3369C** 10/11/17
Registration of services programs that provide controlled substances; update of cross references, 5.17, 11.3, 11.26(2), 11.27, 11.33 Notice **ARC 3370C** 10/11/17
End of prescriber/patient relationship—dispensing of remaining prescription refills, 8.20 Notice **ARC 3371C** 10/11/17
Agency procedure for rule making, ch 28 Notice **ARC 3373C** 10/11/17

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Cosmetology arts and sciences—licensure of practitioners and establishments, continuing education, amendments to chs 60, 61, 64 Notice **ARC 3372C** 10/11/17
Licensure procedures for hearing aid specialists, amendments to chs 121 to 124 Notice **ARC 3409C** 10/25/17
Optometrists—application for licensure, contact lens and spectacle lens prescriptions, 180.2(1), 182.3 Filed **ARC 3428C** 10/25/17
Speech pathologists and audiologists—licensure, continuing education, discipline, amendments to chs 300, 303, 304 Notice **ARC 3410C** 10/25/17
Licensure of athletic trainers, amendments to ch 351 Notice **ARC 3363C** 10/11/17

PUBLIC HEALTH DEPARTMENT[641]

Statewide obstetrical and newborn indigent care program, rescind ch 75 Notice **ARC 3350C** 10/11/17
Office of minority and multicultural health, rescind ch 82 Notice **ARC 3351C** 10/11/17
Medical cannabidiol program, amendments to ch 154 Notice **ARC 3420C** 10/25/17
Medical cannabidiol Act registration card program, 154.1 to 154.14 Notice of Termination **ARC 3379C** 10/11/17
Prospective private sector employee drug testing—addition of "hair" to definition of "sample"; update of references to forensic drug testing, amendments to ch 12 Filed **ARC 3392C** 10/11/17
Notification requirements for mammogram reports, 41.6(4) Filed **ARC 3393C** 10/11/17
Vital records—reporting of terminations of pregnancy, amendments to ch 100 Filed **ARC 3394C** 10/11/17
Biological agent risk assessment, rescind ch 112 Filed **ARC 3395C** 10/11/17
Automated external defibrillator program, amendments to ch 143 Filed **ARC 3396C** 10/11/17
Governmental public health advisory council—update of definition for "local board of health," 186.2 Filed **ARC 3397C** 10/11/17
Organized delivery systems, rescind ch 201 Filed **ARC 3398C** 10/11/17
Iowa health information network, rescind ch 206 Notice **ARC 3352C** 10/11/17

PUBLIC SAFETY DEPARTMENT[661]

2012 life safety code—adoption by reference, 205.1, 205.5, 205.10, 205.15, 205.20, 205.25 Notice **ARC 3411C** 10/25/17

REVENUE DEPARTMENT[701]

Optional designations of funds by taxpayer, 43.4 Notice **ARC 3413C** 10/25/17
Electronic filing of W-2 and 1099 forms—extension of deadline, 46.3(3) Filed **ARC 3429C** 10/25/17
Property assessment appeal board, amendments to ch 126 Filed **ARC 3430C** 10/25/17

TRANSPORTATION DEPARTMENT[761]

Holiday rest stops and rest areas; rest area sponsorship program, amend chs 105, 106; rescind ch 123 Notice **ARC 3366C** 10/11/17
Highway project planning, rescind ch 110 Filed **ARC 3399C** 10/11/17
General requirements and covenants for highway and bridge construction, rescind ch 125 Filed **ARC 3400C** 10/11/17
Improvements and maintenance on primary road extensions, 150.1 to 150.5 Notice **ARC 3367C** 10/11/17

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Documents filed with the utilities board; forms, 2.1, 2.2, 2.4 Notice **ARC 3417C** 10/25/17
Declaratory orders, amendments to ch 4 Notice **ARC 3418C** 10/25/17
Generating certificate dockets; request for power of eminent domain, 24.2 to 24.4, 24.5(2), 24.6(2), 24.8, 24.10(4), 24.11(1), 24.12(2), 24.15 Notice **ARC 3416C** 10/25/17

WORKERS' COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Evaluation of permanent impairments; vocational training and education; suitable work; commutations, amendments to chs 1 to 6, 8, 12 Notice **ARC 3414C** 10/25/17

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Employer records, reports, contribution and charges; claims; benefits, amendments to chs 22 to 24 Filed **ARC 3401C** 10/11/17
Employer contribution and charges; cash value of room and board, amendments to chs 23, 25 Filed **ARC 3402C** 10/11/17
Subpoenas for witnesses and documents, 26.13 Notice **ARC 3421C** 10/25/17

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 Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

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4019 NE Bellagio Circle
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Representative Megan Jones
4470 Highway 71
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Representative Amy Nielsen
168 Lockmoor Circle
North Liberty, Iowa 52317

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317

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P.O. Box A
Mt. Auburn, Iowa 52313

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

Colin Smith
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Organic certification, amendments to ch 47 IAB 10/25/17 **ARC 3403C**	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 14, 2017 2 p.m.

EDUCATION DEPARTMENT[281]

High school equivalency diploma, ch 32 IAB 10/11/17 **ARC 3365C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 31, 2017 10 to 11 a.m.
General transfer rule—exception to ensure homeless student access to extracurricular activities, 36.15(3) IAB 10/11/17 **ARC 3364C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 31, 2017 9 to 10 a.m.

INSURANCE DIVISION[191]

Iowa stopgap measure, 82.7 to 82.14 IAB 10/11/17 **ARC 3348C**	Division Office, Fourth Floor 601 Locust St. Two Ruan Center Des Moines, Iowa	November 2, 2017 10 a.m.
Term and universal life insurance reserve financing, ch 112 IAB 10/11/17 **ARC 3362C**	Conference Rm. 4 North, Fourth Floor 601 Locust St. Two Ruan Center Des Moines, Iowa	November 1, 2017 1:30 p.m.

LABOR SERVICES DIVISION[875]

OSHA civil penalty structure, amendments to ch 3 IAB 10/25/17 **ARC 3415C**	150 Des Moines St. Des Moines, Iowa	November 16, 2017 1:30 p.m. (If requested)

MEDICINE BOARD[653]

Permanent and administrative medicine physician licensure, amendments to ch 9 IAB 10/11/17 **ARC 3368C**	Board Office, Suite C 400 S.W. Eighth St. Des Moines, Iowa	October 31, 2017 11 a.m.
Standards of practice—experimental treatments for patients with a terminal illness, 13.13 IAB 10/11/17 **ARC 3360C**	Board Office, Suite C 400 S.W. Eighth St. Des Moines, Iowa	October 31, 2017 11 a.m.
Standards of practice—tick-borne disease diagnosis and treatment, 13.14 IAB 10/11/17 **ARC 3361C**	Board Office, Suite C 400 S.W. Eighth St. Des Moines, Iowa	October 31, 2017 11 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Cosmetology arts and sciences—licensure of practitioners and establishments, continuing education, amendments to chs 60, 61, 64 IAB 10/11/17 **ARC 3372C**	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	October 31, 2017 12:30 to 1 p.m.

PROFESSIONAL LICENSURE DIVISION[645] (cont'd)

Licensure procedures for hearing aid specialists, amendments to chs 121 to 124 IAB 10/25/17 **ARC 3409C**	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 15, 2017 1:30 to 2 p.m.
Speech pathologists and audiologists—licensure, continuing education, discipline, amendments to chs 300, 303, 304 IAB 10/25/17 **ARC 3410C**	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 15, 2017 1 to 1:30 p.m.
Licensure of athletic trainers, amendments to ch 351 IAB 10/11/17 **ARC 3363C**	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	October 31, 2017 1 to 1:30 p.m.

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Public sector collecive bargaining, amend chs 1, 2, 4, 6 to 8, 11, 16; adopt ch 5 IAB 10/25/17 **ARC 3405C**	Starkweather Conference Room Vocational Rehabilitation Offices 510 E. 12th St. Des Moines, Iowa	November 14, 2017 2 p.m.

PUBLIC HEALTH DEPARTMENT[641]

Medical cannabidiol program, amendments to ch 154 IAB 10/25/17 **ARC 3420C**	Rooms 517 and 518 Lucas State Office Bldg. Des Moines, Iowa *To participate by conference call:* Dial 877-844-7358	December 8, 2017 10 a.m. to 12 noon

PUBLIC SAFETY DEPARTMENT[661]

2012 life safety code—adoption by reference, 205.1, 205.5, 205.10, 205.15, 205.20, 205.25 IAB 10/25/17 **ARC 3411C**	First Floor Public Conference Room 125 Oran Pape State Office Bldg. Des Moines, Iowa	November 14, 2017 10 a.m.

TRANSPORTATION DEPARTMENT[761]

Holiday rest stops and rest areas; rest area sponsorship program, amend chs 105, 106; rescind ch 123 IAB 10/11/17 **ARC 3366C**	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	November 2, 2017 10 a.m. (If requested)
Improvements and maintenance on primary road extensions, 150.1 to 150.5 IAB 10/11/17 **ARC 3367C**	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	November 2, 2017 9 a.m. (If requested)

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Employer contribution and charges; claims and benefits, 23.69, 23.70, 23.72(1), 24.1, 24.39, 24.40 IAB 10/25/17 **ARC 3432C**	Iowa Workforce Development Board Room Room 135 1000 E. Grand Ave. Des Moines, Iowa	November 21, 2017 10 a.m.

The following list will be updated as changes occur.

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

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

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
  Soil Conservation and Water Quality Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
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ARC 3403C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 190C.3, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 47, "Iowa Organic Program," Iowa Administrative Code.

The proposed amendments update provisions related to organic certification and remove provisions made redundant by national requirements already adopted by reference. The proposed amendments also rescind a number of items that were only recommendations.

Any interested persons may make written suggestions or comments on the proposed amendments on or before November 14, 2017. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

A public hearing will be held on November 14, 2017, at 2 p.m. in the second floor conference room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa.

These proposed amendments are subject to the Department's general waiver provision.

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

These amendments are intended to implement Iowa Code chapter 190C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rule **21—47.2(190C)**.

ITEM 2. Amend rule 21—47.3(190C) as follows:

21—47.3(190C) ~~Crops~~ Drift.

~~47.3(1)~~ ~~*Split operations.* Split operations shall be allowed. Segregation plans shall be developed and followed, and applicable logs shall be maintained for organic and nonorganic crops. The operation shall maintain, but not be limited to, the documents and logs addressing the following procedures: equipment cleaning, spraying, purging, separate storage and separate transportation. Appropriate physical facilities, machinery and management practices shall be established to prevent commingling of nonorganic and organic products or contamination by prohibited substances.~~

~~47.3(2)~~ ~~*Buffer zone.*~~

~~*a. Requirements.*~~

~~(1) If crops are grown in a buffer zone, such crops shall not be labeled, sold or in any way represented as organic.~~

~~(2) Crops harvested from buffer zones shall be kept separate from organic crops, and appropriately designated storage areas shall be clearly identified and records maintained to sufficiently identify the disposition of nonorganic product.~~

~~*b. Recommendations.*~~

~~(1) A minimum of 25 feet is recommended as a buffer zone between certified organic crops and areas treated with prohibited substances.~~

~~(2) Planting windbreaks and hedgerows is encouraged to help reduce spray drift from neighboring farms and wind damage to crops.~~

~~(3) It is recommended that the producer notify neighbors, county roadside management officials, railroads, utility companies and other potential sources of contaminants. It is recommended that the~~

~~producer provide such individuals with maps of organic production areas, request individuals not to spray adjacent areas, and request to be informed if prohibited materials are applied to land adjacent to organic production areas.~~

~~(4) Place "no-spray" or "organic farm" signs where appropriate, e.g., roadways and access areas.~~

47.3(3) ~~*Drift.*~~

~~*a.*~~ The party in control of the site shall notify the department's organic program of suspected pesticide drift incidences onto certified organic land or land which is under consideration for organic certification. The department may require residue testing to make a determination regarding certification.

~~*b.*~~ In the case of drift, the affected party may file a complaint under Iowa Code section 206.14 with the department's pesticide bureau.

47.3(4) ~~*Runoff and flooding.*~~

~~*a.* Records shall be kept regarding land that is subject to runoff or flooding.~~

~~*b.* The department may require testing to make a determination regarding certification.~~

47.3(5) ~~*Rotations.* For the production of annual crops, rotations are required for soil improvement and disruption of weed, insect, disease and nematode cycles. A crop rotation including, but not limited to, sod, legumes or other nitrogen-fixing plants, and green manure crops shall be established.~~

~~*a. Annual agronomic crops (row crops and small grain crops).*~~

~~(1) Crops of the same species or family shall not be grown repeatedly without interruption on the same field or plot.~~

~~(2) Soil-building period. It is recommended that each field or plot be planted in and achieve a viable stand of a solid-seeded (non-row), soil-building legume crop or crop mixture that includes at least one legume species and that the field or plot be maintained a minimum of one year out of a five-year period. During this soil-building period, the producer may maintain the soil-building crop through the crop's growing period to maturity or until the crop achieves its optimal soil-building characteristics. Soil-building crops may be used as winter cover or plow-down in fall. Some examples of soil-building practices include the following:~~

~~1. Plant and harvest a small grain crop with the solid-seeded crop mixture identified above; e.g., plant oats and alfalfa in the spring and harvest oats in the summer;~~

~~2. Maintain the solid-seeded crop mixture identified above for more than one season; e.g., alfalfa established in one season may be maintained and harvested for successive years if desired; or~~

~~3. Harvest the solid-seeded crop mixture identified above prior to its incorporation into the soil; e.g., harvest oats and alfalfa mixture in the summer prior to incorporation into the soil at a later time.~~

~~*b. Annual horticultural crops (fruit, vegetable, and herb crops).*~~

~~(1) Crops of the same species or family shall not be grown repeatedly without interruption on the same field or plot.~~

~~(2) Soil-building period. It is recommended that each field or plot be planted in and achieve a viable stand of a solid-seeded (non-row), soil-building legume crop or crop mixture that includes at least one legume species and that the field or plot be maintained a minimum of one year out of a five-year period. During this soil-building period, the producer may maintain the soil-building crop through the crop's growing period to maturity or until the crop achieves its optimal soil-building characteristics. Soil-building crops may be used as winter cover or plow-down in fall. Some examples of soil-building practices include the following:~~

~~1. Plant and harvest a small grain crop with the solid-seeded crop mixture identified above; e.g., plant oats and alfalfa in the spring and harvest oats in the summer;~~

~~2. Maintain the solid-seeded crop mixture identified above for more than one season; e.g., alfalfa established in one season may be maintained and harvested for successive years if desired; or~~

~~3. Harvest the solid-seeded crop mixture identified above prior to its incorporation into the soil; e.g., harvest oats and alfalfa mixture in the summer prior to incorporation into the soil at a later time.~~

~~(3) It is recommended that the producer make an effort to establish a rotation sequence where crops of the same species or family, e.g., Solanaceae family: tomatoes, peppers, potatoes, and eggplant, are not planted in the same field or plot in consecutive years.~~

~~*c. Perennials.* Perennial systems shall include a plan for biodiversity in the system and a soil-building program, including the use of cover crops, mulches, grass cover and a soil-building legume crop mixture.~~

~~(1) It is strongly recommended that, at the end of a perennial crop life cycle that exceeds four years, the field or plot be planted in a solid-seeded (non-row) soil-building legume crop or crop mixture which includes at least one legume species, achieves a viable stand, and is maintained for a minimum of one year prior to planting another perennial crop.~~

~~(2) Replacement of individual plants within a perennial crop stand is permissible.~~

~~(3) Rescinded IAB 10/29/03, effective 12/3/03.~~

~~*d. Crop rotation variance.* Rescinded IAB 10/29/03, effective 12/3/03.~~

ITEM 3. Rescind and reserve rule **21—47.4(190C)**.

ITEM 4. Amend rule 21—47.5(190C) as follows:

21—47.5(190C) ~~Use of state seal~~ Recognition. For the promotion or sale of organic products, only those producers, handlers and processors certified as organic by the department are entitled to utilize the ~~state~~ Iowa Organic Program seal attesting to state of Iowa organic certification.

ITEM 5. Amend rule 21—47.6(190C) as follows:

21—47.6(190C) General requirements. In order to receive and maintain organic certification from the department, producers, processors and handlers of organic agricultural products shall apply for organic certification with the department and submit all required materials; comply with Iowa Code chapter 190C and this chapter; permit the department to access the operation and all applicable records as deemed necessary; comply with all local, state and federal regulations applicable to the conduct of such business; and submit all applicable fees to the department pursuant to Iowa Code section 190C.5(1) ~~as amended by 2003 Iowa Acts, House File 600,~~ and this chapter.

47.6(1) Application for ~~state~~ organic certification.

a. Application for ~~state~~ certification shall be completed and submitted with required application materials and fees to the department on forms furnished by the department. Applications submitted to the department after the published deadline date may be charged late fees for application and inspection, and the processing of such applications may be subject to delays or the applications may not be processed at all.

b. The applicant shall inform the department of changes to the organic plan which may affect the conformity of the operation to the certification standards at any time during the certification process and after such certification is granted.

c. The ~~state-certified~~ certified party shall inform the department of any changes in the organic plan, such as production changes or intended modification to the product(s) or manufacturing process which may affect the conformity of the operation to the certification standards. ~~If such is the case, the certified party may not be allowed to release such products as certified organic products bearing the state seal until the department has given approval to do so.~~

d. The certified party shall keep a record of all complaints made known to that party relating to a product's compliance with requirements to the relevant standard and shall make these records available to the department upon request. The certified party shall take appropriate action with respect to such complaints and any deficiencies found in products or services that affect compliance with the requirements for certification, and all such actions shall be documented and available upon request by the department.

~~*e.* Records of inputs applied to nonorganic fields or livestock split or parallel operations shall be maintained and made available during inspections. This applies to all fields in the operation whether leased or owned.~~

47.6(2) Reserved.

ITEM 6. Amend rule 21—47.8(190C) as follows:

21—47.8(190C) Certification agent.

47.8(1) The department shall serve as certification agent on behalf of and as authorized by the secretary of agriculture pursuant to Iowa Code section 190C.3 ~~as amended by 2003 Iowa Acts, House File 600~~.

47.8(2) Scope of certification. Contingent upon USDA accreditation, the department may inspect and certify organic production and handling operations located outside of the state. The intent of the department is to facilitate continuity of certification services to Iowa-based farms or businesses, or when the county in which the applicant resides is contiguous to the state. Consideration may be given to other out-of-state applicants. ~~The department may seek accreditation from USDA to provide certification services in Iowa and other states where necessary.~~

ITEM 7. Amend rule 21—47.9(190C), introductory paragraph, as follows:

21—47.9(190C) Fees. Fees are established for application, inspection, and certification to support costs associated with activities necessary to administer this program pursuant to Iowa Code sections 190C.5(1) to 190C.5(3) ~~as amended by 2003 Iowa Acts, House File 600~~. The applicant shall submit all fees to the department for the specific amount and at the appropriate time as specified in this rule. A schedule of application, inspection and certification fees shall be published by the department and disseminated with the application packet.

ITEM 8. Amend subrule 47.9(3) as follows:

47.9(3) *Certification fees.* Certification fees may be adjusted annually pursuant to Iowa Code section 190C.5(2) ~~as amended by 2003 Iowa Acts, House File 600~~. The certification fee is assessed annually.

ITEM 9. Amend subrules 47.10(1) to 47.10(3) as follows:

47.10(1) *Enforcement and investigations.* The department and the attorney general shall enforce Iowa Code chapter 190C and this chapter pursuant to Iowa Code ~~section 190C.21as amended by 2003 Iowa Acts, House File 600~~ chapter 190C.

47.10(2) *Complaints.* Any person may submit a written complaint to the department regarding a suspected violation of Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.22(2) ~~as amended by 2003 Iowa Acts, House File 600~~. Such signed complaints shall be submitted on the required form provided by the department upon request.

47.10(3) *Inspection and testing, reporting and exclusion from sale—unscheduled inspection.* All parties making an organic claim may be subject to an unscheduled on-site inspection, review of records and sampling if deemed necessary by the department pursuant to Iowa Code sections 190C.22(3), 190C.22(4), and 190C.24(1) ~~as amended by 2003 Iowa Acts, House File 600,~~ to verify compliance.

ITEM 10. Rescind and reserve rule **21—47.11(190C)**.

ITEM 11. Amend **21—Chapter 47**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 190C ~~as amended by 2003 Iowa Acts, House File 600~~.

ARC 3419C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

The proposed amendment will allow hospice agencies to use the Medicare election of hospice benefits as an alternative to using the election of Medicaid hospice benefits.

Medicaid members and hospice providers will benefit from this amendment. The Department will also be affected by a decrease in the number of exceptions to policy are processed by the Department.

Any interested person may make written comments on the proposed amendment on or before November 14, 2017. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

This amendment is intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

Amend subparagraph **78.36(4)"b"(1)** as follows:

(1) Election statement. An individual, or individual's representative, elects to receive the hospice benefit by filing an election statement, Form 470-2618, Election of Medicaid Hospice Benefit, or a Medicare election of hospice benefit form, with a particular hospice. The hospice may provide the individual with another election form to use provided the form includes the following information:

1. to 7. No change.

ARC 3407C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 10A.801, the Department of Inspections and Appeals hereby gives Notice of Intended Action to adopt new Chapter 9, "Contested Cases," and to amend Chapter 10, "Contested Case Hearings," Chapter 30, "Food and Consumer Safety," Chapter 50, "Health Care Facilities Administration," Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled," Chapter 65, "Intermediate Care Facilities for Persons with

Mental Illness (ICF/PMC)," Chapter 67, "General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services," Chapter 90, "Public Assistance Debt Recovery Unit," Chapter 100, "Administration," Chapter 105, "Registered Amusement Devices," and Chapter 106, "Card Game Tournaments by Veterans Organizations," Iowa Administrative Code.

These amendments make a number of technical corrections to the procedure governing administrative hearings conducted by the Administrative Hearings Division. The amendments update the title of Chapter 10 to better describe the nature of the rules within, and they move the rules pertaining to contested cases of the Department of Inspections and Appeals to their own chapter to provide greater clarity and update cross references accordingly. They update the procedures related to prehearing conferences to simplify the rule and provide greater flexibility to the parties and the administrative law judge to use the conferences in a manner that efficiently advances the administration of justice. The amendments also update the rule related to providing recordings of hearings to account for technological changes and eliminate an obsolete rule implementing a statutory provision that has been repealed. Finally, the amendments update references to statutory provisions and cross references to rules to reflect the accurate citations.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 14, 2017. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

No waiver provision is included in these rules because the statute governs the procedure to be used in contested case proceedings, which includes other safeguards for the administrative law judge to ensure the parties are provided a fair, impartial, and individualized hearing.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

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

These amendments are intended to implement Iowa Code sections 10A.801 and 17A.12.

The following amendments are proposed.

ITEM 1. Adopt the following **new** 481—Chapter 9:

CHAPTER 9
CONTESTED CASES

481—9.1(10A,17A) Applicability. This chapter applies to contested case proceedings conducted under the authority of the department of inspections and appeals in which the director of the department of inspections and appeals is the final decision-making authority.

481—9.2(10A,17A) Initiation of a contested case proceeding. If the department decides to initiate a contested case proceeding upon request or its own initiative, the department shall transmit the proceeding to the administrative hearings division, which shall issue a notice of hearing and assign the proceeding to an administrative law judge to serve as the presiding officer. All contested case proceedings shall be conducted pursuant to 481—Chapter 10 and any other administrative rule applicable to the specific type of proceeding.

481—9.3(10A,17A) Director review.

9.3(1) A request for review of a proposed decision shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews on its own motion as follows. The department may review a proposed decision upon its own motion within 15 days of issuance of the proposed decision.

9.3(2) A review shall be based on the record and limited to issues raised in the hearing. The issues shall be specified in the party's request for review.

9.3(3) Each party shall have opportunity to file exceptions and present briefs. The director or a designee of the director may set a deadline for submission of briefs. When the director or the director's designee consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified of the scheduled time and place in advance.

9.3(4) The director or the director's designee shall not take any further evidence with respect to issues of fact heard in the hearing except as set forth below. Application may be filed for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the director or the director's designee that the additional evidence is material and that there were good reasons for failure to present it in the hearing, the director or the director's designee may order the additional evidence taken upon conditions determined by the director or the director's designee.

9.3(5) Final decisions shall be issued by the director or the director's designee.

481—9.4(10A,17A) Rehearing. Requests for rehearing shall be made to the director of the department within 20 days of issuance of a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available or an obvious mistake is corrected or when the decision failed to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

481—9.5(10A,17A) Judicial review. Judicial review of department final decisions may be sought in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapters 10A and 17A.

ITEM 2. Amend **481—Chapter 10**, title, as follows:

~~CONTESTED CASE HEARINGS~~ RULES OF PROCEDURE AND PRACTICE BEFORE THE ADMINISTRATIVE HEARINGS DIVISION

ITEM 3. Amend rule **481—10.1(10A)**, definition of "Party," as follows:

"Party" means a party as defined in Iowa Code subsection ~~17A.2(5)~~ 17A.2(8).

ITEM 4. Amend rule 481—10.2(10A,17A) as follows:

481—10.2(10A,17A) Time requirements. Time shall be computed as provided in Iowa Code subsection ~~4.1(22)~~ 4.1(34). For good cause, the administrative law judge may extend or shorten the time to take any action, except as provided otherwise by rule or law.

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 5. Amend rule **481—10.3(10A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~10A.202(1)~~ 10A.801(7).

ITEM 6. Amend rule **481—10.4(10A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~10A.202(1)~~ 10A.801(7).

ITEM 7. Amend rule **481—10.6(10A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~10A.202(2)~~ 10A.801(7).

ITEM 8. Amend rule **481—10.10(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 9. Amend subrule 10.11(1) as follows:

10.11(1) *Petition.* When an action of the agency is appealed and pleadings are required under ~~subrule 10.10(1)~~ this rule, the aggrieved party shall file the petition.

a. Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

b. The petition shall state in separately numbered paragraphs the following:

(1) The relief demanded and the facts and law relied upon for relief;

(2) The particular provisions of the statutes and rules involved;

(3) On whose behalf the petition is filed; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

ITEM 10. Amend rule **481—10.11(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.12(6)*"a."*

ITEM 11. Rescind rule 481—10.16(17A) and adopt the following **new** rule in lieu thereof:

481—10.16(10A,17A) Prehearing conference.

10.16(1) *Set by division.* The division may commence a contested case proceeding by issuing a notice of hearing that sets a prehearing conference to provide parties an opportunity to be heard on the selection of a date and time for the hearing on the merits and any other matters set forth in the notice or raised by the parties.

10.16(2) *Requested by party.* Any party may request a prehearing conference by filing and serving a written motion at least ten days prior to the date of the hearing. The motion must state any matters that the party seeks to address at the prehearing conference. If the administrative law judge grants the motion, the administrative law judge shall issue an order providing notice of the date and time of the prehearing conference to all parties.

10.16(3) *Ordered by administrative law judge.* The administrative law judge may order a prehearing conference if the administrative law judge determines on the administrative law judge's own motion that a prehearing conference should be held.

10.16(4) *Default.* If a party fails to appear or participate in a prehearing conference after proper service of notice, the administrative law judge may enter a default decision or proceed with the prehearing conference in the absence of the party.

This rule is intended to implement Iowa Code sections 10A.801(7) and 17A.12.

ITEM 12. Amend rule **481—10.17(10A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~10A.202(1)~~ 10A.801(7).

ITEM 13. Amend rule **481—10.18(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 14. Amend rule **481—10.19(10A,17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~10A.202(1)~~ 10A.801(7) and 17A.22.

ITEM 15. Amend subrule 10.24(2) as follows:

10.24(2) *Review of proposed decisions.* Request for review of a proposed decision shall be made to the agency in which the contested case originated in the manner and within the time specified by that agency's rules. In contested cases in which the director of ~~DIA~~ the department of inspections and appeals has final decision-making authority, request for review shall be made as provided in rule ~~481—10.25(10A,17A)~~ 481—9.3(10A,17A).

ITEM 16. Rescind and reserve rule **481—10.25(10A,17A)**.

ITEM 17. Rescind and reserve rule **481—10.27(10A)**.

ITEM 18. Amend rule 481—10.28(10A) as follows:

481—10.28(10A) Recording costs. The ~~department~~ division may provide a copy of the ~~tape-recorded~~ audio recording of the hearing or a printed transcript of the hearing when a record of the hearing is requested. The cost of providing the recording or preparing the ~~tape or~~ transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

ITEM 19. Amend rule 481—30.11(10A,137C,137D,137F) as follows:

481—30.11(10A,137C,137D,137F) Formal hearing. All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa

50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by ~~481—Chapter 10, "Contested Case Hearings."~~ 481—Chapter 9, "Contested Cases."

For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule ~~481—10.25(10A,17A)~~ 481—9.3(10A,17A).

This rule is intended to implement Iowa Code section 10A.104 and Iowa Code chapters 137C, 137D, and 137F.

ITEM 20. Amend rule 481—50.6(10A), introductory paragraph, as follows:

481—50.6(10A) Formal hearing. All decisions of the division may be contested. Appeals and hearings are controlled by ~~481—Chapter 10, "Contested Case Hearings."~~ 481—Chapter 9, "Contested Cases."

ITEM 21. Amend paragraph **57.14(6)"d"** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or the resident's legal representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

ITEM 22. Amend paragraph **58.40(7)"d"** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or resident's legal representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

ITEM 23. Amend paragraph **62.14(6)"d"** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

ITEM 24. Amend paragraph **63.34(7)"d"** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

ITEM 25. Amend paragraph **64.36(7)"d"** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

ITEM 26. Amend paragraph **65.16(6)"d"** as follows:

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9. The hearing shall be public unless the resident or representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of evidence rests on the party requesting the transfer or discharge.

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

ITEM 27. Amend subrule 67.14(5) as follows:

67.14(5) *Contested case hearings.* Contested case hearings shall be conducted by the department's administrative hearings division pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9.

ITEM 28. Amend subrule 67.15(2) as follows:

67.15(2) *Hearings.* Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9.

ITEM 29. Amend subrule 67.16(2) as follows:

67.16(2) *Appeal of conditional certificate.* A written request for hearing must be received by the department within 30 days after the mailing or service of notice. The conditional certificate shall not be suspended pending the hearing. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9.

ITEM 30. Amend rule 481—67.18(17A,231B,231C,231D) as follows:

481—67.18(17A,231B,231C,231D) Judicial review. Judicial review shall be conducted pursuant to Iowa Code chapter 17A and ~~481—Chapter 10~~ 481—Chapter 9.

ITEM 31. Amend rule 481—90.7(10A) as follows:

481—90.7(10A) Appeal rights. If a notice of debt or other notice of adverse action is received by the debtor and the debtor wishes to contest the debt, an appeal is submitted to the recovery unit or to DHS. If an appeal is submitted, the recovery process is suspended until conclusion of the appeal process outlined in ~~481—Chapter 10~~ 481—Chapter 9 and 441—Chapter 7.

ITEM 32. Amend rule 481—100.12(10A,17A,99B), introductory paragraph, as follows:

481—100.12(10A,17A,99B) Appeal rights. Any decision of the department may be appealed in accordance with procedures set out in ~~Iowa Administrative Code 481—Chapter 10~~ 481—Chapter 9. When an appeal is received, the status of the license is governed by the following standards:

ITEM 33. Amend rule 481—105.8(10A,99B), introductory paragraph, as follows:

481—105.8(10A,99B) Appeal rights. Decisions to refuse to issue a registration or to revoke a registration by the department may be appealed in accordance with the procedures set out in ~~481—Chapter 10~~ 481—Chapter 9. The refusal to issue a registration or the notice of revocation shall be in writing and state the specific grounds for the action. When an appeal is received, the status of the registration is governed by the following standards:

ITEM 34. Amend subrule 106.13(3) as follows:

106.13(3) If the licensee or applicant requests a hearing, the hearing shall be held in accordance with procedures in ~~481—Chapter 10~~ 481—Chapter 9.

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INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 10A.801, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 10, "Contested Case Hearings," and to adopt new Chapter 15, "Iowa Code of Administrative Judicial Conduct," Iowa Administrative Code.

Iowa Code section 10A.801(7)(d) requires the Administrative Hearings Division of the Department of Inspections and Appeals to establish a code of administrative judicial conduct that is similar in function and substantially equivalent to the Iowa Code of Judicial Conduct found in Chapter 51 of the Iowa Court Rules, to govern the conduct, in relation to their quasi-judicial functions in contested cases, of all persons who act as presiding officers under the authority of Iowa Code section 17A.11(1). In August 2010, the Iowa Supreme Court substantially amended the Iowa Code of Judicial Conduct. These amendments update the Iowa Code of Administrative Judicial Conduct to be substantially equivalent to the amended Iowa Code of Judicial Conduct. These amendments were drafted in close consultation with a working group representing presiding officers throughout the Executive Branch.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 14, 2017. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

No waiver provision is included in these rules because the statute they implement is mandatory and to the extent the rules could be waived, the Department's general waiver procedure is available.

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

These amendments are intended to implement Iowa Code section 10A.801.

The following amendments are proposed.

ITEM 1. Rescind the definition of "Presiding officer" in rule **481—10.1(10A)**.

ITEM 2. Rescind and reserve rule **481—10.29(10A)**.

ITEM 3. Adopt the following **new** 481—Chapter 15:

CHAPTER 15
IOWA CODE OF ADMINISTRATIVE JUDICIAL CONDUCT

481—15.1(10A) Canon 1. A presiding officer shall uphold and promote the independence, integrity, and impartiality of the administrative judiciary and shall avoid impropriety and the appearance of impropriety.

15.1(1) *Compliance with the law.* A presiding officer shall comply with the law, including the Iowa Code of Administrative Judicial Conduct, hereafter referred to as "this Code."

15.1(2) *Promoting confidence in the administrative judiciary.* A presiding officer shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the administrative judiciary and shall avoid impropriety and the appearance of impropriety.

15.1(3) *Avoiding abuse of the prestige of an administrative judicial position.* A presiding officer shall not abuse the prestige of the administrative judicial position to advance the personal or economic interests of the presiding officer or others, or allow others to do so.

481—15.2(10A) Canon 2. A presiding officer shall perform administrative judicial duties impartially, competently, and diligently.

15.2(1) *Giving precedence to administrative judicial duties.* The administrative judicial duties, as prescribed by law, shall take precedence over all of a presiding officer's personal and extrajudicial activities.

15.2(2) *Impartiality and fairness.* A presiding officer shall uphold and apply the law, and shall perform all administrative judicial duties fairly and impartially.

15.2(3) *Bias, prejudice, and harassment.*

a. A presiding officer shall perform all administrative judicial and other duties without bias or prejudice.

b. A presiding officer shall not, in the performance of administrative judicial duties, by words or conduct manifest bias or prejudice or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit others subject to the presiding officer's direction and control to do so.

c. A presiding officer shall require lawyers and party representatives in proceedings before the presiding officer to refrain from manifesting bias or prejudice or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, party representatives, or others.

d. The restrictions of paragraphs 15.2(3)*"b"* and *"c"* do not preclude presiding officers, lawyers, or party representatives from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

15.2(4) *External influences on administrative judicial conduct.*

a. A presiding officer shall not be swayed by public clamor or fear of criticism.

b. A presiding officer shall not permit family, social, political, financial, or other interests or relationships to influence the presiding officer's administrative judicial conduct or judgment.

c. A presiding officer shall not convey or permit others to convey the impression that any person or organization is in a position to influence the presiding officer.

15.2(5) *Competence, diligence, and cooperation.*

a. A presiding officer shall perform administrative judicial and other duties competently and diligently.

b. A presiding officer shall cooperate with other presiding officers and other executive branch employees in the administration of agency business.

15.2(6) *Ensuring the right to be heard.*

a. A presiding officer shall accord to every person who has a legal interest in a proceeding, or that person's lawyer or authorized representative, the right to be heard according to law.

b. A presiding officer may encourage parties to a proceeding and their lawyers or authorized representatives to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

15.2(7) *Responsibility to decide.* A presiding officer shall hear and decide matters assigned to the presiding officer, except when disqualification is required by subrule 15.2(11) or other law.

15.2(8) *Decorum and demeanor.*

a. A presiding officer shall require order and decorum in proceedings before the presiding officer.

b. A presiding officer shall be patient, dignified, and courteous to parties, board members, witnesses, lawyers, party representatives, agency staff, agency officials, and others with whom the presiding officer deals in an official capacity, and shall require similar conduct of lawyers, party representatives, and others subject to the presiding officer's direction and control.

15.2(9) *Ex parte communications.*

a. A presiding officer shall not initiate, permit, or consider ex parte communications, or consider other communications made to the presiding officer outside the presence of the parties or their lawyers, concerning a pending matter or impending matter, except as permitted by Iowa Code section 17A.17.

b. A presiding officer shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may be officially noticed pursuant to Iowa Code section 17A.14.

15.2(10) *Statements on pending and impending cases.*

a. A presiding officer shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a pending matter or impending matter before the presiding officer or another presiding officer in the same agency, or make any nonpublic statement that might substantially interfere with a fair hearing.

b. A presiding officer shall not, in connection with cases, controversies, or issues that are likely to come before the presiding officer, make pledges, promises, or commitments that are inconsistent with the impartial performance of the presiding officer's adjudicative duties.

c. A presiding officer shall require others subject to the presiding officer's direction and control to refrain from making statements that the presiding officer would be prohibited from making by paragraphs 15.2(10)*"a"* and *"b."*

d. Notwithstanding the restrictions in paragraph 15.2(10)*"a,"* a presiding officer may explain agency procedures and may comment on any proceeding in which the presiding officer is a party in a personal capacity.

e. Subject to the requirements of paragraph 15.2(10)*"a,"* a presiding officer may respond directly or through a third party to allegations in the media or elsewhere concerning the presiding officer's conduct in a matter.

15.2(11) *Disqualification.*

a. A presiding officer shall disqualify himself or herself in any proceeding in which the presiding officer's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The presiding officer has a personal bias or prejudice concerning a party or a party's lawyer or other representative, or has personal knowledge of facts that are in dispute in the proceeding.

(2) The presiding officer knows that the presiding officer, the presiding officer's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

1. A party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

2. Acting as a lawyer or party representative in the proceeding;

3. A person who has more than a de minimis interest that could be substantially affected by the proceeding; or

4. Likely to be a material witness in the proceeding.

(3) The presiding officer knows that he or she, individually or as a fiduciary, or the presiding officer's spouse, domestic partner, parent, or child, or any other member of the presiding officer's family residing in the presiding officer's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The presiding officer, while a presiding officer, has made a public statement, other than in an agency proceeding, decision, opinion, or order, that commits or appears to commit the presiding officer to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The presiding officer:

1. Served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

2. Served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

3. Was a material witness concerning the matter.

(6) The presiding officer personally investigated, prosecuted, or advocated in connection with the matter, the specific controversy underlying the matter, or another pending factually related matter, or pending factually related controversy that may culminate in a contested case, involving the same parties, or is subject to the authority, direction, or discretion of any person who has personally investigated,

prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties. But the presiding officer is not required to disqualify himself or herself solely because the presiding officer determined there was probable cause to initiate the proceeding.

b. A presiding officer shall keep informed about the presiding officer's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the presiding officer's spouse or domestic partner and minor children residing in the presiding officer's household.

c. A presiding officer subject to disqualification under this rule, other than for bias or prejudice under subparagraph 15.2(11)*"a"*(1), may disclose on the record the basis of the presiding officer's disqualification and may ask the parties and their lawyers or representatives to consider, outside the presence of the presiding officer, whether to waive disqualification. If, following the disclosure, the parties and lawyers or party representatives agree, without participation by the presiding officer, that the presiding officer should not be disqualified, the presiding officer may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

15.2(12) *Supervisory duties.*

a. A presiding officer shall require others subject to the presiding officer's direction and control to act in a manner consistent with the presiding officer's obligations under this Code.

b. A presiding officer with supervisory authority for the performance of other presiding officers shall take reasonable measures to ensure that those presiding officers properly discharge their administrative judicial responsibilities, including the prompt disposition of matters before them.

15.2(13) Reserved.

15.2(14) *Disability and impairment.* A presiding officer having a reasonable belief that the performance of a lawyer, party representative, or another presiding officer is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or employee assistance program.

15.2(15) *Responding to administrative judicial and lawyer misconduct.*

a. A presiding officer having knowledge that another presiding officer has committed a violation of this Code that raises a substantial question regarding the presiding officer's honesty, trustworthiness, or fitness as a presiding officer in other respects shall inform the appropriate authority.

b. A presiding officer having knowledge that a lawyer has committed a violation of the Iowa Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

c. A presiding officer who receives information indicating a substantial likelihood that another presiding officer has committed a violation of this Code shall take appropriate action.

d. A presiding officer who receives information indicating a substantial likelihood a lawyer has committed a violation of the Iowa Rules of Professional Conduct shall take appropriate action.

e. This rule does not require disclosure of information gained by a presiding officer while participating in an approved lawyers assistance program.

15.2(16) *Cooperation with disciplinary authorities.*

a. A presiding officer shall cooperate and be candid and honest with a lawyer disciplinary agency or other appropriate authority investigating a violation of this Code or the Iowa Rules of Professional Conduct.

b. A presiding officer shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a presiding officer or a lawyer.

481—15.3(10A) Canon 3. An administrative law judge shall conduct the administrative law judge's personal and extrajudicial activities to minimize the risk of conflict with administrative judicial obligations.

15.3(1) *Extrajudicial activities in general.* An administrative law judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, an administrative law judge shall not:

a. Participate in activities that will interfere with the proper performance of the administrative law judge's administrative judicial duties;

b. Participate in activities that will lead to frequent disqualification of the administrative law judge;

c. Participate in activities that would appear to a reasonable person to undermine the administrative law judge's independence, integrity, or impartiality;

d. Engage in conduct that would appear to a reasonable person to be coercive; or

e. Make use of agency premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, the provision of legal services, or the administration of justice, or unless such additional use is permitted by law.

15.3(2) Reserved.

15.3(3) *Testifying as a character witness.* An administrative law judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly subpoenaed.

15.3(4) *Appointments to governmental positions.* An administrative law judge shall not accept appointment to a governmental committee, board, commission, or other governmental position that would appear to a reasonable person to undermine the administrative law judge's independence, integrity, or impartiality or would lead to frequent disqualification of the administrative law judge.

15.3(5) *Use of nonpublic information.* An administrative law judge shall not intentionally disclose or use nonpublic information acquired in an administrative judicial capacity for any purpose unrelated to the administrative law judge's administrative judicial or other duties.

15.3(6) *Affiliation with discriminatory organizations.*

a. An administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation. An administrative law judge's membership in a religious organization as a lawful exercise of the freedom of religion is not prohibited.

b. An administrative law judge shall not use the benefits or facilities of an organization if the administrative law judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph 15.3(6)*"a."* An administrative law judge's attendance at an event in a facility of an organization that the administrative law judge is not permitted to join is not a violation of this rule when the administrative law judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

15.3(7) *Participation in educational, religious, charitable, fraternal, or civic organizations and activities.*

a. Subject to the requirements of subrule 15.3(1), an administrative law judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, the provision of legal services, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) Assisting such an organization or entity in planning related to fund-raising, volunteering goods or services at fund-raising events, and participating in the management and investment of the organization's or entity's funds;

(2) Soliciting contributions for such an organization or entity, but only from members of the administrative law judge's family, or from other administrative law judges or coworkers in the administrative law judge's immediate office over whom the administrative law judge does not exercise supervisory authority;

(3) Appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the administrative law judge may participate only if the event concerns the law, the legal system, the provision of legal services, or the administration of justice;

(4) Making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, the provision of legal services, or the administration of justice; and

(5) Serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

1. Will be engaged in proceedings that would ordinarily come before the administrative law judge; or

2. Will frequently be engaged in adversary proceedings before the agency in which the administrative law judge serves.

b. An administrative law judge may encourage lawyers to provide pro bono publico legal services.

c. Subject to the requirements of subrule 15.3(1), an administrative law judge may:

(1) Provide leadership in identifying and addressing issues involving equal access to the justice system; developing public education programs; engaging in activities to promote the fair administration of justice and convening, participating or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of legal services, or the administration of justice.

(2) Endorse projects and programs directly related to the law, the legal system, the provision of legal services, and the administration of justice to those coming before the courts or the administrative judiciary.

(3) Participate in programs concerning the law or which promote the administration of justice.

15.3(8) *Appointments to fiduciary positions.*

a. An administrative law judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the administrative law judge's family, and then only if such service will not interfere with the proper performance of administrative judicial duties.

b. An administrative law judge shall not serve in a fiduciary position if the administrative law judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the administrative law judge, or if the estate, trust, or ward becomes involved in adversary proceedings before the agency in which the administrative law judge serves.

c. An administrative law judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to an administrative law judge personally.

d. If a person who is serving in a fiduciary position becomes an administrative law judge, he or she must comply with this subrule as soon as reasonably practicable, but in no event later than six months after becoming an administrative law judge.

15.3(9) *Services as arbitrator or mediator.* An administrative law judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the administrative law judge's official duties unless expressly authorized by law.

15.3(10) *Practice of law.* An administrative law judge shall not engage in the private practice of law. An administrative law judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the administrative law judge's family, but is prohibited from serving as the family member's lawyer before the agency in which the administrative law judge serves. An administrative law judge serving in the administrative hearings division of the department of inspections and appeals is prohibited from serving as the family member's lawyer in any proceeding in which another administrative law judge serving in the division is the presiding officer, regardless of whether the proceeding is being conducted on behalf of the department of inspections and appeals or another state agency.

15.3(11) *Financial, business, or remunerative activities.*

a. An administrative law judge may hold and manage investments of the administrative law judge and members of the administrative law judge's family.

b. An administrative law judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that an administrative law judge may manage or participate in:

(1) A business closely held by the administrative law judge or members of the administrative law judge's family; or

(2) A business entity primarily engaged in investment of the financial resources of the administrative law judge or members of the administrative law judge's family.

c. An administrative law judge shall not engage in financial activities permitted under paragraphs 15.3(11)*"a"* and *"b"* if they will:

(1) Interfere with the proper performance of administrative judicial duties;

(2) Lead to frequent disqualification of the administrative law judge;

(3) Involve the administrative law judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the agency in which the administrative law judge serves; or

(4) Result in violation of other provisions of this Code.

15.3(12) *Compensation for extrajudicial activities.* An administrative law judge may accept reasonable compensation for extrajudicial activities permitted by this Code and other law unless such acceptance would appear to a reasonable person to undermine the administrative law judge's independence, integrity, or impartiality.

15.3(13) *Acceptance of gifts, loans, bequests, benefits, or other things of value.* An administrative law judge, an administrative law judge's spouse, and an administrative law judge's dependent child shall not accept or receive any gift, loan, bequest, benefit, or other thing of value, if acceptance or receipt is prohibited by Iowa Code chapter 68B or any other law or if acceptance or receipt would appear to a reasonable person to undermine the administrative law judge's independence, integrity, or impartiality.

15.3(14) *Reimbursement of expenses and waivers of fees or charges.*

a. Unless otherwise prohibited by subrules 15.3(1) and 15.3(13), Iowa Code chapter 68B, or other law, an administrative law judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the administrative law judge's employing entity, if the expenses or charges are associated with the administrative law judge's participation in extrajudicial activities permitted by this Code.

b. Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the administrative law judge and, when appropriate to the occasion, by the administrative law judge's spouse, domestic partner, or guest.

481—15.4(10A) Canon 4. An administrative law judge shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the administrative judiciary.

15.4(1) *Political and campaign activities of administrative law judges.*

a. Except as permitted by law, an administrative law judge shall not:

(1) Act as a leader in, or hold an office in, a political organization;

(2) Make speeches on behalf of a political organization;

(3) Publicly endorse or oppose a candidate for any public office;

(4) Solicit funds for, pay an assessment to, or make a contribution to a political organization, a candidate for judicial retention, or a candidate for public office;

(5) Attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office; or

(6) Participate in a precinct caucus, except as provided for in paragraph 15.4(1)*"b."*

b. Paragraph 15.4(1)*"a"* does not prohibit an administrative law judge from participating in a precinct caucus merely to vote for, or support in the delegate selection process, a candidate for the office of President of the United States, provided that the administrative law judge does not speak publicly on behalf of or against a candidate, encourage other caucus participants to support or oppose a candidate, or otherwise engage in conduct that is inconsistent with the independence, integrity, or impartiality of the administrative judiciary.

c. An administrative law judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the administrative law judge, any activities prohibited under paragraph 15.4(1)*"a."*

15.4(2) to **15.4(4)** Reserved.

15.4(5) *Activities of administrative law judges who become candidates for nonjudicial office.*

a. Upon becoming a candidate for nonjudicial elective office, an administrative law judge shall resign from the administrative law judge position unless permitted by law to continue to hold the administrative law judge position.

b. Upon becoming a candidate for nonjudicial appointive office, an administrative law judge is not required to resign from the administrative law judge position, provided that the administrative law judge complies with the other provisions of this Code.

481—15.5(10A) Scope, definitions, and application.

15.5(1) *Scope.*

a. The Iowa Code of Administrative Judicial Conduct consists of four canons, each of which is codified as the introductory paragraph of an administrative rule, and numbered rules under each canon, which are codified as subrules. Subrule 15.5(3) establishes when the various rules apply to a presiding officer or an administrative law judge.

b. The canons state overarching principles of judicial ethics that all administrative law judges and presiding officers, as applicable, must observe. Although an administrative law judge or presiding officer may be disciplined only for violating an applicable rule, the canons provide important guidance in interpreting the rules. Where a rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the administrative law judge or presiding officer in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

c. Consistent with the requirement of Iowa Code section 10A.801(7)(d), this Code is similar in function and substantially equivalent to the Iowa Code of Judicial Conduct adopted by the Iowa Supreme Court and contained in Chapter 51 of the Iowa Court Rules. The Iowa Code of Judicial Conduct includes accompanying comments to the rules that may provide useful guidance regarding the purpose, meaning, and proper application of the corresponding rule in this Code. The comments contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. The comments may also identify aspirational goals for administrative law judges and presiding officers. To implement fully the principles of this Code as articulated in the canons, administrative law judges and presiding officers should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the administrative judicial position.

d. The rules of this Code are rules of reason that should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law, and with due regard for all relevant circumstances. The rules should not be interpreted to impinge upon the essential independence of administrative law judges and presiding officers in making administrative judicial decisions.

e. Although the black letter of the rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined by the presiding officer's appointing authority through a reasonable and reasoned application of the rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the administrative judicial system or others.

f. This Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for parties to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a presiding officer.

15.5(2) *Definitions.* For purposes of this chapter, the following definitions apply:

"Administrative law judge" means a person who acts as a presiding officer under the authority of Iowa Code section 17A.11(1) who is not an agency head or a member of a multimembered agency head. This includes, but is not limited to, administrative law judges employed by the administrative hearings division of the department of inspections and appeals, the unemployment insurance appeals bureau of Iowa workforce development, the public employment relations board, and the board of parole, as well as deputy workers' compensation commissioners in the division of workers' compensation of Iowa workforce development.

"Affiliate" and *"affiliated"* mean any person, domestic or foreign, that controls, is controlled by, or is under common control with any other person.

"Appropriate authority" means the authority having responsibility for the initiation of disciplinary process in connection with the violation to be reported.

"Associate" and *"associated"* means any person who employs, is employed by, or is under common employment with another person; any person who acts in cooperation, consultation, or concert with, or at the request of, another person; and any spouse, domestic partner, or person within the third degree of relationship of any of the foregoing.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance which, if obtained by the recipient otherwise, would require a financial expenditure.

"Control" and *"controlled"* each refers to the power of one person to exercise, directly or indirectly or through one or more persons, a dominating, governing, or controlling influence over another person, whether by contractual relationship (including without limitation a debtor-creditor relationship), by family relationship, by ownership, dominion over, or power to vote any category or voting interest (including without limitation shares of common stock, shares of voting preferred stock, and partnership interests), or by exercising (or wielding the power to exercise) in any manner dominion over a majority of directors, partners, trustees, or other persons performing similar functions. See definition of "affiliate" and "affiliated."

"De minimis," in the context of interests pertaining to disqualification of an administrative law judge, means an insignificant interest that could not raise a reasonable question regarding the administrative law judge's impartiality.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the presiding officer participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a presiding officer, it does not include:

1. An interest in the individual holdings within a mutual or common investment fund;
2. An interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the presiding officer or the presiding officer's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;
3. A deposit in a financial institution or deposits or proprietary interests the presiding officer may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
4. An interest in the issuer of government securities held by the presiding officer.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian.

"Impartial," "impartiality," and *"impartially"* mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a presiding officer or administrative law judge.

"Impending matter" is a matter that is imminent or expected to occur in the near future.

"Impropriety" includes conduct that violates the law, court rules, or provisions of the Iowa Code of Administrative Judicial Conduct, and conduct that undermines a presiding officer's or administrative law judge's independence, integrity, or impartiality.

"Independence" means a presiding officer's or administrative law judge's freedom from influence or controls other than those established by law.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character.

"Knowingly," "knowledge," "known," and *"knows"* mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Law" encompasses administrative rules and regulations, court rules, ordinances, statutes, constitutional provisions, and decisional law.

"Member of the administrative law judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the administrative law judge maintains a close familial relationship.

"Member of an administrative law judge's family residing in the judge's household" means any relative of an administrative law judge by blood or marriage, or a person treated by an administrative law judge as a member of the administrative law judge's family, who resides in the administrative law judge's household.

"Member of the presiding officer's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the presiding officer maintains a close familial relationship.

"Member of a presiding officer's family residing in the judge's household" means any relative of a presiding officer by blood or marriage, or a person treated by a presiding officer as a member of the presiding officer's family, who resides in the presiding officer's household.

"Nonpublic information" means information that is not available to the public. "Nonpublic information" may include, but is not limited to, information that is confidential or sealed by statute or court or administrative order or impounded or communicated in camera.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process, including director review and judicial review, until final disposition.

"Person" means any natural or juridical person, including without limitation any corporation, limited liability company, partnership, trust, union, or other labor organization; any branch, division, department, or local unit of any of the foregoing; any political committee, party, or organization; or any other organization or group of persons.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office.

"Presiding officer" means a person who acts as a presiding officer of a contested case proceeding under the authority of Iowa Code section 17A.11(1).

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

15.5(3) *Application.*

a. The provisions of the Iowa Code of Administrative Judicial Conduct apply to all persons who act as presiding officers under the authority of Iowa Code section 17A.11(1), except as specified in paragraph 15.5(3)*"b"* for agency heads or members of multimembered agency heads. Canons and rules that apply to all presiding officers use the terminology "presiding officer" in their text. This Code only applies to an agency head or a member of a multimembered agency head who actually acts as a presiding officer and does not apply merely because the agency head or member of a multimembered agency head is authorized to serve as the presiding officer when another person serves as the presiding officer.

b. The provisions of rules 481—15.3(10A) and 481—15.4(10A) of this Code do not apply to agency heads or members of multimembered agency heads. These provisions apply only to administrative law judges and thus the terminology "administrative law judge" is used in their text.

c. This Code does not apply to persons who participate only in the making of a final decision in a contested case without serving as a presiding officer pursuant to Iowa Code section 17A.11(1) in that contested case unless a statute or administrative rule requires such a person to abide by this Code or

a particular provision of this Code. This Code may nevertheless provide useful ethical guidance for a person participating in the making of a final decision in a contested case.

These rules are intended to implement Iowa Code section 10A.801.

ARC 3404C

INSURANCE DIVISION[191]

Notice of Termination

Pursuant to the authority of Iowa Code section 505.8 and chapter 507B, the Insurance Division hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 3318C** on September 13, 2017, proposing to amend Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

The Notice proposed to amend rule 191—15.5(507B) by providing reciprocal protections for seniors who move between Medicare supplement insurance and Medicare Part C insurance (also known as Medicare Advantage).

The Insurance Division seeks to terminate the rule making commenced in **ARC 3318C** in order to incorporate further changes, clarifications, and feedback to the requirements under this rule.

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

ARC 3415C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 88.5 and 2017 Iowa Acts, House File 529, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 3, "Inspections, Citations and Proposed Penalties," Iowa Administrative Code.

In 2015, federal lawmakers passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Act) that required many federal agencies to increase the amounts of their civil penalties. The Act also required that the same federal agencies make annual adjustments to their civil penalty amounts. Among the federal agencies that were required by the Act to increase civil penalties was the federal Occupational Safety and Health Administration.

The Iowa Labor Commissioner administers Iowa's occupational safety and health program, and the state program must be at least as effective as the federal program. As a result, 2017 Iowa Acts, House File 529, was enacted to enable the Labor Commissioner to modify the Iowa occupational safety and health civil penalty structure to conform with the federal penalty structure. The proposed amendment in Item 4 of this Notice is a direct result of House File 529. Additional proposed amendments contained in this rule making consist of conforming amendments, editorial changes, and the removal of obsolete language.

The principal reasons for these proposed amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa's regulations current and consistent with federal regulations. Pursuant to Iowa Code section 88.14 as amended by 2017 Iowa Acts, House File 529, the Labor Commissioner shall adopt rules to align state and federal penalty amounts.

After analysis and review of this rule making, jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal

regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on November 14, 2017, a public hearing will be held on November 16, 2017, at 1:30 p.m. at 150 Des Moines Street, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)725-5615 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than November 16, 2017, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Variance procedures are set forth in 875—Chapter 5.

These amendments are intended to implement Iowa Code chapter 88 as amended by 2017 Iowa Acts, House File 529.

The following amendments are proposed.

ITEM 1. Amend **875—Chapter 3**, title, as follows:
POSTING, INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

ITEM 2. Amend subrule 3.1(1) as follows:

3.1(1) Each employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the department of workforce development, division of labor services. The notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other materials. The notice or notices will be furnished by the ~~occupational safety and health bureau of the~~ division of labor services.

Reproductions or ~~facsimilies~~ facsimiles of the state poster shall constitute compliance with the posting requirements of Iowa Code section 88.6(3)*"a"* where such reproductions or ~~facsimilies~~ facsimiles are at least 8½ inches by 14 inches, and the printing size is at least 10 point. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 point.

ITEM 3. Renumber subrules **3.11(1)** to **3.11(5)** as **3.11(2)** to **3.11(6)**.

ITEM 4. Adopt the following **new** subrule 3.11(1):

3.11(1) The civil penalties proposed by the labor commissioner on or after January 27, 2018, are as follows:

a. Willful violation. The penalty for each willful violation under Iowa Code section 88.14(1) as amended by 2017 Iowa Acts, House File 529, shall not be less than $8,908 and shall not exceed $124,709.

b. Repeated violation. The penalty for each repeated violation under Iowa Code section 88.14(1) as amended by 2017 Iowa Acts, House File 529, shall not exceed $124,709.

c. Serious violation. The penalty for each serious violation under Iowa Code section 88.14(2) as amended by 2017 Iowa Acts, House File 529, shall not exceed $12,471.

d. Other-than-serious violation. The penalty for each other-than-serious violation under Iowa Code section 88.14(3) as amended by 2017 Iowa Acts, House File 529, shall not exceed $12,471.

e. Failure to correct violation. The penalty for failure to correct a violation under Iowa Code section 88.14(4) as amended by 2017 Iowa Acts, House File 529, shall not exceed $12,471 per day.

ITEM 5. Amend renumbered subrule 3.11(5) as follows:

3.11(5) Any employer failing to comply with the provisions of subrules ~~3.11(1)~~ 3.11(2) and ~~3.11(2)~~ 3.11(3) shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14 as amended by 2017 Iowa Acts, House File 529.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 6. Amend rule **875—3.11(88)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections 88.7(3) and 88.8~~ chapter 88 and 2017 Iowa Acts, House File 529.

ITEM 7. Amend subrule 3.13(2) as follows:

3.13(2) A petition for modification of abatement date shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of the action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition and notice informing affected employees of their rights to party status has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with 3.13(3)*"a"* and a certification of the date upon which the posting and service was made. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested additional time to correct one or more of the violations. Affected employees are entitled to participate as parties under terms and conditions established by the Iowa employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file the objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceedings related thereto. Objections shall be sent to the commissioner's designee: ~~IOSH Administrator, Occupational Safety and Health Bureau,~~ Iowa OSHA, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (place reasonably convenient to employees, preferably at or near workplace).

ITEM 8. Amend subrule 3.19(3) as follows:

3.19(3) *Abatement certification.*

a. to *c.* No change.

~~NOTE: Appendix A contains a sample abatement certification letter.~~

ITEM 9. Amend subrules 3.19(5) and 3.19(6) as follows:

3.19(5) *Abatement plans.*

a. and *b.* No change.

~~NOTE: Appendix B contains a sample abatement plan form.~~

3.19(6) *Progress reports.*

a. and *b.* No change.

~~NOTE: Appendix B contains a sample progress report form.~~

ITEM 10. Amend paragraph **3.19(9)"b"** as follows:

b. The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. A sample tag is available at osha.gov as Appendix C to 29 CFR 1903.19.

~~NOTE: Appendix C (nonmandatory) contains a sample tag that employers may use to meet this requirement.~~

ITEM 11. Rescind and reserve rule **875—3.24(88)**.

ITEM 12. Amend **875—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A and 88 and ~~sections 84A.1, 84A.2 and 88.2~~ 2017 Iowa Acts, House File 529.

ITEM 13. Amend **875—Chapter 3** by rescinding the Note and Appendices A through C at the end thereof.

ARC 3409C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76 and chapters 154A and 272C, the Board of Hearing Aid Specialists hereby gives Notice of Intended Action to amend Chapter 121, "Licensure of Hearing Aid Specialists," Chapter 122, "Continuing Education for Hearing Aid Specialists," Chapter 123, "Practice of Hearing Aid Dispensing," and Chapter 124, "Discipline for Hearing Aid Specialists," Iowa Administrative Code.

This rule making discusses licensure procedures for practitioners. These proposed amendments are mainly technical in nature, including updates to contact information for the Board's Web site, updates to definitions and clarification of references throughout the chapters.

Consideration will be given to all written comments on the proposed amendments received no later than November 15, 2017. Such written materials should be addressed to Venus Vendoures Walsh, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail Venus.Vendoures-Walsh@idph.iowa.gov.

A public hearing will be held on Wednesday, November 15, 2017, from 1:30 to 2 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions accorded under 645—Chapter 18.

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

These amendments are intended to implement Iowa Code chapters 147, 154A and 272C.

The following amendments are proposed.

ITEM 1. Amend rule **645—121.1(154A)**, definitions of "Department," "Dispense," "Hearing aid specialist" and "License," as follows:

"Department" means the Iowa department of public health.

"Dispense" or *"sell"* means a transfer of title or of the right to use by lease, bailment, or any other means, but excludes a wholesale transaction with a distributor or hearing aid specialist, and excludes the temporary, charitable loan or educational loan of a hearing aid without remuneration.

"Hearing aid specialist" means any person engaged in the fitting, dispensing and ~~the~~ sale of hearing aids and providing hearing aid services or maintenance by means of procedures stipulated by Iowa Code chapter 154A or the board.

"License" means a license issued by the state to a hearing aid ~~specialists~~ specialist.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 2. Amend paragraphs **121.2(4)"b"** and **"c"** as follows:

b. Evaluating the audiograms and determining which hearing aid and ear mold will best compensate for hearing loss of a particular person; ~~and~~

c. Notifying the board within 15 days of the termination of the holder of a temporary permit~~.~~; and

ITEM 3. Amend paragraphs **121.3(1)"e"** and **"f"** as follows:

e. Provide direct supervision of the trainee before completion of the first 90 days for any client activity that would require dispensing of hearing aids, including evaluation, selection, fitting or selling of hearing aids; ~~and~~

f. Cosign all audiometric evaluations and contracts processed by the trainee for the duration of the temporary permit~~.~~; and

ITEM 4. Amend subrule 121.4(1) as follows:

121.4(1) The applicant shall complete a board-approved application packet. Application forms may be obtained from the board's Web site ~~(http://www.idph.state.ia.us/licensure)~~ (idph.iowa.gov/licensure) or directly from the board office. All applications shall be sent to Board of Hearing Aid Specialists, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 5. Amend subrule 121.5(2) as follows:

121.5(2) The applicant shall not take the examination more than three times. If the applicant fails a third examination, the applicant is required to submit a request to the board with a proposed course of study. The board ~~will~~ has discretion to determine ~~whether~~ if the request will be granted.

ITEM 6. Amend rule 645—121.6(154A), introductory paragraph, as follows:

645—121.6(154A) Licensure by endorsement. An applicant who has been a licensed hearing aid specialist under the laws of another jurisdiction and would like to be considered for licensure in Iowa shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

ITEM 7. Amend subrule 121.9(3) as follows:

121.9(3) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule ~~125.1(5)~~ 5.7(5). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

ITEM 8. Amend subrule 121.14(2) as follows:

121.14(2) Pay the reactivation fee that is due as specified in 645—subrule ~~125.1(6)~~ 5.7(6).

ITEM 9. Amend rule **645—122.1(154A)**, definition of "Continuing education," as follows:

"Continuing education" means planned, organized learning acts ~~acquired during initial licensure~~ designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

ITEM 10. Amend subrules 122.2(1) and 122.2(2) as follows:

122.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on January 1 of each odd-numbered year and ending on December 31 of the next even-numbered year. Each biennium, each person who is licensed to practice as a hearing aid specialist in this state shall be required to complete a minimum of 32 hours of continuing education approved by the board. ~~For the 2011-2012 compliance period for license renewal on January 1, 2013, and every renewal biennium thereafter, a~~ A minimum of 2 hours shall be in the content areas of Iowa hearing aid specialist law and rules, or ethics.

122.2(2) ~~Requirements for new licensees.~~ Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses.

Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 32 hours of continuing education per biennium for each subsequent license renewal.

ITEM 11. Amend rule 645—123.4(154A), introductory paragraph, as follows:

645—123.4(154A) Requirements for record keeping. A licensee shall keep and maintain records in the licensee's office or place of business at all times, and each such record shall be kept and maintained for a seven-year period.

ITEM 12. Amend subrule 124.2(3) as follows:

124.2(3) Professional ~~incompetence~~ incompetency. Professional ~~incompetence~~ incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice~~;~~.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other hearing aid specialists in the state of Iowa acting in the same or similar circumstances~~;~~.

c. ~~A failure~~ Failure to exercise the degree of care which is ordinarily exercised by the average hearing aid specialist acting in the same or similar circumstances~~;~~.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of licensed hearing aid specialists in this state.

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

ITEM 13. Amend subrule 124.2(34) as follows:

124.2(34) Unethical conduct. In accordance with Iowa Code ~~section~~ sections 147.55(3) and 154A.24(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

a. Verbally or physically abusing a patient, client, or coworker.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

~~*d.* Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.~~

~~*e.* Being adjudged mentally incompetent by a court of competent jurisdiction.~~

ARC 3410C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology hereby gives Notice of Intended Action to amend Chapter 300, "Licensure of Speech Pathologists and Audiologists," Chapter 303, "Continuing Education for Speech Pathologists and Audiologists," and Chapter 304, "Discipline for Speech Pathologists and Audiologists," Iowa Administrative Code.

These amendments were approved by the Board of Speech Pathology and Audiology at its scheduled meeting held on June 23, 2017.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These proposed amendments update the rules for consistency with terminology used in the Iowa Code, including technical updates throughout all three chapters. The application process is streamlined to require the same documents from all applicants, and a sentence was added to clarify the title approved for use by assistants.

These proposed amendments are intended to provide regulatory clarity to licensees by removing terms that identify specific organizations that offer continuing education and by identifying categories of organizations that may offer continuing education. These amendments reduce the need for the Board to update the rule when new organizations are established or existing organizations experience a name change. The rule also limits to 16 hours the number of continuing education hours a presenter may earn biannually toward the 30 hours of required continuing education.

Consideration will be given to all written comments on the proposed amendments received no later than November 15, 2017. Such written materials should be addressed to Venus Vendoures Walsh, Professional Licensure Division, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; e-mail venus.vendoures-walsh@idph.state.ia.us.

A public hearing will be held on Wednesday, November 15, 2017, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions accorded under 645—Chapter 18.

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

These amendments are intended to implement Iowa Code chapter 147 and sections 154F.3 and 272C.2.

The following amendments are proposed.

ITEM 1. Amend rule 645—300.1(147) as follows:

645—300.1(147) Definitions. For purposes of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"ASHA" means the American Speech-Language Hearing Association.

"Assistant" means ~~a~~ an unlicensed person who works under the supervision of an Iowa-licensed speech pathologist or audiologist~~, does not meet the requirements to be licensed as a speech pathologist or audiologist,~~ and meets the minimum requirements set forth in these rules.

"Audiologist" means a person who engages in the application of principles, methods and procedures for measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to hearing and disorders of hearing and associated communication disorders for the purpose of nonmedically evaluating, identifying, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals, including the determination and use of appropriate amplification.

"Board" means the board of speech pathology and audiology.

"Full-time" means a minimum of 30 hours per week.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may ~~included~~ include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Licensee" means any person licensed to practice as a speech pathologist or audiologist in the state of Iowa.

"License expiration date" means December 31 of odd-numbered years.

"Licensure by endorsement" means the issuance of an Iowa license to practice speech pathology or audiology to an applicant who is or has been licensed in another state.

"On site" means:

1. To be continuously on site and present in the department or facility where services are being provided;

2. To be immediately available to assist the person being supervised in the services being performed; and

3. To provide continued direction of appropriate aspects of each treatment session in which a component of treatment is delegated.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—300.17(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means the issuance of an Iowa license to practice speech pathology or audiology to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of speech pathology and audiology to license persons that have the same or similar qualifications to those required in Iowa.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

"Speech pathologist" means a person who engages in the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to the development and disorders of speech, fluency, voice, or language for the purpose of nonmedically evaluating, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals.

ITEM 2. Amend subrule 300.3(1) as follows:

300.3(1) The applicant shall complete a board-approved application packet. Application forms may be obtained from the board's Web site ~~(http://www.idph.state.ia.us/licensure)~~ (idph.iowa.gov/licensure) or directly from the board office. All applications shall be sent to Board of Speech Pathology and Audiology, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 3. Amend subrule 300.3(4) as follows:

300.3(4) The application shall include:

a. An official copy of a current ~~American Speech-Language Hearing Association (ASHA)~~ ASHA certificate of clinical competence; or

b. Submission of the following:

(1) Official copies of academic transcripts sent directly from the school to the board showing proof of possession of a master's degree in speech pathology or a master's or doctoral degree in audiology or the equivalent of one of these degrees and official verification of completion of not less than 400 hours of supervised clinical training;

(2) Verification of nine months of full-time clinical experience, or equivalent, completed after the master's degree, under the supervision of a licensed speech pathologist or audiologist or as a part of the doctoral degree; and

(3) Results of the Praxis Examination.

ITEM 4. Amend subrule 300.4(2) as follows:

300.4(2) Foreign-trained speech pathologists and audiologists shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International ~~Educational~~ Education Research ~~Foundations~~ Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, Web site www.ierf.org or E-mail at info@ierf.org; International Credentialing Associates, Inc., ~~7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo~~ 10801 Starkey Road, Suite 104 #108, Seminole, FL 33777, telephone (727)549-8555 or Web site www.icaworld.com. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

~~*b.* Provide a notarized copy of the certificate or diploma awarded to the applicant from a speech pathology or audiology program in the country in which the applicant was educated.~~

~~*c.*~~ *b.* Receive a final determination from the board regarding the application for licensure.

ITEM 5. Amend rule 645—300.6(147), introductory paragraph, as follows:

645—300.6(147) Temporary clinical license. A temporary clinical license for the purpose of obtaining clinical experience as a prerequisite for licensure is valid for one year and may be renewed at the discretion of the board. The license shall be designated "temporary clinical license in speech pathology" or "temporary clinical license in audiology."

ITEM 6. Amend rule 645—300.8(147), introductory paragraph, as follows:

645—300.8(147) Use of assistants. A licensee shall, in the delivery of professional services, utilize assistants only to the extent provided in these rules. Such assistants shall use the title provided by these rules.

ITEM 7. Amend rule 645—300.9(147) as follows:

645—300.9(147) Licensure by endorsement. An applicant who has been a licensed speech pathologist or audiologist under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of licensure requirements that are similar to those required in Iowa;

~~3.~~ 4. Shows evidence of a current ASHA certificate or at least nine months of full-time clinical experience or its equivalent;

~~4.~~ 5. Shows evidence that the Praxis Examination scores have been sent directly from the examination service to the board;

~~5.~~ 6. Provides official copies of the academic transcripts; and

~~6.~~ 7. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

ITEM 8. Amend subrule 300.11(3) as follows:

300.11(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—303.2(147) and the mandatory reporting requirements of subrule 300.11(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

~~*c.* An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.~~

ITEM 9. Amend subrule 300.11(4) as follows:

300.11(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, 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 requirements as identified in paragraph ~~*"e."*~~ *"f."*

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 in the previous five years or condition(s) for waiver of this requirement as identified in paragraph ~~*"e."*~~ *"f."*

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."*~~ *"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. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

~~*d.*~~ *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.

~~*e.*~~ *f.* 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 303.

~~*f.*~~ *g.* The board may select licensees for audit of compliance with the requirements in paragraphs *"a"* to ~~*"e."*~~ *"f."*

ITEM 10. Amend subrule 300.11(7) as follows:

300.11(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule ~~305.1(3)~~ 5.20(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

ITEM 11. Amend subrule 300.17(2) as follows:

300.17(2) Pay the reactivation fee that is due as specified in 645—~~Chapter 305~~ subrule 5.20(4).

ITEM 12. Amend rule 645—300.18(17A,147,272C) as follows:

645—300.18(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 645—300.17(17A,147,272C) prior to practicing speech pathology and audiology in this state.

ITEM 13. Amend rule 645—303.1(147) as follows:

645—303.1(147) Definitions. For the purpose of these rules, the following definitions shall apply:

"AAA" means the American Association of Audiology.

"Active license" means a license that is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"ASHA" means the American Speech-Language Hearing Association.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the board of speech pathology and audiology.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

"Continuing education" means ~~a planned individual learning experience or activity~~ an approved program/activity that is directly related to the sciences or contemporary clinical practice of audiology, speech-language pathology and speech-language-hearing science and whose content and focus are beyond the basic preparation required for entry into the professions. These activities result in improving, adding to, or positively changing the knowledge and skills of the licensee to improve the safety and welfare of the public.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"License" means license to practice.

"Licensee" means any person licensed to practice speech pathology or audiology or both in the state of Iowa.

ITEM 14. Amend subrule 303.2(3) as follows:

303.2(3) Hours of continuing education credit may be obtained by participation in ~~a continuing education~~ an approved program or activity. Such programs and activities may take place individually or in group settings including in-person conferences, journal readings, teleconferences, videoconferences and online programs or activities as long as such programs and activities meet the criteria specified in the definition of continuing education in rule 645—303.1(147).

ITEM 15. Amend paragraph **303.3(2)"c"** as follows:

c. A licensee may present professional programs which meet the criteria in this rule. Two hours of credit will be allowed for each hour of newly developed presentation material. A maximum of 16 hours may be obtained per biennium. A course schedule or brochure must be maintained for audit.

ITEM 16. Adopt the following **new** paragraph **303.3(2)"g"**:

g. Continuing education shall be obtained by attending a program that meets the criteria in subrule 303.3(1) including but not limited to continuing education programs offered by AAA and ASHA. Other individuals or groups may offer continuing education programs that meet the criteria in rule 645—303.3(147,272C) through one of the following organizations:

(1) National, state or local associations of speech pathology and audiology;

(2) Schools and institutes of speech pathology and audiology;

(3) Universities, colleges or community colleges.

Continuing education must be offered by or approved in advance of delivery by the organizations stated above.

ITEM 17. Amend subrule 304.2(11) as follows:

304.2(11) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of ~~convicion~~ conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ITEM 18. Amend paragraph **304.2(31)"h"** as follows:

h. Failure to comply with current Food and Drug Administration regulations 21 CFR §801.420, "Hearing aid devices; professional and patient labeling," and 21 CFR §801.421, "Hearing aid devices~~,~~; conditions for sale."

ARC 3405C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby amends its Notice of Intended Action published in the Iowa Administrative Bulletin on August

30, 2017, as **ARC 3277C**, to give notice that a public hearing will be held. Amendments to the agency's rules to reflect and implement the provisions of 2017 Iowa Acts, House File 291, were also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3278C**.

The public hearing will be held on Tuesday, November 14, 2017, at 2 p.m. in the Starkweather Conference Room of the Vocational Rehabilitation Offices, 510 East 12th Street, Des Moines, Iowa, in order to receive oral or written comments on the amendments to Chapter 1, "General Provisions," Chapter 2, "General Practice and Hearing Procedures," and Chapter 4, "Bargaining Unit and Bargaining Representative Determination"; the adoption of new Chapter 5, "Elections"; and the amendments to Chapter 6, "Negotiations and Negotiability Disputes," Chapter 7, "Impasse Procedures," Chapter 8, "Internal Conduct of Employee Organizations," Chapter 11, "State Employee Appeals of Grievance Decisions and Disciplinary Actions," and Chapter 16, "Electronic Document Management System," Iowa Administrative Code.

After analysis and review of these amendments, and consideration of anecdotal information concerning the effects of the implementation of amendments to public sector collective bargaining in the State of Wisconsin which are similar in many respects to the amendments contained in 2017 Iowa Acts, House File 291, the agency anticipates that the amendments to Iowa Code chapter 20 may reduce the number of private sector jobs or potential job opportunities for individuals in the private sector who provide legal or support services to labor organizations or public employers in Iowa, although the extent of any such reduction cannot be reasonably determined.

ARC 3420C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 136.3(9) and 2017 Iowa Acts, House File 524, section 14(2), the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 154, "Medical Cannabidiol Act Registration Card Program," Iowa Administrative Code.

On May 12, 2017, Governor Branstad signed 2017 Iowa Acts, House File 524, which repealed existing Iowa Code chapter 124D and enacted new Iowa Code chapter 124E, the Medical Cannabidiol Act. The legislation was effective upon enactment. House File 524 expanded the state's existing Medical Cannabidiol Act in a number of ways, including expanding the list of conditions for which a patient is eligible to receive a medical cannabidiol patient or primary caregiver registration card, establishing a Medical Cannabidiol Board, providing for licensure of medical cannabidiol manufacturers and dispensaries, establishing a fee structure for registration cards and licensure applications, and adding a new requirement for a real-time, 24/7 statewide medical cannabidiol registry management and seed-to-sale tracking system.

These proposed amendments establish operational requirements for medical cannabidiol manufacturers and dispensaries as well as operating procedures for the newly created Medical Cannabidiol Board. The proposed amendments implement the duties of the Department as related to manufacturing and dispensing and establish annual licensing procedures, manufacturer and dispensary operational requirements and prohibited activities, facility security requirements, advertising and marketing restrictions, and requirements for packaging and labeling, medical cannabidiol transportation and disposal, record keeping, medical cannabidiol production, quality assurance and control, supply and inventory tracking, inspections, penalty assessment, license suspension or revocation proceedings and closure of operations.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Any interested person may make written comments or suggestions on the proposed amendments on or before November 14, 2017. Such written comments should be directed to Randy Mayer, Administrator, Office of Medical Cannabidiol, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50219-0075. Comments may be sent by e-mail to randall.mayer@idph.iowa.gov. Due to the aggressive implementation timelines of 2017 Iowa Acts, House File 524, early notice of these proposed amendments was provided to interested stakeholders on September 8, 2017. These stakeholders were invited to provide feedback to the Department prior to the filing of this Notice of Intended Action, so significant concerns could be addressed at the outset of the rule-making process.

There will be a public hearing on Friday, December 8, 2017, from 10 a.m. to 12 noon in Room 517-518, Lucas State Office Building, Des Moines, Iowa. The hearing will also be accessible via operated assisted conference call by dialing 877-844-7358.

Waiver provisions for these rules are located at 641—Chapter 178.

The Department anticipates that implementation of 2017 Iowa Acts, House File 524, will cause the expenditure of state funds in excess of $100,000 per year. Anticipated costs include personnel to oversee the startup and administration of the program, technology solutions that are required by the statute, and administrative costs for equipment and office supplies.

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

These amendments are intended to implement 2017 Iowa Acts, House File 524.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 154**, title, as follows:
MEDICAL CANNABIDIOL ~~ACT REGISTRATION CARD~~ PROGRAM

ITEM 2. Amend rule 641—154.1(87GA,HF524) as follows:

641—154.1(87GA,HF524) Definitions. For the purposes of these rules, the following definitions shall apply:

"Accredited nonpublic school" means any nonpublic school accredited by the Iowa state board of education, excluding home schools.

"Audit" means a financial review by an independent certified public accountant that includes select scope engagement or other methods of review that analyze operational or compliance issues.

"Background investigation" means a thorough review of an entity, owner, investors, and employees conducted by the department of public safety, including but not limited to state and national criminal history records, credit records, and internal revenue service records.

"Batch" means a set of cannabis plants that are grown, harvested, and processed together, such that they are exposed to substantially similar conditions throughout cultivation and processing.

"Batch number" means a unique numeric or alphanumeric identifier assigned to a batch of cannabis plants by a manufacturer when the batch is first planted. The batch number shall contain the manufacturer's number and a sequence to allow for inventory and traceability.

"Biosecurity" means a set of preventative measures designed to reduce the risk of transmission of:

1. Infectious diseases in crops;
2. Quarantined pests;
3. Invasive alien species; and
4. Living modified organisms.

"Bordering state" means the same as defined in Iowa Code section 331.910.

"Cannabis" means seeds, plants, cuttings, or plant waste material from *Cannabis sativa* L. or *Cannabis indica* used in the manufacture of medical cannabidiol.

"Crop input" means any substance applied to or used in the cultivation and growth of a cannabis plant. "Crop input" includes, but is not limited to, pesticides, fungicides, fertilizers, and other soil or medium amendments.

"Date of expiration" means one year from the date of issuance of the medical cannabidiol registration card by the department of transportation.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

"Date of issuance" means the date of issuance of the medical cannabidiol registration card by the department of transportation.

"Debilitating medical condition" means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
   - Severe or chronic pain.
   - Nausea or severe vomiting.
   - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn's disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
   - Severe or chronic pain.
   - Nausea or severe vomiting.
   - Cachexia or severe wasting.
8. Parkinson's disease.
9. Untreatable pain.

"Department" means the Iowa department of public health.

"Department of transportation" means the Iowa department of transportation.

"Director" means the director of the Iowa department of public health.

"Dispensary" means an individual or entity licensed by the department to dispense medical cannabidiol to patients and primary caregivers pursuant to Iowa Code chapter 124E and these rules. "Dispensary" includes the employees and agents of the dispensary.

"Dispensary facility" means any secured building, space, grounds, and physical structure of a dispensary licensed by the department to dispense medical cannabidiol and where the dispensing of medical cannabidiol is authorized.

"Dispense" or *"dispensing"* means to supply medical cannabidiol to patients pursuant to Iowa Code chapter 124E and these rules.

"Disqualifying felony offense" means a violation under federal or state law of a felony under federal or state law, which has as an element the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. §802(6).

"Edible medical cannabidiol products" means food items containing medical cannabidiol. "Edible medical cannabidiol products" does not include pills, tinctures, oils, or other forms of medical cannabidiol that may be consumed orally or through the nasal cavity that do not contain food or food additives; provided that food or food additives used as carriers, excipients, or processing aids shall not be considered food or food additives.

"Form and quantity" means the types and amounts of medical cannabidiol allowed to be dispensed to a patient or primary caregiver as approved by the department subject to recommendation by the medical cannabidiol board and approval by the board of medicine.

"Health care practitioner" means an individual licensed under Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery who is a patient's primary care provider. "Health care practitioner" shall not include a physician assistant licensed under Iowa Code chapter 148C or an advanced registered nurse practitioner licensed pursuant to Iowa Code chapter 152 or 152E.

"Inspection" means an on-site evaluation by the department, the department of public safety, or a department-approved independent consultant of facilities, records, personnel, equipment, methodology, and quality assurance practices for compliance with these rules.

"International Electrotechnical Commission" or *"IEC"* means an independent, nongovernmental membership organization that prepares and publishes international standards for all electrical, electronic, and related technologies.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

"International Organization for Standardization" or *"ISO"* means an independent, nongovernmental membership organization and the largest developer of voluntary international standards.

"Laboratory" means the state hygienic laboratory at the University of Iowa or other independent medical cannabidiol testing facility accredited to Standard ISO/IEC 17025 by an ISO-approved accrediting body, with a controlled substance registration certificate from the drug enforcement administration of the U.S. Department of Justice and a certificate of registration from the Iowa board of pharmacy, and approved by the department to examine, analyze, or test samples of medical cannabidiol or any substance used in the manufacture of medical cannabidiol.

"Lot" means a specific quantity of medical cannabidiol that is uniform and intended to meet specifications for identity, strength, purity, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling record.

"Lot number" means a unique numeric or alphanumeric identifier assigned to a lot by a manufacturer when medical cannabidiol is produced. The lot number shall contain the manufacturer's number and a sequence to allow for inventory, traceability, and identification of the plant batches used in the production of a lot of medical cannabidiol.

"Manufacture" or *"manufacturing"* means the process of converting harvested cannabis plant material into medical cannabidiol.

"Manufacturer" means an individual or entity licensed by the department to produce medical cannabidiol and distribute it to dispensaries pursuant to Iowa Code chapter 124E and these rules. "Manufacturer" includes the employees and agents of the manufacturer.

"Manufacturing facility" means any secured building, space, grounds, and physical structure of a manufacturer for the cultivation, harvesting, packaging, processing, storage, and distribution of cannabis or medical cannabidiol and where access is restricted to designated employees of a manufacturer and escorted visitors.

"Market withdrawal" means the voluntary removal of medical cannabidiol from dispensaries and patients by a manufacturer for minor issues that do not pose a serious health threat.

"Medical assistance program" means IA Health Link, Medicaid Fee-for-Service, or HAWK-I, as administered by the Iowa Medicaid enterprise of the Iowa department of human services.

"Medical cannabidiol" means any pharmaceutical grade cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that has a tetrahydrocannabinol level of no more than 3 percent and that is delivered in a form recommended by the medical cannabidiol board, approved by the board of medicine, and designated in this chapter.

"Medical cannabidiol waste" means medical cannabidiol that is returned, damaged, defective, expired, or contaminated.

"National criminal history background check" means fingerprint processing through the department of public safety and the Federal Bureau of Investigation (FBI) and review of records on file with national organizations, courts, and law enforcement agencies to the extent allowed by law.

"Patient" means a person who is a permanent resident of the state of Iowa who suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol pursuant to ~~2017 Iowa Acts, House File 524~~ Iowa Code chapter 124E and these rules.

"Permanent resident" means a natural person who physically resides in Iowa as the person's principal and primary residence and who establishes evidence of such residency by providing the department with one of the following:

1. A valid Iowa driver's license,
2. A valid Iowa nonoperator's identification card,
3. A valid Iowa voter registration card,
4. A current Iowa vehicle registration certificate,
5. A utility bill,
6. A statement from a financial institution,
7. A residential lease agreement,

8. A check or pay stub from an employer,

9. A child's school or child care enrollment documents,

10. Valid documentation establishing a filing for homestead or military tax exemption on property located in Iowa, or

11. Other valid documentation as deemed acceptable by the department to establish residency.

"Plant material" means any cannabis plant, cutting, trimming, or clone that has roots or that is cultivated with the intention of growing roots.

"Plant material waste" means plant material that is not used in the production of medical cannabidiol in a form allowable under these rules.

"Primary caregiver" means a person who is a resident of this state or a bordering state, including but not limited to a parent or legal guardian, at least 18 years of age, who has been designated by a patient's health care practitioner as a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol pursuant to the provisions of ~~2017 Iowa Acts, House File 524~~ Iowa Code chapter 124E and these rules.

"Primary care provider" means any health care practitioner involved in the diagnosis and treatment of a patient's debilitating medical condition.

"Production" or *"produce"* means:

1. Cultivating or harvesting plant material;

2. Processing or manufacturing; or

3. Packaging of medical cannabidiol.

"Public or private school" means any property operated by a school district, charter school, or accredited nonpublic school for purposes related to elementary, middle, or secondary schools or secondary vocation centers.

"Recall" means the return of medical cannabidiol from patients and dispensaries to a manufacturer because of the potential for serious health consequences from the use of the medical cannabidiol.

"Restricted access area" means a building, room, or other contiguous area on the premises where plant material is grown, cultivated, harvested, stored, packaged, or processed for sale under control of the manufacturer, and where no person under the age of 18 is permitted.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Untreatable pain" means any pain whose cause cannot be removed and, according to generally accepted medical practice, the full range of pain management modalities appropriate for the patient has been used without adequate result or with intolerable side effects.

"Written certification" means a document signed by a health care practitioner, with whom the patient has established a patient-provider relationship, which states that the patient has a debilitating medical condition and identifies that condition and provides any other relevant information.

ITEM 3. Add the following **new** heading to precede rule **641—154.2(87GA,HF524)**:

REGISTRATION CARDS

ITEM 4. Reserve rule **641—154.15**.

ITEM 5. Adopt the following **new** rules 641—154.16(124E) to 641—154.65(124E):

MANUFACTURING

641—154.16(124E) Duties of the department.

154.16(1) *Interagency agreements.* The department may enter into any interagency agreements with other state agencies for technical services or other assistance related to the regulation or inspection of manufacturers.

154.16(2) *Notice to law enforcement.* The department shall notify local law enforcement agencies and the department of public safety of the locations of manufacturers. If the department determines there

is a threat to public safety, the department shall notify local law enforcement agencies and the department of public safety of any conditions that pose a threat to public safety, including but not limited to:

a. Loss or theft of medical cannabidiol or plant material;

b. Diversion or potential diversion of medical cannabidiol or plant material;

c. Unauthorized access to the secure sales and inventory tracking system or other patient and caregiver information system or file; or

d. Other violations of law.

154.16(3) *Inspection of manufacturers.* The department or its agents shall conduct regular inspections of manufacturers and manufacturing facilities as described in rule 641—154.28(124E).

154.16(4) *Establishment and maintenance of a secure sales and inventory tracking system.* The department shall establish and maintain a secure, electronic system that is available 24 hours a day, seven days a week to track:

a. Inventory of plant material, medical cannabidiol, and waste material;

b. Transport of plant material, waste material, and laboratory samples;

c. Application and use of crop inputs and other solvents and chemicals;

d. Sales of medical cannabidiol to dispensaries;

e. Sales of medical cannabidiol from dispensaries to patients and primary caregivers.

154.16(5) *Licensure and licensure renewal of manufacturers.* The department shall issue a request for proposals to select and license by December 1, 2017, up to two manufacturers to manufacture and to possess, cultivate, harvest, transport, package, process, and supply medical cannabidiol within the state consistent with the provisions of Iowa Code chapter 124E and these rules.

a. To be eligible for licensure, an applicant manufacturer shall provide information on forms and in a manner required by the department of public safety for the completion of a background investigation. In addition, the applicant manufacturer shall submit to the department of public safety necessary funds to satisfy the full reimbursement of costs associated with completing the background investigations. If an applicant manufacturer is not found suitable for licensure as a result of the background investigation, a license shall not be issued by the department.

b. As a condition for licensure, an applicant manufacturer shall agree to begin supplying medical cannabidiol to licensed medical cannabidiol dispensaries in Iowa no later than December 1, 2018.

c. The initial license to manufacture medical cannabidiol shall be valid from December 1, 2017, through November 30, 2018. The license shall be renewed annually unless a manufacturer relinquishes the license, there is a change in state law prohibiting the department from renewing the license, or the license is revoked pursuant to Iowa Code chapter 124E or these rules.

d. A license to manufacture issued by the department pursuant to these rules is not assignable or transferable.

e. The department shall consider the following factors in determining whether to select and license a medical cannabidiol manufacturer:

(1) The technical expertise of an applicant manufacturer regarding medical cannabidiol;

(2) The qualifications of an applicant manufacturer's employees;

(3) The long-term financial stability of an applicant manufacturer;

(4) The ability to provide appropriate security measures on the premises of an applicant manufacturer;

(5) Whether an applicant manufacturer has demonstrated an ability to meet certain medical cannabidiol production needs for medical use regarding the range of recommended dosages for each debilitating medical condition, the range of chemical compositions of any plant of the genus cannabis that will likely be medically beneficial for each of the debilitating medical conditions, and the form or forms of medical cannabidiol that may be appropriate for the approved debilitating medical conditions;

(6) An applicant manufacturer's projection of and ongoing assessment of wholesale product costs.

f. Pursuant to Iowa Code section 124E.5(1)*"b,"* information submitted during the application process shall be confidential until the licensure process is completed unless otherwise protected from disclosure under state or federal law.

g. A licensed manufacturer shall submit an application to renew its license with the department at least six months before the license expires. The application shall be submitted on a form created by the department.

h. The department shall notify a manufacturer of the decision to approve or deny the manufacturer's license by August 1 of the year in which the renewal application is submitted.

154.16(6) *Collection of fees from manufacturers.* Except as provided in this rule, all fees are nonrefundable, shall be retained by the department, and shall be considered repayment receipts as defined in Iowa Code section 8.2.

a. Fees to the department.

(1) Each application for licensure as a manufacturer shall include a nonrefundable application fee of $7,500.

(2) Licensed manufacturers shall pay an annual fee to the department to cover costs associated with regulating and inspecting manufacturers and for other expenses necessary for the administration of the medical cannabidiol program. The department shall assess the fee with the notice of approval of license renewal each year by August 1, payable by the manufacturer to the department no later than December 1.

b. Fees to the department of public safety.

(1) An applicant manufacturer shall be responsible to reimburse the department of public safety the full cost of conducting background investigations related to an application for licensure and operation as a licensed manufacturer. The department of public safety shall retain the right to bill a manufacturer for additional background investigations, as needed.

(2) Each manufacturer submitting an application for licensure shall, at the time of application, submit to the department of public safety a deposit of $10,000 for each business owner subject to a background investigation and a national criminal history background check. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the applicant shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the manufacturer.

(3) A licensed manufacturer shall pay a deposit of $200 per employee to the department of public safety for a background investigation and a national criminal history background check on any person being considered for hire as an employee of the manufacturer. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the manufacturer shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the manufacturer. The department shall retain the right to preclude a potential employee from hire based upon the results of the background investigation and national criminal history background check.

641—154.17(124E) Manufacturer operations.

154.17(1) *Operating documents.* The operating documents of a manufacturer shall include all of the following:

a. Procedures for the oversight of the manufacturer, including descriptions of operational and management practices regarding:

(1) The forms and quantities of medical cannabidiol products that are produced at the manufacturing facility;

(2) The methods of planting, harvesting, drying, and storing cannabis;

(3) The estimated types and amounts of all crop inputs used in the production of medical cannabidiol;

(4) The estimated types and amounts of medical cannabidiol waste and plant material waste to be generated;

(5) The disposal methods for all waste materials;

(6) Employee training methods for the specific phases of production;

(7) Biosecurity measures used in the production and manufacturing of medical cannabidiol;

(8) Strategies for identifying and reconciling discrepancies in inventory of plant material or medical cannabidiol;

(9) Sampling strategy and quality testing for labeling purposes;

(10) Medical cannabidiol packaging and labeling procedures;

(11) Procedures for recall and market withdrawal of medical cannabidiol;

(12) Plans for responding to a security breach at a manufacturing facility or while medical cannabidiol is in transit to a dispensary;

(13) A business continuity plan;

(14) Records relating to all transport activities; and

(15) Other information requested by the department.

b. Procedures to ensure accurate record keeping.

c. Procedures for the implementation of appropriate security measures to deter and prevent the theft of medical cannabidiol and unauthorized entrance into areas containing medical cannabidiol.

154.17(2) *Prohibited activities.* A manufacturer shall not:

a. Own or operate a medical cannabidiol manufacturing facility unless the manufacturer is licensed by the department pursuant to Iowa Code chapter 124E and these rules;

b. Produce or manufacture medical cannabidiol in any location except in those areas approved by the department;

c. Sell, deliver, transport, or distribute medical cannabidiol from any location except its manufacturing facility or a dispensary facility;

d. Produce or manufacture medical cannabidiol in Iowa for sales or distribution outside of Iowa;

e. Sell or distribute medical cannabidiol to any person or business other than a dispensary;

f. Refuse to sell, deliver, transport, or distribute medical cannabidiol in any form or quantity produced by the manufacturer to a dispensary, unless deemed appropriate in the manufacturer's reasonable business judgment and approved by the department in writing;

g. Transport or deliver medical cannabidiol to any location except as allowed in subrule 154.22(1);

h. Sell medical cannabidiol that is not packaged and labeled in accordance with rule 645—154.21(124E);

i. Sell medical cannabidiol in any form or quantity other than a form or quantity approved by the department, subject to recommendation by the medical cannabidiol board and approval by the board of medicine;

j. Permit any person to consume medical cannabidiol on the property of the manufacturer;

k. Employ a person who is under 18 years of age or who has been convicted of a disqualifying felony offense;

l. Manufacture edible medical cannabidiol products.

154.17(3) *Criminal background investigations.*

a. A manufacturer shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history record check.

b. An employee of a manufacturer shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

154.17(4) *Relationship to health care practitioners.* A manufacturer shall not share office space with, refer patients to, or have any financial relationship with a health care practitioner.

641—154.18(124E) Security requirements. The department may request assistance from the department of public safety in ensuring manufacturers meet the security requirements in this rule.

154.18(1) *Visitor logs.* Visitors to the manufacturing facility shall sign visitor manifests with name, date, and times of entry and exit, and shall wear badges that are visible at all times and that identify them as visitors.

154.18(2) *Restricted access.* A manufacturer shall use a controlled access system and written manifests to limit entrance to all restricted access areas of its manufacturing facility and shall retain a record of all persons who entered the secured areas.

a. The controlled access system shall do all of the following:

(1) Limit access to authorized individuals;

(2) Maintain a log of individuals with approved access, including dates of approvals and revocations;

(3) Track times of personnel entry to and exit from the facility;

(4) Track times of personnel and visitor movement between secured areas;

(5) Store data for retrieval for a minimum of five years; and

(6) Remain operable in the event of a power failure.

b. Separate written manifests of visitors to restricted areas shall be kept and stored for a minimum of five years if the controlled access system does not include electronic records of visitors to the restricted areas.

c. A manufacturer shall promptly, but no later than five business days after receipt of request, submit stored controlled access system data to the department.

d. Restricted access areas shall be identified with signs that state: "Do Not Enter – Restricted Access Area – Access Limited to Authorized Personnel Only."

154.18(3) *Perimeter intrusion detection system.*

a. *Computer-controlled video surveillance system.* A manufacturer shall operate and maintain in good working order a computer-controlled, closed-circuit television surveillance system on its premises that operates 24 hours per day, seven days a week, and visually records:

(1) All phases of medical cannabidiol production;

(2) All areas that might contain plant material and medical cannabidiol, including all safes and vaults;

(3) All points of entry and exit;

(4) The entrance to the video surveillance control room; and

(5) Parking areas, which shall have appropriate lighting for the normal conditions of the area under surveillance.

b. *Camera specifications.* Cameras shall:

(1) Capture clear and certain identification of any person entering or exiting a manufacturing facility or its parking areas;

(2) Have the ability to produce a clear, color still photograph live or from a recording;

(3) Have on all recordings an embedded date-and-time stamp that is synchronized to the recording and does not obscure the picture; and

(4) Continue to operate during a power outage.

c. *Video recording specifications.*

(1) A video recording shall export still images in an industry standard image format, such as .jpg, .bmp, or .gif.

(2) Exported video shall be archived in a format that ensures authentication and guarantees that the recorded image has not been altered.

(3) Exported video shall also be saved in an industry standard file format that can be played on a standard computer operating system.

(4) All recordings shall be erased or destroyed at the end of the retention period and prior to disposal of any storage medium.

d. *Additional requirements.* A manufacturer shall maintain all security system equipment and recordings in a secure location to prevent theft, loss, destruction, corruption, and alterations.

e. *Retention.* A manufacturer shall ensure that 24-hour recordings from all video cameras are:

(1) Available for viewing by the department upon request;

(2) Retained for at least one year;

(3) Maintained free of alteration or corruption; and

(4) Retained longer, as needed, if a manufacturer is given actual notice of a pending criminal, civil, or administrative investigation, or other legal proceeding for which the recording may contain relevant information.

f. *Required signage.* A manufacturer shall post a sign in capital letters in a conspicuous location at every entrance to the manufacturing facility that reads, "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE."

154.18(4) *Security alarm system requirements.*

a. A manufacturer shall install and maintain a professionally monitored security alarm system that provides intrusion and fire detection of all:

(1) Facility entrances and exits;

(2) Rooms with exterior windows;

(3) Rooms with exterior walls;

(4) Roof hatches;

(5) Skylights; and

(6) Storage rooms.

b. For the purposes of this subrule, a security alarm system means a device or series of devices that summons law enforcement personnel during, or as a result of, an alarm condition. Devices may include:

(1) Hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audio, visual, or electronic signal;

(2) Motion detectors;

(3) Pressure switches;

(4) A duress alarm;

(5) A panic alarm;

(6) A holdup alarm;

(7) An automatic voice dialer; and

(8) A failure notification system that provides an audio, text, or visual notification of any failure in the surveillance system.

c. A manufacturer's security alarm system and all devices shall continue to operate during a power outage.

d. A manufacturer's security alarm system shall be inspected and all devices tested annually by a qualified alarm vendor. A manufacturer shall provide documentation of the annual inspection and device testing to the department upon request.

154.18(5) *Personnel identification system.* A manufacturer shall use a personnel identification system that controls and monitors individual employee access to restricted access areas within the manufacturing facility and that meets the requirements of this subrule and subrule 154.18(1).

a. Requirement for employee identification card. An employee identification card shall contain:

(1) The name of the employee;

(2) The date of issuance and expiration;

(3) An alphanumeric identification number that is unique to the employee; and

(4) A photographic image of the employee.

b. A manufacturer's employee shall keep the identification card visible at all times when the employee is in a manufacturing facility, a dispensary, or a vehicle transporting medical cannabidiol.

c. Upon termination or resignation of an employee, a manufacturer shall immediately:

(1) Revoke the employee's access to the manufacturing facility; and

(2) Obtain and destroy the employee's identification card, if possible.

641—154.19(124E) Location. All of a manufacturer's manufacturing, cultivating, harvesting, packaging, processing, and storage of medical cannabidiol shall take place in one secured manufacturing facility location at a physical address provided to the department during the licensure and application processes.

154.19(1) *Proximity to dispensary.* A manufacturer shall not operate a manufacturing facility at the same physical location as a medical cannabidiol dispensary.

154.19(2) *Proximity to school.* A manufacturer shall not operate a manufacturing facility in any location, whether for manufacturing, possessing, cultivating, harvesting, transporting, packaging, processing, storing, or supplying, within 1,000 feet of a public or private school existing before the date of the manufacturer's licensure by the department.

641—154.20(124E) Advertising and marketing.

154.20(1) *Permitted marketing and advertising activities.*

a. A manufacturer may:

(1) Display the manufacturer's business name and logo on medical cannabidiol labels, signs, Web site, and informational material provided to patients. The name or logo shall not include:

1. Images of cannabis or cannabis-use paraphernalia;
2. Colloquial references to cannabis;
3. Names of cannabis plant strains or varieties;
4. Unsubstantiated medical claims; or
5. Medical symbols that bear a reasonable resemblance to established medical associations. Examples of established medical organizations include the American Medical Association or American Academy of Pediatrics. The use of medical symbols is subject to approval by the department;

(2) Display signs on the manufacturing facility; and

(3) Maintain a business Web site that contains the following information:

1. The manufacturer's name and contact information;
2. The medical cannabidiol forms and quantities manufactured in Iowa; and
3. Other information as approved by the department.

b. The business Web site shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

c. The department reserves the right to review a manufacturer's marketing and advertising materials and to require a manufacturer to make changes to the content. The department has 30 calendar days following submission to approve or deny marketing and advertising materials of a manufacturer.

154.20(2) *Other marketing and advertising activities.* A manufacturer shall request and receive the department's written approval before beginning marketing or advertising activities that are not specified in subrule 154.20(1). The department has 30 calendar days to approve or deny marketing and advertising activity requests from a manufacturer.

154.20(3) *Inconspicuous display.* A manufacturer shall arrange displays of medical cannabidiol, interior signs, and other exhibits to prevent public viewing from outside the manufacturing facility.

641—154.21(124E) Packaging and labeling.

154.21(1) *Medical cannabidiol packaging.* A manufacturer shall package all medical cannabidiol intended for distribution according to the following standards:

a. The manufacturer shall properly package medical cannabidiol in compliance with the United States Poison Prevention Packing Act regarding child-resistant packaging and exemptions for packaging for elderly patients.

b. The manufacturer shall label packaged medical cannabidiol as described in subrule 154.21(3).

c. The manufacturer shall use medical containers that are:

(1) Plain;

(2) Of sufficient size to accommodate a separate dispensary label containing the information described in rule 645—154.46(124E);

(3) Designed to maximize the shelf life of the contained medical cannabidiol;

(4) Tamper-evident; and

(5) Child-resistant.

d. Medical cannabidiol packaging shall not bear a reasonable resemblance to commonly available nonmedical commercial products.

e. The manufacturer shall package medical cannabidiol in a manner that minimizes the package's appeal to children.

f. The manufacturer shall not depict images other than the manufacturer's business name or logo on the packaging.

154.21(2) *Trade names.* A manufacturer's medical cannabidiol trade names shall comply with the following:

a. Names shall be limited to those that clearly reflect the form's medical cannabidiol nature;

b. Any name that is identical to, or similar to, the name of an existing nonmedical cannabidiol product is prohibited;

c. Any name that is identical to, or similar to, the name of an unlawful product or substance is prohibited; and

d. Any name that contains language that suggests using medical cannabidiol for recreational purposes or for a condition other than a qualifying debilitating medical condition is prohibited.

154.21(3) *Package labeling.*

a. A manufacturer shall ensure that all medical cannabidiol packaging is labeled with the following information:

(1) The name and address of the manufacturer where the medical cannabidiol was manufactured;

(2) The medical cannabidiol's chemical composition, including levels of tetrahydrocannabinol and cannabidiol;

(3) Directions for use of the product, including recommended and maximum amount by age and weight, if applicable;

(4) All ingredients of the product shown with common or usual names, including any colors, artificial flavors, and preservatives, listed in descending order by predominance of weight;

(5) Instructions for storage, including light and temperature requirements, if any;

(6) Date of expiration;

(7) The date of manufacture and lot number;

(8) A notice with the statement, including capitalization: "This product has not been analyzed or approved by the United States Food and Drug Administration. There is limited information on the side effects of using this product, and there may be associated health risks and medication interactions. This product is not recommended for use by pregnant or breastfeeding women. KEEP THIS PRODUCT OUT OF REACH OF CHILDREN.";

(9) The universal warning symbol provided by the department; and

(10) A notice with the statement: "This medical cannabidiol is for therapeutic use only. Use of this product by a person other than the patient listed on the label is unlawful and may result in the cancellation of the patient's medical cannabidiol registration card. Return unused medical cannabidiol to a dispensary for disposal."

b. Labeling text shall not include any false or misleading statements regarding health or physical benefits to the patient.

c. A package may contain multiple labels if the information required by this rule is not obstructed.

d. Labeling text font size shall be no smaller than 6 point.

641—154.22(124E) Transportation of medical cannabidiol and plant material.

154.22(1) *Transport of medical cannabidiol.* A manufacturer is authorized to transport medical cannabidiol to and from:

a. Dispensaries;

b. A laboratory for testing;

c. A waste facility for disposal;

d. Other sites only with departmental approval.

154.22(2) *Transport of plant material.* A manufacturer is authorized to transport cannabis plant material from its manufacturing facility to:

a. A waste disposal site;

b. Other sites only with departmental approval.

154.22(3) *Chain of custody tracking system.*

a. A manufacturer shall use the secure sales and inventory tracking system, if available, or a department-approved manifest system to track shipping of medical cannabidiol. The system shall include a chain of custody that records:

(1) The name and address of the destination;

(2) The weight and description of each individual package that is part of the shipment, and the total number of individual packages;

(3) The date and time the medical cannabidiol shipment is placed into the transport vehicle;

(4) The date and time the shipment is accepted at the delivery destination;

(5) The person's identity, and the circumstances, duration, and disposition of any other person who had custody or control of the shipment; and

(6) Any handling or storage instructions.

b. Before transporting medical cannabidiol, a manufacturer shall:

(1) Record in the secure sales and inventory tracking system or on the manifest information about the material to be transported; and

(2) Notify the dispensary, laboratory, or waste facility, as applicable, of the expected arrival time and transmit a copy of the manifest to the dispensary, laboratory, or waste facility, if applicable.

c. Each transport shall be approved electronically or in writing by:

(1) An authorized manufacturer employee when the transport vehicle is departing the manufacturing facility; and

(2) An authorized employee of the receiving dispensary, laboratory, or waste facility.

d. An authorized employee at the dispensary, laboratory, or waste facility receiving medical cannabidiol shall:

(1) Verify and document the type and quantity of the transported medical cannabidiol against the information in the secure sales and inventory tracking system or written manifest;

(2) Approve the transport electronically or return a signed copy of the manifest to the manufacturing facility; and

(3) Record the medical cannabidiol that is received as inventory in the secure sales and inventory tracking system, if available. If a manifest system is being used, the dispensary, laboratory, or waste facility shall also maintain a signed copy of manifest, and shall maintain records of the inventory received consistent with these rules.

e. A manufacturer shall maintain all manifests for at least five years and make them available upon request of the department.

154.22(4) *Vehicle requirements for transport.*

a. A manufacturer shall ensure that all medical cannabidiol transported on public roadways is:

(1) Packaged in tamper-evident, bulk containers;

(2) Transported so it is not visible or recognizable from outside the vehicle; and

(3) Transported in a vehicle that does not bear any markings to indicate that the vehicle contains medical cannabidiol or bears the name or logo of the manufacturer.

b. Manufacturer employees who are transporting medical cannabidiol on public roadways shall:

(1) Travel directly to a dispensary or other department-approved locations; and

(2) Document refueling and all other stops in transit, including:

1. The reason for the stop;
2. The duration of the stop;
3. The location of the stop; and
4. All activities of employees exiting the vehicle.

c. If the vehicle must be stopped due to an emergency situation, the employee shall notify 911 and complete an incident report on a form approved by the department.

d. Under no circumstance shall any person other than a designated manufacturer employee have actual physical control of the motor vehicle that is transporting the medical cannabidiol.

e. A manufacturer shall staff all motor vehicles with a minimum of two employees when transporting medical cannabidiol between a manufacturing facility and a dispensary. At least one

employee shall remain with the motor vehicle at all times that the motor vehicle contains medical cannabidiol. A single employee may transport medical cannabidiol to the laboratory.

f. Each employee in a transport motor vehicle shall have communication access with the manufacturer's personnel and have the ability to contact law enforcement at all times that the motor vehicle contains medical cannabidiol.

g. An employee shall carry the employee's identification card at all times when transporting or delivering medical cannabidiol and, upon request, produce the identification card to the department or to a law enforcement officer acting in the course of official duties.

h. A manufacturer shall not leave a vehicle that is transporting medical cannabidiol unattended overnight.

641—154.23(124E) Disposal of medical cannabidiol and plant material.

154.23(1) *Return of medical cannabidiol from dispensaries and laboratory.* A manufacturer shall collect at no charge unused, excess, or expired medical cannabidiol from dispensaries, including medical cannabidiol that was returned to a dispensary from a patient or primary caregiver, and from the laboratory that has tested samples submitted by the manufacturer. A manufacturer shall:

a. Collect waste medical cannabidiol from dispensaries no less often than once a month;

b. Collect waste medical cannabidiol from the laboratory on a schedule mutually agreed upon by the manufacturer and laboratory;

c. Dispose of the returned medical cannabidiol as provided in subrule 154.23(2); and

d. Maintain a written record of disposal that includes:

(1) The tracking number assigned at the time of the dispensing, if available, or the name of the patient, if the tracking number is unavailable, when the medical cannabidiol was returned to the dispensary from a patient or primary caregiver;

(2) The date the medical cannabidiol was returned;

(3) The quantity of medical cannabidiol returned; and

(4) The type and lot number of medical cannabidiol returned.

154.23(2) *Medical cannabidiol and plant material waste.* A manufacturer shall store, secure, and manage medical cannabidiol waste and plant material waste in accordance with all applicable federal, state, and local regulations.

a. The manufacturer shall dispose of medical cannabidiol waste at a waste facility according to federal and state law and in a manner which renders it unusable.

b. The manufacturer shall dispose of plant material waste by composting as follows:

(1) At the manufacturing facility, according to federal and state law; or

(2) At an approved solid waste composting facility, according to federal and state law.

c. Before transport of plant material waste, the manufacturer shall render the plant material waste unusable and unrecognizable by grinding and incorporating the waste with a greater quantity of nonconsumable, solid wastes including:

(1) Paper waste;

(2) Cardboard waste;

(3) Food waste;

(4) Yard waste;

(5) Vegetative wastes generated from industrial or manufacturing processes that prepare food for human consumption;

(6) Soil; or

(7) Other waste approved by the department.

154.23(3) *Liquid and chemical waste disposal.* A manufacturer shall dispose of all liquid and chemical product waste generated in the process of cultivating, manufacturing, and distributing medical cannabidiol in accordance with all applicable federal, state, and local regulations.

154.23(4) *Waste-tracking requirements.* A manufacturer shall use forms approved by the department to maintain accurate and comprehensive records regarding waste material. The records shall account for,

reconcile, and evidence all waste activity related to the disposal of medical cannabidiol waste and plant material waste.

641—154.24(124E) Record-keeping requirements.

154.24(1) *Sales and distribution.* A manufacturer shall maintain complete and accurate electronic sales transaction records in the department's secure sales and inventory tracking system, including:

a. The date of each sale or distribution;

b. The item number, product name and description, and quantity of medical cannabidiol sold or otherwise distributed; and

c. The sale price.

154.24(2) *Financial transactions.* A manufacturer shall maintain records that reflect all financial transactions and the financial condition of the business. The following records shall be maintained for at least five years and made available for review, upon request of the department:

a. Purchase invoices, bills of lading, sales records, copies of bills of sale, and any supporting documents, to include the items or services purchased, from whom the items were purchased, and the date of purchase;

b. Bank statements and canceled checks for all business accounts;

c. Accounting and tax records;

d. Records of all financial transactions, including contracts and agreements for services performed or services received;

154.24(3) *Other records.*

a. A manufacturer shall maintain the following for at least five years and provide to the department upon request:

(1) All personnel records;

(2) Records of any theft, loss, or other unaccountability of any medical cannabidiol or plant material;

(3) Controlled access system data and visitor manifests;

(4) Transport manifests and incident reports; and

(5) Records of all samples sent to a testing laboratory and the quality assurance test results.

b. A manufacturer shall use the department's secure sales and inventory tracking system to maintain the following:

(1) Crop input records;

(2) Production records;

(3) Transportation records; and

(4) Inventory records, including disposal of waste.

641—154.25(124E) Production requirements.

154.25(1) *Cultivation and processing.*

a. Only a licensed manufacturer is authorized to produce and manufacture medical cannabidiol.

b. All phases of production shall take place in designated, restricted access areas that are monitored by a surveillance camera system in accordance with rule 641—154.18(124E).

c. All areas shall be compartmentalized based on function, and employee access shall be restricted between compartments.

d. The production process shall be designed to limit contamination. Examples of contamination include mold, fungus, bacterial diseases, rot, pests, nonorganic pesticides, and mildew.

e. Each production area shall have an open aisle for unobstructed access, observation, and inventory of each plant group.

f. Biosecurity measures shall be in effect as described in the operating documents pursuant to subrule 154.17(1).

154.25(2) *Record-keeping and tracking requirements.*

a. The manufacturer shall use the department's secure sales and inventory tracking system to maintain an electronic record of all crop inputs for at least five years. The record shall include the following:

(1) The date of input application;

(2) The name of the employee applying the crop input;

(3) The crop input that was applied;

(4) The section, including the square footage, that received the application by batch number;

(5) The amount of crop input that was applied; and

(6) A copy of the label of the crop input applied.

b. At the time of planting, all plants shall be tracked in a batch process with a unique batch number that shall remain with the batch through final processing into medical cannabidiol.

c. A manufacturer shall record any removal of plants from the batch, including the reason for removal, on a record maintained at the manufacturing facility for at least five years.

d. Each batch or part of a batch of cannabis plants that contributes to a lot of medical cannabidiol shall be recorded in the department's secure sales and inventory tracking system or other manifest system.

154.25(3) *Production of medical cannabidiol.*

a. A manufacturer shall comply with all state and local building and fire code requirements.

b. A manufacturer shall obtain approval from the department for use of any hydrocarbon-based extraction process. Examples of a hydrocarbon-based extraction process include the use of butane, ethanol, hexane, and isopropyl alcohol.

c. Medical cannabidiol shall be prepared, handled, and stored in compliance with the sanitation requirements in this rule.

d. A manufacturer shall produce shelf-stable, nonperishable forms of medical cannabidiol.

e. A manufacturer shall ensure that the cannabinoid content of the medical cannabidiol it produces is homogenous.

f. Each lot of medical cannabidiol shall be assigned a unique lot number and recorded in the department's secure sales and inventory tracking system or other manifest system.

154.25(4) *General sanitation requirements.* A manufacturer shall take all reasonable measures and precautions to ensure that:

a. Any employee who has a communicable disease does not perform any tasks that might contaminate plant material or medical cannabidiol;

b. Hand-washing facilities are:

(1) Convenient and furnished with running water at a suitable temperature;

(2) Located in all production areas; and

(3) Equipped with effective hand-cleaning and -sanitizing preparations and sanitary towel service or electronic drying devices;

c. All employees working in direct contact with plant material and medical cannabidiol use hygienic practices while on duty, including:

(1) Maintaining personal cleanliness; and

(2) Washing hands thoroughly in a hand-washing area before starting work and at any other time when the hands may have become soiled or contaminated;

d. Litter and waste are routinely removed and the operating systems for waste disposal are routinely inspected;

e. Floors, walls, and ceilings are constructed with a surface that can be easily cleaned and maintained in good repair to inhibit microbial growth;

f. Lighting is adequate in all areas where plant material and medical cannabidiol are processed, stored, or sold;

g. Screening or other protection against the entry of pests is provided, including that rubbish is disposed of to minimize the development of odor and the potential for the waste becoming an attractant, harborage, or breeding place for pests;

h. Any buildings, fixtures, and other facilities are maintained in a sanitary condition;

i. Toxic cleaning compounds, sanitizing agents, and other potentially harmful chemicals are identified and stored in a separate location away from plant material and medical cannabidiol and in accordance with applicable local, state, or federal law;

j. All contact surfaces, utensils, and equipment used in the production of plant material and medical cannabidiol are maintained in a clean and sanitary condition;

k. The manufacturing facility water supply is sufficient for necessary operations;

l. Plumbing size and design meets operational needs and all applicable state and local laws;

m. Employees have accessible toilet facilities that are sanitary and in good repair; and

n. Plant material and medical cannabidiol that could support the rapid growth of undesirable microorganisms are isolated to prevent the growth of those microorganisms.

154.25(5) *Storage.*

a. A manufacturer shall store plant material and medical cannabidiol during production, transport, and testing to prevent diversion, theft, or loss, including ensuring that:

(1) Plant material and medical cannabidiol are returned to a secure location immediately after completion of the process or at the end of the scheduled business day; and

(2) The tanks, vessels, bins, or bulk containers containing plant material or medical cannabidiol are locked inside a secure area if a process is not completed at the end of a business day.

b. A manufacturer shall store all plant material and medical cannabidiol during production, transport, and testing, and all saleable medical cannabidiol:

(1) In areas that are maintained in a clean, orderly, and well-ventilated condition; and

(2) In storage areas that are free from infestation by insects, rodents, birds, and other pests of any kind.

c. To prevent degradation, a manufacturer shall store all plant material and medical cannabidiol in production, transport, and testing, and all saleable medical cannabidiol under conditions that will protect the product and its container against physical, chemical, and microbial contamination and deterioration.

d. A manufacturer shall maintain a separate secure storage area for medical cannabidiol that is returned from a dispensary, including medical cannabidiol that is outdated, damaged, deteriorated, mislabeled, or contaminated, or whose containers or packaging has been opened or breached, until the returned medical cannabidiol is destroyed. For purposes of this rule, a separate secure storage area includes a container, closet, or room that can be locked or secured.

641—154.26(124E) Quality assurance and control.

154.26(1) *Quality control program.* A manufacturer shall develop and implement a written quality assurance program that assesses the chemical and microbiological composition of medical cannabidiol. Assessment includes a profile of the active ingredients, including shelf life, and the presence of inactive ingredients and contaminants. A manufacturer shall use these testing results to determine appropriate storage conditions and expiration dates.

154.26(2) *Sampling protocols.* A manufacturer shall develop and follow written procedures for sampling medical cannabidiol that require the manufacturer to:

a. Conduct sample collection in a manner that provides analytically sound and representative samples;

b. Document every sampling event and provide this documentation to the department upon request;

c. Describe all sampling and testing plans in written procedures that include the sampling method and the number of units per lot to be tested;

d. Ensure that random samples from each lot are:

(1) Taken in an amount necessary to conduct the applicable test;

(2) Labeled with the lot number; and

(3) Submitted for testing; and

e. Retain the results from the random samples for at least five years.

154.26(3) *Sampling and testing.* A manufacturer shall:

a. Work with the department and laboratory personnel to develop acceptance criteria for all potential contaminants based on the levels of metals, microbes, or other contaminants that the manufacturer uses in cultivating and producing medical cannabidiol;

b. Conduct sampling and testing using acceptance criteria that are protective of patient health. The sampling and testing results shall be approved by the department and laboratory personnel and shall ensure that lots of medical cannabidiol meet allowable health risk limits for contaminants;

c. Reject a medical cannabidiol lot that fails to meet established standards, specifications, and any other relevant quality-control criteria except for amounts of medical cannabidiol and tetrahydrocannabinol. Lots that fail quality assurance testing based on amounts of medical cannabidiol or tetrahydrocannabinol may be remixed and retested;

d. Develop and follow a written procedure for responding to results indicating contamination. The procedure shall include destroying contaminated medical cannabidiol and determining the source of contamination; and

e. Retain documentation of test results, assessment, and destruction of medical cannabidiol for at least five years.

154.26(4) *Stability testing.*

a. The quality assurance program shall include procedures for performing stability testing of each product type produced to determine product shelf life. The procedures shall describe:

(1) Sample size and test intervals based on statistical criteria for each attribute examined to ensure valid stability estimates;

(2) Storage conditions for samples retained for testing; and

(3) Reliable and specific test methods.

b. Stability studies shall include:

(1) Medical cannabidiol testing at appropriate intervals; and

(2) Medical cannabidiol testing in the same container-closure system in which the medical cannabidiol is marketed and dispensed.

c. If shelf-life studies have not been completed before December 1, 2018, a manufacturer shall assign a tentative expiration date, based on any available stability information. A manufacturer shall concurrently conduct stability studies to determine the actual product expiration date.

d. After a manufacturer verifies the tentative expiration date, or determines the appropriate expiration date, a manufacturer shall include that expiration date on each lot of medical cannabidiol.

e. Stability testing shall be repeated if the manufacturing process or the product's chemical composition is changed.

154.26(5) *Reserve samples.*

a. A manufacturer shall retain a uniquely labeled reserve sample that represents each lot of medical cannabidiol and store the reserve sample under conditions consistent with product labeling. The reserve sample shall be stored in the same immediate container-closure system in which the medical cannabidiol is marketed or in one that has similar characteristics. The reserve sample shall consist of at least twice the quantity necessary to perform all the required tests.

b. A manufacturer shall retain the reserve for at least one year following the lot's expiration date.

c. After one year, reserve samples shall be destroyed as provided in subrule 154.23(2).

154.26(6) *Retesting.* If the department deems that public health may be at risk, the department may require the manufacturer to retest any sample of plant material or medical cannabidiol.

154.26(7) *Disposal of substandard product.* A manufacturer shall dispose of all medical cannabidiol whose samples fail to meet established standards, specifications, and other relevant quality control criteria as provided in subrule 154.23(2).

154.26(8) *Recall and market withdrawal procedures.* Each manufacturer shall establish a procedure for recalling or withdrawing from the market, as applicable, medical cannabidiol that has a reasonable probability of causing an unexpected or harmful response in a patient population, despite appropriate use, that outweighs the potential benefit of the medical cannabidiol. This procedure shall include:

a. Factors that make a recall or market withdrawal necessary;

b. Manufacturer's personnel who are responsible for overseeing the recall or market withdrawal; and

c. How to notify affected parties of a recall or market withdrawal.

641—154.27(124E) Supply and inventory.

154.27(1) *Reliable and ongoing supply.* A manufacturer shall provide a reliable and ongoing supply of medical cannabidiol to medical cannabidiol dispensaries.

154.27(2) *Inventory controls and procedures.* A manufacturer shall establish inventory controls and procedures for conducting inventory reviews to prevent and detect any diversion, theft, or loss in a timely manner.

154.27(3) *Real-time inventory required.* A manufacturer shall use the department-approved secure sales and inventory tracking system to track medical cannabidiol production from seed or plant cutting through distribution of medical cannabidiol to a dispensary. The manufacturer shall use the system to maintain a real-time record of the manufacturer's inventory of plant material and medical cannabidiol to include:

a. The quantity and form of medical cannabidiol maintained by the manufacturer at the manufacturing facility on a daily basis;

b. The amount of plants being grown at the manufacturing facility on a daily basis;

c. The names of the employees or employee conducting the inventory; and

d. Other information deemed necessary and requested by the department.

154.27(4) *Waste inventory.* A manufacturer shall maintain a record of its inventory of all medical cannabidiol waste and plant material waste for disposal.

154.27(5) *Reconciliation.* At the close of business each day, a manufacturer shall reconcile its physical inventory with the secure sales and inventory tracking system. Inconsistencies shall be reported to the department or law enforcement within 24 hours of discovery. Reconciliation shall include:

a. Plant material at the manufacturing facility and in transit; and

b. Medical cannabidiol at the manufacturing facility, at distribution and storage facilities, and in transit.

154.27(6) *Scales.* All scales used to weigh usable plant material for purposes of these rules shall be certified in accordance with ISO/IEC Standard 17025, which is incorporated herein by reference.

641—154.28(124E) Inspection by department or independent consultant. A manufacturer is subject to reasonable inspection by the department, a department-approved consultant, or other agency pursuant to Iowa Code chapter 124E and these rules and as authorized by laws and regulations.

154.28(1) *Types of inspections.* Inspections may include:

a. Aspects of the business operations;

b. The manufacturing facility;

c. Vehicles used for transport or delivery of medical cannabidiol or plant material;

d. Financial information and inventory documentation;

e. Physical and electronic security alarm systems; and

f. Other inspections as determined by the department.

154.28(2) *Local safety inspections.* A manufacturer may be subject to inspection of its manufacturing facility and grounds by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local licensing authority restrictions related to medical cannabidiol manufacturing or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.

154.28(3) *Health and sanitary inspection.* The department has discretion to determine when an inspection by an independent consultant is necessary. The following is a nonexhaustive list of examples that may justify an independent inspection:

a. The department has reasonable grounds to believe that the manufacturer is in violation of one or more of the requirements set forth in these rules or other applicable public health or sanitary laws, rules or regulations; or

b. The department has reasonable grounds to believe that the manufacturer was the cause or source of contamination of medical cannabidiol.

154.28(4) *Compliance required.* A manufacturer shall pay for and cooperate in a timely manner with the department's requirement that it undergo an independent health and sanitary inspection in accordance with this rule.

641—154.29(124E) Assessment of penalties. The department shall assess to a manufacturer a civil penalty of up to $1,000 per violation of Iowa Code chapter 124E or these rules in addition to other applicable penalties.

641—154.30(124E) Suspension or revocation of a manufacturer license.

154.30(1) The department may suspend or revoke a manufacturer license upon any of the following grounds:

a. Submission of false, inaccurate, misleading, or fraudulent information to the department in the application or inspection processes.

b. Failure to submit required reports and documents.

c. Violation of Iowa Code chapter 124E or these rules, or violation of state or local law related to operation of the licensee.

d. Conduct or practices detrimental to the safety, health, or welfare of a patient, primary caregiver, or the public.

e. Criminal, civil, or administration action taken against a license or registration in this or another state or country related to manufacturing or dispensing medical cannabidiol.

f. False, misleading, or deceptive representations to the department, another state or federal agency, or a law enforcement agency.

g. Discontinuance of operation for more than 30 days, unless the department approves an extension of such period for good cause shown.

h. Failure to maintain effective controls against diversion, theft, or loss of medical cannabidiol.

i. Failure to correct a deficiency within the time frame required by the department.

j. Failure of a manufacturer's business owner to have a satisfactory result in a background investigation or national criminal history background check conducted by the department of public safety and as determined by the department.

154.30(2) The department shall notify the licensee of the proposed action pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of issuance of a suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

154.30(3) A request for appeal concerning the suspension or revocation of a license shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Office of Medical Cannabidiol, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the suspension or revocation has been or will be removed. After the hearing or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the suspension or revocation. If no request for appeal is received within the 20-day time period, the department's notice of suspension or revocation shall become the department's final agency action.

154.30(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

154.30(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

154.30(6) When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

154.30(7) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

154.30(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections, and rulings thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

154.30(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

154.30(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

154.30(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

154.30(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

154.30(13) Emergency adjudicative proceedings.

a. Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

b. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

(1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

(2) Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

(3) Whether the licensee required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

(4) Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

(5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

c. Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the licensee that is required to comply with the order. The order shall be delivered by one or more of the following methods:

1. Personal delivery.
2. Certified mail, return receipt requested, to the last address on file with the department.
3. Fax. Fax may be used as the sole method of delivery if the licensee required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the licensee that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the licensee that is required to comply with the order is the party requesting the continuance.

641—154.31(124E) Closure of operations.

154.31(1) *Notice.* A manufacturer shall notify the department at least six months before the closure of the manufacturing facility.

154.31(2) *Procedures.* If a manufacturer ceases operation, the manufacturer shall work with the department to verify the remaining inventory of the manufacturer and ensure that any plant material, plant material waste, and medical cannabidiol are destroyed at a waste facility as provided in subrule 154.23(2).

641—154.32 to **154.39 Reserved.**

DISPENSING

641—154.40(124E) Duties of the department.

154.40(1) *Interagency agreements.* The department may enter into any interagency agreements with other state agencies for technical services or other assistance related to the regulation or inspection of dispensaries.

154.40(2) *Notice to law enforcement.* The department shall notify local law enforcement agencies and the department of public safety of the locations of dispensaries. If the department has sufficient cause to believe that there is a threat to public safety, the department shall notify local law enforcement agencies and the department of public safety of any conditions that pose a threat to public safety including but not limited to:

a. Loss or theft of medical cannabidiol;

b. Diversion or potential diversion of medical cannabidiol;

c. Unauthorized access to the secure sales and inventory tracking system or other patient and caregiver information system or file; or

d. Other violations of law.

154.40(3) *Inspection of dispensaries.* The department or its agents shall conduct regular inspections of dispensaries and their facilities as described in rule 641—154.52(124E).

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154.40(4) *Establishment and maintenance of a secure sales and inventory tracking system.* The department shall establish and maintain a secure, electronic system that is available 24 hours a day, seven days a week to track:

a. Inventory of medical cannabidiol and waste material;

b. Sales of medical cannabidiol from dispensaries to patients and primary caregivers.

154.40(5) *Licensure and licensure renewal of dispensaries.* The department shall issue a request for proposals to select and license by April 1, 2018, up to five dispensaries to dispense medical cannabidiol within the state consistent with the provisions of Iowa Code chapter 124E and these rules.

a. To be eligible for licensure, an applicant dispensary shall provide information on forms and in a manner required by the department of public safety for the completion of a background investigation. In addition, the applicant dispensary shall submit to the department of public safety necessary funds to satisfy the full reimbursement of costs associated with completing the background investigations. If the applicant dispensary is not found suitable for licensure as a result of the background investigation, a license shall not be issued by the department.

b. As a condition for licensure, an applicant dispensary shall agree to begin dispensing medical cannabidiol to patients and primary caregivers in Iowa no later than December 1, 2018.

c. The initial license to dispense medical cannabidiol shall be valid from April 1, 2018, through November 30, 2018. The license shall be renewed annually unless a dispensary relinquishes the license, there is a change in state law prohibiting the department from renewing the license, or the license is revoked pursuant to Iowa Code chapter 124E or these rules.

d. A license to dispense medical cannabidiol issued by the department pursuant to these rules is not assignable or transferable.

e. The department shall consider the following factors in determining whether to select and license a medical cannabidiol dispensary:

(1) Geographical location of the proposed dispensary facility;

(2) The technical expertise of an applicant dispensary's staff regarding medical cannabidiol;

(3) The qualifications of an applicant dispensary's employees;

(4) The long-term financial stability of an applicant dispensary;

(5) The ability of an applicant dispensary to provide appropriate security measures on the premises of the dispensary;

(6) An applicant dispensary's projection of and ongoing assessment of retail product costs, including any dispensing fees.

f. Pursuant to Iowa Code section 124E.5(1)*"b,"* information submitted during the application process shall be confidential until an applicant dispensary is licensed by the department unless otherwise protected from disclosure under state or federal law.

g. A licensed dispensary shall submit an application to renew its license with the department at least six months before the license expires. The application shall be submitted on a form created by the department.

h. The department shall notify a dispensary of the decision to approve or deny the dispensary's license by August 1 of the year in which the renewal application is submitted.

154.40(6) *Collection of fees from dispensaries.* Except as provided in this rule, all fees are nonrefundable, shall be retained by the department, and shall be considered repayment receipts as defined in Iowa Code section 8.2.

a. Fees to the department.

(1) One application is required for each dispensary location.

(2) Each application for licensure as a dispensary shall include a nonrefundable application fee of $5,000.

(3) Licensed dispensaries shall pay an annual fee to the department to cover costs associated with regulating and inspecting dispensaries and for other expenses necessary for the administration of the medical cannabidiol program. The department shall assess the fee with the notice of approval of license renewal each year on August 1, payable by the dispensary to the department no later than December 1.

b. Fees to the department of public safety.

(1) An applicant dispensary shall be responsible to reimburse the department of public safety the full cost of conducting background investigations related to an application for licensure and operation as a licensed dispensary. The department of public safety shall retain the right to bill a dispensary for additional background investigations, as needed.

(2) Each dispensary submitting an application for licensure shall, at time of application, submit to the department of public safety a deposit of $10,000 for each business owner subject to a background investigation and a national criminal history background check. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the applicant shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the dispensary.

(3) A licensed dispensary shall pay a deposit of $200 per employee to the department of public safety for a background investigation and a national criminal history background check on any person being considered for hire as an employee of the dispensary. Background investigation costs shall be deducted from the funds deposited. If the background investigation fees exceed the funds deposited, the dispensary shall submit additional funds as required by the department of public safety. If the background investigation fees are less than the funds deposited, the department of public safety may refund or retain the fees as mutually agreed with the dispensary. The department shall retain the right to preclude a potential employee from hire based upon the results of the background investigation and national criminal history background check.

641—154.41(124E) Dispensary operations.

154.41(1) *Operating documents.* The operating documents of a dispensary shall include all of the following:

a. Procedures for the oversight of the dispensary, including descriptions of operational and management practices regarding:

(1) The forms and quantities of medical cannabidiol products that will be stored and dispensed at the dispensary;

(2) The estimated forms and quantities of medical cannabidiol waste to be generated or collected;

(3) The disposal methods for all waste materials;

(4) Employee training methods for the dispensary employees;

(5) Strategies for identifying and reconciling discrepancies in inventory of medical cannabidiol;

(6) Medical cannabidiol labeling procedures;

(7) Procedures for recall or market withdrawal of medical cannabidiol;

(8) Plans for responding to a security breach at the dispensary facility;

(9) A business continuity plan; and

(10) Other information requested by the department.

b. Procedures to ensure accurate record keeping.

c. Procedures for the implementation of appropriate security measures to deter and prevent the theft of medical cannabidiol and unauthorized entrance into areas of the dispensary facility containing medical cannabidiol.

154.41(2) *Prohibited activities.*

a. A person or entity shall not own or operate a dispensary unless the person or entity is licensed by the department pursuant to Iowa Code chapter 124E and these rules.

b. A dispensary shall not:

(1) Dispense medical cannabidiol in any location except in those areas approved by the department;

(2) Sell, receive, transport, or distribute medical cannabidiol from any location except its dispensary;

(3) Sell, receive, or distribute medical cannabidiol from any entity other than a manufacturer licensed by the department;

(4) Sell or distribute medical cannabidiol to any person other than an approved patient or primary caregiver;

(5) Transport or deliver medical cannabidiol to any location, unless approved by the department;

(6) Sell medical cannabidiol that is not packaged and labeled in accordance with rules 641—154.21(124E) and 641—154.46(124E);

(7) Repackage medical cannabidiol or remove the manufacturer's label;

(8) Sell medical cannabidiol in any form or quantity other than a form or quantity approved by the department and adopted by rule;

(9) Permit any person to consume medical cannabidiol on the property of the dispensary;

(10) Employ a person who is under 18 years of age or who has been convicted of a disqualifying felony offense.

154.41(3) *Criminal background checks.*

a. An owner of a dispensary shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

b. An employee of a dispensary shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

154.41(4) *Relationship to health care practitioners.* A dispensary shall not share office space with, refer patients to, or have any financial relationship with a health care practitioner.

641—154.42(124E) Security requirements. The department may request assistance from the department of public safety in ensuring dispensaries meet the security requirements in this rule.

154.42(1) *Restricted access.* A dispensary shall have a controlled access system to limit entrance to all restricted access areas of the dispensary facility. Visitors to restricted access areas shall sign manifests with name, date, and times of entry and exit, if the controlled access system cannot electronically record visitors. Visitors shall wear badges that are visible at all times and identify them as visitors.

a. The controlled access system shall do all of the following:

(1) Limit access to authorized individuals;

(2) Maintain a log of individuals with approved access, including dates of approvals and revocations;

(3) Track times of personnel entry to and exit from secured areas;

(4) Store data for retrieval for a minimum of five years; and

(5) Remain operable in the event of a power failure.

b. A dispensary shall promptly, but no later than five business days after receipt of request, submit stored controlled access system data to the department.

c. Separate written manifests of visitors to restricted areas shall be kept and stored for a minimum of five years if the controlled access system does not include electronic records of visitors to the restricted areas.

d. Restricted access areas shall be identified with signs that state: "Do Not Enter – Restricted Access Area – Access Limited to Authorized Personnel Only."

154.42(2) *Perimeter intrusion detection system.*

a. *Computer-controlled video surveillance system.* A dispensary shall operate and maintain in good working order a computer-controlled, closed-circuit television surveillance system on its premises that operates 24 hours per day, seven days a week, and visually records:

(1) All areas that might contain medical cannabidiol, including all safes, vaults, and storage areas;

(2) All points of entry and exit;

(3) The entrance to the video surveillance control room; and

(4) Parking areas, which shall have appropriate lighting for the normal conditions of the area under surveillance.

b. *Camera specifications.* Cameras shall:

(1) Capture clear and certain identification of any person entering or exiting a dispensary or its parking areas;

(2) Have the ability to produce a clear, color still photograph live or from a recording;

(3) Have on all recordings an embedded date-and-time stamp that is synchronized to the recording and does not obscure the picture; and

(4) Continue to operate during a power outage.

c. *Video recording specifications.*

(1) A video recording shall export still images in an industry standard image format, such as .jpg, .bmp, or .gif.

(2) Exported video shall be archived in a format that ensures authentication and guarantees that the recorded image has not been altered.

(3) Exported video shall also be saved in an industry standard file format that can be played on a standard computer operating system.

(4) All recordings shall be erased or destroyed at the end of the retention period and prior to disposal of any storage medium.

d. *Additional requirements.* A dispensary shall maintain all security system equipment and recordings in a secure location to prevent theft, loss, destruction, corruption, and alterations.

e. *Retention.* A dispensary shall ensure that 24-hour recordings from all video cameras are:

(1) Available for viewing by the department upon request;

(2) Retained for at least one year;

(3) Maintained free of alteration or corruption; and

(4) Retained longer, as needed, if a dispensary is given actual notice of a pending criminal, civil, or administrative investigation, or other legal proceeding for which the recording may contain relevant information.

f. *Required signage.* A dispensary shall post a sign in capital letters in a conspicuous location at every entrance to the dispensary that reads, "THESE PREMISES ARE UNDER CONSTANT VIDEO SURVEILLANCE."

154.42(3) *Security alarm system requirements.*

a. A dispensary shall install and maintain a professionally monitored security alarm system that provides intrusion and fire detection of all:

(1) Dispensary entrances and exits;

(2) Rooms with exterior windows;

(3) Rooms with exterior walls;

(4) Roof hatches;

(5) Skylights; and

(6) Storage rooms.

b. For the purposes of this subrule, a security alarm system means a device or series of devices that summons law enforcement personnel during, or as a result of, an alarm condition. Devices may include:

(1) Hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audio, visual, or electronic signal;

(2) Motion detectors;

(3) Pressure switches;

(4) A duress alarm;

(5) A panic alarm;

(6) A holdup alarm;

(7) An automatic voice dialer; and

(8) A failure notification system that provides an audio, text, or visual notification of any failure in the surveillance system.

c. A dispensary's security alarm system and all devices shall continue to operate during a power outage.

d. A dispensary's security alarm system shall be inspected and all devices tested annually by a qualified alarm vendor. A dispensary shall provide documentation of the annual inspection and device testing to the department upon request.

154.42(4) *Personnel identification system.* A dispensary shall use a personnel identification system that controls and monitors individual employee access to restricted access areas within the dispensary and that meets the requirements of this subrule and subrule 154.42(1).

a. Requirement for employee identification card. An employee identification card shall contain:

(1) The name of the employee;

(2) The date of issuance and expiration;

(3) An alphanumeric identification number that is unique to the employee; and

(4) A photographic image of the employee.

b. A dispensary's employees shall keep the identification card visible at all times when the employee is in a dispensary or a vehicle transporting medical cannabidiol.

c. Upon termination or resignation of an employee, a dispensary shall immediately:

(1) Revoke the employee's access to restricted areas of the dispensary; and

(2) Obtain and destroy the employee's identification card, if possible.

641—154.43(124E) Location. All dispensing of medical cannabidiol shall take place in an enclosed facility at one physical address provided to the department during the licensure process.

154.43(1) *Proximity to manufacturers.* A dispensary shall not operate at the same physical location as a manufacturer.

154.43(2) *Proximity to schools.* A dispensary shall not operate in any location within 1,000 feet of a public or private school existing before the date of the dispensary's licensure by the department.

641—154.44(124E) Advertising and marketing.

154.44(1) *Permitted marketing and advertising activities.*

a. A dispensary may:

(1) Display the dispensary's business name and logo on medical cannabidiol labels, signs, Web site, and informational material provided to patients. The name or logo shall not include:

1. Images of cannabis or cannabis-use paraphernalia;
2. Colloquial references to cannabis;
3. Names of cannabis plant strains or varieties;
4. Unsubstantiated medical claims; or
5. Medical symbols that bear a reasonable resemblance to established medical associations. Examples of established medical organizations include the American Medical Association or American Academy of Pediatrics. The use of medical symbols is subject to approval by the department.

(2) Display signs on the dispensary; and

(3) Maintain a business Web site that contains the following information:

1. The dispensary's name and contact information;
2. The medical cannabidiol forms and quantities provided;
3. Medical cannabidiol pricing;
4. Hours of operation; and
5. Other information as approved by the department.

b. The business Web site shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

c. The department reserves the right to review a dispensary's marketing and advertising materials and to require a dispensary to make changes to the content. The department has 30 calendar days following submission to approve or deny marketing and advertising materials of a dispensary.

154.44(2) *Other marketing and advertising activities.* A dispensary shall request and receive the department's written approval before beginning marketing or advertising activities that are not specified in subrule 154.44(1). The department has 30 calendar days to approve or deny marketing and advertising activity requests from a dispensary.

154.44(3) *Inconspicuous display.* A dispensary shall arrange displays of medical cannabidiol, interior signs, and other exhibits to prevent public viewing from outside the dispensary.

641—154.45(124E) Storage.

154.45(1) *Storage of saleable medical cannabidiol.*

a. A dispensary shall store medical cannabidiol to prevent diversion, theft, or loss, including ensuring that:

(1) Medical cannabidiol is kept in a secure and monitored location within the dispensary; and

(2) Cabinets or storage containers inside the secure and monitored area are locked at the end of a business day.

b. A dispensary shall store all medical cannabidiol:

(1) In areas that are maintained in a clean, orderly, and well-ventilated condition;

(2) In areas that are free from infestation by insects, rodents, birds, and other pests of any kind;

(3) According to the manufacturer's requirements regarding temperature, light exposure, or other environmental conditions;

(4) Under conditions that will protect the product and its container against physical, chemical, and microbial contamination and deterioration.

154.45(2) *Storage of returned medical cannabidiol.* A dispensary shall maintain a separate secure storage area for medical cannabidiol that is to be returned to a manufacturer for disposal, including medical cannabidiol that is outdated, damaged, deteriorated, mislabeled, or contaminated, or whose containers or packaging has been opened or breached, until the medical cannabidiol is collected by a manufacturer. For purposes of this subrule, a separate secure storage area includes a container, closet, or room that can be locked or secured.

641—154.46(124E) Dispensing.

154.46(1) *Access to all forms of product.* A dispensary shall provide access to all medical cannabidiol forms produced by each licensed manufacturer.

154.46(2) *Dispensing to a patient.*

a. Prior to dispensing any medical cannabidiol to a patient, a dispensary shall do all of the following:

(1) Verify the patient's identity;

(2) Verify that the patient is registered and listed in the secure sales and inventory tracking system and has a valid medical registration card;

(3) Assign a tracking number to any medical cannabidiol that is to be dispensed to the patient;

(4) Issue a label that contains the following information:

1. The medical cannabidiol tracking number;
2. The date and time the medication is being dispensed;
3. The name and address of the dispensary;
4. The patient's registry identification number, name, and date of birth;
5. The patient's address; and
6. Any specific instructions for use based upon manufacturer or departmental guidelines. Labeling text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

b. The dispensary shall record the patient name, the amount dispensed, the price, the medical cannabidiol tracking number, the time and date, and other information required by the department in the secure sales and inventory tracking system within one business day.

154.46(3) *Dispensing to a primary caregiver.*

a. Prior to dispensing any medical cannabidiol to a primary caregiver, a dispensary shall do all of the following:

(1) Verify the primary caregiver's identity;

(2) Verify that the patient and the primary caregiver are registered and listed in the secure sales and inventory tracking system and have valid medical registration cards;

(3) Assign a medical cannabidiol tracking number to any medical cannabidiol that is to be dispensed to the primary caregiver;

(4) Issue a label that contains the following information:

1. The medical cannabidiol tracking number;
2. The date and time the medication is being dispensed;
3. The name and address of the dispensary;
4. The patient's registry identification number, name, and date of birth;
5. The primary caregiver's registry identification number, name, and date of birth;
6. The patient's address; and
7. Any specific instructions for use based upon manufacturer or departmental guidelines. Labeling text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

b. The dispensary shall record the names of the patient and primary caregiver, the amount dispensed, the price, the medical cannabidiol tracking number, the time and date, and other information required by the department in the secure sales and inventory tracking system within one business day.

641—154.47(124E) Transportation of medical cannabidiol. A dispensary is not authorized to transport medical cannabidiol, unless approved by the department. Any approved transport shall be logged in the secure sales and inventory tracking system.

641—154.48(124E) Disposal of medical cannabidiol.

154.48(1) *Identification of excess, expired, or damaged medical cannabidiol.*

a. Dispensaries shall identify unused, excess, expired, or damaged medical cannabidiol for return to manufacturers.

b. Unused, excess, expired, or damaged medical cannabidiol shall be stored as described in subrule 154.45(2).

154.48(2) *Return of medical cannabidiol from a patient or primary caregiver to a dispensary.*

a. A dispensary shall accept at no charge unused, expired, or unwanted medical cannabidiol from any patient or primary caregiver.

b. The dispensary shall enter the following information into the secure sales and inventory tracking system for all medical cannabidiol returned from a patient or primary caregiver:

(1) The tracking number assigned at the time of the dispensing, if available, or the name of the patient, if the tracking number is unavailable, when the medical cannabidiol was returned to the dispensary from a patient or primary caregiver;

(2) The date the medical cannabidiol was returned;

(3) The quantity of medical cannabidiol returned; and

(4) The type and lot number of medical cannabidiol returned.

c. A dispensary shall store medical cannabidiol returned from patients and primary caregivers as described in subrule 154.45(2).

154.48(3) *Return of medical cannabidiol to a manufacturer.*

a. A manufacturer shall collect and dispose of medical cannabidiol from dispensaries as provided in rule 641—154.23(124E).

b. A dispensary shall record information on all medical cannabidiol collected by the manufacturer in the secure sales and inventory tracking system. Information shall include:

(1) The date the medical cannabidiol was collected by the manufacturer;

(2) The quantity of medical cannabidiol collected; and

(3) The type and lot number of medical cannabidiol collected.

641—154.49(124E) Record-keeping requirements.

154.49(1) *Sales.* A dispensary shall maintain complete and accurate electronic sales transaction records in the department's secure sales and inventory tracking system, including:

a. The name of the patient and, if purchase is made by the primary caregiver, the name of the primary caregiver;

b. The date of each sale;

c. The item number, product name and description, and quantity of medical cannabidiol sold;

d. The sale price;

e. Other information required by the department.

154.49(2) *Financial transactions.* A dispensary shall maintain records that reflect all financial transactions and the financial condition of the business. The following records shall be maintained for at least five years and made available for review, upon request of the department:

a. Purchase invoices, bills of lading, sales records, copies of bills of sale, and any supporting documents, to include the items or services purchased, from whom the items were purchased, and the date of purchase;

b. Bank statements and canceled checks for all business accounts;

c. Accounting and tax records;

d. Records of all financial transactions, including contracts and agreements for services performed or services received.

154.49(3) *Other records.*

a. A dispensary shall maintain the following for at least five years and provide to the department upon request:

(1) All personnel records; and

(2) Records of any theft, loss, or other unaccountability of any medical cannabidiol.

b. A dispensary shall use the department's secure sales and inventory tracking system to maintain the following:

(1) Inventory records;

(2) Return of medical cannabidiol from a patient or primary caregiver; and

(3) Return of unused, excess, expired, or damaged medical cannabidiol to a manufacturer.

641—154.50(124E) Quality assurance and control. A dispensary shall cooperate with manufacturers and the department on quality assurance and control procedures, including participating in stability-testing studies, developing sampling strategies, and returning medical cannabidiol that has been recalled or withdrawn from the market.

641—154.51(124E) Inventory.

154.51(1) *Inventory controls and procedures.* A dispensary shall establish inventory controls and procedures for conducting inventory reviews to prevent and detect any diversion, theft, or loss in a timely manner.

154.51(2) *Real-time inventory required.* A dispensary shall use the department-approved secure sales and inventory tracking system to maintain a real-time record of the dispensary's inventory of medical cannabidiol to include:

a. The quantity and form of saleable medical cannabidiol maintained at the dispensary on a daily basis;

b. The amount of damaged, expired, or returned medical cannabidiol being held at the dispensary for return to a manufacturer; and

c. Other information deemed necessary and requested by the department.

154.51(3) *Reconciliation.* At the close of business each day, a dispensary shall reconcile all medical cannabidiol at the dispensary with the secure sales and inventory tracking system. Inconsistencies shall be reported to the department or law enforcement within 24 hours of discovery.

641—154.52(124E) Inspection by department or independent consultant. A dispensary is subject to reasonable inspection by the department, a department-approved consultant, or other agency as authorized by Iowa Code chapter 124E and these rules or state or local laws and regulations.

154.52(1) *Types of inspections.* Inspections may include:

a. Aspects of the business operations;

b. The physical location of a dispensary, including any storage facilities;

c. Financial information and inventory documentation;

d. Physical and electronic security alarm systems; and

e. Other aspects or areas as determined by the department.

154.52(2) *Local safety inspections.* A dispensary may be subject to inspection of its dispensary by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet local licensing authority restrictions related to medical cannabidiol dispensing or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety.

154.52(3) *Health and sanitary inspection.* The department has discretion to determine when an inspection by an independent consultant is necessary. The following is a nonexhaustive list of examples that may justify an independent inspection:

a. The department has reasonable grounds to believe that the dispensary is in violation of one or more of the requirements set forth in these rules or other applicable public health or sanitary laws, rules or regulations;

b. The department has reasonable grounds to believe that the dispensary was the cause or source of contamination of medical cannabidiol; or

c. The department has reasonable grounds to believe that the dispensary was the cause of loss of product quality or change in chemical composition due to improper storage and handling of medical cannabidiol.

154.52(4) *Compliance required.* A dispensary shall pay for and cooperate in a timely manner with the department's requirement that the dispensary undergo an independent health and sanitary inspection in accordance with this rule.

641—154.53(124E) Assessment of penalties. The department shall assess to a dispensary a civil penalty of up to $1,000 per violation of Iowa Code chapter 124E or these rules in addition to other applicable penalties.

641—154.54(124E) Suspension or revocation of a dispensary license.

154.54(1) The department may suspend or revoke a dispensary license upon any of the following grounds:

a. Submission of false, inaccurate, misleading, or fraudulent information to the department in the application or inspection processes.

b. Failure to submit required reports and documents.

c. Violation of Iowa Code chapter 124E or these rules, or violation of state or local law related to operation of the licensee.

d. Conduct or practices detrimental to the safety, health, or welfare of a patient, primary caregiver, or the public.

e. Criminal, civil, or administration action taken against a license or registration in this or another state or country related to manufacturing or dispensing medical cannabidiol.

f. False, misleading, or deceptive representations to the department, another state or federal agency, or a law enforcement agency.

g. Discontinuance of operation for more than 30 days, unless the department approves an extension of such period for good cause shown.

h. Failure to maintain effective controls against diversion, theft, or loss of medical cannabidiol.

i. Failure to correct a deficiency within the time frame required by the department.

j. Failure of a dispensary's business owner to have a satisfactory result in a background investigation or national criminal history background check conducted by the department of public safety and as determined by the department.

154.54(2) The department shall notify the licensee of the proposed action pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of issuance of a suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

154.54(3) A request for appeal concerning the suspension or revocation of a license shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Office of Medical Cannabidiol, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the suspension or revocation has been or will be removed. After the hearing or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the suspension or revocation. If no request for appeal is received within the 20-day time period, the department's notice of suspension or revocation shall become the department's final agency action.

154.54(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

154.54(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

154.54(6) When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

154.54(7) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

154.54(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections, and rulings thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

154.54(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

154.54(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

154.54(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

154.54(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

154.54(13) Emergency adjudicative proceedings.

a. Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law,

the department may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

b. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

(1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

(2) Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

(3) Whether the licensee required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

(4) Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

(5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

c. Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the licensee that is required to comply with the order. The order shall be delivered by one or more of the following methods:

1. Personal delivery.

2. Certified mail, return receipt requested, to the last address on file with the department.

3. Fax. Fax may be used as the sole method of delivery if the licensee required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the licensee that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the licensee that is required to comply with the order is the party requesting the continuance.

641—154.55(124E) Closure of operations.

154.55(1) *Notice.* A dispensary shall notify the department at least six months before the closure of the dispensary.

154.55(2) *Procedures.* If a dispensary ceases operation, the dispensary shall work with the department to verify the remaining inventory of the dispensary and ensure that any medical cannabidiol is returned to a manufacturer.

641—154.56 to **154.59 Reserved.**

MEDICAL CANNABIDIOL BOARD

641—154.60(124E) Purpose and duties of board.

154.60(1) The purpose of the board is to administer the provisions of Iowa Code section 124E.4A.

154.60(2) Responsibilities of the board include but are not limited to:

a. Accepting and reviewing petitions to add medical conditions, medical treatments, or debilitating diseases to the list of debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial under Iowa Code chapter 124E.

b. Making recommendations to the board of medicine relating to the removal or addition of debilitating medical conditions to the list of allowable debilitating medical conditions for which the medical use of cannabidiol under Iowa Code chapter 124E would be medically beneficial.

c. Working with the department regarding the requirements for the licensure of manufacturers and dispensaries, including licensure procedures.

d. Advising the department regarding the location of manufacturers and dispensaries throughout the state.

e. Making recommendations to the board of medicine relating to the form and quantity of allowable medical uses of cannabidiol.

f. Considering recommendations to the general assembly for statutory revisions to the definition of medical cannabidiol to increase the tetrahydrocannabinol (THC) level to more than 3 percent.

g. Submitting an annual report to the general assembly detailing the activities of the board no later than January 1.

641—154.61(124E) Organization of board and proceedings.

154.61(1) *Membership.* The board shall be composed of nine members appointed by the governor pursuant to Iowa Code section 124E.4A. The appointments, unless provided otherwise by law, shall be for three-year staggered terms which shall expire on June 30. Board members shall be knowledgeable about the use of medical cannabidiol. The medical practitioners appointed to the board shall be licensed in Iowa and be nationally board-certified in their area of specialty.

154.61(2) *Vacancies.* Vacancies shall be filled in the same manner in which the original appointments were made for the balance of the unexpired term.

154.61(3) *Absences.* Three consecutive unexcused absences shall be grounds for the governor to consider dismissal of a board member and to appoint another. Department staff is charged with providing notification of absences to the governor's office.

154.61(4) *Board meetings.*

a. The board shall convene at least twice but no more than four times a year.

b. Board meetings shall be conducted in accordance with the open meetings requirements of Iowa Code chapter 21.

c. The department's office of medical cannabidiol shall schedule the time, date and location of meetings.

d. A majority of the members shall constitute a quorum for conducting business of the board.

e. An affirmative vote of a majority of the board members present at a meeting is required for a motion to pass.

154.61(5) *Facilities and staffing.* The department shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter but shall be reimbursed for all costs incurred by fee revenue generated from licensing activities and registration card applications.

154.61(6) *Subcommittees.* The board may designate one or more subcommittees to perform such duties as may be deemed necessary.

641—154.62(124E) Official communications. All official communications, including submissions, petitions and requests, may be addressed to the Medical Cannabidiol Board, Office of Medical Cannabidiol, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

641—154.63(124E) Office hours. The board office is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

641—154.64(124E) Public meetings. Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained through the Iowa department of public health's Web site (idph.iowa.gov/mcarcp) or directly from the board office.

154.64(1) *Exclusion of participants.* The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

154.64(2) *Recording of meetings.* Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the presiding department staff member at the meeting may request the user to discontinue use of the camera or device.

641—154.65(124E) Petitions for the addition or removal of medical conditions, medical treatments or debilitating diseases. Petitions for the addition or removal of medical conditions, medical treatments, or debilitating conditions for which the medical use of cannabidiol would be medically beneficial under Iowa Code chapter 124E may be submitted to the board pursuant to this rule.

154.65(1) *Petition form.* Any person or entity may file a petition to add or remove medical conditions, medical treatments or debilitating diseases with the board. A petition is deemed filed when it is received by the medical cannabidiol office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE MEDICAL CANNABIDIOL BOARD

Petition by (Name of Petitioner) for the (addition or removal) of (medical conditions, medical treatments or debilitating diseases) to the list of debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial.	}	PETITION FOR (ADDITION or REMOVAL)

The petition must provide the following information:

a. A statement of the specific medical condition, medical treatment or debilitating disease the petitioner is seeking to add or remove from the list of debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial.

b. A brief summary of the petitioner's arguments in support of the action urged in the petition.

c. A brief summary of any data or scientific evidence supporting the action urged in the petition.

d. A list of reference material supporting the petition.

e. A list of subject matter experts who are willing to testify in support of the petition. The list of subject matter experts must contain names, credentials (if applicable), e-mail addresses, telephone numbers, and mailing addresses.

f. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

154.65(2) *Signature and address.* The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, telephone number and e-mail address of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

154.65(3) *Denial for format.* The board may deny a petition because it does not substantially conform to the required form.

154.65(4) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person or entity concerning the substance of the petition.

154.65(5) *Inquiries.* Inquiries concerning the status of a petition may be made to the Office of Medical Cannabidiol, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

154.65(6) *Additional information.* The board may request the petitioner to submit additional information concerning the petition. The board may also solicit comments from any person on the substance of the petition. Comments on the substance of the petition may be submitted to the board by any person.

154.65(7) *Presentation to the board.* The board may request or allow the petitioner to make an oral presentation of the contents of a petition at a board meeting following submission of the petition.

154.65(8) *Board response.* Within six months after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, either deny the petition and notify the petitioner of the board's action and the reasons therefore, or grant the petition and notify the petitioner that the board has recommended addition or removal of the medical condition, medical treatment, or debilitating disease to the board of medicine. A petitioner shall be deemed notified of the denial or recommendation on the date when the board mails the required notification to the petitioner.

154.65(9) *Denials.* Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

ITEM 6. Amend **641—Chapter 154**, implementation sentence, as follows:

These rules are intended to implement ~~2017 Iowa Acts, House File 524~~ Iowa Code chapter 124E.

ARC 3411C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 100.35, the State Fire Marshal in the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 205, "Fire Safety Requirements for Hospitals and Health Care Facilities," Iowa Administrative Code.

The State Fire Marshal in the Department of Public Safety is authorized to adopt administrative rules pursuant to Iowa Code section 100.35. The proposed amendments adopt the 2012 edition of NFPA 101: Life Safety Code, referred to as the "2012 Life Safety Code." The 2012 Life Safety Code was adopted by the Centers for Medicare and Medicaid Services and became effective July 5, 2016. The 2012 Life Safety Code reflects current safety standards and requirements for hospitals, nursing facilities, hospices, intermediate care facilities for persons with intellectual disabilities or mental illness, ambulatory care facilities, and religious nonmedical facilities. Adopting the 2012 Life Safety Code will promote safety for vulnerable persons.

Any person may comment on the amendments by e-mail at admrule@dps.state.ia.us or by mail to Rules Coordinator, Iowa Department of Public Safety, Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa, 50319. Comments must be received by 4:30 p.m. on November 14, 2017.

A public hearing on the amendments will be held on November 14, 2017, at 10 a.m. in the First Floor Public Conference Room (Room 125), Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

The fiscal impact for the adoption of the 2012 Life Safety Code is expected to be minimal, and less than $100,000.

Pursuant to the provisions of rule 661—10.222(17A), the State Fire Marshal does not have authority to waive requirements established by statute. Pursuant to the provisions of rules 661—200.2(100) and 661—10.222(17A), the State Fire Marshal has the authority to grant waivers from the rules.

It is expected that there will be no impact on jobs. The adoption of the 2012 Life Safety Code will help to better protect vulnerable populations and persons who work in the facilities listed above.

These amendments are intended to implement Iowa Code section 100.35.

The following amendments are proposed.

ITEM 1. Amend rule 661—205.1(100) as follows:

661—205.1(100) Definitions. The following definitions apply to rules 661—205.1(100) through 661—205.25(100).

"Ambulatory health care facility" means a facility or portion thereof used to provide services or treatment that provides, on an outpatient basis, treatment for one or more patients that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others; or provides, on an outpatient basis, anesthesia that renders the patient incapable of taking action for self-preservation under emergency conditions without the assistance of others.

"Existing" means that a facility (1) has been in continuous operation under its current classification of occupancy since before ~~September 11, 2003~~ July 5, 2016, and has not undergone renovation or remodeling, including an addition, on or after ~~September 11, 2003~~ July 5, 2016, or (2) received plan approval for initial construction or for its most recent renovation or remodeling project, including an addition, if any, from the building code bureau of the fire marshal division prior to ~~March 11, 2003~~ July 5, 2016.

"Hospice" means a facility licensed or seeking licensure pursuant to Iowa Code section 135J.2.

"Hospital" means a facility licensed or seeking licensure pursuant to Iowa Code chapter 135B.

"Intermediate care facility ~~for the mentally retarded~~" means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.2(3)*"c."*

"New" means that a facility (1) commenced continuous operation under its current classification of occupancy on or after ~~September 11, 2003~~ July 5, 2016, (2) has undergone renovation or remodeling, including an addition, on or after ~~September 11, 2003~~ July 5, 2016, or (3) received plan approval from the building code bureau of the fire marshal division for the initial construction of the facility or the most recent renovation of or addition to the facility on or after ~~March 11, 2003~~ July 5, 2016.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

"Nursing facility" means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.6, including a nursing facility for intermediate care or a nursing facility for skilled care.

ITEM 2. Amend rule 661—205.5(100) as follows:

661—205.5(100) Hospitals.

205.5(1) *New hospitals.* NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 18, is adopted by reference as the fire safety rules for new hospitals.

205.5(2) *Existing hospitals.* NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 19, is adopted by reference as the fire safety rules for existing hospitals~~, with the following amendments:~~.

~~Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.~~

~~Section 19.2.9 is not effective prior to March 13, 2006.~~

~~**205.5(3)** *Alcohol-based hand rub dispensers.* Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a hospital may install alcohol-based hand rub dispensers in its facility if:~~

~~*a.* Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;~~

~~*b.* The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;~~

~~*c.* The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and~~

~~*d.* The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.~~

ITEM 3. Amend rule 661—205.10(100) as follows:

661—205.10(100) Nursing facilities and hospices.

205.10(1) *New nursing facilities and hospices.* NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 18, is adopted by reference as the fire safety rules for new nursing facilities and hospices that provide inpatient care directly.

205.10(2) *Existing nursing facilities and hospices.* NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 19, is adopted by reference as the fire safety rules for existing nursing facilities and hospices that provide inpatient care directly~~, with the following amendments:~~.

~~Section 19.2.9 is not effective prior to March 13, 2006.~~

~~Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.~~

~~**205.10(3)** *Alcohol-based hand rub dispensers.* Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a hospice or nursing facility may place alcohol-based hand rub dispensers in its facility if:~~

~~*a.* Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;~~

~~*b.* The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;~~

~~*c.* The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and~~

~~*d.* The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.~~

~~**205.10(4)** *Smoke detectors in nursing facilities.* A nursing facility shall:~~

~~*a.* Install battery-operated smoke detectors in resident sleeping rooms and public areas by May 24, 2006.~~

~~*b.* Have a program for testing, maintenance, and battery replacement to ensure the reliability of the smoke detectors.~~

~~EXCEPTION: Battery-operated smoke detectors are not required in each resident sleeping room and public area if either the facility has a hard-wired AC smoke detection system in patient rooms and public areas that is installed, tested, and maintained in accordance with NFPA 72, National Fire Alarm Code, for hard-wired AC systems, or the facility has a sprinkler system throughout that is installed, tested, and maintained in accordance with NFPA 13, Automatic Sprinklers.~~

ITEM 4. Amend rule 661—205.15(100) as follows:

661—205.15(100) Intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disabilities and intermediate care facilities for persons with mental illness.

205.15(1) *New intermediate care facilities.* New intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disabilities and new intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 18.

b. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 32~~, with the following amendments:~~.

~~NOTE: Any requirement contained within Chapter 32 that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical." Any provision which is dependent upon an evacuation capability rating other than "impractical" shall be unavailable.~~

~~(1) Delete Section 32.2.1.2.1 and insert in lieu thereof the following new section:~~

~~32.2.1.2.1~~

~~Small facilities shall comply with the requirements of Section 32.2 as indicated for an evacuation capability of impractical.~~

~~Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.~~

~~(2) Delete Section 32.2.1.2.2 and insert in lieu thereof the following new section:~~

~~32.2.1.2.2~~

~~The evacuation capability shall be classified as impractical.~~

~~(3) Delete Exception No. 1 to Section 32.2.2.1.~~

~~(4) Delete Exceptions No. 2 and No. 3 to Section 32.2.2.4.~~

~~(5) Delete the Exception to Section 32.2.3.3.2.~~

~~(6) Delete Exception No. 1 to Section 32.2.3.5.1.~~

~~(7) Delete Exceptions No. 1, No. 3 and No. 4 to Section 32.2.3.5.2.~~

~~(8) Delete Exception No. 2 to Section 32.2.3.5.2 and insert in lieu thereof the following new Exception No. 2:~~

~~EXCEPTION NO. 2: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Facilities with more than eight residents shall be treated as two-family dwellings with regard to water supply.~~

~~(9) Delete Exception No. 5 to Section 32.2.3.5.2 and insert in lieu thereof the following new Exception No. 5:~~

~~EXCEPTION NO. 5: In facilities up to and including four stories in height, systems in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered.~~

~~(10) Delete Section 32.2.3.5.3.~~

~~(11) Delete Section 32.2.3.5.4 and insert in lieu thereof the following new section:~~

~~32.2.3.5.4~~

~~Automatic sprinkler systems shall be supervised in accordance with Section 9.7.~~

~~(12) Delete Exception No. 1 to Section 32.2.3.6.1.~~

~~(13) Delete Section 32.3.1.2.1.~~

~~(14) Delete Section 32.3.1.2.2 and insert in lieu thereof the following new section:~~

~~32.3.1.2.2~~

~~Large facilities shall meet the requirements for limited care facilities in Chapter 18.~~

~~Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.~~

~~(15) Delete Section 32.3.1.2.3.~~

~~(16) Delete the Exception to Section 32.3.1.3.3, paragraph (a).~~

~~(17) Delete Section 32.4.1.4 and insert in lieu thereof the following new section:~~

~~32.4.1.4 Minimum Construction Requirements.~~

~~In addition to the requirements of Chapter 30, apartment buildings housing residential board and care facilities shall meet the construction requirements of 18.1.6. In applying the construction requirements, the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.~~

~~EXCEPTION: If the new board and care occupancy is created in an existing apartment building, the construction requirements of 19.1.6 shall apply.~~

~~(18) Delete Exception No. 2 to Section 32.7.3 and insert in lieu thereof the following new Exception No. 2:~~

~~EXCEPTION NO. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 18.7 shall apply in such instances.~~

205.15(2) *Existing intermediate care facilities.* Existing intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disabilities and existing intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

a. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 19.

b. NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 33~~, with the following amendments:~~.

NOTE: Any requirement contained in Chapter 33 that is determined on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical." Any provision which depends upon an evacuation rating of "prompt" or "slow" shall be unavailable.

~~(1) Delete Section 33.1.7.~~

~~(2) Delete Section 33.2.1.2.1 and insert in lieu thereof the following new section:~~

~~33.2.1.2.1~~

~~Small facilities shall comply with the requirements of Section 33.2.~~

~~Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.~~

~~(3) Delete Section 33.2.1.2.2 and insert in lieu thereof the following new section:~~

~~33.2.1.2.2~~

~~The evacuation capability shall be classified as impractical.~~

~~(4) Delete Section 33.2.1.3 and insert in lieu thereof the following new section:~~

~~33.2.1.3 Minimum Construction Requirements.~~

~~Buildings shall be of any construction type in accordance with 8.2.1 other than Type II(000), Type III(200), or Type V(000) construction.~~

~~EXCEPTION: Buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5 shall be permitted to be of any type of construction.~~

~~(5) Delete Exception No. 1 to Section 33.2.2.1.~~

~~(6) Delete Section 33.2.2.2.2 and insert in lieu thereof the following new section:~~

~~33.2.2.2.2~~

~~The primary means of escape for each sleeping room shall not be exposed to living areas and kitchens.~~

~~EXCEPTION: Buildings equipped with quick-response or residential sprinklers throughout. Standard response sprinklers shall be permitted for use in hazardous areas in accordance with 33.2.3.2.~~

~~(7) Delete Exception No. 2, Exception No. 3, and Exception No. 4 to Section 33.2.2.4.~~

~~(8) Delete the Exception to Section 33.2.3.3.~~

~~(9) Delete Section 33.2.3.5.2 and insert in lieu thereof the following new section:~~

~~33.2.3.5.2*~~

~~Where an automatic sprinkler system is installed, for either total or partial building coverage, the system shall be in accordance with Section 9.7 and shall activate the fire alarm system in accordance with 33.2.3.4.1. The adequacy of the water supply shall be documented to the authority having jurisdiction.~~

~~EXCEPTION NO. 1: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft^2 (5.1 m^2), provided that such spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.~~

~~EXCEPTION NO. 2: In facilities up to and including four stories in height, systems installed in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft^2 (5.1 m^2), provided that such spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.~~

~~EXCEPTION NO. 3: Initiation of the fire alarm system shall not be required for existing installations in accordance with 33.2.3.5.5.~~

~~(10) Delete Section 33.2.3.5.3 and insert in lieu thereof the following new section:~~

~~33.2.3.5.3~~

~~All facilities shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5.2.~~

~~(11) Delete Exception No. 1 and Exception No. 4 to Section 33.2.3.6.1.~~

~~(12) Delete Section 33.3.1.1 and insert in lieu thereof the following new section:~~

~~33.3.1.1 Scope.~~

~~Section 33.3 applies to residential board and care occupancies providing sleeping accommodations for more than 16 residents. Facilities having sleeping accommodations for not more than 16 residents shall be evaluated in accordance with Section 33.2.~~

~~(13) Delete Section 33.3.1.2 and insert in lieu thereof the following new section:~~

~~33.3.1.2 Requirements.~~

~~Large facilities shall meet the requirements for limited care facilities in Chapter 19.~~

~~Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.~~

~~(14) Delete the Exception to Section 33.3.1.3.3, paragraph (a).~~

~~(15) Delete Exception No. 2 to Section 33.3.3.6.1.~~

~~(16) Delete Exception No. 2 to Section 33.3.3.6.3.~~

~~(17) Delete Section 33.4.1.3 and insert in lieu thereof the following new section:~~

~~33.4.1.3 Requirements.~~

~~33.4.1.3.1~~

~~Apartment buildings housing board and care facilities shall comply with the requirements of Section 33.4.~~

~~Exception*: Facilities where the authority having jurisdiction has determined that equivalent safety for housing a residential board and care facility is provided in accordance with Section 1.5.~~

~~33.4.1.3.2~~

~~All facilities shall meet the requirements of Chapter 31 and the additional requirements of Section 33.4.~~

~~(18) Delete Section 33.4.1.4 and insert in lieu thereof the following new section:~~

~~33.4.1.4 Minimum Construction Requirements.~~

~~In addition to the requirements of Chapter 31, apartment buildings housing residential board and care facilities shall meet the construction requirements of 19.1.6. In applying the construction requirements, the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.~~

~~(19) Delete Exception No. 2 to Section 33.7.3 and insert in lieu thereof the following new exception:~~

~~EXCEPTION NO. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 19.7 shall apply in such instances.~~

~~**205.15(3)** *Alcohol-based hand rub dispensers.* Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a facility may install alcohol-based hand rub dispensers if:~~

~~*a.* Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;~~

~~*b.* The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;~~

~~*c.* The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and~~

~~*d.* The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.~~

ITEM 5. Amend rule 661—205.20(100) as follows:

661—205.20(100) Ambulatory health care facilities.

205.20(1) *New ambulatory health care facilities.* NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 20, is adopted by reference as the fire safety rules for new ambulatory health care facilities.

205.20(2) *Existing ambulatory health care facilities.* NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 21, is adopted by reference as the fire safety rules for existing ambulatory health care facilities~~, with the following amendments:~~.

~~Section 21.2.9.1 is not effective prior to March 13, 2006.~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~**205.20(3)** *Alcohol-based hand rub dispensers.* Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, an ambulatory health care facility may place alcohol-based hand rub dispensers in its facility if:~~

~~*a.* Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;~~

~~*b.* The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;~~

~~*c.* The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and~~

~~*d.* The dispensers are installed in accordance with the following provisions:~~

~~(1) Where dispensers are installed in a corridor, the corridor shall have a minimum width of 6 ft (1.8 m);~~

~~(2) The maximum individual dispenser fluid capacity shall be:~~

~~1. 0.3 gallons (1.2 liters) for dispensers in rooms, corridors, and areas open to corridors;~~

~~2. 0.5 gallons (2.0 liters) for dispensers in suites of rooms;~~

~~(3) The dispensers shall have a minimum horizontal spacing of 4 ft (1.2 m) from each other;~~

~~(4) Not more than an aggregate 10 gallons (37.8 liters) of alcohol-based hand rub solution shall be in use in a single smoke compartment outside of a storage cabinet;~~

~~(5) Storage of quantities greater than 5 gallons (18.9 liters) in a single smoke compartment shall meet the requirements of NFPA 30, Flammable and Combustible Liquids Code;~~

~~(6) The dispensers shall not be installed over or directly adjacent to an ignition source; and~~

~~(7) In locations with carpeted floor coverings, dispensers installed directly over carpeted surfaces shall be permitted only in sprinklered smoke compartments.~~

ITEM 6. Amend rule 661—205.25(100) as follows:

661—205.25(100) Religious nonmedical health care institutions.

205.25(1) *New religious nonmedical health care institutions.* NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 18, is adopted by reference as the fire safety rules for new religious nonmedical health care institutions.

205.25(2) *Existing religious nonmedical health care institutions.* NFPA 101, Life Safety Code, ~~2000~~ 2012 edition, Chapter 19, is adopted by reference as the fire safety rules for existing religious nonmedical health care institutions~~, with the following amendments:~~.

~~Section 19.2.9 is not effective prior to March 13, 2006.~~

~~Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.~~

~~**205.25(3)** *Alcohol-based hand rub dispensers.* Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a religious nonmedical health care institution may place alcohol-based hand rub dispensers in its facility if:~~

~~*a.* Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;~~

~~*b.* The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;~~

~~*c.* The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and~~

~~*d.* The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.~~

REVENUE DEPARTMENT

Advisory Notice

Pursuant to the authority of Iowa Code sections 421.7 and 421.14, the Director of the Department of Revenue hereby gives Notice that the interest rate upon all unpaid taxes that are due as of January 1,

2018, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes that are due and unpaid as of, or after, January 1, 2018. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2018. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2018.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 43, "Assessments and Refunds," Iowa Administrative Code.

The proposed amendment is necessary to implement changes to the administration of certain income tax checkoffs that are contained in 2016 Iowa Acts, House File 2459, and 2017 Iowa Acts, House File 242. 2016 Iowa Acts, House File 2459, updated the automatic repeal dates for certain checkoffs allowed on the individual income tax return to indicate that the checkoffs which currently appear on the form will not be subject to automatic repeal until 2019. 2017 Iowa Acts, House File 242, changed the tax years in which designations to the Iowa election campaign fund are allowable to reflect the repeal of the election campaign fund. The proposed amendment also rescinds several subrules that implemented checkoffs that are no longer in effect, and the remaining subrules are renumbered to account for this change.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 27, 2017, to Ben Clough, Legal Services, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Alternatively, requests may be e-mailed to ben.clough@iowa.gov. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on the proposed amendment on or before November 14, 2017. Such written comments should be e-mailed to Ben Clough at ben.clough@iowa.gov or mailed to Ben Clough, Legal Services, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons wishing to convey their views orally should contact Ben Clough, Legal Services, Department of Revenue, at (515)725-2176 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 14, 2017.

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

After analysis and review of this rule making, the Department finds that the proposed amendment is not likely to have a significant impact on jobs.

This amendment is intended to implement Iowa Code section 422.12E as amended by 2016 Iowa Acts, House File 2459, and Iowa Code sections 68A.601 and 422.12J as amended by 2017 Iowa Acts, House File 242.

The following amendment is proposed.

REVENUE DEPARTMENT[701](cont'd)

Amend rule 701—43.4(68A,422,456A) as follows:

701—43.4(68A,422,456A) Optional designations of funds by taxpayer.

43.4(1) *Iowa fish and game protection fund.* The taxpayer may designate an amount to be donated to the Iowa fish and game protection fund. The donation must be $1 or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, and other state agencies~~, and the Iowa election campaign checkoff~~ have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund claimed on the original return or the payment remitted with the return is adjusted by the department, the amount of the designation to the fund may be adjusted accordingly.

EXAMPLE A: Overpayment as shown on the original return is $50. $25 is designated to the fund. Due to an error on the return, only $20 is an overpayment. The taxpayer would not receive any refund and all $20 of the overpayment would be credited to the fund.

EXAMPLE B: Overpayment as shown on the original return is $50. $25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes $20. No money would be credited to the fund in this instance.

EXAMPLE C: Amount shown due on return is $30. $20 is designated to the fund. A $50 payment was made with the return. Due to an error on the return, the taxpayer owes $40. Only $10 would be credited to the fund in this situation.

43.4(2) *Iowa election campaign fund.* ~~A~~ For tax years beginning before January 1, 2017, a person with a tax liability of $1.50 or more on the Iowa individual income tax return may direct or designate that a $1.50 contribution be made to a specific political party or that the contribution be made to the Iowa election campaign fund to be shared by all political parties as clarified further in this paragraph. In the case of married taxpayers filing a joint Iowa individual return with a tax liability of $3.00 or more, each spouse may direct or designate that a $1.50 contribution be made to a specific political party or that a $1.50 contribution be made to the Iowa election campaign fund as a contribution to be shared by all political parties. The designation or direction of a contribution to a political party or to the election campaign fund is irrevocable and cannot be changed on an amended return. The designation to a political party or the election campaign fund is allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts and other state agencies are satisfied. Note that for purposes of this subrule, "political party" means a party as defined in Iowa Code section 43.2.

In a tax year beginning before January 1, 2017, when there are two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on individual income tax returns for that tax year are to be divided equally between the two parties. In a tax year beginning before January 1, 2017, where there are more than two political parties for purposes of the Iowa election campaign fund, all undesignated contributions to the fund made on income tax returns for that tax year are to be divided among the political parties on the basis of the number of registered voters for a particular political party on December 31 of that tax year to the total number of registered voters on December 31 of that tax year that have declared an affiliation with any of the recognized political parties.

Thus, if there were 400,000 registered voters for "x" political party, 500,000 registered voters for "y" political party, and 100,000 registered voters for "z" political party on December 31 of a tax year beginning before January 1, 2017, where there were three recognized political parties, 40 percent of the undesignated political contributions on ~~1997~~ that year's returns would be paid to "x" political party since 40 percent of the registered voters with an affiliation to a political party on December 31 had an affiliation with party "x" on that day.

~~**43.4(3)** *Domestic abuse services checkoff.* Rescinded IAB 11/30/11, effective 1/4/12.~~

REVENUE DEPARTMENT[701](cont'd)

~~43.4(4)~~ 43.4(3) *State fair foundation fund checkoff.* ~~For tax years beginning on or after January 1, 1993, a~~ A taxpayer filing a state individual income tax return can designate a checkoff of $1 or more to the foundation fund of the Iowa state fair foundation. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the foundation fund checkoff, the amount credited to the foundation fund checkoff will be reduced accordingly. The designation to the foundation fund checkoff is irrevocable.

A designation to the foundation fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, ~~the Iowa election campaign checkoff,~~ and the Iowa fish and game protection fund checkoff are satisfied.

On or before January 31 of the year following the year in which returns with the foundation fund checkoff are due, the department of revenue shall transfer the total amount designated to the foundation fund.

~~43.4(5)~~ 43.4(4) *Limitation of checkoffs on the individual income tax return.* ~~For tax years beginning on or after January 1, 1995, but before January 1, 2004, no more than three checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return. When the same three checkoffs have been provided on the income tax return for three consecutive years, the checkoff for which the least amount has been contributed in the aggregate for the first two years and through March 15 of the third tax year will be repealed.~~

~~For example, the 1999 Iowa individual income tax return due in 2000 includes checkoffs A, B and C which also were shown on the Iowa returns for 1997, 1998 and 1999. Through March 15, 2000, $90,000 was contributed on the 1997, 1998 and 1999 returns for checkoff A, $60,000 was contributed for checkoff B and $120,000 for checkoff C. Since the least amount contributed in the aggregate was for checkoff B, that checkoff is repealed and will not appear on the 2000 Iowa income tax return to be filed in 2001.~~

For tax years beginning on or after January 1, ~~2004~~ 2019, no more than four checkoffs are allowed on the individual income tax return. The election campaign fund checkoff is not considered for purposes of limiting the number of checkoffs on the income tax return.

~~When~~ For tax years beginning on or after January 1, 2017, when the same four checkoffs have been provided on the income tax return for two consecutive years, the two checkoffs for which the least amount has been contributed in the aggregate for the first year and through March 15 of the second tax year will be repealed.

If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax return form, the earliest enacted checkoffs for which there is space will be included on the income tax return form, and all other checkoffs enacted during that session of the general assembly are repealed. If the same session of the general assembly enacts more checkoffs on the same day than there is space for inclusion on the individual income tax form, the director of revenue shall determine which checkoffs shall be included on the individual income tax form.

~~43.4(6)~~ ~~*Keep Iowa beautiful fund checkoff.* For tax years beginning on or after January 1, 2001, but before January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the keep Iowa beautiful fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount credited to the keep Iowa beautiful fund will be reduced accordingly. Once the taxpayer has designated a contribution to the keep Iowa beautiful fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend the designation.~~

~~A designation to the keep Iowa beautiful checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other~~

~~state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.~~

~~On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the keep Iowa beautiful fund are due, the department of revenue shall transfer the total amount designated to the keep Iowa beautiful fund.~~

43.4(7) ~~*Volunteer fire fighter preparedness fund checkoff.* For tax years beginning on or after January 1, 2004, but before January 1, 2006, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the volunteer fire fighter preparedness fund, the amount credited to the volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.~~

~~A designation to the volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the keep Iowa beautiful fund checkoff are satisfied.~~

~~On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the volunteer fire fighter preparedness fund are due, the department of revenue is to certify to the state treasurer the amount designated to the volunteer fire fighter preparedness fund on those returns.~~

43.4(8) ~~*Veterans trust fund checkoff.* For tax years beginning on or after January 1, 2006, but before January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the veterans trust fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the veterans trust fund, the amount credited to the veterans trust fund will be reduced accordingly. Once the taxpayer has designated a contribution to the veterans trust fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.~~

~~A designation to the veterans trust fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff and the state fair foundation checkoff are satisfied.~~

~~On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the veterans trust fund are due, the department of revenue shall transfer the total amount designated to the veterans trust fund.~~

43.4(9) ~~*Joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund checkoff.* For tax years beginning on or after January 1, 2006, but before January 1, 2008, a taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund, the amount credited to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.~~

~~A designation to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department~~

~~of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, the state fair foundation checkoff and the veterans trust fund checkoff are satisfied.~~

~~On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the joint keep Iowa beautiful fund and volunteer fire fighter preparedness fund are due, the department of revenue shall transfer one-half of the total amount designated to the keep Iowa beautiful fund, and the remaining one-half will be transferred to the volunteer fire fighter preparedness fund.~~

~~43.4(10)~~ 43.4(5) *Child abuse prevention program fund checkoff.* ~~For tax years beginning on or after January 1, 2008, a~~ A taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the child abuse prevention program fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the child abuse prevention program fund, the amount credited to the child abuse prevention program fund will be reduced accordingly. Once the taxpayer has designated a contribution to the child abuse prevention program fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the child abuse prevention program fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, ~~the Iowa election campaign checkoff,~~ the Iowa fish and game protection fund checkoff and the state fair foundation fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the child abuse prevention program fund are due, the department of revenue shall transfer the total amount designated to the child abuse prevention program fund.

~~43.4(11)~~ 43.4(6) *Joint veterans trust fund and volunteer fire fighter preparedness fund checkoff.* ~~For tax years beginning on or after January 1, 2008, a~~ A taxpayer filing an individual income tax return can designate a checkoff of $1 or more to the joint veterans trust fund and volunteer fire fighter preparedness fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the joint veterans trust fund and volunteer fire fighter preparedness fund, the amount credited to the joint veterans trust fund and volunteer fire fighter preparedness fund will be reduced accordingly. Once the taxpayer has designated a contribution to the joint veterans trust fund and volunteer fire fighter preparedness fund on an individual income tax return filed with the department of revenue, the taxpayer cannot amend that designation.

A designation to the joint veterans trust fund and volunteer fire fighter preparedness fund checkoff may be allowed only after obligations of the taxpayer to the department of revenue, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, ~~the Iowa election campaign checkoff,~~ the Iowa fish and game protection fund checkoff, the state fair foundation fund checkoff and the child abuse prevention program fund checkoff are satisfied.

On or before January 31 of the year following the year in which Iowa income tax returns with contributions to the joint veterans trust fund and volunteer fire fighter preparedness fund are due, the department of revenue shall transfer one-half of the total amount designated to the veterans trust fund, and the remaining one-half will be transferred to the volunteer fire fighter preparedness fund.

This rule is intended to implement Iowa Code sections 422.12D, 422.12E, 422.12H, 422.12J, 422.12K and 422.12L, 2016 Iowa Acts, House File 2459, and ~~2014 Iowa Acts, House File 2473~~ 2017 Iowa Acts, House File 242.

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 Ronald L. Hansen, and Auditor of State Mary Mosiman has established today the following rates of interest for public obligations and special assessments. The usury rate for October is 4.25%.

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 10, 2017, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .20%
More than 397 days	Minimum .45%

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:

USURY(cont'd)

November 1, 2016 — November 30, 2016	3.75%
December 1, 2016 — December 31, 2016	3.75%
January 1, 2017 — January 31, 2017	4.25%
February 1, 2017 — February 28, 2017	4.50%
March 1, 2017 — March 31, 2017	4.50%
April 1, 2017 — April 30, 2017	4.50%
May 1, 2017 — May 31, 2017	4.50%
June 1, 2017 — June 30, 2017	4.25%
July 1, 2017 — July 31, 2017	4.25%
August 1, 2017 — August 31, 2017	4.25%
September 1, 2017 — September 30, 2017	4.25%
October 1, 2017 — October 31, 2017	4.25%
November 1, 2017 — November 30, 2017	4.25%

ARC 3417C

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 474.5, and 476.2, the Utilities Board (Board) gives notice that on October 9, 2017, the Board issued an order in Docket No. RMU-2016-0030, In re: Review of Forms Rules [199 IAC Chapter 2], "Order Commencing Rule Making," proposing to update and streamline Chapter 2 of the Board's rules. The order approving this Notice of Intended Action can be found on the Board's Electronic Filing System (EFS) Web site, efs.iowa.gov, in Docket No. RMU-2016-0030.

To develop the proposed amendments, the Board sought input from stakeholders. Stakeholder comments were filed by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; MidAmerican Energy Company; and the Iowa Communications Alliance.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before November 14, 2017. The statement should be filed electronically through the Board's EFS. Instructions for making an electronic filing can be found on the EFS Web site at efs.iowa.gov. Filings shall comply with the format requirements in 199 IAC 2.2(2) and shall clearly state the author's name and address and make specific reference to Docket No. RMU-2016-0030. Paper comments may be filed only with the approval of the Board.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion after reviewing the comments may determine an oral presentation should be scheduled. Requests for oral presentation should be filed in EFS by November 14, 2017, in Docket No. RMU-2016-0030.

After analysis and review of this rule making, the Board tentatively concludes that the proposed amendments, if adopted, will not have a detrimental effect on employment in Iowa.

These amendments are intended to implement Iowa Code sections 476.2, 474.5, and 546.7.

The following amendments are proposed.

UTILITIES DIVISION[199](cont'd)

ITEM 1. Amend rule 199—2.1(17A,474) as follows:

199—2.1(17A,474) ~~Forms—general~~ Documents filed with the utilities board. Documents shall be filed with the board in compliance with the provisions of 199—Chapter 14. Documents filed with the board shall be double spaced, except that long quotations may be single spaced and indented. All documents, except exhibits, shall be formatted so as not to exceed 8½ inches by 11 inches in size with inside margins not less than 1 inch in width. Whenever practical, all exhibits of a documentary character should conform to the foregoing requirements of size and margin. Documents should contain the name and address of the filing party and, if the filing party is represented by an attorney, the name and office address of such attorney. The board may reject a document which does not substantially conform with the foregoing requirements, with a statement of reasons for such rejection. The board may, if it deems appropriate, prescribe different or additional requirements for documents to be filed in a particular proceeding.

~~**2.1(1)** *Purpose and scope.* These rules shall govern all forms prescribed by the Iowa utilities board (hereinafter referred to as board) for use in all proceedings before the board, provided however, that the board may prescribe additional or different forms to be utilized in a specific case as necessary.~~

~~**2.1(2)** *Forms compliance.* All papers filed with the board shall substantially conform with the requirements set forth below. The board, without prejudice to any party to a proceeding, may reject a paper which does not substantially conform with the requirements of this chapter, giving a statement of reasons for the rejection.~~

~~**2.1(3)** *General requirements.* Documents filed with the board shall be printed, typewritten, or otherwise mechanically reproduced and double spaced, except that long quotations may be single spaced and indented. All papers, except exhibits, shall be cut or folded so as not to exceed 8½ inches by 11 inches in size with inside margins not less than 1 inch in width. Whenever practical, all exhibits of a documentary character should conform to the foregoing requirements of size and margin. Papers should contain the name and address of the party filing the paper and, if represented by an attorney, the name and office address of such attorney. Except as otherwise provided in these rules, the original of all papers and exhibits should be filed with the board. The person filing the paper or exhibit shall also furnish additional copies for each respondent or party to be served by the board and such other copies as the board may request.~~

~~This rule is intended to implement Iowa Code section 474.5.~~

ITEM 2. Rescind rule 199—2.2(17A,474) and adopt the following **new** rule in lieu thereof:

199—2.2(17A,474) Forms. The board has made available on its Web site, iub.iowa.gov, sample forms of documents routinely filed with the board for various purposes. Except to the extent expressly provided by statute or board rule, the use of any such form is not mandatory, and the forms are intended only as examples. To the extent that any statute or board rule prescribes the content of a document, that provision shall govern notwithstanding any sample form. Subject to any such content requirement established by statute or rule, the board may, if it deems appropriate, prescribe specific content requirements for documents to be filed in a particular proceeding.

ITEM 3. Rescind and reserve rule **199—2.4(17A,474)**.

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UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 474.5, and 476.2, the Utilities Board (Board) gives notice that on October 9, 2017, the Board issued an order in Docket No. RMU-2016-0032, In re: Review of Declaratory Orders Rules [199 IAC Chapter 4], "Order Commencing Rule Making," proposing to update and streamline Chapter 4 of the Board's rules. The order approving this Notice of Intended Action can be found on the Board's Electronic Filing System (EFS) Web site, http://efs.iowa.gov, in Docket No. RMU-2016-0032.

To develop the proposed amendments, the Board sought early input from stakeholders. Stakeholder comments were filed by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; MidAmerican Energy Company; and the Iowa Communications Alliance.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before November 14, 2017. The statement should be filed electronically through the Board's EFS. Instructions for making an electronic filing can be found on the EFS Web site at efs.iowa.gov. Filings shall comply with the format requirements in 199 IAC 2.2(2) and shall clearly state the author's name and address and make specific reference to Docket No. RMU-2016-0032. Paper comments may be filed only with the approval of the Board.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion after reviewing the comments may determine an oral presentation should be scheduled. Requests for oral presentation should be filed in EFS by November 14, 2017, in Docket No. RMU-2016-0032.

After analysis and review of this rule making, the Board tentatively concludes that the proposed amendments, if adopted, will not have a detrimental effect on employment in Iowa.

These amendments are intended to implement Iowa Code sections 17A.9, 476.1, and 546.7.

The following amendments are proposed.

ITEM 1. Amend rule 199—4.1(17A) as follows:

199—4.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the ~~utilities~~ board~~, at 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069~~. Except as otherwise expressly provided in this chapter, the rules of procedure applicable to a petition for a declaratory order shall be those set forth in 199—Chapter 7. Additional requirements applicable to a petition for a declaratory order are established by Iowa Code section 17A.9.

4.1(1) The petitioner shall file a petition for a declaratory order with the board in the manner provided by 199—Chapter 14. A petition is deemed filed when it is received by ~~that office~~ the board. T~~he utilities board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:~~

UTILITIES DIVISION[199](cont'd)

~~STATE OF IOWA~~
~~BEFORE THE IOWA STATE UTILITIES BOARD~~

~~IN RE: THE PETITION OF~~ ~~(insert petitioner's name)~~ ~~FOR A DECLARATORY ORDER ON~~ ~~(insert rule number, statute, etc., for which interpretation is sought).~~	}	~~DOCKET NO.___~~ ~~(completed by board)~~ ~~PETITION FOR~~ ~~DECLARATORY ORDER~~

~~COMES NOW (insert name of petitioner) and requests a declaratory order on (state rule number, statute, order, decision, or other written statement of law or policy of which an interpretation is sought), and in support petitioner states:~~

4.1(2) ~~(~~The petition shall ~~then~~ be dated and signed by, and shall include appropriate contact information for, the petitioner and shall set forth ~~in separately numbered statements~~ the following information (a sample form of a petition for a declaratory order is available at the board's Web site, iub.iowa.gov):~~)~~

a. The question or questions that petitioner wishes the board to determine, stated clearly and concisely;

~~1.~~ *b.* A clear and concise statement of all relevant facts on which the ruling is requested~~.~~, including the petitioner's interest in the issue;

~~2.~~ *c.* A citation to and the relevant language of the ~~specific~~ statutes, rules, policies, decisions, or orders~~, the~~ that are applicable or whose applicability ~~of which has been questioned,~~ is in question and any other relevant law~~.~~;

~~3. The questions petitioner wants answered, stated clearly and concisely.~~

~~4.~~ *d.* ~~The answers to the questions desired by the petitioner~~ The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers~~.~~, including a statement of the legal support for the petitioner's position;

~~5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.~~

~~6.~~ *e.* A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity~~.~~;

~~7.~~ *f.* The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition~~.~~; and

~~8.~~ *g.* ~~Any request by~~ A statement whether the petitioner ~~for~~ requests a meeting as provided for by rule 199—4.7(17A).

~~[The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.]~~

~~WHEREFORE, (insert petitioner's name) prays that the board issue a declaratory order on (insert proposed subject of the requested order).~~

~~Respectfully submitted,~~

~~(Signature of petitioner or representative)~~
~~(Typed or printed name of signer)~~
~~(Address and telephone number)~~

ITEM 2. Rescind and reserve rule **199—4.2(17A)**.

ITEM 3. Amend rule 199—4.3(17A) as follows:

199—4.3(17A) Intervention. A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to rule 199—7.13(17A,476) within 20 days of the filing of a petition for a declaratory order. The board may at its discretion

entertain a late-filed petition for intervention. A petition for intervention in a proceeding on a petition for declaratory order shall be dated and signed by, and shall include appropriate contact information for, the petitioner and shall set forth, in addition to the information required by rule 199—7.13(17A,476), the following:

a. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;

b. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity;

c. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition; and

d. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

~~**4.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 14 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.~~

~~**4.3(2)** Any person who filed a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the utilities board.~~

~~**4.3(3)** A petition for intervention shall be filed at 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069. Such a petition shall be deemed filed when it is received by that office. The utilities board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:~~

~~STATE OF IOWA~~
~~BEFORE THE IOWA STATE UTILITIES BOARD~~

~~IN RE: THE PETITION OF~~ ~~(insert petitioner's name)~~ ~~FOR A DECLARATORY ORDER ON~~ ~~(insert rule number, statute, etc., for which interpretation is sought).~~	}	~~DOCKET NO.___~~ ~~(insert docket number)~~ ~~PETITION FOR INTERVENTION~~

~~COMES NOW (insert name of petitioner) and requests intervention in this matter and in support petitioner states:~~

~~(The petition shall then set forth in separately numbered statements:)~~

~~1. Facts supporting the intervenor's standing and qualifications for intervention.~~

~~2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.~~

~~3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.~~

~~4. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.~~

~~5. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition.~~

~~6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.~~

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

~~WHEREFORE, (insert intervenor's name) prays that the board grant it intervention and issue a declaratory order on (insert proposed subject of the requested order).~~

UTILITIES DIVISION[199](cont'd)

~~Respectfully submitted,~~

~~_____~~

~~(Signature of intervenor or representative)~~
~~(Typed or printed name of signer)~~
~~(Address and telephone number)~~

ITEM 4. Amend rule 199—4.4(17A) as follows:

199—4.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of ~~the~~ that party's position ~~urged~~. The ~~utilities~~ board may ~~request a brief from~~ require that the petitioner~~,~~ file a brief and may request that any intervenor~~,~~ or any other person submit a brief concerning the questions raised.

ITEM 5. Rescind and reserve rule **199—4.5(17A)**.

ITEM 6. Amend rule 199—4.6(17A) as follows:

199—4.6(17A) Service and filing of petitions and other ~~papers~~ documents.

4.6(1) ~~*When service required.* Except where~~ In a proceeding on a request for a declaratory order, except as otherwise provided by law, ~~every~~ a party shall file with the board a petition for declaratory order, petition for intervention, brief, or any other ~~paper filed in a proceeding for a declaratory order~~ document in the manner provided in rule 199—14.16(17A,476) and shall ~~be served~~ at the same time serve it, in compliance with the requirements of 199—subrule 7.4(6) and rule 199—14.16(17A,476), upon each of the parties of record to the proceeding and on any ~~persons~~ person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law~~, simultaneously with their filing~~. ~~The party filing a document is responsible for service on all parties and other required persons.~~ The party filing a petition shall also file with the board a list of all persons served.

4.6(2) ~~*Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers filed in a proceeding for a declaratory order shall be filed with the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the utilities board.~~

4.6(3) ~~*Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 199—subrule 7.6(1).~~

ITEM 7. Amend rule 199—4.7(17A) as follows:

199—4.7(17A) ~~Agency consideration~~ Informal meeting. Upon request by petitioner, the ~~utilities~~ board ~~must~~ will schedule ~~a brief and~~ an informal meeting between the ~~original~~ petitioner, all intervenors, and the ~~utilities~~ board, a member of the ~~utilities~~ board, or a designated member of the staff of the ~~utilities~~ board to discuss the questions ~~raised~~ identified in the petition. The ~~utilities~~ board may solicit comments from any person on the questions raised. ~~Also, comments on the questions raised may be submitted to the utilities board by any person.~~

ITEM 8. Rescind and reserve rule **199—4.8(17A)**.

ITEM 9. Amend rule 199—4.9(17A) as follows:

199—4.9(17A) Refusal to issue order.

4.9(1) *Grounds.* The ~~utilities~~ board shall not issue a declaratory order ~~where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and~~ that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding. The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

1. ~~The question does not substantially comply with the required form~~ The petitioner requests the board to determine whether a statute is unconstitutional on its face.

2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the ~~utilities~~ board to issue an order.

3. The ~~utilities~~ board does not have jurisdiction over the questions presented in the petition.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

~~10. The petitioner requests the utilities board to determine whether a statute is unconstitutional on its face.~~

4.9(2) *Content and effect of refusal.* ~~A~~ The board's refusal to issue a declaratory order ~~must indicate~~ will include a statement of the specific grounds for the refusal and constitutes final ~~utilities~~ board action on the petition.

~~**4.9(3)**~~ Refusal to issue a declaratory order pursuant to this ~~provision~~ rule does not preclude the filing of a new petition that seeks to ~~eliminate~~ remedy the grounds for the refusal to issue an order.

ITEM 10. Rescind and reserve rule **199—4.10(17A)**.

ITEM 11. Rescind and reserve rule **199—4.11(17A)**.

ITEM 12. Amend rule 199—4.12(17A) as follows:

199—4.12(17A) Effect of a declaratory order. ~~A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is~~ The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order shall be binding on the ~~utilities~~ board, on the petitioner, ~~and~~ on any intervenors who consent to be bound, and ~~is applicable only in circumstances where~~ on any persons who would be necessary parties, who are served pursuant to subrule 4.6(1), and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the ~~utilities~~ board. ~~The issuance of a declaratory order constitutes final agency action on the petition.~~

A declaratory order shall be effective upon the date of issuance.

ITEM 13. Amend **199—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement ~~1998 Iowa Acts, chapter 1202, section 13, and~~ Iowa Code ~~section~~ sections 17A.9 and 476.1.

ARC 3416C

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 474.5, 476.2, and 476A.12, the Utilities Board (Board) gives notice that on October 9, 2017, the Board issued an order in Docket No. RMU-2016-0026, In re: Review of Location and Construction of Electric Power Generating Facilities Rules [199 IAC Chapter 24], "Order Commencing Rule Making," proposing to amend the Board's Chapter 24.

The Board is undertaking a comprehensive review of its rules and as part of that review is attempting to make the rules more readable, streamline reporting requirements in the rules, ensure the rules are current, and transition away from providing forms within the rules. The intent of these changes is to promote ease of access for those interacting with the Board.

These specific amendments would update and streamline the filing rules related to generating certificate dockets by updating statutory references, accommodating electronic filing, and removing outdated language. The amendments would also add notice requirements relating to any potential request for the power of eminent domain. The amendments would also clarify existing language and make other editorial changes.

To develop the proposed amendments, the Board sought early input from stakeholders. Stakeholder comments were filed by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; MidAmerican Energy Company (MidAmerican); and Interstate Power and Light Company (IPL). None of the parties objected to any of the proposed changes. IPL suggested further amendments related to wind energy and the repowering of existing wind turbines which MidAmerican supported. OCA did not object to IPL's suggestions, but it noted that IPL did not propose specific language and reserved the right to comment if the Board proposed additional amendments in response. After consideration of these issues, the Board believes the current rules are sufficient and is not proposing additional amendments in response to IPL's comments.

The order approving this Notice of Intended Action can be found on the Board's Electronic Filing System (EFS) Web site, efs.iowa.gov, in Docket No. RMU-2016-0026.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before November 14, 2017. The statement should be filed electronically through the Board's EFS. Instructions for making an electronic filing can be found on the EFS Web site at efs.iowa.gov. Filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to Docket No. RMU-2016-0026. Paper comments may only be filed with approval of the Board.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested, or the Board on its own motion after reviewing the comments may determine an oral presentation should be scheduled. Requests for an oral presentation should be filed in EFS by November 14, 2017, in Docket No. RMU-2016-0026.

After analysis and review of this rule making, the Board tentatively concludes that the proposed amendments, if adopted, will not have a detrimental effect on employment in Iowa.

These amendments are intended to implement Iowa Code chapter 476A.

The following amendments are proposed.

UTILITIES DIVISION[199](cont'd)

ITEM 1. Amend rule **199—24.2(476A)**, definitions of "Intervenor" and "Significant alteration," as follows:

"Intervenor" means a person who received notice under 24.6(2)*"b," "c," "d," "e,"* or *"f"* and has filed with the board a written notice of intervention, ~~or, in all other cases, who, upon written petition of intervention is permitted in the proceeding pursuant to 199—subrule 7.2(8)~~ or a person granted permission to intervene by the board after filing a petition pursuant to rule 199—7.13(17A,476).

"Significant alteration" means:

a. A change in the generic type of fuel used by the major electric generating facility; or

b. Any change in the location, construction, maintenance, or operation of equipment at an existing facility that ~~results in a 10 percent increase or more in the maximum generator nameplate capacity of an existing facility if the increase is more than or equal to~~ increases the maximum generator nameplate capacity of the facility by at least 10 percent and at least 25 megawatts.

ITEM 2. Amend paragraph **24.3(1)"a"** as follows:

a. The application, associated documents, or other papers filed with the board in a certification proceeding shall be capable of being printed or typewritten and reproduced on sheets of 8½ inches by 11 inches (except for foldouts and special exhibits) ~~in loose leaf or equivalent replaceable sheet form with hard cover~~.

ITEM 3. Amend subrule 24.3(2) as follows:

24.3(2) *Manner and place of filing.*

a. An applicant shall file the ~~original and 20 copies of its application with the board by presentation or mailing to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069~~ application electronically unless otherwise permitted by the board.

~~*b.* Within ten days of receipt of the application the Executive Secretary shall acknowledge in writing receipt of the application, but said acknowledgment shall not constitute acceptance of the application.~~

~~*c.*~~ *b.* ~~Within ten days of the receipt of application, the board shall forward copies thereof to each regulatory agency listed in the application. In addition, that part of the application responding to 24.4(1)*"a"* through *"c"* will be forwarded to such~~ The board, through the use of its electronic filing system, shall include on the service list for the application each regulatory agency listed on the application in addition to other agencies as the board deems appropriate~~, including the office of state archaeologist, the division of community action agencies of the department of human rights, and the office of historical preservation of the state historical society of Iowa as interested agencies, and also to the Iowa department of transportation, and the Iowa department of natural resources, if such have not been designated as regulatory agencies~~.

~~*d.*~~ *c.* Any amendments to the application shall be filed in a manner similar to that required of the application.

ITEM 4. Amend rule 199—24.4(476A), introductory paragraph, as follows:

199—24.4(476A) Application for a certificate—contents. Each person or group of persons proposing to construct a facility ~~after January 1, 1977,~~ or a significant alteration to a facility shall file an application for certificate with the board, unless otherwise provided by these rules. The applicant may file a portion of an application and, in conjunction therewith, a request that the board accept such portion of the application pursuant to subrule 24.5(3) and conduct a separate phase of the proceeding with respect to issues presented by such portion of the application to the extent permitted pursuant to 24.5(3) and rule 199—24.9(476A). An application shall substantially comply with the following informational requirements:

ITEM 5. Amend paragraph **24.4(1)"j"** as follows:

j. The names and addresses of those owners and lessees of record ~~or~~ of real property identified in 24.6(2)*"d"* and *"e."*

UTILITIES DIVISION[199](cont'd)

ITEM 6. Adopt the following **new** paragraph **24.4(1)"k"**:

k. The names and addresses of those owners and lessees of record of real property for whom the applicant seeks the use of eminent domain.

ITEM 7. Amend paragraph **24.4(3)"b"** as follows:

b. A forecast of any temporary ~~stress~~ impact placed upon housing, schools or other community facilities as a result of a temporary influx of workers during the construction of the proposed facility.

ITEM 8. Amend subrule 24.5(2) as follows:

24.5(2) ~~Applicant~~ The applicant shall have 30 days from notification of deficiencies to amend or request, for good cause, a reasonable extension of time to amend. In the event the applicant fails to amend within the time allowed or, after amendment, the application or portion thereof filed is not in substantial compliance with the requirements of rule 199—24.4(476A) which pertain thereto, the board may reject the application or such portion thereof. Such rejection shall constitute final agency action, but shall not preclude reapplication.

ITEM 9. Amend paragraph **24.6(2)"f"** as follows:

f. ~~Other interested persons as determined by the board.~~ Owners and lessees of real property for which the applicant seeks the power of eminent domain.

ITEM 10. Adopt the following **new** paragraph **24.6(2)"g"**:

g. Other interested persons as determined by the board.

ITEM 11. Amend subrule 24.8(1) as follows:

24.8(1) *General.* The proceedings conducted by the board pursuant to this chapter shall be treated in the same manner as a contested case pursuant to the provisions of Iowa Code chapter 17A. Except where contrary to express provisions below, the hearing procedure shall conform to the board's rules of practice and procedure, 199—Chapter 7~~, IAC~~. The proceeding for the issuance of certificate may be consolidated with the contested case proceeding for determination of applicable ratemaking principles under Iowa Code section 476.53. All filings shall be made electronically unless otherwise permitted by the board.

ITEM 12. Amend paragraph **24.8(2)"a"** as follows:

a. Notice of intervention. An agency not receiving notice pursuant to 24.6(2)*"b"* may become a party to the contested case proceeding by filing ~~with the board an original and ten copies of~~ a notice of intervention. Such notice shall contain a statement of the jurisdiction or interest of the particular agency with respect to the proposed facility.

ITEM 13. Amend paragraph **24.8(2)"b"** as follows:

b. Petition to intervene. Any other person wishing to become a party to the contested case proceeding may request to intervene in the proceeding by petition to intervene filed at least 30 days prior to the date of the scheduled hearing, but not afterward except for good cause shown. Such application shall specify the issues in which petitioner may contest before a regulatory agency or otherwise. A petition to intervene shall substantially comply with the form prescribed in 199—subrule 2.2(10). ~~The original and ten copies of the petition shall be filed with the board.~~ All other parties to the proceeding shall have the right to resist or respond to the petition to intervene within seven days subsequent to the petitioner's service thereof.

ITEM 14. Amend subrule 24.8(5) as follows:

24.8(5) *Application for rehearing.* All applications for rehearing will be made and processed in accordance with Iowa Code ~~section~~ sections 17A.16(2) and 476.12. Applications for rehearing after decision made by the board must state the specific grounds upon which the application is based and must specify such findings of fact and conclusions of law and such terms or conditions of any certificate or amendment to certificate as are claimed to be erroneous, with a brief statement of the grounds of error. An application for rehearing shall substantially comply with the form prescribed in 199—subrule 2.2(13). ~~The original and ten copies of the application shall be filed with the board.~~

UTILITIES DIVISION[199](cont'd)

ITEM 15. Amend subrule 24.10(4) as follows:

24.10(4) *Denial.* In the event the applicant fails to amend in a timely fashion, or after amendment or reopening the record, or both, the board is still unable to make an affirmative finding, the board will deny the application. ~~Applicant~~ The applicant may request rehearing on such denial in accordance with Iowa Code ~~section~~ sections 17A.16(2) and 476.12.

ITEM 16. Amend subrule 24.11(1) as follows:

24.11(1) In the event no certificate has been issued after 90 days from the commencement of the hearing, the board may permit the applicant to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this ~~section~~ rule shall have no probative value to the board's decision concerning the actual issuance of a certificate.

ITEM 17. Amend subrule 24.12(2) as follows:

24.12(2) *Eminent domain.* The certificate shall give the applicant the power of eminent domain to the extent and under such conditions as the board approves, prescribes, and finds necessary for the public convenience, use, and necessity, proceeding in the manner of works of internal improvement under Iowa Code chapter ~~472~~ 6B.

ITEM 18. Amend rule 199—24.15(476A) as follows:

199—24.15(476A) Waiver. The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this chapter. In determining whether the public interest would not be adversely affected, the board will consider the following factors:

1. The purpose of the facility.
2. The type of facility.
3. If the facility is for the applicant's own needs.
4. The effect of the facility on existing transmission systems.
5. Any other relevant factors.

In addition to other service requirements, the applicant must serve a copy of the waiver request on all owners of record of real property that adjoins the proposed facility site. A request for a waiver shall also comply with rule 199—1.3(17A,474,476).

This rule is intended to implement Iowa Code sections 476A.1, 476A.2, 476A.4, 476A.6, 476A.7 and 476A.15.

ARC 3414C

WORKERS' COMPENSATION DIVISION[876]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby gives Notice of Intended Action to amend Chapter 1, "Purpose and Function," Chapter 2, "General Provisions," Chapter 3, "Forms," Chapter 4, "Contested Cases," Chapter 5, "Declaratory Orders," Chapter 6, "Settlements and Commutations," Chapter 8, "Substantive and Interpretative Rules," and Chapter 12, "Formal Review and Waiver of Rules," Iowa Administrative Code.

These amendments relate to recent changes enacted in 2017 involving Iowa Code chapter 85, concerning the evaluation of permanent impairments under Iowa Code section 85.34, vocational training and education under Iowa Code section 85.70(2), suitable work under Iowa Code section 85.33, and commutations under Iowa Code section 85.45. These amendments also update agency addresses, agency telephone numbers, and statutory references. Cross references in these rules to provisions of

Iowa Code chapter 85 should be understood to include the amendments enacted in 2017 Iowa Acts, House File 518.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 14, 2017. Such written suggestions or comments should be sent to Heather Palmer, Deputy Workers' Compensation Commissioner, Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319; faxed to (515)281-6501, or e-mailed to heather.palmer@iwd.iowa.gov.

The Division does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual. Therefore, a fiscal impact statement does not accompany this rule making.

These amendments do not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Division of Workers' Compensation rules.

The Division has determined that these amendments will not have an impact on small business within the meaning of Iowa Code section 17A.4A.

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

These amendments are intended to implement Iowa Code chapter 85 as amended by 2017 Iowa Acts, House File 518.

The following amendments are proposed.

ITEM 1. Amend rule 876—1.2(86,17A) as follows:

876—1.2(86,17A) Location. Interested persons may contact the Iowa Workers' Compensation Commissioner, 1000 East Grand Avenue (mailing address), 150 Des Moines Street (physical location), Des Moines, Iowa 50319; telephone ~~(515)281-5387~~ (515)725-4120 or ~~1-800-Job-Iowa (1-800-562-4692)~~ 1-800-645-4583. The fax number is (515)281-6501. The Web site address is ~~http://~~www.iowaworkforce.org/wc.

ITEM 2. Amend rule 876—2.4(85,86) as follows:

876—2.4(85,86) Guides to evaluation of permanent impairment. The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association are adopted ~~as a guide~~ for determining the extent of loss or percentage of impairment for permanent partial disabilities and payment of weekly compensation for permanent partial scheduled injuries under Iowa Code section ~~85.34(2)*"a" to "s."*~~ 85.34(2) not involving a determination of reduction in an employee's earning capacity. ~~The extent of loss or percentage of permanent impairment may be determined by use of the Fifth Edition of the guides and payment of weekly compensation for permanent partial scheduled injuries made accordingly.~~ Payment so made shall be recognized by the workers' compensation commissioner as a prima facie showing of compliance by the employer or insurance carrier with the foregoing sections of the Iowa workers' compensation Act. Nothing in this rule shall be construed to prevent the presentations of other medical opinions or other material evidence for the purpose of establishing that the degree of permanent disability to which the claimant would be entitled would be more or less than the entitlement indicated in the ~~Fifth Edition of the AMA guides~~ Guides to the Evaluation of Permanent Impairment, Fifth Edition, when the reduction in earning capacity for all other permanent partial and permanent total disabilities is determined.

This rule is intended to implement Iowa Code sections 85.34(2) and 86.8.

ITEM 3. Amend subrule 3.1(7) as follows:

3.1(7) *Form—original notice and petition.* The following forms are types of original notice and petition: original notice and petition—Form 100 (Form No. 14-0005); original notice, petition, answer and order concerning independent medical examination—Form 100A (Form No. 14-0007); original notice, petition, answer and order concerning vocational rehabilitation program benefit—Form 100B (Form No. 14-0009); original notice, petition, and answer concerning application for alternate medical care—Form 100C (Form No. 14-0011); original notice, petition, and answer concerning application for vocational training and education—Form 100D (Form No. 14-0012); original notice and petition

for full commutation of all remaining benefits of ten weeks or more 876 IAC 6.2(6)—Form 9 (Form No. 14-0013); checklist for full commutation (Form No. 14-0015); original notice and petition and order for partial commutation—Form 9A (Form No. 14-0017); and checklist for partial commutation (Form No. 14-0019). See rule 876—4.6(85,86,17A) for further descriptions.

ITEM 4. Amend subrule 3.1(21) as follows:

3.1(21) *Form—agreement for settlement. (Form No. 14-0021)* This form is used to file an agreement for settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(2).

ITEM 5. Amend subrule 3.1(22) as follows:

3.1(22) *Form—compromise settlement. (Form No. 14-0025)* This form is used to file a compromise settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(3).

ITEM 6. Amend subrule 3.1(23) as follows:

3.1(23) *Form—combination settlement. (Form No. 14-0159)* This form is used to file a combination settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(4).

ITEM 7. Amend subrule 3.1(24) as follows:

3.1(24) *Form—contingent settlement. (Form No. 14-0161)* This form is used to file a contingent settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(5).

ITEM 8. Amend rule 876—4.1(85,85A,85B,86,87,17A) as follows:

876—4.1(85,85A,85B,86,87,17A) Contested cases. Contested case proceedings before the workers' compensation commissioner are:

4.1(1) Arbitration (Iowa Code section 86.14).

4.1(2) Review of award or settlement (review-reopening, Iowa Code section 86.14).

4.1(3) Benefits under Iowa Code section 85.27.

4.1(4) Death and burial benefits (Iowa Code sections 85.28, 85.29, 85.31).

4.1(5) Determination of dependency (Iowa Code sections 85.42, 85.43, 85.44).

4.1(6) Equitable apportionment (Iowa Code section 85.43).

4.1(7) Second injury fund (Iowa Code section 85.63 et seq.).

4.1(8) Vocational rehabilitation benefits (Iowa Code section ~~85.70~~ 85.70(1)).

4.1(9) Vocational training and education (Iowa Code section 85.70(2)).

~~**4.1(9)**~~ **4.1(10)** Approval of fees under Iowa Code section 86.39.

~~**4.1(10)**~~ **4.1(11)** Commutation (Iowa Code section 85.45 et seq.).

~~**4.1(11)**~~ **4.1(12)** Employee's examination (Iowa Code section 85.39).

~~**4.1(12)**~~ **4.1(13)** Employer's examination or sanctions (Iowa Code section 85.39).

~~**4.1(13)**~~ **4.1(14)** Determination of compliance with Iowa Code chapters 85, 85A, 85B, 86, and 87.

~~**4.1(14)**~~ **4.1(15)** Applications for alternate medical care (Iowa Code section 85.27).

~~**4.1(15)**~~ **4.1(16)** Determination of liability, reimbursement for benefits paid and recovery of interest (Iowa Code section 85.21).

~~**4.1(16)**~~ **4.1(17)** Interest (Iowa Code section 85.30).

~~**4.1(17)**~~ **4.1(18)** Penalty (Iowa Code section 86.13).

~~**4.1(18)**~~ **4.1(19)** Application for approval of third-party settlement (Iowa Code section 85.22).

~~**4.1(19)**~~ **4.1(20)** Matters that would be a contested case if there were a dispute over the existence of material facts.

~~**4.1(20)**~~ **4.1(21)** Any other issue determinable upon evidential hearing which is under the jurisdiction of the workers' compensation commissioner.

This rule is intended to implement ~~the provisions of~~ Iowa Code sections 17A.2(2) and 86.8 and the statutory sections noted in each category of the rule.

WORKERS' COMPENSATION DIVISION[876](cont'd)

ITEM 9. Amend rule 876—4.4(86) as follows:

876—4.4(86) Request for hearing. Unless otherwise ordered, a hearing shall not be held in proceedings under 4.1(8) to ~~4.1(12)~~ 4.1(13), unless requested in writing by the petitioner in the original notice or petition or by the respondent within ten days following the time allowed by these rules for appearance.

ITEM 10. Amend rule 876—4.5(86) as follows:

876—4.5(86) Commencement by commissioner. In addition to an aggrieved party, the commissioner may initiate proceedings under ~~4.1(9)~~ 4.1(10). The proceeding may be held before a deputy commissioner or the commissioner. The workers' compensation commissioner shall be the only person to commence a proceeding under ~~4.1(13)~~ 4.1(14), unless such authority is specifically delegated by the workers' compensation commissioner to a deputy commissioner concerning a specific matter.

ITEM 11. Amend rule 876—4.6(85,86,17A) as follows:

876—4.6(85,86,17A) Original notice and petition. A petition or application must be delivered or filed with the original notice unless original notice Form 100, Form 100A, ~~or~~ Form 100B, or Form 100D of the division of workers' compensation is used.

The original notice Form 100, Form 100A, Form 100B, Form 100C, Form 100D, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in 876—4.1(85,85A,85B,86,87,17A). Form 100 is to be used for all contested case proceedings except as indicated in this rule. Form 100A is to be used for the contested case proceedings provided for in subrules ~~4.1(11) and~~ 4.1(12) and 4.1(13). Form 100B is to be used for the contested case proceeding provided for in subrule 4.1(8). Form 100C is to be used for the contested case proceeding provided for in subrule ~~4.1(14)~~ 4.1(15) and rule 876—4.48(17A,85,86). Form 100D is to be used for the contested case proceeding provided for in rule 876—4.50(85). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, Form No. 9 or Form No. 9A must be filed in addition to any other document. The petition for declaratory order, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

At the same time and in the same manner as service of the original notice and petition, the claimant shall serve a patient's waiver using Form 14-0043 (authorization for release of information regarding claimants seeking workers' compensation benefits), or a substantially equivalent form, which shall not be revoked until conclusion of the contested case. The claimant shall provide the patient's waivers in other forms and update the patient's waivers as necessary to permit full disclosure of discoverable information whenever requested by a medical practitioner or institution.

~~For all original notices and petitions filed on or after January 1, 2003, a~~ A separate original notice and petition shall be filed for each claim that seeks benefits due to the occurrence of an injury, occupational disease or occupational hearing loss. The original notice and petition shall allege a specific date of occurrence consisting of a day, month and year. Alternate or multiple dates of occurrence may be alleged in the same original notice and petition if the claim or claims arose from the same occurrence or series of occurrences and uncertainty exists concerning the correct date of occurrence or the number of occurrences. An employee may join any number of employers or insurance carriers in the same original notice and petition if the claim is made against them jointly, severally or in the alternative. The remedy for misjoinder must be requested by motion within a reasonable time after the grounds become known, but in no event later than the claimant's case preparation completion date. All remedies will be applied without prejudice to any claim or defense. In addition to the remedies contained in Iowa Rule of Civil Procedure 1.236, the workers' compensation commissioner may order that parts of a claim be severed and proceeded with separately or that separate related claims be joined or consolidated for administrative convenience or for any good cause. If a correction is ordered but not made by a date specified in the order, the original notice and petition may be dismissed without further notice. If the correction is made

within the specified time, the correction relates back to the date of the initial filing for purposes of the statute of limitations.

This rule is intended to implement ~~the provisions of~~ Iowa Code sections 85.27, 85.45, 85.48, and 17A.12.

ITEM 12. Amend paragraph **4.8(2)"a"** as follows:

a. For all original notices and petitions for arbitration or review-reopening relating to weekly benefits filed on account of each injury, gradual or cumulative injury, occupational disease or occupational hearing loss alleged, a filing fee shall be paid at the time of filing. ~~The filing fee for original notices and petitions filed on or after July 1, 1988, but before July 1, 2009, is $65.~~ The filing fee for petitions ~~filed on or after July 1, 2009,~~ is $100. No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits under Iowa Code section 85.27; burial benefits, Iowa Code section 85.28; determination of dependency, Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment, Iowa Code section 85.43; second injury fund, Iowa Code sections 85.63 to 85.69; vocational rehabilitation benefits, Iowa Code section ~~85.70~~ 85.70(1); vocational training and education benefits, Iowa Code section 85.70(2); approval of legal, medical and other fees under Iowa Code section 86.39; commutation, Iowa Code sections 85.45 to 85.48; employee's examination, Iowa Code section 85.39; employee's examination or sanctions, Iowa Code section 85.39; application for alternate care, Iowa Code section 85.27; determination of liability, reimbursement for benefits paid and recovery of interest, Iowa Code section 85.21; interest, Iowa Code section 85.30; penalty, Iowa Code section 86.13; application for approval of third-party settlement, Iowa Code section 85.22; and petitions for declaratory orders or petitions for interventions filed pursuant to 876—Chapter 5. An amendment to a petition that was filed on or after July 1, 1988, that alleges an additional or alternate date of occurrence does not require payment of an additional filing fee if a filing fee was paid when the petition was filed.

ITEM 13. Amend subrule 4.9(8) as follows:

4.9(8) *Withdrawal of counsel.* Counsel may withdraw if another counsel has appeared or if the client's written consent accompanies the withdrawal.

Under all other circumstances, counsel may withdraw only upon the order of the workers' compensation commissioner after making written application. Counsel shall give the client written notice that the client has the right to object to the withdrawal by ~~delivering~~ filing written objections and a request for a hearing to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319, when filing by mail, or 150 Des Moines Street, Des Moines, Iowa 50319, when filing in person, within ten days following the date the notice was mailed or personally delivered to the client. Counsel's application shall be accompanied by proof that a copy of the application and notice was sent by certified mail addressed to the client's last-known address or was delivered to the client personally. If no objections are timely filed, the withdrawal will become effective when approved by the workers' compensation commissioner. If objections are timely filed, a hearing on the application will be held. No withdrawal under this subrule will be effective without the approval of the workers' compensation commissioner. The filing of an application to withdraw stays all pending matters until a ruling is made on the application.

ITEM 14. Adopt the following **new** rule 876—4.50(85):

876—4.50(85) Vocational training, education, and supplies.

4.50(1) *Purpose.* The purpose of this rule is to establish the procedures for issuing decisions on applications for vocational training, education, and supplies provided for in Iowa Code section 85.70(2).

4.50(2) *Definitions.* The following definitions apply to this rule:

"Application for vocational training and education hearing" or *"application"* means a contested case proceeding filed with the division of workers' compensation contesting the results of an evaluation and determination or contesting or requesting the termination of a vocational training and education program.

"Evaluation and determination" means an assessment conducted by the department of workforce development to determine if the employee would benefit from a vocational training and education program offered through an area community college to allow the employee to return to the workforce.

"Request for vocational training and education" or *"request"* means a written request for an evaluation and determination of whether an employee is entitled to vocational training, education, and supplies.

"Vocational training and education" shall include general educational development programs for employees who have not graduated from high school or obtained a general education diploma, and career and technical education programs that provide instruction in the areas of agriculture, family and consumer sciences, health occupations, business, industrial technology, and marketing, offered through an area community college that will allow the employee to return to the workforce.

4.50(3) *Application for vocational training and education.* An application shall:

a. Only concern the issue of vocational training, education, and supplies;

b. Be filed on the form provided by the division of workers' compensation;

c. State the reasons for the application;

d. Be served on the other party;

e. Contain a proof of service on the other party; and

f. Specify whether a telephone or in-person hearing is requested.

4.50(4) *Fee.* No filing fee is due. See paragraph 4.8(2)*"a."*

4.50(5) *Request for vocational education and training.* Prior to filing an application, the employee shall complete a request on a form supplied by the department of workforce development and submit the completed form to the department of workforce development asking for an evaluation and determination. The employee, employer, or insurance carrier may contest the results of the evaluation and determination by filing an application with the division of workers' compensation.

4.50(6) *Proper application.* An application may not be filed under this rule until:

a. An evaluation and determination has been made by the department of workforce development; and

b. There has been a finding by the division of workers' compensation or the employer or the employer's insurance carrier or both and the employee agree that the employee has sustained an injury to the shoulder resulting in a permanent partial disability for which compensation is payable under Iowa Code section 85.34(2)*"n,"* and the employee cannot return to gainful employment because of such disability.

4.50(7) *Notice of hearing.* The workers' compensation commissioner shall notify the parties by electronic mail, ordinary mail, or facsimile of the time, place, and nature of the hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice shall specify whether the hearing will be held by telephone or in person.

4.50(8) *Evidence.* Any written evidence to be used by the employer, the employer's insurance carrier, or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of hearing. Written evidence shall be limited to 50 pages per party.

4.50(9) *Motion to change hearing type.* A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The workers' compensation commissioner will make no rulings on motions.

4.50(10) *Briefs.* Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to five pages.

4.50(11) *Hearing.* The hearing will be held either by telephone or in person in Des Moines, Iowa. If the party filing the application does not request an in-person hearing in the application, the other parties may request an in-person hearing. The hearing will be recorded electronically. Copies of the recording will be provided to the parties. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing. A transcript shall be provided by the appealing party pursuant to Iowa Code section 86.24(4) and a copy of the transcript shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner, unless the parties submit an agreed-upon transcript. If a party disputes

the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid by the party that disputes the accuracy of the transcript, pursuant to Iowa Code section 86.19(1).

4.50(12) *Represented party.* A party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and the employer's insurance carrier shall be treated as one party unless their interests appear to be in conflict, and a representative of either the employer or the employer's insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

4.50(13) *Decision.* A decision will be issued within 30 working days of receipt of a proper application.

This rule is intended to implement Iowa Code sections 17A.12, 85.70(2), and 86.17.

ITEM 15. Amend subrule 5.6(2) as follows:

5.6(2) *Filing.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319~~-0209~~, when filed by mail, or 150 Des Moines Street, Des Moines, Iowa 50319, when filed in person.

ITEM 16. Amend rule 876—6.1(85,86) as follows:

876—6.1(85,86) Settlements under Iowa Code ~~Supplement~~ section 85.35. All proposed settlements shall be submitted to the workers' compensation commissioner for approval. An agreement for settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(2) shall be on Form 14-0021. A compromise settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(3) shall be on Form 14-0025. A combination settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(4) shall be on Form 14-0159. A contingent settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(5) shall be on Form 14-0161.

6.1(1) Evidence that a settlement should be approved as required by Iowa Code ~~Supplement~~ section 85.35(7) shall accompany the settlement or be incorporated into the settlement forms. It is presumed that the showing required by Iowa Code ~~Supplement~~ section 85.35(7) has been made if the claimant is represented by an attorney licensed to practice law in this state.

6.1(2) The documents for a compromise settlement shall identify either the specific date or dates of injury or the specific injurious condition or conditions, or both. The documents for a compromise settlement, including any addendum to the documents, shall not contain any language that either expressly states or implies that the proposed compromise settlement is a final settlement of any and all injuries, known or unknown, that an employee may have sustained while employed by the employer. If a compromise settlement is submitted that does not comply with this subrule, the workers' compensation commissioner shall return the proposed compromise settlement to the party ~~who~~ that submitted it.

6.1(3) Approval of a compromise settlement pursuant to Iowa Code ~~Supplement~~ section 85.35(3) is a final bar to rights under the Iowa Workers' Compensation Law, and the approved compromise settlement is not subject to review under Iowa Code section 85.26(2).

6.1(4) Nothing in this rule shall prohibit the approval of settlements in other appropriate cases when allowed by Iowa Code ~~Supplement~~ section 85.35(7).

This rule is intended to implement Iowa Code ~~Supplement~~ section 85.35.

ITEM 17. Amend rule 876—6.2(85,86) as follows:

876—6.2(85,86) Commutation. The following requirements must be met before ~~an uncontested~~ a commutation will be considered or granted:

6.2(1) A first report of injury, an acknowledgment of compensability and an updated supplemental claim activity report must be filed.

6.2(2) The commutation forms provided for in 876—6.4(85,86) must be filed.

6.2(3) All doctors' and practitioners' reports relevant to the disability of the claimant involved in the commutation must be attached to the commutation forms.

6.2(4) Claimant's condition as a result of the injury as shown by the medical reports cannot be one which will be expected to deteriorate. When a partial commutation is sought, this ~~paragraph~~ subrule shall diminish in importance.

6.2(5) Claimant's condition as a result of the injury shown by the doctors' and practitioners' reports cannot be one which will be expected to require future treatment unless the future treatment is adequately provided for. When a partial commutation is sought, this ~~paragraph~~ subrule shall diminish in importance.

6.2(6) A detailed statement of claimant's need or other reason for a lump sum of money must be attached to the application. The analysis shall include disclosure of any attorney fee amount to be paid from the full commutation. A commutation of less than ten weeks' benefits is presumed to be not in the best interest of the claimant.

6.2(7) When multiple dependents are involved, a signed stipulation or order of apportionment identifying the proportion of benefits to be received by each dependent shall be attached to the commutation form.

6.2(8) A signed stipulation as to the degree of permanent disability shall be attached to the commutation form.

~~**6.2(9)** Rescinded IAB 10/25/06, effective 11/29/06.~~

This rule is intended to implement Iowa Code sections 85.45 and 85.47.

ITEM 18. Amend rule 876—6.5(85) as follows:

876—6.5(85) Statement of awareness. When a petition for settlement under Iowa Code ~~Supplement~~ section 85.35(3) or commutation is submitted, it shall contain or be accompanied by a verified statement from the injured employee indicating awareness that, upon approval by the workers' compensation commissioner of the settlement or commutation, a final bar to future claims or benefits under the Iowa Workers' Compensation Law for such injury shall exist except as specifically reserved in any agreement.

This rule is intended to implement Iowa Code ~~Supplement section~~ sections 85.35, ~~and sections~~ 85.45, and 85.47.

ITEM 19. Amend rule 876—6.7(85,86) as follows:

876—6.7(85,86) Claimant statement. When the claimant is not represented by counsel, a claimant's statement on Form 14-0163, which the claimant has personally completed, certified and signed, must be submitted with all settlement and commutation forms and documents.

This rule is intended to implement Iowa Code ~~Supplement section~~ sections 85.35 and ~~section~~ 86.8.

ITEM 20. Amend rule 876—6.8(85,86) as follows:

876—6.8(85,86) Failure to timely file settlement. If a party notifies the workers' compensation commissioner that a matter scheduled for a hearing has been settled and the matter is removed from the hearing schedule, the proposed settlement shall be filed with the workers' compensation commissioner within 60 days of the notification. A party may, within 60 days of the notification, request an extension of time to file the settlement documents. If the settlement documents are not timely filed, the matter will be reassigned for hearing in Des Moines at a date determined by the workers' compensation commissioner and the parties cannot request that the matter be rescheduled. Any matter rescheduled because settlement documents were not timely filed shall not again be removed from the hearing schedule because a party notifies the workers' compensation commissioner of a settlement.

This rule is intended to implement Iowa Code ~~Supplement section~~ sections 85.35, ~~and sections~~ 85.47, 85.48, 86.8, 86.13 and 86.27.

WORKERS' COMPENSATION DIVISION[876](cont'd)

ITEM 21. Adopt the following **new** rule 876—8.11(85):

876—8.11(85) Offer of suitable work. The employer shall communicate an offer of temporary work to the employee in writing, including the details of lodging, meals, and transportation. With each offer of temporary work, the employer shall notify the employee in writing that:

1. If the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing;
2. During the period of refusal, the employee will not be compensated with temporary partial, temporary total, or healing period benefits unless the work refused is not suitable; and
3. Failure to communicate the reason for the refusal to the employer in writing precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

This rule is intended to implement Iowa Code section 85.33.

ITEM 22. Amend rule 876—12.3(17A) as follows:

876—12.3(17A) Form of criticism. The ~~Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319-0209,~~ division of workers' compensation is designated as the office where interested persons may submit written criticism regarding an administrative rule of the Workers' Compensation Division[876]. Written criticism should be mailed to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319; or delivered to 150 Des Moines Street, Des Moines, Iowa 50319. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, be signed by the complainant, not be part of any other filing with the workers' compensation commissioner or department of workforce development, and have a valid legal basis for support. All criticisms received on any rule will be kept in a separate record for a period of five years by the workers' compensation commissioner and be a public record open for public inspection. All criticisms must substantially conform to the following form:

BEFORE THE WORKERS' COMPENSATION COMMISSIONER

CRITICISM BY (NAME OF PERSON SUBMITTING CRITICISM).	}	CRITICISM OF (SPECIFY RULE THAT IS CRITICIZED).

Reasons for criticism:
Name, address, telephone number and signature of person submitting criticism.

ITEM 23. Amend rule 876—12.4(17A) as follows:

876—12.4(17A) Requests for waiver of rules. Requests for waiver of a rule in the Workers' Compensation Division[876] of the Iowa Administrative Code shall be made to the Workers' Compensation Commissioner, 1000 E. Grand, Des Moines, Iowa 50319~~-0209~~, by mail; or 150 Des Moines Street, Des Moines, Iowa 50319, in person. All requests for waiver of a rule must be in writing and are a public record open for inspection. The person requesting the waiver must submit all facts relied upon in requesting the waiver. The person requesting waiver of the rule must provide clear and convincing evidence that compliance with the rule will create an undue hardship on the person requesting the waiver. A concise memorandum brief and argument, if any is filed, shall be attached to the request for waiver at the time the request is filed. The workers' compensation commissioner shall grant or deny the waiver within 60 days of the date the request is filed with the agency. The workers' compensation commissioner shall deny the request if the request is for waiver of a statute. If the request for waiver relates to a time requirement of a rule, the request must be received before the time specified in the rule has expired. The workers' compensation commissioner may deny the request if the request does not comply with the provisions of this rule. All requests for waiver must substantially conform to the following form:

WORKERS' COMPENSATION DIVISION[876](cont'd)

BEFORE THE WORKERS' COMPENSATION COMMISSIONER

(NAME OF PERSON REQUESTING WAIVER).	}	REQUEST FOR WAIVER OF (SPECIFY RULE FOR WHICH WAIVER IS REQUESTED).

Reasons for requesting waiver:
Name, address, telephone number and signature of person submitting waiver request.

ARC 3432C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby gives notice that a public hearing will be held on November 21, 2017, at 10 a.m. at the IWD Board Room, Room 135, Iowa Workforce Development Department, 1000 East Grand Avenue, Des Moines, Iowa. This Amended Notice of Intended Action changes the original public hearing date from November 20, 2017, as published in the October 11, 2017, Iowa Administrative Bulletin under Amended Notice of Intended Action **ARC 3380C**, to the new date listed above. The purpose of the public hearing is to receive oral or written comments on the proposed amendments to Chapter 23, "Employer's Contribution and Charges," and Chapter 24, "Claims and Benefits," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3280C** on August 3, 2017.

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

ARC 3421C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 26, "Contested Case Proceedings," Iowa Administrative Code.

This proposed amendment clarifies and simplifies the procedures by which claimants and employers interact with Iowa Workforce Development in the unemployment appeal process. This amendment also clarifies the subpoena processes for witnesses and for documents in contested case proceedings. The agency needs updated administrative rules to clarify these processes.

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before November 14, 2017, by sending them to Emily Chafa, Iowa Workforce Development, Appeals Bureau, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to emily.chafa@iwd.iowa.gov.

This amendment does not have any fiscal impact on the State of Iowa.

Waiver provisions do not apply to this rule making.

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

This amendment is intended to implement Iowa Code chapters 96 and 17A.

The following amendment is proposed.

Rescind rule 871—26.13(17A,96) and adopt the following **new** rule in lieu thereof:

871—26.13(17A,96) Subpoenas for witnesses and documents.

26.13(1) It is the responsibility of the parties to request the attendance of witnesses the parties believe have knowledge of the facts in issue in the contested case.

26.13(2) Upon the written request of a party in interest received at least three days prior to the hearing date, the presiding officer shall issue a subpoena compelling the attendance of a person at the contested case hearing.

26.13(3) The written request shall include:

a. The full name and mailing address or e-mail address of the person to be served; and

b. A statement of the relevance of the witness's testimony and that it will not repeat or duplicate the testimony of other witnesses.

26.13(4) Upon the written request of a party in interest received at least three days prior to the hearing date, the presiding officer shall issue a subpoena duces tecum for documents or other items believed to be relevant to the facts in issue in the contested case. The request must specifically describe the items to be provided pursuant to the subpoena duces tecum.

26.13(5) Documents or other items subpoenaed for hearings shall be mailed, faxed, or e-mailed to the appeals bureau and to the other parties to the proceeding prior to the hearing date.

26.13(6) If the presiding officer deems it appropriate, the entity or person to whom a subpoena is directed shall be notified and given the opportunity to object to its issuance.

a. If an objection to the issuance of the subpoena is raised, the presiding officer, as a matter of discretion, may hear and rule on the objection prior to commencing the evidentiary hearing or may postpone the evidentiary hearing and schedule a special hearing to receive arguments from all parties concerning the issuance of the subpoena.

b. The presiding officer shall issue the subpoena if it is established to the presiding officer's satisfaction that the testimony or document sought is material and relevant, is not unduly repetitious of other evidence already of record or expected to be submitted by any party, and, in the case of the subpoena duces tecum, the records requested do not disclose business secrets or cause undue burden on the party to whom the subpoena is directed.

26.13(7) If the subpoena is granted over objection, the aggrieved party may, in accordance with Iowa Code section 17A.13(1), petition the district court for review of the action before proceeding further. The aggrieved party must promptly notify the presiding officer that a petition for judicial review of the subpoena order will be filed immediately so the contested case may be postponed until the court has issued its ruling. Nothing herein shall preclude an aggrieved party from including the granting or denial of a subpoena as grounds for appeal of the presiding officer's decision in the contested case to the employment appeal board of the department of inspections and appeals.

26.13(8) If any entity or person to whom a subpoena is directed refuses to honor the subpoena, the aggrieved party may, in accordance with Iowa Code section 17A.13(1), apply to the appropriate district court for an order to compel the entity or person to obey the subpoena.

ARC 3422C

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board (Board) hereby amends Chapter 1, "Definitions," Chapter 6, "Attest and Compilation Services," Chapter 7, "Certified Public Accounting Firms," Chapter 8, "Licensed Public Accounting Firms," Chapter 10, "Continuing Education," Chapter 13, "Rules of Professional Ethics and Conduct," Chapter 14, "Disciplinary Authority and Grounds for Discipline," Chapter 20, "Practice Privilege for Out-of-State Certified Public Accountants," and Chapter 21, "Practice Privilege for Out-of-State Certified Public Accounting Firms," Iowa Administrative Code.

These amendments update the Board's rules to reflect changes enacted by 2017 Iowa Acts, Senate File 237, which amends Iowa Code chapter 542 to authorize out-of-state certified public accounting firms (CPA firms) exercising a practice privilege to perform all forms of attest services, as opposed to only review and compilation services as previously authorized. These amendments also update the Board's rules to allow CPA firms to designate nonlicensee owners as the individuals responsible for CPA firm licensure, consistent with 2017 Iowa Acts, Senate File 237. The amendments also amend the Board's rules to include the Commonwealth of the Northern Mariana Islands within the definition of the term "state," consistent with 2017 Iowa Acts, Senate File 237.

The amendments reflect partial compliance with Iowa Code section 17A.7(2), which states that beginning July 1, 2012, over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency's rules. The goal of the review is to identify and eliminate all rules that are outdated, redundant, or inconsistent or incompatible with statute or the agency's rules or the rules of other agencies.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 2, 2017, as **ARC 3224C**. A public hearing was held at 1 p.m. on Monday, August 28, 2017, at the offices of the Professional Licensing and Regulation Bureau, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa. Since publication of the Notice, one change has been made in response to comments received. In Item 7, a cross reference to paragraph 4.1(2)"f" has been added to subrule 8.1(7) to clarify what constitutes good moral character.

There is no fiscal impact. No current fees are being changed, and no new fees are being imposed.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These amendments were adopted at the September 27, 2017, regular meeting of the Board.

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

These amendments are intended to implement Iowa Code chapter 542 as amended by 2017 Iowa Acts, Senate File 237.

These amendments will become effective November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend rule **193A—1.1(542)**, definition of "State," as follows:

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or Guam.

ITEM 2. Amend subrule 6.1(3) as follows:

6.1(3) CPAs performing attest services, whether the CPAs are certified in Iowa or exercising a practice privilege, must do so in a CPA firm that holds a permit to practice pursuant to Iowa Code section 542.7~~. However, a CPA exercising a practice privilege who works for~~ or in an out-of-state CPA firm ~~that does not hold a permit to practice under Iowa Code section 542.7 may provide review services in Iowa or for a client with a home office in Iowa as long as the firm complies~~ exercising a practice privilege in compliance with Iowa Code ~~section 542.20, subsections 5 and 6,~~ sections 542.20(5) and 542.20(6) and associated rules and the peer review and ownership provisions of Iowa Code section 542.7.

ITEM 3. Amend paragraph **6.3(3)"c"** as follows:

c. Out-of-state CPAs performing attest services while exercising a practice privilege under Iowa Code section 542.20 are not required to individually apply to the board for attest qualification~~, but the~~. However, if:

(1) CPAs perform attest services in an Iowa CPA firm ~~in which such attest services are performed~~, the Iowa CPA firm shall affirm when applying for an initial or renewal firm permit to practice that the CPAs who supervise attest services for the firm or who sign or authorize someone to sign the accountant's report on behalf of the firm, as such attest services are or will in the following year be performed in Iowa or for a client with a home office in Iowa, have been qualified to perform attest services in Iowa or another jurisdiction.

(2) CPAs perform attest services through an out-of-state CPA firm exercising a practice privilege, the out-of-state CPA firm shall affirm upon request from the board that the CPAs who supervise attest services for the firm or who sign or authorize someone to sign the accountant's report on behalf of the firm, as such attest services are or will in the following year be performed in Iowa or for a client with a home office in Iowa, have been qualified to perform attest services in Iowa or another jurisdiction.

ITEM 4. Amend paragraph **7.1(5)"a"** as follows:

a. Designate an Iowa CPA or ~~a person with a practice privilege under Iowa Code section 542.20~~ a nonlicensee owner who is responsible for the proper licensure of the firm and the firm's compliance with all applicable laws and rules of the state;

ITEM 5. Amend subrule 7.1(6) as follows:

7.1(6) An out-of-state CPA firm exercising a practice privilege may perform ~~review~~ attest services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm is validly licensed in the state of its principal place of business, complies with Iowa Code ~~section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122,~~ sections 542.20(5) and 542.20(6) and associated rules, and complies with the peer review and ownership provisions of Iowa Code section 542.7.

ITEM 6. Amend subrule 7.3(11) as follows:

7.3(11) Affirmation that all CPAs or LPAs who are responsible for supervising compilation services or who sign or authorize someone to sign the accountant's compilation report ~~on the financial statements~~ on behalf of the firm comply with nationally recognized professional standards that are applicable to the compilation services performed in Iowa or for a client with a home office in Iowa.

ITEM 7. Amend subrule 8.1(7) as follows:

8.1(7) The application shall affirm that all nonlicensee owners are of good moral character as defined in 193A—paragraph 4.1(2)*"f"* active participants in the firm or an affiliated entity.

ITEM 8. Amend subrule 10.7(1) as follows:

10.7(1) Every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report ~~on the financial statements~~ on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of eight hours of continuing professional education devoted to financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates. When required, the financial statement presentation continuing education shall be completed within the three-year period ending on the December 31 or June 30 preceding the application for certificate or license renewal. For credit to be claimed for a course covering multiple topics, a minimum of one hour as outlined in subrule 10.6(1) shall be devoted to financial statement presentation. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to financial statement presentation, then only one hour shall be claimed toward meeting the requirement of this subrule.

ITEM 9. Amend subrule 13.4(2) as follows:

13.4(2) *Practice privilege.* All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa must be performed through a CPA firm that holds an active Iowa firm

permit to practice~~; provided that,~~ or through an out-of-state CPA firm exercising a practice privilege ~~may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies~~ in compliance with Iowa Code sections 542.20(5) and 542.20(6) and associated rules and the peer review and ownership provisions of Iowa Code section 542.7. Unless Iowa certification is specifically required by a governmental body or client, the individual CPAs performing such attest services may either hold an active Iowa CPA certificate or exercise a practice privilege as more fully described in Iowa Code section 542.20. LPAs and LPA firms are not authorized to perform attest services.

ITEM 10. Amend subrule 13.5(3) as follows:

13.5(3) *Mandatory financial statement presentation continuing professional education.* In each renewal period in which compilation reports are issued, every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report ~~on the financial statements~~ on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of eight hours of continuing education devoted to financial statement presentation every three years, such as courses covering the Statements on Standards for Accounting and Review Services (SSARS) and accounting and auditing updates. This requirement is more fully described in 193A—subrule 10.7(1).

ITEM 11. Amend paragraph **14.3(5)"c"** as follows:

c. Performing attest services as an individual without proper certification or attest qualification, or without acting through a CPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or exercising a practice privilege pursuant to Iowa Code section 542.20.

ITEM 12. Amend paragraph **14.3(5)"d"** as follows:

d. Performing attest services as a firm without holding a permit to practice pursuant to Iowa Code section 542.7 or exercising a practice privilege pursuant to Iowa Code section 542.20, or without ensuring that the individuals responsible for supervising attest services or signing or authorizing someone to sign the accountant's report are attest qualified, hold the required certification or are eligible to exercise a practice privilege, or otherwise performing attest services in a manner inconsistent with Iowa Code chapter 542 ~~and 193A—Chapters 6 and 7~~ or the rules of the board.

ITEM 13. Amend rule 193A—20.5(542) as follows:

193A—20.5(542) Attest and compilation services.

20.5(1) Individuals providing audit, review or other attest services in Iowa or for a client with a home office in Iowa must practice through a CPA firm that holds an active permit to practice pursuant to Iowa Code section 542.7~~; provided that,~~ or through an out-of-state CPA firm exercising a practice privilege ~~may perform review services in Iowa or for a client~~ with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the out-of-state firm is validly licensed in the state of its principal place of business, complies with Iowa Code ~~section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122,~~ sections 542.20(5) and 542.20(6) and associated rules, and complies with the peer review and ownership provisions of Iowa Code section 542.7. Unless Iowa certification is specifically required by a governmental body or client, individual CPAs performing such attest services through an out-of-state CPA firm may either hold an active Iowa CPA certificate or exercise a practice privilege as more fully described in Iowa Code section 542.20. Individuals who provide such attest services in Iowa or for a client with a home office in Iowa through an out-of-state CPA firm exercising a practice privilege must provide such services through a certified public accounting firm that is validly licensed in the state of its principal place of business, complies with Iowa Code sections 542.20(5) and 542.20(6) and associated rules, and complies with the peer review and ownership provisions of Iowa Code section 542.7.

20.5(2) Individuals providing compilation services in Iowa or for a client with a home office in Iowa must comply with the peer review provisions of Iowa Code section 542.6(6), or provide such services through a CPA or LPA firm, or a substantially equivalent firm that holds a valid license in the firm's

principal place of business and that complies with the peer review and ownership provisions of Iowa Code section 542.7 or 542.8.

~~**20.5(3)** Individuals who provide reviews of financial statements, as provided in Iowa Code section 542.3, subsection 1, in Iowa or for a client with a home office in Iowa must provide such services through a certified public accounting firm that is validly licensed in the state of its principal place of business and that complies with the peer review and ownership provisions of Iowa Code section 542.7.~~

ITEM 14. Amend subrule 21.3(2) as follows:

21.3(2) Iowa licensure is required if~~:~~

~~*a.* The firm performs or offers to perform attest services, other than review services, in Iowa or for a client with a home office in Iowa; or~~

~~*b.* The~~ the firm has one or more offices in Iowa at which the firm uses the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm."

ITEM 15. Rescind rule 193A—21.5(542) and adopt the following **new** rule in lieu thereof:

193A—21.5(542) Attest and compilation services. Unless otherwise required by rule 193A—21.3(542), attest and compilation services may be performed by an out-of-state CPA firm exercising a practice privilege as long as the out-of-state firm is validly licensed in the state of its principal place of business, complies with Iowa Code sections 542.20(5) and 542.20(6) and associated rules, and complies with the peer review and ownership provisions of Iowa Code section 542.7.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/25/17.

ARC 3423C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)"r," and 17A.3(1)"b," the Iowa Finance Authority hereby amends Chapter 24, "Home and Community-Based Services Rent Subsidy Program," Iowa Administrative Code.

These amendments simplify and clarify the rules governing the Home and Community-Based Services Rent Subsidy Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3272C**. The Authority received and replied to public comment on the amendments published under Notice on issues pertaining to the waiting list and the appeal process. The Authority made only nonsubstantive changes to the amendments as published under Notice.

The Iowa Finance Authority adopted these amendments on October 4, 2017.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code sections 16.5(1)"r" and 16.47 and 2017 Iowa Acts, House File 586.

These amendments will become effective on November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 265—24.1(16) as follows:

265—24.1(16) Purpose. This chapter defines and structures the rent subsidy program for persons who participate in a home- and community-based services (HCBS) waiver program ~~and who meet the nursing facility level of care for HCBS waiver services as established on or after July 1, 2005~~, including habilitation services, or Money Follows the Person (MFP). This program is designed to provide rent assistance to ~~these persons to~~ help ~~them~~ HCBS waiver and MFP participants live ~~successfully~~ in ~~their~~

~~own home and~~ the community ~~until they become eligible for any other local, state or federal rent assistance~~.

ITEM 2. Amend rule 265—24.2(16) as follows:

265—24.2(16) Definitions.

~~*"Adult"* means a person aged 18 or over.~~

"Applicant" means a person aged 18 or over who participates in one of the home- and community-based services waiver programs, habilitation services, or Money Follows the Person.

"Authority" means the Iowa finance authority.

~~*"Child"* or *"children"* means a person or persons under 18 years of age.~~

~~*"Dependent relative"* or *"dependent relatives"* means a person or persons as defined by the department of human services under the provisions set forth in 441—subrule 51.4(4).~~

"Habilitation services" means an Iowa Medicaid program designed to provide home- and community-based services to Iowans with the functional impairments typically associated with chronic mental illnesses.

"Home- and community-based services rent subsidy program" means a program as established in 2017 Iowa Acts, House File 586, section 3.

"Home- and community-based services waiver program" or *"HCBS"* means any of the waiver programs administered by the department of human services under the provisions set forth in 441—Chapter 83 ~~including, but not limited to, the ill and handicapped waiver, the elderly waiver, the AIDS/HIV waiver, the mental retardation waiver, the brain injury waiver, and the physical disabilities waiver~~, the habilitation services waiver, or Money Follows the Person.

"Housing Choice Voucher (HCV) program" means the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market as created in Section 201 of Title 2 of Public Law 93-383, also known as the Housing and Community Development Act of 1974, with implementing regulations found in 24 CFR Part 982. Applicants apply for the HCV program through the local public housing authority.

"HUD" means the U.S. Department of Housing and Urban Development.

"Immediate family member" means a spouse, parent or child.

"Legal guardian" means a person lawfully invested with the power, and charged with the obligation, of taking care of and managing the property and rights of a recipient who, because of age, understanding, or self-control, is considered incapable of administering the recipient's own affairs.

~~*"Legal representative"* for personal or health care decisions means a person possessing a durable power of attorney for health care, guardian, or next of kin (spouse, adult children, parents, adult siblings under Iowa Code chapter 144A). "Legal representative" for financial decisions means a person possessing a power of attorney, a representative payee, fiduciary or conservator.~~

"Money Follows the Person (MFP)" means Iowa's Money Follows the Person (MFP) partnership for community integration program, which provides opportunities for individuals in Iowa to move out of intermediate care facilities for persons with intellectual disabilities (ICF/ID) or nursing facilities, and into the community.

"Qualified dependent(s)" means the applicant's spouse or child who is claimed as a dependent of the applicant for federal income tax purposes.

"Qualified rental unit" means ~~an apartment, mobile home, or private room~~ a housing unit for which a signed written ~~lease~~ rental agreement exists and which is governed by Iowa Code chapter 562A. A qualified rental unit does not include a home owned by ~~a~~ an immediate family member.

"Representative payee" means a person who is appointed for a recipient who is unable to receive and manage the recipient's own benefits due to mental or physical impairments. The representative payee is to use the benefits in the recipient's best interest and is personally liable for misuse of funds.

~~*"Residential-based supported community living services"* means residential-based supported community living services as defined in 441—subrule 78.41(10).~~

ITEM 3. Amend rule 265—24.3(16) as follows:

265—24.3(16) Eligibility requirements. All of the following criteria shall be met.

~~**24.3(1)** *HCBS recipient.* The person shall be an adult recipient of one of the HCBS waiver programs or a child receiving residential-based supported community living services under the mental retardation HCBS waiver program.~~

~~**24.3(2)**~~ **24.3(1)** *Demonstrated need.* ~~To~~ An applicant must demonstrate need~~, adult applicants must provide evidence that they are responsible for paying more than 30 percent of their gross income for rent and that they are not receiving and are ineligible for other rental assistance. In the case of children receiving residential-based supported community living services under the mental retardation HCBS waiver program, they or their families or guardians must provide evidence that the children are not receiving and are ineligible for other rental assistance and that more than 30 percent of the children's gross income is obligated for rent. A minimum contribution of $25 toward the cost of rent is expected from all applicants. This program may not be used to substitute for any other rent subsidy that a person had been receiving at the time of or immediately prior to the time of application to this program. Persons receiving rental assistance at the time of or immediately prior to the time of application to this program shall not be eligible.~~ for rent subsidy by meeting all of the following requirements:

a. The applicant shall provide a copy of an executed rental agreement showing the applicant as a tenant, with signatures by the landlord and the applicant or the applicant's legal guardian;

b. The applicant shall provide evidence that the applicant pays more than 30 percent of the applicant's gross income for rent, with a minimum contribution of $25 per month;

c. The applicant shall not receive any other permanent rental assistance;

d. The applicant may not use this program to substitute for any other permanent rent subsidy that the applicant had been receiving at the time of or immediately prior to the time of application to this program; and

e. The applicant's rental unit may not be owned by someone who lives in the unit.

~~**24.3(3)** *Risk of nursing facility care.* Applicants must be able to demonstrate both of the following:~~

~~*a.* That they have been assessed as needing, at a minimum, nursing facility level of care for HCBS waiver services; and~~

~~*b.* That they have insufficient funds to pay their community housing costs and that insufficient funds will cause them to enter a facility that provides, at a minimum, nursing facility level of care.~~

~~**24.3(4)**~~ **24.3(2)** *Ineligible for other rent subsidies.* The ~~person~~ applicant shall have been determined ineligible or be on the waiting list ~~for rent subsidy programs~~, or provide documentation that the waiting list is closed, under the ~~U.S. Department of Housing and Urban Development (HUD) and any other available rent subsidy programs~~ HUD Housing Choice Voucher (HCV) program administered by Iowa's public housing authorities. In the event that the HCV waiting list is currently closed, the applicant is responsible for monitoring the status of the waiting list application period and must apply at the first available opportunity and provide documentation of HCV application submission to the local public housing authority or be subject to removal from the HCBS rent subsidy program or the HCBS rent subsidy program waiting list.

~~**24.3(5)** *Responsible for rent.* Adult program participants shall be financially responsible for rent. In the case of children receiving residential-based supported community living services under the mental retardation HCBS waiver program, they or their families must demonstrate this financial responsibility.~~

ITEM 4. Amend rule 265—24.4(16) as follows:

265—24.4(16) Application. Applications for the HCBS rent subsidy program may be obtained on the authority's Web site at ~~www.iowafinanceauthority.gov~~ www.iowafinanceauthority.gov/HCBS. Applications shall be submitted to the Iowa Finance Authority~~, HCBS Rent Subsidy Program, 2015 Grand Avenue, Des Moines, Iowa 50312~~ as directed on the application.

24.4(1) *Application process.* ~~A person who wishes to apply~~ An applicant shall complete the ~~Application~~ application for HCBS ~~Rent Subsidy~~ rent subsidy and provide ~~verification of the following:~~ all required documentation as specified in the application.

~~*a.* The applicant's estimated monthly gross income for the 12 months following application, including written evidence from the income sources used to determine that income.~~

~~*b.* Written evidence from sources of local rental assistance available in the applicant's community that the applicant has applied for that rental assistance and that the applicant has been determined ineligible or placed on a waiting list for that rental assistance. If the waiting list for rental assistance has been closed, a copy of that notice is considered written documentation if signed and dated by a representative of the local rental assistance program.~~

~~*c.* The total amount of the monthly rent for the qualified rental unit.~~

~~*d.* The total number of bedrooms in the qualified rental unit.~~

~~*e.* The applicant's number of dependent relatives living full-time in the qualified rental unit.~~

24.4(2) *Date of application.* The date of the application shall be the date the completed application, including all required documentation, is received by the authority~~, including written verification of gross income, written verification of application to other rental assistance programs or a signed, dated copy of the waiting list closure notice, and written verification that the applicant needs nursing facility level of care for HCBS waiver services~~.

24.4(3) *Eligibility determination.* The applicant~~, the applicant's legal representative, or the applicant's case manager~~ shall be notified of the amount of monthly rent subsidy within ~~25~~ 30 business days of the authority's ~~receipt~~ approval of a complete application. ~~The notice shall be sent on or about the date when the authority determines that funding is available to approve the applicant's rent subsidy.~~ In addition, the applicant may elect to have any of the following notified: legal guardian, case manager or representative payee.

24.4(4) *Waiting list.* ~~After funds appropriated for this purpose are obligated, the authority shall deny pending applications.~~ The authority shall maintain and administer a statewide waiting list for funding of HCBS rent subsidy as follows:

~~*a.* A denial shall be accompanied by a notice of decision, which will be sent within 25 business days of the authority's receipt of a complete application. The notice shall state that no funds are available and that the applicant will be placed on the waiting list, or that the applicant does not meet eligibility requirements.~~

~~*b.* Applicants not awarded funding shall be placed on a statewide waiting list according to the order in which the completed applications and verification were received by the authority. In the event that more than one application is received on the same day, the person shall be entered on the waiting list on the basis of the day of the month of the person's birthday, with the lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.~~

~~*c.* When funding allows additional persons to be added to the rent subsidy program, their names shall be taken from the statewide waiting list, and their eligibility shall be determined at that time. If the completed application and verification of eligibility are not received by the time line specified by the authority, the person's name shall be dropped from consideration for receipt of the rent subsidy payment.~~

a. When an application is received, the applicant will be placed on the established waiting list according to the order in which the completed application and all required supporting documents were received by the authority.

b. Waiting list priority shall be given to an applicant:

(1) Who is an approved MFP participant.

(2) Who is transitioning from an out-of-state institutional placement.

(3) Who is transitioning from an institutional setting within Iowa.

(4) Whose rent subsidy has been terminated due to lack of available funds under subrule 24.7(3).

c. When funding allows additional applicants to be added to the HCBS rent subsidy program, their names shall be taken from the statewide waiting list, updated information will be requested, and each applicant's eligibility shall be determined at that time based upon receipt of the requested updated documentation. If the completed application and verification of eligibility are not received by the deadline specified by the authority, the applicant's name may be removed from the waiting list.

ITEM 5. Amend rule 265—24.5(16) as follows:

265—24.5(16) Amount of rent subsidy.

24.5(1) *Use of subsidy.* Assistance shall be used for rental expense.

24.5(2) *Maximum monthly payment for rent.* Assistance for rent shall be equal to the lesser of the rent paid~~, not to exceed 100 percent of the current fair market rent under guidelines of the applicable~~ by the applicant or the current applicable fair market rent as published by HUD ~~low-rent housing program in~~ for the area where the ~~person's~~ applicant's residence is located, less 30 percent of the applicant's gross monthly income ~~of the applicant~~. The fair market rent used shall be that for a one-bedroom unit or a proportionate share of the fair market rent in living units containing more than one bedroom. When the applicant resides with a ~~dependent relative(s)~~ qualified dependent(s), the proportionate share may consist of additional bedrooms, applying the same maximum monthly payment standard.

24.5(3) *Monthly payment.* Applicants approved for HCBS rent subsidy payments shall receive an ongoing monthly payment which is equal to the amount determined pursuant to subrule 24.5(2)~~, provided, however, that the~~. The authority will not send any payments ~~that amount to~~ less than ~~$25~~ $50 but will accrue subsidy payments until such time as at least ~~$25~~ $50 is accumulated. ~~An approved rent subsidy shall be payable on a monthly basis following approval.~~

ITEM 6. Amend rule 265—24.6(16) as follows:

265—24.6(16) Redetermination of eligibility.

24.6(1) *Time of completion.* A redetermination of eligibility for HCBS rent subsidy payments shall be completed:

a. At least once every 12 months.

b. When a change in circumstances occurs that affects eligibility in accordance with rule 265—24.3(16).

c. If the ~~person~~ recipient moves from the residence stated on the approved application.

d. When there is a change greater than ~~$40~~ $100 in the recipient's estimated gross monthly income.

24.6(2) *Renewal notice.* The authority shall send a renewal notice ~~at least 60 calendar days~~ before the deadline date for annual redetermination of eligibility.

a. The recipient shall submit the completed ~~Application~~ application for HCBS ~~Rent Subsidy~~ rent subsidy and required verification materials to the ~~Iowa Finance Authority, HCBS Rent Subsidy Program, 2015 Grand Avenue, Des Moines, Iowa 50312~~ authority, as directed on the application.

b. If the authority does not receive the completed application and verification of continuing eligibility by the ~~thirtieth day following the date of notification~~ due date as noted on the authority's Web site, the ~~person's~~ recipient's rent subsidy shall be terminated.

ITEM 7. Amend rule 265—24.7(16) as follows:

265—24.7(16) Termination of rent subsidy payments.

24.7(1) *Reasons for termination.* The HCBS rent subsidy shall terminate at the end of the month in which any of the following occur, and a notice shall be sent ~~which states~~ stating the reason for the termination, which may include, but is not limited to, the following:

a. The ~~person~~ recipient does not meet one or more of the eligibility criteria listed in rule 265—24.3(16).

~~*b.* The person dies.~~

~~*c.*~~ *b.* Completion of the required documentation is not received by the deadline established by the authority.

~~*d.*~~ *c.* No further funds are available for the HCBS rent subsidy program.

d. The recipient, case manager, legal guardian or representative payee demonstrates abusive or threatening language or behavior toward authority staff.

e. The recipient is determined to have provided false information.

24.7(2) *Reporting of changes.* The ~~person~~ applicant or the applicant's designated responsible party as certified in the application is required to report to the authority any changes that may affect eligibility

within ten business days ~~any changes that may affect eligibility~~ of the occurrence of the change. Failure to do so may result in the applicant's responsibility ~~for repayment of~~ to repay HCBS rent subsidy funds and termination of the HCBS rent subsidy. ~~(See rule 265—24.8(16).)~~

24.7(3) *Insufficient funding.* If funds are not sufficient to cover payments for all ~~persons on~~ recipients under the HCBS rent subsidy program, ~~persons~~ recipients shall be terminated from the ~~rent subsidy~~ program in inverse order based on the date of ~~initial~~ the approved application~~. The person~~, such that the most recently approved recipients shall be terminated from the program first, and the recipient terminated from the program shall ~~move~~ be placed back ~~to~~ on the waiting list, with the ~~person's~~ recipient's original ~~application~~ approval date dictating the ~~person's~~ recipient's position on the waiting list ~~as stated at subrule 24.4(4)~~. ~~The authority is responsible for notifying the persons who will be removed from the rent subsidy for this reason.~~

ITEM 8. Rescind rule 265—24.8(16) as follows:

~~**265—24.8(16) Fraudulent practices relating to the rent subsidy program.** A person is guilty of a fraudulent practice if that person, or the person's representative, with the intent to gain financial assistance for which that person is not eligible, knowingly makes or causes to be made a false statement or representation, or knowingly fails to report to an employee of the authority any change in circumstances affecting that person's eligibility for financial assistance. In cases of found fraudulent practices, the authority may require, as a condition of continued participation in the rent subsidy program, repayment of the amount that was received by the recipient while the recipient was ineligible.~~

ITEM 9. Rescind rule 265—24.9(16) as follows:

~~**265—24.9(16) Appeals.**~~

~~**24.9(1)** An applicant whose application has been timely filed may appeal the authority's decision by filing a written notice of appeal within 14 days of the decision before the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. To be considered timely, the notice of appeal must actually be received at the above address within the time frame specified.~~

~~**24.9(2)** The notice of appeal shall state the grounds upon which the applicant challenges the decision.~~

~~**24.9(3)** An appeal shall be heard by the executive director of the authority. The executive director shall grant the appellant reasonable opportunity to gather information and inquire as to why the decision in question was made. The executive director shall allow the appellant to present all the relevant facts supporting the appellant's position. Such presentation shall be held not later than 30 days after the filing of an appeal, unless the parties agree to hold the presentation on a later date.~~

~~**24.9(4)** Within 7 days of the presentation, the executive director shall issue a written decision which clearly states whether or not the authority's decision was appropriate. Such decision shall be delivered to the appellant and the board of the authority.~~

~~**24.9(5)** If the executive director determines that the authority's decision was not appropriate, the executive director shall recommend to the board of the authority a proper remedy.~~

~~**24.9(6)** Final agency action. After receiving a written decision from the executive director, the board must either approve or decline to approve the executive director's recommendation no later than the next regularly scheduled board meeting. Such action by the board shall be the final decision of the agency.~~

~~**24.9(7)** Judicial review. Judicial review of the authority's final decisions may be sought in accordance with Iowa Code section 17A.19.~~

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/25/17.

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IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)"m," 16.5(1)"r," 16.54(5), and 17A.3(1)"b," the Iowa Finance Authority hereby amends Chapter 27, "Military Service Member Home Ownership Assistance Program," Iowa Administrative Code.

These amendments clarify and simplify the rules governing the Military Service Member Home Ownership Assistance Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3273C**. The Authority received no public comment on the amendments published under Notice, and the Authority made no changes to the amendments as published under Notice.

The Iowa Finance Authority adopted these amendments on October 4, 2017.

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

These amendments are intended to implement Iowa Code sections 16.5(1)"r" and 16.54.

These amendments will become effective on November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 265—27.2(16) as follows:

265—27.2(16) Definitions. As used in this chapter, unless the context otherwise requires:

"Closing agent" means the attorney, real estate firm, or closing company that is closing the ~~cash sale~~ qualifying purchase transaction and that prepares the cash sale settlement statement.

"Eligible service member" means a person purchasing his or her primary residence in the state of Iowa who, at the time of application for a grant under the program, (1) is or was, if discharged under honorable conditions, a member of the national guard, reserve, or regular component of the armed forces of the United States under Title 10 or Title 32 and has served at least 90 days of active duty service, other than training, beginning on or after September 11, 2001, or during the period of the Persian Gulf Conflict, beginning August 2, 1990, and ending April 6, 1991; (2) was honorably discharged due to injuries incurred while on active federal service beginning on or after September 11, 2001, or during the period of the Persian Gulf Conflict, beginning August 2, 1990, and ending April 6, 1991; or (3) is a surviving spouse of a service member who met the eligibility criteria of (1) or (2) above.

"Facilitating lender" means a lender that is not a participating lender but that is approved by the authority to make loans under the military home ownership assistance program pursuant to Iowa Code section 16.54(5) and subrule 27.3(7).

"Home ownership assistance" means the one-time assistance of up to $5,000 per eligible service member that may be used toward down payment or closing costs, or both, in the purchase of a qualified home. ~~This assistance does not require repayment except pursuant to rule 265—27.4(16).~~

"Participating lender" means a lender approved for participation in one or more of the authority's first mortgage financing home buyer programs. ~~Eligible home buyer program participating lenders are those that make available the authority's home buyer program to customers in the same manner as other mortgage loan programs.~~ The authority maintains a list of participating lenders on its Web site: www.iowafinanceauthority.gov.

"Program" or *"military home ownership assistance program"* or *"MHOA"* means the military service member home ownership assistance program authorized by Iowa Code section 16.54 ~~as amended by 2010 Iowa Acts, House File 2148~~.

"Qualified home" means a home ~~that is~~ located in the state of Iowa~~,~~ that ~~is purchased by an eligible service member as the service member's primary residence, that will be immediately occupied by the service member or spouse, and that falls~~ an eligible service member purchases, occupies, and uses as the service member's primary residence. The home must fall into one of the following categories:

1. Single-family residence, including "stick-built" homes, modular homes, or manufactured homes, provided the home is attached to a permanent foundation and is taxed as real estate;

2. Condominium;

3. Townhome;

4. A property containing two to four residential units, where one unit is to be occupied by the eligible service member as ~~his or her~~ the service member's primary residence.

~~The following categories of property shall not constitute a qualified home:~~

~~● Multifamily properties of five units or more;~~

~~● Commercial or nonresidential property;~~

~~● Farmland or other investment property;~~

~~● Recreational vehicles, mobile homes, or trailers that are not both attached to a permanent foundation and taxed as real estate.~~

"Qualified mortgage" means a permanent mortgage loan made pursuant to one of the authority's home buyer mortgage programs unless the lender offers ~~a lower annual percentage interest rate (APR), fixed-rate, fully amortizing first mortgage meeting the requirements of paragraph 27.3(2)~~ ~~*"a."*~~ financing that is more financially advantageous for the service member. ~~The authority's home buyer mortgage program information may be obtained on the authority's Web site at www.iowafinanceauthority.gov.~~

"Status documentation" means written documentation ~~of~~ verifying that the ~~applicant's status with the armed forces of the United States, typically~~ applicant is an eligible service member. This documentation may include, but is not limited to, a copy of a valid DD Form 214, showing character of service other than dishonorable, or the applicant's most recent ~~four months of~~ leave and earnings statements representing 90 days of active duty.

"Title guaranty certificate" means the certificate issued by the Iowa title guaranty division of the authority pursuant to Iowa Code section 16.92 to ensure marketable title to the lender or the homeowner, or both. ~~Information about title guaranty may be obtained at the title guaranty Web site at www.iowafinanceauthority.gov.~~

ITEM 2. Amend rule 265—27.3(16) as follows:

265—27.3(16) Application procedure and determination of eligibility.

27.3(1) *Prior approval.* Whether the purchase of a qualified home is by mortgage financing or cash, prior approval of the assistance by the authority is required. Approval of the request will ~~entail application and~~ include supporting document review by the authority and a determination of the service member's eligibility by the Iowa department of veterans affairs. ~~A minimum of two weeks should be allowed for response from the authority.~~

27.3(2) *Financed home purchases.*

a. In the case of the purchase of a qualified home that is to be financed, the eligible service member must apply for assistance under the program through a participating or facilitating lender ~~or a lender approved to facilitate MHOA assistance~~. ~~The~~ If the service member qualifies for one of the authority's home buyer mortgage programs, the mortgage financing provided shall be a qualified mortgage ~~loan made pursuant to one of the authority's home buyer mortgage programs if the service member qualifies for it; provided, however, that notwithstanding the foregoing, a service member may utilize a mortgage loan that is not made pursuant to one of the authority's home buyer mortgage programs if:~~. Service members who are not eligible for one of the authority's home buyer mortgage programs and are not purchasing on a cash basis may use any permanent financing available to them.

~~(1) Such mortgage loan is offered by either:~~

~~1. A lender that participates in one of the authority's first mortgage financing programs, or~~

~~2. A lender approved pursuant to Iowa Code section 16.54(5); and~~

~~(2) The authority determines that the offered financing would be economically feasible and financially advantageous for the eligible service member. The authority shall presume an offer of financing to be financially advantageous for the eligible service member if the offered financing has an annual percentage rate that is at least 25 basis points lower than the most nearly equivalent loan offered by participating lenders on the same date pursuant to one of the authority's home buyer mortgage programs.~~

~~If the service member does not qualify for one of the authority's home buyer mortgage programs, another permanent, fixed-rate, fully amortizing mortgage loan may be used.~~

b. To apply for the military assistance, the eligible service member shall provide the participating or facilitating lender with ~~all of~~ the ~~following:~~

~~(1)~~ ~~Status~~ status documentation~~;~~ and all necessary program documents.

~~(2) A bona fide purchase agreement with any addenda or attachments for a primary residence;~~

~~(3) A complete loan application on Form 1003;~~

~~(4) A copy of a government-issued photo identification card or a lender certification that a government-issued photo identification card has been provided;~~

~~(5) A copy of the subject appraisal; and~~

~~(6) Documentation that demonstrates the home will be occupied as a primary residence.~~

~~*c.* The eligible service member shall assist the participating lender in completing an MHOA application on a form approved by the authority stating the amount of the assistance being requested. In the event the service member is not using one of the authority's mortgage programs, the request submission must include early truth-in-lending and good-faith estimate disclosures.~~

~~*d.*~~ *c.* Once ~~it~~ the lender has received all of the information required by this subrule, the lender shall transmit copies of the ~~loan application, the status documentation, the purchase agreement, the photo ID, the appraisal, any~~ necessary ~~supporting~~ documentation~~, and the MHOA application~~ to the authority.

27.3(3) *Cash home purchases.* In the case of a cash purchase of a qualified home, the eligible service member shall provide directly to the authority status documentation, ~~a completed MHOA application form obtained from the authority, and a bona fide~~ the purchase agreement with any addenda or attachments for a primary residence, and a title guaranty commitment.

27.3(4) *Referral of status documentation to Iowa department of veterans affairs.* ~~Upon receipt of the completed MHOA application, the~~ The authority shall submit the status documentation, upon receipt, to the Iowa department of veterans affairs for verification that the ~~applicant's duty status is consistent with the definition of "~~ applicant is an eligible service member.~~"~~ The Iowa department of veterans affairs shall be the final authority as to whether an ~~applicant's duty status is consistent with the definition of "~~ applicant is an eligible service member.~~"~~

27.3(5) *Notice of MHOA approval.* Upon confirmation of the applicant's ~~service record~~ eligibility by the Iowa department of veterans affairs and the authority, ~~provided that the information submitted on the application form complies with the requirements of this chapter,~~ the authority shall notify the lender, or eligible service member in the case of a cash purchase, that the MHOA application has been approved.

27.3(6) *Gaps in funding.* In cases where the military assistance funds are unavailable during the home purchase process, MHOA requests for approval ~~shall~~ may be placed on a waiting list. When funds are again available~~, provided that all other criteria have been met, including issuance of the title guaranty certificate,~~ and ~~where~~ the home purchase closed without the benefit of military assistance funds being applied toward closing costs or down payment, the proceeds of the assistance shall be paid (1) directly to the participating ~~lender/servicing~~ lender or servicing lender to be applied toward the qualified mortgage loan's principal balance, or (2) if the qualified home was purchased pursuant to a cash purchase transaction, directly to the eligible service member. ~~Additional documentation required shall include a statement executed by~~ The authority will notify the applicant ~~authorizing~~ that the assistance ~~to~~ will be applied to the principal balance.

27.3(7) *Approval process for facilitating lender status.* Pursuant to Iowa Code section 16.54(5), an Iowa-regulated or federally regulated lender with a physical location in the state of Iowa may submit an application to the authority for approval, even if such lender does not participate in the authority's home ownership programs for home buyers. ~~The application shall include a written request to be approved as an MHOA facilitating lender, a check for $500 payable to the authority, a narrative describing the lender's mortgage origination process, including mortgage loan products offered through the lender, documentation of Iowa or federal regulation showing that the applicant is in good standing, an errors and omissions insurance declaration evidencing coverage of at least $300,000, and a completed electronic funds transfer form. Lenders should allow a minimum of two weeks' response time from the authority.~~ The approval to be a facilitating lender shall be valid for one year, and lenders annually will need to

submit an application, including the application fee. The application fee may not be charged in part or in full to a service member or to a property seller. ~~Any approval granted pursuant hereto shall be contingent upon the approved lender's offering eligible service members a lower annual percentage rate than the annual percentage rates available at such time from lenders that participate in the authority's first mortgage financing programs.~~

ITEM 3. Amend rule 265—27.4(16) as follows:

265—27.4(16) MHOA award. Assistance awarded hereunder shall be up to $5,000 toward the purchase of a qualified home ~~and may be used for down payment or for closing costs, or for both. Assistance funds must be applied to the purchase of a qualified home and, in the case of mortgage financing, the mortgage must be a qualified mortgage. Any assistance proceeds which are not used for down payment or closing costs toward the purchase of a qualified home which is financed by a mortgage or cash purchase transaction must be returned to the authority~~.

27.4(1) *MHOA reimbursement.* The ~~participating~~ lender ~~or cash payment home buyer~~ shall advance funds at closing in an amount equal to ~~the amount of~~ the assistance on behalf of the eligible service member ~~to be applied toward closing costs or the down payment~~. ~~The~~ After closing, the lender ~~or cash payment home buyer, as applicable,~~ shall~~, within 30 days of closing,~~ submit to the authority ~~a copy of the~~ copies of the following documents: an executed ~~HUD-1 Settlement Statement (or, if the transaction is a cash purchase, the eligible service member may use the settlement statement certified by a closing agent and the eligible service member), a copy of~~ settlement statement, the deed conveying title ~~to the qualified home~~, a ~~copy of a~~ title guaranty ~~certificate issued for the qualified home~~ commitment, and ~~the military grant agreement and certification (form obtained from the authority) for reimbursement for the amount of the assistance. In the event the mortgage financing is not made pursuant to one of the authority's home buyer programs, reimbursement documentation shall include a certified copy of~~ the promissory note~~,~~ and mortgage~~, and final truth-in-lending disclosure~~. After closing, for cash home purchasers, the eligible service member shall submit to the authority a copy of the executed settlement statement, the deed conveying title and the executed title guaranty certificate.

27.4(2) *MHOA assistance restrictions and limitations.* All assistance under the program is subject to funding availability. Assistance will be awarded in the order in which ~~completed MHOA applications are received~~ all required documentation is received and approved by the authority. Assistance awarded pursuant to the program is personal to its recipient and may not be assigned. Only one award of assistance shall be awarded per home purchase. If both homeowners are eligible service members, only one may use the MHOA per home purchase. If another home is purchased at a later date, the other eligible service member may use the MHOA on the second home if the program exists and funds are available. An eligible service member shall receive only one award under the program. While program funds are available, the award shall be valid for 60 days in the case of purchases of existing or completed property and 120 days in the case of purchases of property being constructed or renovated. A reasonable extension may be granted with evidence of a purchase loan in progress which has been delayed due to circumstances beyond the service member's control.

ITEM 4. Rescind rule 265—27.5(16) as follows:

~~**265—27.5(16) Income, purchase price and qualified mortgage.** There are no income or purchase price limits under the program except for eligible service members purchasing with mortgage financing under one of the authority's home buyer programs. Service members who are not eligible for one of the authority's home buyer mortgage programs and are not purchasing on a cash basis must use other permanent mortgages made by the lender. Service members may also, if eligible, use other subsidy funds from the authority as allowed by one or more of the authority's programs, grant fund assistance available through other public agencies, nonprofit organizations, or the service member's employer, or any forgivable, "soft second" lien subsidy. Information about the authority's home buyer~~

~~programs or how to contact a participating lender may be obtained on the authority's Web site at www.iowafinanceauthority.gov.~~

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IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)"m," 16.5(1)"r," and 17A.3(1)"b," the Iowa Finance Authority hereby amends Chapter 39, "HOME Investment Partnerships Program," Iowa Administrative Code.

These amendments clarify the rules governing the HOME Investment Partnerships Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3274C**. The Authority received public comment on the amendments published under Notice and made certain changes to the amendments in response thereto. In particular, the Authority retained most of subrule 39.6(8), which had been proposed to be stricken as part of the amendments published under Notice, and renumbered the subrule as 39.6(3). The Authority also retained certain language in rule 265—39.9(16) that had been proposed to be stricken as part of the amendments published under Notice. Specifically, the Authority retained language in the subrules renumbered herein as 39.9(1) and 39.9(2).

The Iowa Finance Authority adopted these amendments on October 4, 2017.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code section 16.5(1)"m" and 42 U.S.C. Sections 12701 et seq.

These amendments will become effective on November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 265—39.2(16) as follows:

265—39.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific housing activities, projects or programs assisted through the HOME investment partnerships program.

"Administrative plan" means a document that a HOME recipient establishes that describes the operation of a funded activity in compliance with all state and federal requirements.

"Affordability period" means the length of time a recipient or subrecipient must impose the rent or occupancy income restrictions on the units assisted by HOME funds as established by federal program requirements.

"CHDO" means a community housing development organization, which is a nonprofit organization registered with the Iowa secretary of state and certified as such by IFA, pursuant to 24 CFR 92.2 (July 24, 2013).

"Consolidated plan" means the state's housing and community development planning document and the annual action plan update approved by HUD.

"Contract" means a binding written agreement between IFA and the recipient or subrecipient for the purpose of utilizing HOME funds to build, buy or rehabilitate (or both buy and rehabilitate) affordable housing for rent or homeownership or to provide direct rental assistance to low-income people.

~~*"Developer"* means any individual or entity responsible for initiating and controlling the development process and ensuring that all phases of the development process, or any material portion thereof, are accomplished. The development process applies to transitional housing, rental housing, rehabilitation and rental housing new construction.~~

~~*"Development subsidies"* means financial assistance provided to developers of newly constructed, single-family housing to address the added costs of constructing housing. In such cases, the total cost of development is likely to exceed the sales price or the appraised fair market value of the housing. Additional costs might include labor, materials and equipment; professional design and construction oversight costs; and required third-party energy efficiency verification and certification costs.~~

~~*"Displaced homemaker"* means an individual who (1) is an adult; (2) has not worked full-time/full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and (3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.~~

~~*"Energy Star"* means a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that establishes standards and practices to improve energy efficiency.~~

~~*"Energy Star certification"* means a property meets strict guidelines for energy efficiency set by the U.S. Environmental Protection Agency (EPA), making the property 20 to 30 percent more efficient than standard homes. Homes achieve this level of performance through a combination of energy-efficient improvements, including effective insulation systems, high-performance windows, tight construction and ducts, efficient heating and cooling equipment, and Energy Star-qualified lighting and appliances.~~

~~*"Energy Star rater"* means a certified inspector who works closely with the builder throughout the construction process to help determine the needed energy-saving equipment and construction techniques and to conduct required on-site diagnostic testing and inspections to document that the home is eligible to earn the Energy Star certification.~~

~~*"First-time homebuyer"* or *"homebuyer"* means an individual or an individual and the individual's spouse who have not owned a home during the three-year period before the purchase of a home with HOME assistance, except that an individual who is a displaced homemaker or single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while a homemaker, owned a home with the individual's spouse or resided in a home owned by a spouse; and an individual may not be excluded from consideration on the basis that the individual owns or owned, as a principal residence during the three-year period before purchase of a home with HOME assistance, a dwelling unit whose structure is (1) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations or (2) not in compliance with state, local or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.~~

~~*"Fully accessible unit"* means a unit designed and constructed for full accessibility in accordance with Section 1002 of the International Code Council (ICC) A117.1.~~

"HOME" means the HOME Investment Partnerships Program, authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990.

"HUD" means the U.S. Department of Housing and Urban Development.

~~*"IDIS"* means the HUD Integrated Disbursement and Information System.~~

"IFA" means the Iowa finance authority.

~~*"Lead hazard reduction or abatement carrying costs"* means the additional costs incurred by lead professionals to ensure that target housing is lead-safe at the completion of rehabilitation. "Lead hazard reduction or abatement carrying costs" includes, but is not limited to, required notifications and reports, lead hazard or abatement evaluations, revisions to project specifications to achieve lead safety, lead hazard reduction or abatement oversight, and clearance testing and final assessment.~~

~~*"LIHTC"* means low-income housing tax credits and federal tax incentives created through the Tax Reform Act of 1986 and allocated through IFA for affordable rental housing development.~~

~~*"Local financial support"* means financial investment by the recipient through the use of the recipient's own discretionary funds that are a permanent financial contribution or commitment applied to and related to the objectives of the housing activity or project assisted through the HOME partnership program and that are used during the same time frame as the requested housing activity or project.~~

~~*"Local support"* means involvement, endorsement and investment by local citizens, local organizations or the governing body of the local government in which the housing project is located.~~

~~The local support shall promote the objectives of the housing activity or projects assisted through HOME.~~

"Low-income" means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD. An individual does not qualify as a low-income family if the individual is enrolled as a student at an institution of higher education; is under 24 years of age; is not a veteran of the United States military; is unmarried; does not have a dependent child; and is not otherwise individually low-income or does not have parents who qualify as low-income.

~~*"Multifamily housing"* means a structure with five or more dwelling units serving five or more family residences.~~

~~*"Net proceeds"* means the amount determined by calculating the difference between the sale price and the amount of the outstanding principal loan balance owed plus any seller's reasonable and customary closing costs associated with the sale.~~

~~*"New construction rental units"* means the on-site construction or erection of a building, or buildings, for the purpose of providing rental housing units. New construction rental units include conventional, on-site, stick-built construction and on-site erection or fabrication of manufactured housing units or components of units. New construction rental units also include the addition of any rental units outside the existing walls (the building envelope) of an existing building, or buildings, that are part of a rental rehabilitation, renovation or conversion project.~~

~~*"Period of affordability"* means the length of time a recipient or subrecipient must impose the rent or occupancy income restrictions on the units assisted by HOME funds as established by federal program requirements.~~

"Program income" means gross income received by the participating jurisdiction, state recipient, or a subrecipient directly generated from the use of HOME funds or matching contributions.

"Project" means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking. The project includes all the activities associated with the site and building. For tenant-based rental assistance, project means assistance to one or more families.

~~*"Project completion"* means that all construction work and title transfer (if applicable) are completed and the final draw of HOME funds has been disbursed. In addition:~~

~~1. For homebuyer projects, the beneficiary data have been entered into IDIS;~~

~~2. For rental projects, the units have all been initially occupied and the unit data have been entered into IDIS;~~

~~3. For tenant-based rental assistance projects, all HOME funds associated with the tenant-based rental assistance contract have been disbursed and beneficiary data have been entered into IDIS.~~

~~*"Qualified veteran"* means a person who served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable.~~

~~*"Reasonable and customary closing costs"* means:~~

~~1. Seller's reasonable and customary closing costs incurred include, but are not limited to: abstract updating, title search fees, document preparation fees, bringing current the seller's county taxes, and real estate commission fees. Ineligible costs include, but are not limited to: lender discount points, allowances, inspection fees, and buyer closing costs.~~

~~2. Buyer's reasonable and customary closing costs incurred include, but are not limited to: lender origination fees, credit report fees, fees for the title evidence or title opinion, fees for recording and filing of legal documents, attorneys' fees, appraisal fees, and required inspection fees. Ineligible costs under this definition include, but are not limited to: prepayment of taxes, prepayment of insurance, lender discount points and seller's closing costs.~~

"Recaptured funds" means HOME funds which are recouped by the recipient when the housing unit assisted by the HOME program homebuyer funds does not continue to be the principal residence of the assisted homebuyer for the full ~~period of~~ affordability period.

"Recipient" means the entity under contract with IFA to receive HOME funds and undertake the funded housing activity.

"Repayment" means HOME funds which the recipient shall repay to IFA because the funds were invested in a project or activity that is terminated before completion or were invested in a project or activity which failed to comply with federal program requirements.

~~*"Single-family housing unit"* means a one- to four-family residence, combination of manufactured housing unit and lot, or manufactured housing lot.~~

~~*"Single parent"* means an individual who (1) is unmarried or is legally separated from a spouse; and (2) has one or more minor children of whom the individual has custody or joint custody, or is pregnant.~~

"Subrecipient" means a public agency or nonprofit organization selected by IFA to administer all or a portion of an activity to produce affordable housing, provide down payment assistance, or provide tenant-based rental assistance under the HOME program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient. The selection of a subrecipient by IFA is not subject to the procurement procedures and requirements under federal or state law.

~~*"Technical services"* means all services that are necessary to carry out individual, scattered site activities including but not limited to: (1) conducting initial inspections, (2) work write-up or project specification development, (3) cost estimate preparation, (4) construction supervision associated with activities that do not require an architect or engineer, (5) lead hazard reduction or lead abatement need determination and oversight, (6) lead hazard reduction or abatement carrying costs, (7) temporary relocation coordination, (8) financing costs such as security agreement preparation and recording or filing fees, (9) processing of individual applications for assistance, (10) income eligibility determination and verification, (11) value determination (new construction) or after rehabilitation value determination (existing structures), and (12) project-specific environmental clearance processes.~~

~~*"Technical services provision"* means the cost to provide other individual housing project-related services such as: (1) financing costs (security agreement preparation, recording and filing fees), (2) processing individual applications for assistance, (3) income eligibility determination and verification, (4) after rehabilitation value determination, and (5) project-specific environmental clearance.~~

~~*"Very low-income"* means families whose annual incomes do not exceed 50 percent of the median income for the area, as determined by HUD. An individual does not qualify as a very low-income family if the individual is enrolled as a student at an institution of higher education; is under 24 years of age; is not a veteran of the United States military; is unmarried; does not have a dependent child; and is not otherwise individually very low-income or does not have parents who qualify as very low-income.~~

ITEM 2. Amend rule 265—39.3(16) as follows:

265—39.3(16) Eligible applicants. Eligible applicants for HOME assistance include all incorporated cities and all counties within the state of Iowa, nonprofit 501(c) organizations, CHDOs, and for-profit corporations or partnerships. Any eligible applicant may apply directly to IFA.

~~**39.3(1)** Any eligible applicant may apply directly to IFA.~~

~~**39.3(2)** Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.~~

ITEM 3. Amend rule 265—39.4(16) as follows:

265—39.4(16) Eligible activities and forms of assistance.

39.4(1) Eligible activities may include ~~transitional housing,~~ tenant-based rental assistance, rental housing rehabilitation ~~(including conversion and preservation)~~, rental housing new construction and adaptive reuse, homebuyer assistance that includes some form of direct subsidy to the homebuyer, and other housing-related activities as may be deemed appropriate by IFA. ~~Assisted housing may be single-family housing or multifamily housing and may be designed for occupancy by homebuyers or tenants.~~

~~*a.* Assisted units shall meet the period of affordability as set forth in the federal program requirements.~~

~~*b.* For homebuyer assistance, the initial purchase price for newly constructed units or the after-rehabilitation value for rehabilitated units shall not exceed the maximum homeownership value limit as established by HUD.~~

~~*c.* For a rental project, rents shall be limited to the rents allowed by HUD for HOME.~~

~~*d.* Assisted households shall meet income limits established by federal program requirements.~~

~~(1) For a rental project, all assisted units shall be rented to low-income households; at initial occupancy, at least 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with five or more units, at least 20 percent of the units shall be rented to very low-income households.~~

~~(2) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; at least 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.~~

~~(3) For homebuyer assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted.~~

~~*e.* Property standards. All newly constructed housing (single-family and multifamily housing) shall be constructed in accordance with any locally adopted and enforced building codes, standards and ordinances. In the absence of locally adopted and enforced building codes, the requirements of the state building code shall apply.~~

~~(1) All rental housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted and enforced building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the state building code shall apply.~~

~~(2) All single-family housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the most current version of Iowa's Minimum Housing Rehabilitation Standards shall apply (all communities with populations of 15,000 or less).~~

~~*f.* Energy Star. All new rental construction must obtain Energy Star certification verified by an Energy Star rater.~~

39.4(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans or other forms of assistance as may be approved by IFA.

~~**39.4(3)** For all single-family housing projects or activities assisting homebuyers, the only form of HOME assistance to the end beneficiary is a forgivable loan.~~

~~**39.4(4)**~~ **39.4(3)** Program income must be returned to IFA.

~~**39.4(5)**~~ **39.4(4)** A site including any building located thereon or project acquired or used for rental activities must be held in fee simple title by the recipient upon the disbursement of HOME funds and throughout the contract term with IFA. An installment contract or leasehold interest is not an acceptable recipient interest.

~~**39.4(6)**~~ **39.4(5)** A site including any building located thereon or project acquired or used for homebuyer activities must be held in fee simple title by the recipient or homebuyer upon the disbursement of HOME funds and throughout the contract term with IFA. An installment contract or leasehold interest is not an acceptable recipient or homebuyer interest.

ITEM 4. Amend rule 265—39.5(16) as follows:

265—39.5(16) Application procedure.

~~**39.5(1)**~~ HOME applications ~~shall be reviewed at least annually. IFA reserves the right to withhold funding from the annual HOME competitive cycle to compensate for insufficient number of or quality of applications received, to ensure IFA meets its 15 percent CHDO set-aside from HOME funds, to add HOME funds to existing HOME awards within one year of the original award date, to reallocate deobligated or recaptured funds, and to fund projects that are consistent with the Rural Development Section 515 Preservation Demonstration Program as long as the program exists. In the event that funds are withheld from the annual competitive cycle, IFA will entertain additional applications, requests for proposals, or other forms of requests as deemed appropriate by IFA~~ will be received from eligible

applicants as often as the state expects funding from HUD. The applications must be submitted on the forms or online system prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

~~**39.5(2)** Joint applications. For applicants requesting funding from both the HOME and LIHTC programs, the applicant may request application forms and related materials from the LIHTC program at IFA. IFA will make a joint tax credit and HOME application available to a potential applicant. The applicant must submit to IFA the completed application with required HOME attachments by the deadline established in the application package. An applicant shall meet the requirements of the LIHTC and HOME programs to receive an award of HOME funds.~~

~~*a.* IFA shall appoint a joint review team to discuss and review applications for HOME and LIHTC funds and any other funding sources. Staff for each program may communicate frequently regarding common projects. Information contained in the joint application will be shared with each program.~~

~~*b.* HOME staff shall review applications for eligibility and for activity threshold requirements. The joint review team shall meet to compare and discuss each common project. Final award decisions regarding funding recommendations will be made in accordance with IFA's qualified allocation plan (scoring and set-asides) and the HOME application requirements. Staff for each program will make recommendations for funding to the IFA board of directors. A decision by one program does not bind the other program to fund a project.~~

~~*c.* An applicant for the HOME program must meet the threshold requirements outlined in rule 265—39.6(16).~~

ITEM 5. Amend rule 265—39.6(16) as follows:

265—39.6(16) Application requirements. To be considered for HOME assistance, an application shall meet the following threshold criteria.

39.6(1) The application shall propose a housing activity consistent with the HOME fund purpose and eligibility requirements and the state consolidated plan.

39.6(2) The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of successful administration of prior housing activities. IFA reserves sole discretion to deny funding to an applicant that has failed to comply with federal or state requirements in the administration of a previous project funded by the state of Iowa or that failed to comply with federal requirements in the administration of a previous project funded in any other state. Documentation of the ability of the applicant to provide technical services and the availability of certified lead professionals and contractors either trained in safe work practices or certified as abatement contractors may also be required as applicable to the HOME fund activity.

~~**39.6(3)** The application shall provide evidence of the need for the proposed activity, the potential impact of the proposed activity, the feasibility of the proposed activity, and the impact of additional housing resources on the existing related housing market.~~

~~**39.6(4)** The application shall demonstrate local support for the proposed activity.~~

~~**39.6(5)** The application shall show that a need for HOME assistance exists after all other financial resources have been identified and secured for the proposed activity.~~

~~**39.6(6)** The application shall include HOME certification that the applicant will comply with all applicable state and federal laws and regulations.~~

~~**39.6(7)** Maximum per-unit subsidy amount, subsidy layering, and underwriting review. The following shall apply to all applications:~~

~~*a.* The total amount of HOME funds awarded on a per-unit basis may not exceed the per-unit dollar limitations established under Section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for nonprofit elevator-type projects that apply to the area in which the housing is located.~~

~~*b.* IFA shall evaluate the project in accordance with subsidy layering guidelines adopted by HUD for this purpose.~~

~~*c.* The total amount of HOME funds awarded on a per-unit basis cannot exceed the pro rata or fair share of the total project costs when compared to a similar unit in a rental activity.~~

~~*d.* IFA shall conduct an underwriting review of the project.~~

~~**39.6(8)**~~ **39.6(3)** ~~An application for~~ Recipients of a homebuyer assistance activity must ~~indicate that recipients will~~ require the beneficiaries of the ~~applicant's~~ homebuyer assistance activity to use a principal mortgage loan product that meets the following criteria:

a. With the exception of Habitat for Humanity principal mortgage loan products, the principal mortgage loan must be the only repayable loan in all individual homebuyer assistance projects.

b. The HOME assistance must be recorded in second lien position to the principal mortgage loan, if one exists. Recipients of HOME homebuyer assistance must maintain their assistance security agreements in the above-stated recording position throughout the applicable period of affordability and will not be allowed to subordinate the required recording position to any other form of assistance, such as home equity loans. A homebuyer search is required, and any collection/unpaid obligation that would become a judgment or any judgments must be paid in full prior to closing.

c. Any mortgage lending entity's principal mortgage loan products may be used provided they meet all of the following minimum requirements:

(1) The loan must be a fully amortizing, fixed-rate loan with rate not to exceed Fannie Mae 90-day yield + 0.125% ~~or VA-published interest rate at par~~;

(2) No less than a 15-year, fully amortized, fixed-rate mortgage shall be used; and

(3) No adjustable rate mortgages or balloon payment types of mortgages will be allowed.

~~**39.6(9)** An application for a homebuyer assistance activity must stipulate that homebuyer assistance is for first-time homebuyers or qualified veterans only and that the assisted unit will remain as the assisted homebuyer's principal residence throughout the required period of affordability, which must be verified annually by the subrecipient. If the assisted homebuyer fails to maintain the home as the principal residence during the period of affordability, then all HOME funds associated with that address must be repaid to IFA.~~

~~**39.6(10)** An application for a homebuyer assistance activity must include a system for:~~

~~*a.* Annual verification that all assisted units are insured for at least the full value of the assisted unit;~~

~~*b.* Underwriting review of the potential homebuyer;~~

~~*c.* Housing counseling to homebuyers; and~~

~~*d.* Application of IFA policies and procedures regarding homebuyer assistance activities.~~

ITEM 6. Amend rule 265—39.7(16) as follows:

265—39.7(16) Application review criteria.

39.7(1) IFA shall evaluate applications and make funding decisions based on general activity criteria, need, impact, feasibility, and activity administration based upon the specific type of activity to be undertaken. The activity criteria shall be a part of the application. Training will be offered prior to the application deadline to provide information and technical assistance to potential applicants.

39.7(2) Notice of the availability of funding and the funding round requirements will be placed on IFA's Web site at www.iowafinanceauthority.gov.

~~**39.7(3)** Special consideration will be given to applications where 100 percent of the HOME-funded rental units are fully accessible units.~~

ITEM 7. Amend rule 265—39.8(16) as follows:

265—39.8(16) Allocation of funds.

39.8(1) IFA may retain up to 10 percent of the state's annual HOME allocation from HUD for administrative costs associated with program implementation and operation.

39.8(2) Not less than 15 percent of the state's annual HOME allocation shall be reserved for eligible housing activities developed, sponsored or owned by CHDOs.

~~**39.8(3)** IFA reserves the right to set aside a portion of the state's annual HOME allocation for rental housing activities for the Rural Development Section 515 Preservation Demonstration Program as long as the program exists.~~

~~**39.8(4)** Not more than 5 percent of the state's annual HOME allocation may be reserved for CHDO operating expenses.~~

~~**39.8(5)** IFA reserves the right to limit or exceed the amount of funds set aside for any single activity type.~~

~~**39.8(6)** A single award shall be limited to no more than:~~

~~*a.* $600,000 for single-family housing activity, or~~

~~*b.* $1,000,000 for rental project, or~~

~~*c.* $1,000,000 for tenant-based rental assistance activity.~~

~~**39.8(7)** Single-family per-unit subsidies.~~

~~*a.* The maximum per-unit subsidy for all single-family housing activities involving rehabilitation is $37,500. The $37,500 per-unit limit includes all applicable costs including, but not limited to, the hard costs of rehabilitation or the acquisition subsidy or both; homebuyer assistance activities; technical services costs, including lead hazard reduction carrying costs; lead hazard reduction costs; and temporary relocation. All rehabilitation hard costs funded with HOME funds are limited to $24,999. All applicable technical services costs, including any lead hazard reduction carrying costs, are limited to $4,500 per unit.~~

~~*b.* Assistance for single-family housing activities providing acquisition assistance for housing (mortgage buy-down, down payment or closing costs assistance or both, or combinations thereof) is limited to $35,000 per unit, inclusive of all costs, including technical services costs.~~

~~**39.8(8)**~~ **39.8(3)** Subrecipients shall identify general administrative costs in the HOME application. IFA reserves the right to negotiate the amount of funds provided for general administration, but in no case shall the amount for general administration exceed 10 percent of a total HOME award. Only local government and nonprofit recipients are eligible for general administrative funds. Subrecipients must certify that all general administrative costs reimbursed by HOME funds are separate from and not reimbursed by HOME as technical services costs.

~~**39.8(9)**~~ **39.8(4)** IFA reserves the right to negotiate the amount and terms of a HOME award.

~~**39.8(10)**~~ **39.8(5)** IFA reserves the right to make award decisions such that the state maintains the required level of local match to HOME funds.

ITEM 8. Amend rule 265—39.9(16) as follows:

265—39.9(16) Administration of awards. Applicants selected to receive HOME awards shall be notified by letter from the IFA executive director or designee.

~~**39.9(1)** *Preaudit survey.* Rescinded IAB 10/5/11, effective 11/9/11.~~

~~**39.9(2)** *Contract.*~~ A contract shall be executed between the recipient and IFA. These rules, the approved application, the IFA HOME Program Guide for the specified activity and all applicable federal and state laws and regulations shall be part of the contract.

~~*a.* The recipient shall execute and return the contract to IFA within 45 days of transmittal of the final contract from IFA. Failure to do so may be cause for IFA to terminate the award.~~

~~*b.* Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Contracts may be conditioned upon the timely completion of these requirements.~~

~~*c.* Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.~~

~~*d.* Rescinded IAB 12/15/10, effective 1/19/11.~~

~~*e.* Release of funds shall be conditioned upon IFA's receipt and approval of documentation of environmental clearance.~~

~~**39.9(3)** *Local administrative and technical services contracts.*~~

~~*a.* Subrecipients awarded funds to perform the general administrative functions for homebuyer assistance and tenant-based rental assistance activities shall enter into a contract with IFA.~~

~~*b.* Recipients awarded funds for activities requiring technical services (e.g., inspections, work write-ups, cost estimates, construction supervision, lead hazard reduction need determination and oversight, lead hazard reduction carrying costs, and temporary relocation coordination) that employ a third-party entity to perform all or part of the technical services shall enter into a contractual agreement for the technical services to be performed. The procurement must follow 24 CFR Part 84 and 24 CFR Part 85, when necessitated by those regulations.~~

~~**39.9(4)**~~ **39.9(1)** *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IFA. ~~Individual requests for funds shall be made in whole dollar amounts equal to or greater than $500 per request, except for the final draw of funds.~~ Adequate and itemized documentation supporting the amount of funds requested shall be provided to and approved by IFA prior to release of funds. For rental projects, IFA may retain up to 10 percent of the total HOME award for up to 30 days after the recipient satisfactorily completes the work, all HOME-assisted units have been initially occupied, and a final draw and completion form has been submitted to and approved by IFA. ~~For homebuyer projects, IFA may retain up to 5 percent of the total HOME award until the subrecipient satisfactorily completes the work and the final draw and completion form for the last activity in the project has been submitted to and approved by IFA~~.

~~**39.9(5)** *Record keeping and retention.*~~

~~*a.* HOME-funded projects. For HOME-funded projects, 24 CFR 92.508 provides the record retention requirements. Recipients and subrecipients shall retain the following:~~

~~(1) For rental housing projects, records shall be retained for five years after the project completion date, except that records of individual tenant income verifications, project rents and project inspections shall be retained for the most recent five-year period, until five years after the period of affordability terminates;~~

~~(2) For homebuyer housing projects, records shall be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the period of affordability terminates;~~

~~(3) For tenant-based rental assistance projects, records shall be retained for five years after the project completion date;~~

~~(4) For records covering displacements and acquisitions, see 24 CFR 92.508;~~

~~(5) For records relating to litigation, see 24 CFR 92.508.~~

~~*b.* Representatives of IFA, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a HOME funds award; to the total project receipts and expenditures related to new construction, acquisition, or rehabilitation; and to any records maintained by third-party administrators for general administration or technical services for the HOME-funded project. IFA reserves the right to demand any and all additional records and documents that may relate to the HOME award.~~

~~**39.9(6)** *Performance reports and reviews.* Recipients shall submit performance reports to IFA in the manner and on forms prescribed by IFA. Reports shall assess the use of funds and progress of activities. IFA may perform reviews or field inspections necessary to ensure recipient performance.~~

~~**39.9(7)** *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall be requested in writing by the recipient and are not considered valid until approved in writing by IFA following the procedure specified in the contract between the recipient and IFA.~~

~~**39.9(8)**~~ **39.9(2)** ~~*Compliance with federal, state and local laws and regulations.*~~ *Construction sign.* ~~Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations.~~ IFA may require a construction sign meeting specifications outlined by IFA to be erected on the property at the initiation of construction or rehabilitation of rental projects.

~~**39.9(9)** *Remedies for noncompliance.* At any time, IFA may, for cause, find that a recipient is not in compliance with the requirements of this program. At IFA's discretion, remedies for noncompliance may include, but not be limited to, penalties up to and including the return of program funds to IFA.~~

~~Reasons for a finding of noncompliance include the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activities in a timely manner.~~

~~**39.9(10)** *Appeals process for findings of noncompliance.* Appeals will be entertained in instances where it is alleged that IFA staff participated in a decision which was unreasonable, arbitrary, or capricious or otherwise beyond the authority delegated to IFA. Appeals should be addressed to the executive director of IFA. Appeals shall be in writing and submitted to IFA within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. IFA's executive director will make the final decision on all appeals.~~

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/25/17.

ARC 3426C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)"r," 16.41, and 17A.3(1)"b," the Iowa Finance Authority hereby amends Chapter 41, "Shelter Assistance Fund," Iowa Administrative Code.

These amendments update definitions and clarify the rules governing the Shelter Assistance Fund Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3275C**. The Authority received no public comment on the amendments published under Notice and made no changes to the amendments as published under Notice.

The Iowa Finance Authority adopted these amendments on October 4, 2017.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code section 16.41.

These amendments will become effective on November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 265—41.1(16) as follows:

265—41.1(16) Purpose. The shelter assistance fund is created ~~for the purposes of rehabilitation, expansion, or~~ to support the costs of operations of ~~group home~~ shelters for the homeless and domestic violence shelters, essential services for the homeless, and evaluation and reporting of services for the homeless~~, and match moneys for federal funds for the homeless management information system~~.

ITEM 2. Amend rule 265—41.2(16) as follows:

265—41.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

"Applicant" means an eligible provider of homeless services which is applying for program funds.

"Domestic violence shelter" means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.

"ESG" means the Emergency Solutions Grant Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

"HMIS" means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

"Homeless" or *"homeless individual"* shall have the meaning set forth in 24 CFR Part 91.

"Homeless shelter" means a facility which provides temporary shelter with overnight sleeping accommodations for homeless persons and which does not require occupants to sign leases or occupancy agreements. ~~Any project funded to provide shelter under the ESG program or which was awarded SAF funds during federal fiscal year 2010 may continue to be funded in the shelter category under SAF.~~

"HUD" means the U.S. Department of Housing and Urban Development.

"IFA" means the Iowa finance authority.

~~*"Major rehabilitation"* means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.~~

"Nonprofit organization" means an organization:

1. No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;
2. That has a voluntary board;
3. That has a functioning accounting system or has designated a fiscal agent that will maintain a functioning accounting system for the organization;
4. That practices nondiscrimination in the provision of assistance; and
5. That has registered with the state of Iowa as a nonprofit corporation.

~~*"Obligated"* means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the shelter assistance fund. Funds awarded by IFA by a written agreement or letter of award requiring payment from the shelter assistance fund are obligated.~~

"Program participant" means any person or family who is homeless or at risk of becoming homeless and who seeks assistance from a recipient and is provided assistance utilizing SAF funds.

"Recipient" means any organization to which IFA distributes program funds.

~~*"Rehabilitation"* means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.~~

~~*"Renovation"* means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.~~

"SAF" means shelter assistance fund according to Iowa Code section 16.41.

~~*"Value of the building"* means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient.~~

ITEM 3. Amend rule 265—41.4(16) as follows:

265—41.4(16) Eligible activities. Eligible activities may include the following, where the activities are necessary to assist program participants:

~~1. Rehabilitation, renovation, or expansion of buildings for use in providing services for the homeless.~~

~~2.~~ 1. Normal operating expenses for homeless and domestic violence shelters, including staff salaries, maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the shelter. Where no appropriate shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual. Eligible costs may also include the costs of third-party agencies' providing food either to one or more shelters or directly to program participants.

~~3.~~ 2. Essential services for individuals and families in homeless and domestic violence shelters, including case management, child care, education services, employment assistance and job training, outpatient health services (to the extent that such health services are otherwise unavailable), legal services, life skills training, mental health services (to the extent that such mental health services are otherwise unavailable), substance abuse treatment services (to the extent that such substance abuse treatment is otherwise unavailable), and transportation (transportation that is necessary to provide services).

~~4.~~ 3. Evaluation of services for the homeless, including the implementation of the HMIS.

ITEM 4. Amend rule 265—41.6(16) as follows:

265—41.6(16) Application procedures. IFA shall issue requests for applications ~~on an annual basis~~ periodically, as long as funds are available. Requests for applications may combine the ESG program with the SAF program. The applications shall be submitted on the forms or ~~on-line~~ online system prescribed by IFA. Application requirements, priorities, and maximum and minimum grant awards will be established by IFA for each competition.

ITEM 5. Amend rule 265—41.10(16) as follows:

265—41.10(16) Requirements placed on recipients.

~~**41.10(1)** *Building use.* Any building for which SAF program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If SAF program funds are used for operating costs, the recipient is required to continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:~~

~~*a.* In the case of a building that was not operated as a provider of services for the homeless before receipt of SAF program funds, on the date of initial occupancy as a provider of services to the homeless.~~

~~*b.* In the case of a building that was operated as a provider of services to the homeless before the receipt of SAF program funds, on the date that those funds are first obligated to the homeless service provider.~~

~~**41.10(2)** *Building standards.* Any building for which SAF program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.~~

~~**41.10(3)**~~ **41.10(1)** *Participation by homeless individuals and families.* To the maximum extent possible, SAF program recipients are required to involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted with SAF funds, in providing services assisted with SAF funds, and in providing services for occupants of facilities assisted with SAF funds.

~~**41.10(4)**~~ **41.10(2)** *Termination of assistance and grievance procedure.* Recipients shall establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process shall include a hearing that provides individuals a full opportunity to address issues of noncompliance.

~~**41.10(5)**~~ **41.10(3)** *Data reporting system.* Recipients shall participate in the HUD-approved HMIS adopted by IFA as required in the executed contract, unless the recipient qualifies as a domestic violence shelter, in which case the recipient shall participate in required data collection and reporting activities using a comparable database as defined by HUD.

~~**41.10(6)**~~ **41.10(4)** *Ensuring confidentiality.* Recipients shall develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

~~**41.10(7)**~~ **41.10(5)** *Requirements for religious organizations.* Recipients shall not engage in religious proselytizing or counseling using SAF funds, nor require attendance at religious services as a requirement or condition to receive assistance with SAF funds, nor limit services or give preference to persons seeking assistance with SAF funds on the basis of religion.

~~**41.10(8)**~~ **41.10(6)** *Prohibition against involuntary family separation.* If a shelter provides services to families with children under the age of 18, the age of a child under the age of 18 shall not be used as a basis for denying any family's admission to shelter.

~~**41.10(9)**~~ **41.10(7)** *Lead-based paint.* Recipients shall follow the federal rules for lead-based paint, including the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations

in 24 CFR Part 35, Subparts A, B, H, J, K, M, and R, which apply to all shelters occupied by program participants.

~~**41.10(10)**~~ **41.10(8)** *Habitability standards.* Recipients shall follow the federal rules for habitability, ensuring that shelters funded with SAF adhere to minimum habitability standards for being safe, sanitary, and adequately maintained, according to the regulations at CFR Part 576.403. Standards include considerations for the following: (1) structure and materials, (2) access, (3) space and security, (4) interior air quality, (5) water supply, (6) sanitary facilities, (7) thermal environment, (8) illumination and electricity, (9) food preparation, (10) sanitary conditions, and (11) fire safety.

~~**41.10(11)**~~ **41.10(9)** *Other requirements.* IFA may, at its discretion, impose additional requirements on recipients, which will be described in the request for applications, the grant contract, or other guidance materials issued from time to time.

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ARC 3427C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)"r," and 17A.3(1)"b," the Iowa Finance Authority hereby amends Chapter 42, "Emergency Solutions Grant Program," Iowa Administrative Code.

These amendments update definitions, clarify and simplify the rules, and eliminate potential redundancies and conflicts with federal law and regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3276C**. The Authority received no public comment on the amendments published under Notice and made no changes to the amendments as published under Notice.

The Iowa Finance Authority adopted these amendments on October 4, 2017.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code section 16.5(1)"m" and 42 U.S.C. Sections 11371 through 11378.

These amendments will become effective on November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 265—42.1(16) as follows:

265—42.1(16) Purpose. The Emergency Solutions Grant Program is a federal program of the U.S. Department of Housing and Urban Development, designed to ~~improve the quality of services to the homeless and to prevent individuals and families from becoming homeless~~ assist individuals and families to quickly regain stability in permanent housing after experiencing a housing crisis or homelessness. ~~The program will make available needed services and help meet the costs of providing essential social services so that homeless individuals and families have access not only to safe and sanitary shelter but also to the supportive services and other types of assistance the individuals and families need to improve their situations.~~ The Iowa finance authority is the recipient and administrator of ESG program funds allocated to the state of Iowa.

ITEM 2. Amend rule 265—42.2(16) as follows:

265—42.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

"Applicant" means an eligible provider of eligible homeless services which is applying for funds through the ESG program.

~~*"Domestic violence shelter"* means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.~~

~~*"Emergency shelter"* means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons, in accordance with the definition at 24 CFR Part 576.~~

"ESG program" ~~or *"ESGP"*~~ means the Emergency Solutions Grant Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

"HMIS" means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

"Homeless" or *"homeless individual"* shall have the meaning set forth in 24 CFR Part 91.

~~*"Homeless prevention"* means activities or programs designed to prevent the incidence of homelessness.~~

~~*"Homeless shelter"* means a facility providing temporary housing and services for homeless persons.~~

"HUD" means the U.S. Department of Housing and Urban Development.

"IFA" means the Iowa finance authority.

~~*"Major rehabilitation"* means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.~~

~~*"Obligated"* means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the grant amount. Funds awarded by IFA by a written agreement or letter of award requiring payment from the grant amount are obligated.~~

"Private, nonprofit organization" means ~~a secular or religious~~ an organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board,
3. Practices nondiscrimination in the provision of services to clients, and
4. Has registered with the state of Iowa as a nonprofit corporation.

~~*"Recipient"* means any private, nonprofit organization or city or county government to which IFA distributes ESG program funds.~~

~~*"Rehabilitation"* means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.~~

~~*"Renovation"* means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.~~

"SAF" means the shelter assistance fund, as set forth in 265—Chapter 41.

"Subrecipient" means any private, nonprofit organization or city or county government to which ~~the recipient~~ IFA distributes ESG program funds.

~~*"Transitional housing"* means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.~~

~~*"Value of the building"* means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or the subrecipient.~~

ITEM 3. Amend rule 265—42.4(16) as follows:

265—42.4(16) Eligible activities. Eligible activities ~~are based on guidelines established by the Stewart B. McKinney Homeless Assistance Act of 1987 and are further defined in 24 CFR Part 576. Activities assisted by this program~~ may include only the following:

42.4(1) *Street outreach.* Provision of essential services necessary to reach out to unsheltered homeless people; to connect them with ~~emergency~~ shelter, housing, or critical services; and to provide

urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access ~~emergency~~ shelter, housing, or an appropriate health facility.

42.4(2) ~~*Emergency shelter*~~ *Shelter.* Provision of essential services to homeless families and individuals in ~~emergency~~ shelters and the operation of ~~emergency~~ shelters.

42.4(3) *Prevention of homelessness.* The provision of housing relocation and stabilization services, ~~and~~ short- or medium-term rental assistance, or other financial assistance as necessary to prevent an individual or family from ~~moving into an emergency shelter or another place described in paragraph (1) of the definition of "homeless" in 24 CFR Part 576.2~~ experiencing homelessness.

42.4(4) *Rapid re-housing.* The provision of housing relocation and stabilization services, ~~and~~ short- or medium-term rental assistance, or other financial assistance as necessary to help ~~a homeless~~ an individual or family experiencing homelessness to move as quickly as possible into permanent housing and achieve stability in that housing.

42.4(5) *Administrative costs.* A ~~recipient~~ subrecipient may use a portion of a grant received for administrative purposes as determined by IFA. IFA reserves the authority for distribution of administrative funds.

42.4(6) *Homeless Management Information System (HMIS) projects.* IFA may award grants for HMIS implementation to support data collection, reporting, and analysis as long as the total amount of such grants does not exceed 10 percent of the total Emergency Solutions Grant Program allocation. Eligible costs may include equipment, software, services, personnel, space, and operations for HMIS activities. ~~In the case of parties to a supportive housing grant agreement or renewal grant agreement with the United States Department of Housing and Urban Development for HMIS implementation who are in need of the required cash match,~~ IFA may in its discretion award such a grant, subject to the terms of this subrule, without regard to the application and review provisions of rules 265—42.6(16) and 265—42.7(16). Subrecipients of grants in support of other eligible activities listed in subrules 42.4(1) to 42.4(4) may also use a portion of such grants to support data collection and reporting using the HMIS or comparable database.

ITEM 4. Amend rule 265—42.5(16) as follows:

265—42.5(16) Ineligible activities. As a general rule, any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with ESG program funds. ~~The following are items specifically listed as ineligible in 24 CFR Part 576.~~

~~1. Acquisition or new construction of an emergency shelter for the homeless;~~

~~2. Rehabilitation administration, such as preparation of work specifications, loan processing, or inspections;~~

~~3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).~~

ITEM 5. Amend rule 265—42.6(16) as follows:

265—42.6(16) Application procedures. IFA will issue requests for ~~proposals from eligible applicants~~ applications periodically, as ~~often~~ long as the state expects funding from HUD. Requests for ~~proposals~~ applications may combine the ESG program with the SAF program. The ~~proposals must~~ application shall be submitted ~~on the forms or on-line system~~ as prescribed by IFA ~~and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant~~. ~~Maximum~~ Application requirements, priorities, and maximum and minimum grant awards will be established by IFA for each competition.

ITEM 6. Amend rule 265—42.7(16) as follows:

265—42.7(16) Application review process. The following procedures will be used in the review of applications.

42.7(1) Review; threshold criteria; eligible activities.

a. Review of applications. Applications will be reviewed ~~by a panel appointed by IFA. Applications will be reviewed~~ based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. ~~Applicant experience and capacity, as well as past performance, are top priorities. Other review~~ IFA may utilize a panel to review the applications. Review criteria include, but are not limited to, program design, applicant experience and capacity, community partnerships and need, performance, budget and grant management, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.

b. Threshold criteria. IFA will identify threshold criteria that all programs must meet in order to be eligible.

c. Activities eligible during funding cycle. Each competition round will also specify which of the total eligible program activities will be supported during that competition round.

42.7(2) If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

42.7(3) IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

42.7(4) IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

42.7(5) Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

~~**42.7(6)** IFA reserves the right to negotiate all aspects of a funding request prior to final approval.~~

~~**42.7(7)** IFA shall establish the term of each funding award.~~

ITEM 7. Amend rule 265—42.8(16) as follows:

265—42.8(16) Matching requirement. Each subrecipient of ESG program funds must ~~match the grant amount with an equal amount~~ provide matching contributions, according to the requirements of each competition. In calculating the amount of matching funds, the following may be included: cash contributions expended for allowable costs of the subrecipient for the ESG program or noncash contributions, including the value of any real property, equipment, goods, or services contributed to the subrecipient's ESG program provided that, if the subrecipient had to pay for them with grant funds, the costs would have been allowable. IFA may allow an exemption of matching funds up to a maximum of $100,000 of the state allocation received from HUD for the subrecipients least capable of providing such matching amounts. The subrecipient must document its need to participate in this exemption from matching requirements and must receive prior approval from IFA before the exemption will be effective.

ITEM 8. Rescind rule 265—42.10(16) as follows:

~~**265—42.10(16) Restrictions placed on recipients and subrecipients.**~~

~~**42.10(1)** *Use as provider of homeless services.* Any building for which ESG program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:~~

~~*a.* In the case of a building that was not operated as a provider of services for the homeless before receipt of ESG program funds, on the date of initial occupancy as a provider of services to the homeless.~~

~~*b.* In the case of a building that was operated as a provider of services to the homeless before the receipt of ESG program funds, on the date that those funds are first obligated to the homeless service provider.~~

~~**42.10(2)** *Building standards.* Any building for which ESG program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.~~

~~**42.10(3)** *Participation by homeless individuals and families.* To the maximum extent possible, the subrecipient must involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted with ESG funds, in providing services assisted with ESG funds, and in providing services for occupants of facilities assisted with ESG funds.~~

~~**42.10(4)** *Termination of assistance and grievance procedure.* Recipients and subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.~~

~~**42.10(5)** *Data reporting system.* Recipients and subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract, unless the recipient or subrecipient qualifies as a domestic violence shelter, in which case the recipient or subrecipient shall participate in required data collection and reporting activities using a comparable database defined by HUD (HUD HMIS Data Standards, Revised Notice March 2011).~~

~~**42.10(6)** *Ensuring confidentiality.* Recipients and subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.~~

~~**42.10(7)** *Coordination with other homeless services.* Subrecipients must coordinate and integrate, to the maximum extent practicable, grant-funded activities with other homeless service programs in the community.~~

~~**42.10(8)** *Access to mainstream services and resources.* Subrecipients must ensure that all program participants are assisted, to the maximum extent practicable, in obtaining mainstream services and financial assistance, including housing, health, social services, employment, education, and youth programs for which participants are eligible.~~

ITEM 9. Renumber rules **265—42.11(16)** and **265—42.12(16)** as **265—42.10(16)** and **265—42.11(16)**.

ITEM 10. Amend renumbered rule 265—42.10(16) as follows:

265—42.10(16) Compliance with applicable federal and state laws and regulations. All ~~recipients and~~ subrecipients shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Act of 1987 and its implementing regulations, as well as the revising regulations of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), as defined by 24 CFR Part 576. ~~Use of ESG program funds must comply with the following additional requirements.~~ All subrecipients shall also comply with all applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR Part 200.

~~**42.10(1)** *Nondiscrimination and equal opportunity.* All recipients and subrecipients must comply with the following:~~

~~*a.* The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).~~

~~*b.* Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.~~

~~*c.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).~~

~~*d.* The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.~~

~~*e.* The Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR Part 24.~~

~~*f.* Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.~~

~~*g.* Contracting requirements at 24 CFR Part 24 that prohibit the use of federally disbarred, suspended, or ineligible contractors for expenses related to the ESG program.~~

~~*h.* Job training and employment for low-income residents requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR Part 135, except that homeless individuals have priority over other Section 3 residents in accordance with 24 CFR Part 576.405(c).~~

~~*i.* The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR Part 35, Subparts A, B, H, J, K, M, and R, which apply to all shelters assisted under the ESG program and all housing occupied by program participants.~~

~~**42.10(2)** *Auditing.* All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.~~

ITEM 11. Amend renumbered rule 265—42.11(16) as follows:

265—42.11(16) Administration.

42.11(1) *Contracts.* Upon selection of an application for funding, IFA will ~~either~~ initiate a contract ~~or authorize another entity to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including the federal ESG program rules and the state program rules as set forth herein~~. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state or federal agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

42.11(2) *Record keeping and retention.* Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the ~~recipient and the~~ subrecipient. Private, nonprofit ~~recipients and~~ subrecipients covered through an ESG program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their ESG program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for five years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

b. Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a ~~recipient or~~ subrecipient pertaining to the receipt of assistance under these rules.

42.11(3) *Reporting requirements.* ~~Recipients and subrecipients~~ Subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:

a. HMIS data reports. All ~~recipients and~~ subrecipients of ESG program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA unless a ~~recipient or~~ subrecipient qualifies as a domestic violence shelter, in which case the ~~recipient or~~ subrecipient must submit reports using a comparable database. A comparable database must collect client-level data over time and generate unduplicated aggregate reports based on that data.

b. Requests for funds. ~~Recipients and subrecipients~~ Subrecipients must submit requests for funds during the contract ~~year~~ period at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of ~~recipient and~~ subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in ~~42.12(5)~~ subrule 42.11(5).

42.11(4) *Amendments to contracts.* Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

42.11(5) *Remedies for noncompliance.* At any time, IFA may, for cause, find that a ~~recipient or~~ subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the ~~recipient's or~~ subrecipient's use of program funds for activities not described in its application, the ~~recipient's or~~ subrecipient's failure to complete approved activities in a timely manner, the ~~recipient's or~~ subrecipient's failure to comply with any applicable state or federal rules or regulations, or the ~~recipient's or~~ subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At IFA's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter stating that continued failure to comply with program requirements within a stated period of time will result in a more serious action.

b. Condition a future award.

c. Direct the ~~recipient or~~ subrecipient to stop incurring costs with grant funds.

d. Require that some or all of the awarded funds be remitted to the state.

e. Reduce the level of funds the ~~recipient or~~ subrecipient would otherwise be entitled to receive.

f. Elect not to provide future award funds to the ~~recipient or~~ subrecipient until appropriate actions are taken to ensure compliance.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/25/17.

ARC 3428C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry hereby amends Chapter 180, "Licensure of Optometrists," and Chapter 182, "Practice of Optometrists," Iowa Administrative Code.

These amendments revise outdated language, outline the requirements for an incomplete application and include the requirement that the best-corrected visual acuity determined by refraction be included as a part of a contact lens or spectacle lens prescription.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 2, 2017, as **ARC 3223C**. A public hearing was held August 22, 2017, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice.

These amendments were adopted by the Iowa Board of Optometry on October 5, 2017.

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

These amendments are intended to implement Iowa Code sections 147.3, 147.10, 147.55, 154.2, and 154.3.

These amendments will become effective on November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend paragraph **180.2(1)"a"** as follows:

a. An applicant shall complete a board-approved application ~~form~~. Application forms may be obtained from the board's Web site ~~(http://www.idph.state.ia.us/licensure)~~ (https://www.idph.iowa.gov/licensure) or directly from the board office, or the applicant may complete the application online at https://ibplicense.iowa.gov. All paper applications shall be sent to the Board of Optometry, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 2. Rescind paragraph **180.2(1)"g"** and adopt the following **new** paragraph in lieu thereof:

g. Submitting complete application materials. An application for an optometry license will be considered active for two years from the date the application is received. If the applicant does not submit all materials within this time period or if the applicant does not meet the requirements for the license, the application shall be considered incomplete. An applicant whose application is filed incomplete must submit a new application, supporting materials, and the application fee. The board shall destroy incomplete applications after two years.

ITEM 3. Amend rule 645—182.3(154), introductory paragraph, as follows:

645—182.3(154) Furnishing prescriptions. Before a licensed optometrist provides a spectacle or contact lens prescription to a patient, the eye examination record shall include best-corrected visual acuity with ophthalmic lenses or contact lenses in the lens powers determined by refraction. Each contact lens or ophthalmic spectacle lens/eyeglass prescription by a licensed optometrist must meet the requirements as listed below:

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/25/17.

ARC 3429C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14, 422.16, and 422.68, the Department of Revenue hereby amends Chapter 46, "Withholding," Iowa Administrative Code.

In 2016, pursuant to **ARC 2739C**, the Department implemented new filing requirements for W-2 and 1099 forms in order to combat tax refund fraud. The adopted rules phased in the new filing requirements over two years. For tax year 2016, only withholding agents with at least 50 employees were required to electronically file W-2 forms with the Department. For tax year 2016, any withholding agents could voluntarily file 1099 forms and withholding agents with fewer than 50 employees could voluntarily file W-2 forms. For tax year 2017, the rule required all withholding agents to electronically file W-2 and 1099 forms with the Department.

To allow additional time to implement these new requirements, the Department is extending the phase-in for one year as described in the amendment below. The amendment will only require withholding agents with at least 50 employees to file W-2 forms electronically for tax years 2016 and 2017. The requirement that all withholding agents file W-2 and 1099 forms electronically will take effect with tax year 2018 rather than 2017.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3284C** on August 30, 2017. No public comments were received. This amendment is identical to that published under Notice.

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

The Department adopted this amendment on October 4, 2017.

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

This amendment is intended to implement Iowa Code section 422.16(2)"b."

This amendment will become effective November 29, 2017.

The following amendment is adopted.

Amend paragraphs **46.3(3)"f"** and **"g"** as follows:

f. W-2 forms.

(1) Beginning in 2017 for tax ~~year~~ years 2016 and 2017, withholding agents with at least 50 employees are required to electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year. Withholding agents with fewer than 50 employees may, but are not required to, electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year.

(2) Beginning in ~~2018~~ 2019 for tax year ~~2017~~ 2018 and all subsequent tax years, all withholding agents are required to electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year.

(3) The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the ~~2019~~ 2020 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

(4) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

g. 1099 forms and W-2G forms.

(1) Beginning in 2017 for tax ~~year~~ years 2016 and 2017, withholding agents with at least fifty 1099 forms and W-2G forms may file 1099 forms and W-2G forms with the department of revenue on or before the last day of January following the tax year.

(2) Beginning in ~~2018~~ 2019 for tax year ~~2017~~ 2018 and all subsequent tax years, all withholding agents are required to electronically file all 1099 forms and W-2G forms on or before the last day of January following the tax year.

(3) The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the ~~2019~~ 2020 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

(4) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

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ARC 3430C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 421.1A(4)"f" and 421.1A(4)"g," the Property Assessment Appeal Board hereby amends Chapter 126, "Property Assessment Appeal Board," Iowa Administrative Code.

The primary purpose of this rule making is to bring the Board's rules into conformance with statutory changes enacted by 2017 Iowa Acts, House File 478.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3285C** on August 30, 2017.

The Board received public comments from two entities regarding these amendments. In response to one comment, the Board revised subparagraph 126.7(3)"d"(1) to clarify that the property record card filed by a local board of review as an exhibit is the property record card reflecting any changes implemented

by the board of review in its final decision. One comment requested that the Board not adopt proposed subrule 126.2(3), which permits an appellant to amend an appeal once as a matter of course after filing. Subrule 126.2(3) is similar to Iowa R. Civ. P. 1.402(4) permitting amendment in original actions. Because the subrule is similar to the procedure in an original action in the Iowa Courts and it is within the Board's authority to set procedure for appeals before the Board, the Board did not make changes to the subrule in regard to the comment. The Board also received two comments regarding burden of proof in classification appeals and admissible evidence and defenses. The burden of proof found in amended subrule 126.2(4) is a recitation of the statutorily imposed burden of proof under Iowa Code section 441.21(3). The rules for evidence in a Board contested case proceeding are statutorily prescribed by Iowa Code section 441.37A and chapter 17A. Finding that the requested changes are outside the scope of the Board's authority, the Board made no changes to the rule making in regard to those comments.

These amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to subrule 126.1(3).

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

These amendments are intended to implement Iowa Code sections 421.1A and 441.37A and 2017 Iowa Acts, House File 478.

These amendments will become effective on November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 701—126.2(421,441) as follows:

701—126.2(421,441) Appeal and ~~certification~~ answer.

126.2(1) *Appeal and jurisdiction.* The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by filing an appeal with the board. The appeal shall ~~include a petition setting~~ set forth the ~~basis of the~~ grounds for appeal and the relief sought. The appeal shall be filed with the board within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed. For an appeal filed through the electronic filing system to be timely, the appeal must be filed by 11:59 p.m. on the last day for filing.

b. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery.

126.2(2) *Form of appeal.* The appeal shall include:

a. The appellant's name, mailing address, e-mail address, and telephone number;

b. The address of the property being appealed and its parcel number;

c. The grounds for appeal;

~~*c.*~~ *d.* A short and plain statement of the claim;

~~*d.*~~ *e.* The relief sought; and

~~*e.*~~ *f.* If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, e-mail address, and telephone number.

126.2(3) *Amendment of appeal.* The appellant may amend the appeal once as a matter of course within 20 days after it is filed to add or modify the grounds for appeal. Otherwise, the appellant may only amend the appeal by leave of the board or by written consent of the adverse party.

~~126.2(3)~~ 126.2(4) *Scope of review.*

a. Grounds for appeal. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. ~~No new grounds in addition to those set out in the protest to the local board of review can be pleaded, but additional evidence to sustain those grounds may be introduced.~~ The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof.

(1) For assessment years prior to January 1, 2018, no new grounds in addition to those set out in the protest to the local board of review can be pleaded but additional evidence to sustain those grounds may be introduced.

(2) For assessment years beginning on or after January 1, 2018, new grounds in addition to those set out in the protest to the local board of review may be pleaded and additional evidence to sustain those grounds may be introduced. The board may order the appellant to clarify the grounds on which the appellant seeks relief.

b. Burden of proof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. ~~The~~

(1) For assessment years prior to January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.

(2) For assessment years beginning on or after January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold the valuation.

c. The appeal is a contested case.

~~126.2(4)~~ 126.2(5) *Notice to local board of review.* The board shall serve, through the electronic filing system, a copy of the appellant's appeal to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is served on the local board of review.

~~126.2(5)~~ 126.2(6) *Answer ~~and certification~~ by local board of review.* Using the form provided by the board or a conforming document, the local board of review's attorney or representative shall file an answer ~~and certification~~ within ~~21~~ 30 days after service of the notice of appeal, unless the time period is shortened or extended by the board. The answer ~~and certification~~ shall include a statement setting forth the local board of review's position on the appeal and ~~include the following attachments:~~ the subject property's current assessed value.

~~1. The taxpayer's protest to the local board of review;~~

~~2. The final decision of the local board of review; and~~

~~3. The notice of assessment, if any.~~

~~126.2(6)~~ 126.2(7) *Docketing.* Appeals shall be assigned consecutive docket numbers. Electronic records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the board, as well as all filings made in the appeal.

~~126.2(7)~~ 126.2(8) *Consolidation and severance.* The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. Severance. The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

~~126.2(8)~~ 126.2(9) *Appearances.* Any party may appear and be heard on its own behalf, or by its attorney or designated representative. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

ITEM 2. Amend rule 701—126.5(421,441) as follows:

701—126.5(421,441) Motions and settlements.

126.5(1) No change.

126.5(2) *Motions.* No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the board and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. to *c.* No change.

d. Motions for refund. For assessment years beginning on or after January 1, 2018, if the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board's final agency action of the appellant's right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within 10 days of the board's final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

126.5(3) *Settlements.* Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. The board will not approve ~~settlements~~ a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

ITEM 3. Amend subrule 126.6(1) as follows:

126.6(1) *When required.* For appeals involving properties classified commercial, industrial, or multiresidential and assessed at $2 million or more, the parties shall confer and file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule ~~126.2(4)~~ 126.2(5). In any other appeal, the parties may jointly file a hearing scheduling and discovery plan or the board may, on its own motion, require parties to file a hearing scheduling and discovery plan. The dates established in a hearing scheduling and discovery plan under this rule shall supersede any dates set forth in any other rule in this chapter.

ITEM 4. Amend rule 701—126.7(421,441) as follows:

701—126.7(421,441) Discovery and evidence.

126.7(1) *Discovery procedure.* The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings. When considering a question of relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 71, and other applicable law. The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in specific Iowa Rules of Civil Procedure govern those specific procedures, unless lengthened or shortened by the board.

a. to *g.* No change.

126.7(2) No change.

126.7(3) *Evidence.*

a. and *b.* No change.

c. Scope of admissible evidence. Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues.

Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision in accordance with the provisions of Iowa Code section 441.21, 701—Chapter 71, or other applicable law. ~~Irrelevant~~ Upon an objection pursuant to paragraph 126.7(3)*"e,"* irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have filed a hearing scheduling and discovery plan under rule 701—126.6(421,441). Rebuttal evidence need not be exchanged or served on the opposing party prior to the hearing. All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark each exhibit with consecutive numbers. The appellee shall mark each exhibit with consecutive letters. ~~The local board of review's Exhibit A shall be the subject property's property record card or cost report.~~

(1) The local board of review's Exhibit A shall be the subject property's property record card after implementation of the final decision of the board of review, including the cost report.

(2) The local board of review's Exhibit B shall be the final decision of the local board of review.

(3) The local board of review's Exhibit C shall be the appellant's petition to the local board of review.

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

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

g. Judicial notice of property record cards. Without additional notice, the board may take judicial notice of the property record card or cost report of the subject property if electronically available to the public through the assessor's Web site. At its discretion, the board may take judicial notice of property record cards or cost reports of comparable properties identified by the parties as provided under Iowa Code section 17A.14(4) if electronically available to the public through the assessor's Web site. If the board takes judicial notice of any property record card or cost report, such card or report shall become part of the board's official agency record for the appeal.

126.7(4) *Subpoenas.*

a. Issuance ~~of subpoena for witness~~.

(1) ~~A~~ Pursuant to Iowa Code section 17A.13(1), a subpoena shall be issued to a party on request, unless otherwise excluded pursuant to this subrule. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

(3) The board shall refuse to issue a subpoena when there is reasonable ground to believe the subpoena is requested for the purpose of harassment; may seek irrelevant information as provided under Iowa Code section 441.21, 701—Chapter 71, or other applicable law; or is untimely. If the board refuses to issue a subpoena, the board shall provide a written statement of the ground for refusal. A party to

whom a refusal is issued may obtain a prompt hearing before the board regarding the refusal by filing with the board and serving on all parties a written request for hearing.

~~*b. Issuance of subpoena for production of documents.*~~

~~(1) A subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.~~

~~(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.~~

~~*c.*~~ *b.* *Motion to quash or modify.* Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

ITEM 5. Amend subrule 126.8(8) as follows:

126.8(8) ~~*Transcript of hearing*~~ *Hearing recordings.* All hearings shall be electronically recorded. Any party may request a copy of the hearing recording and pay a fee associated with preparing the copy. Any party may provide a certified court reporter at the party's own expense. ~~Any party may request a transcription of the hearing. The board reserves the right to impose a charge for copies and transcripts.~~

ITEM 6. Amend rule 701—126.10(17A,441) as follows:

701—126.10(17A,441) Judicial review.

126.10(1) *Appeals of board decisions.* A party may seek judicial review of a decision rendered by the board ~~by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the board's final agency action is postmarked to the appellant or the final agency action is filed in the board's electronic filing system. Iowa Code chapter 17A applies to judicial review of the board's final decision~~. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

a. For assessment years prior to January 1, 2018, a party may seek judicial review by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the board's final agency action is postmarked to the appellant or the final agency action is filed in the board's electronic filing system. Iowa Code chapter 17A applies to judicial review of the board's final decision.

b. For assessment years beginning on or after January 1, 2018, a party may seek judicial review of a decision rendered by the board by filing a petition for judicial review with the clerk of the district court where the property is located within 30 days after the board's action pursuant to Iowa Code chapter 17A.

126.10(2) No change.

ITEM 7. Amend **701—Chapter 126**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapters 17A and 22 and 2017 Iowa Acts, House File 478.

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